R23. Administrative Services, Facilities Construction and Management.

R23-29. Across the Board Delegation.

R23-29-1. Purpose.

This rule provides the procedures for delegation of construction projects to the University of Utah and Utah State University.

R23-29-2. Authority.

This rule is authorized under Subsection 63A-5-103, which directs the Building Board to make rules necessary for the discharge of its duties and the duties of the Division of Facilities Construction and Management.

R23-29-3. Authority and Extent of Delegation.

(1) As permitted by subsection 63A-5-206(3)(a)(ii)(B), authority is delegated to the University of Utah and Utah State University, "the Institutions," to exercise direct supervision over the design and construction of all alterations, repairs, and improvements to existing facilities on their respective campuses up to the dollar amounts stated below.

(2) As permitted by subsection 63A-5-206(5)(c), the Board expresses its intent to authorize the delegation of the design and construction of new facilities on a project-by-project basis up to the dollar amounts stated below. New facilities means the addition of new space costing more than $100,000.

(3) This delegation is granted to Utah State University for projects having a total budget for design and construction of less than $2,000,000.

(4)(a) This delegation is granted to the University of Utah for the design and construction of all alteration, repair and improvement projects unless the Utah State Building Board, after consultation with the University of Utah, determines that the project should be managed by DFCM.

(b) For projects having a total budget for design and construction greater than $5,000,000, the University of Utah shall provide the following in writing to the Director of DFCM prior to initiating a project under this delegation:

(i) a notice of the University's desire to manage the project under this delegation authorization; and

(ii) a project management and staffing plan for the project.

(5) Projects may not be subdivided into multiple projects in order to arrive at projects which are small enough to meet the dollar limits for delegation.

(6) Substantial benefit and justification must be demonstrated before consideration will be given to any delegation requests from these institutions for projects larger than the above limits.

(7) When applicable, this delegation authority shall not take effect for a specific project until the following requirements are met:

(a) Legislative authorization for design and construction has been obtained for the construction of all new space costing more than $100,000.

(b) The requirements of section R23-29-17 regarding the completion of a DFCM administered architectural program have been satisfied.

R23-29-4. Fiduciary Control.

The Institutions shall assume fiduciary control over project finances and shall assume all responsibility for project budgets and expenditures. The Institutions shall be responsible for ensuring compliance with all applicable laws, rules, and building codes.

R23-29-5. Building Official.

Each Institution is designated as the Building Official for projects delegated. Institutions shall comply with all requirements of the Uniform Building Standards Act, Chapter 58-56. If an Institution does not have the internal staff to comply with this requirement, it must contract for the appropriate service.

R23-29-6. Procurement.

Each Institution shall comply with the state Procurement Code, Chapter 63-56, and its procurement rules. Any aspect of the Institution's rules for the procurement of architect/engineer services or construction which is less restrictive than the procurement rules adopted by the Building Board must be approved by the Board.

R23-29-7. Contract Documents.

The Institutions shall utilize substantially the same standard Contract Documents as used by DFCM. Any substantive differences must be approved by the Board.

R23-29-8. Transfer of State Funds.

(1) To the extent possible, all state funds appropriated to DFCM for projects delegated to the Institutions shall be transferred to the respective Institution immediately upon their receipt by DFCM.

(2) State funds provided from state issued bonds, or from other sources containing similar restrictions, shall be transferred to the Institutions on a reimbursement basis. Such reimbursements shall be made on a monthly basis upon receipt of a reimbursement request from the Institution detailing the expenditures made on each project.

(3) Upon completion of a project, any remaining statewide funds like roofing, paving) shall remain with the Institution to be used for a similar need on its campus. This activity shall be noted in the monthly report to the Building Board.

R23-29-9. Contingencies.

The Institutions shall be subject to the same laws and rules regarding contingency funds as is DFCM. The only difference is that contingency funds for delegated projects shall be segregated from the contingency funds held by DFCM for non-delegated projects.

R23-29-10. Space Standards.

The Institutions shall comply with the space standards as adopted by the Building Board. Any significant deviations from these standards shall be reported to the Board.

R23-29-11. Design Criteria.

The Institutions shall utilize the Design Criteria adopted by the Building Board. These may be supplemented by special requirements that are unique to each Institution. Any significant

departures from the Board approved Design Criteria shall be reported to the Board.

R23-29-12. Value Engineering.

The Institutions shall comply with state law and Rule R23-6 regarding the value engineering and life cycle costing of facilities. DFCM may assist each Institution as requested in the performance of these reviews.

R23-29-13. Record Drawings.

At the completion of each delegated project, each Institution shall submit a copy of all record drawings to DFCM.

R23-29-14. Statutory Requirements on DFCM Projects.

(1) In addition to those noted elsewhere in this rule, the Institutions shall comply with the following statutory requirements which have been placed on DFCM projects.

(a) Subsection 63A-5-205(3) relating to the investment of contractor's retention.

(b) Subsection 63A-5-206(3)(c)(ii) relating to the notification to local governments regarding certain types of projects.

(c) The Percent-for-Art program as provided in Sections 63A-5-206 and 63A-5-209, and Title 9, Chapter 6, Part 4.

(d) Subsection 63A-5-206(7) relating to the reporting of completed projects to the Office of the Legislative Fiscal Analyst.

(e) Section 63A-5-208 relating to the listing and changing of subcontractors and the disclosure of subcontractor bids.

(2) The Institutions and DFCM shall strive to avoid any confusion which could result from inconsistent procedures and requirements being used by each entity.

R23-29-15. Reporting.

(1) Each Institution shall report monthly to the Building Board on the status of its delegated projects.

(2) The following reports shall be presented in a similar format and content as that presented by DFCM on projects and funds it is administering.

(a) Architect/Engineer Contracts Awarded

(b) Construction Contracts Awarded

(c) Contingency Funds

(d) Statewide Funds

(e) Status Report for Projects in Construction

(3) The above reports shall be submitted to DFCM at least ten calendar days prior to each Board meeting to be included in packet sent to the Building Board.

(4) A copy of the above reports shall be submitted to the Office of the Commissioner of Higher Education for distribution to the Board of Regents at the same time it is submitted to DFCM.

R23-29-16. Capital Budget Requests.

The Institutions shall continue to submit all capital budget requests to DFCM and the Building Board for review, prioritization, and recommendation to the Governor and the Legislature.

R23-29-17. Programming.

(1) For projects within the definition of "Capital Developments" as defined in subsection 63A-5-103(3)(a), which will be funded wholly or in part by state funds for either construction or operations and maintenance, a facility program shall be developed under the supervision of DFCM unless this requirement is waived by the Building Board.

(2) For projects which are within the delegation limits set forth in section R23-29-1 and which do not meet the requirements of subsection R23-29-17(1), the Institutions may determine the extent of programming or scope definition required and supervise the development of these documents. No DFCM review or approval will be required.

R23-29-18. Sharing of Resources.

DFCM and the Institutions shall strive to share personnel resources where resources exist at one entity and not at another. The Institutions and DFCM shall enter into a separate agreement to accomplish this sharing of resources.

R23-29-19. Staffing Levels.

(1) The Institutions have represented that they have adequate existing resources to assume the responsibilities given to them under this delegation.

(2) The Institutions shall not increase the staffing levels related to the administration of capital projects beyond the levels represented in seeking this delegation which was 32 full time staff at the University of Utah and 15 full time staff and 5 F.T.E. of student employees at Utah State University.

R23-29-20. Review of Delegated Projects.

Upon direction of the Building Board, DFCM staff may review the management of delegated projects and report its findings to the Board.

R23-29-21. Authority to Modify Delegation.

The Building Board may modify or repeal the authority delegated under this rule by amending or repealing this rule.

KEY: buildings, delegation*
October 29, 1998 **63A-5-206**
Notice of Continuation May 11, 1999

R70. Agriculture and Food, Regulatory Services.
R70-530. Food Protection.
R70-530-1. Authority and Purpose.

(1) Authority.

Promulgated under the authority of the Section 4-5-17.

(2) Purpose.

This rule shall be liberally construed and applied to promote its underlying purpose of safeguarding public health and providing to consumers food that is safe, unadulterated, and honestly presented.

(3) Scope.

This rule establishes definitions; sets standards for management and personnel, food operations, equipment, and facilities; and provides for food establishment plan review, inspection, and employee restriction. It shall be used to regulate bakeries, grocery and convenience stores, meat markets, food and grain processors, warehouses and any other establishment meeting the definition of a food establishment.

(4) Adopted by Reference.

The division adopts the food standards, labeling requirements and procedures as specified in 21 CFR, 1 through 200, April 1, 1997 edition, 40 CFR 185, 1997 edition, and 9 CFR 200 to End, 1997 edition, which are incorporated by reference within this rule.

R70-530-2. Definitions.

Definitions. Statement of Application and Listing of Terms.

The following definitions apply in the interpretation and application of this rule:

(1) Additive.

(a) "Food additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 201(s) and 21 CFR 170.

(b) "Color additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 201(t) and 21 CFR 70.

(2) "Adulterated" has the meaning stated in the Wholesome Food Act, Section 4-5-7.

(3) "Approved" means acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

(4) "AW or A_w" means water activity which is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a_w.

(5) "Beverage" means a liquid for drinking, including water.

(6) "Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

(7) "Bulk food" means unpackaged processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn. For the purpose of this interpretation, the term does not include unprocessed fresh fruits, unprocessed fresh vegetables, nuts in the shell, salad bars, and potentially hazardous foods.

(8) "Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

(9) CIP.

(a) "CIP" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize an enclosed beverage processing system.

(b) "CIP" does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

(10) "CFR" means Code of Federal Regulations which is a compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

(a) Citations in this Code refer sequentially to the title, part, and section number, such as 21 CFR 178.1010 refers to Title 21 Part 178, Section 1010.

(b) The CFR is published annually by the U.S. Government Printing Office; and

(c) Contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, and EPA rules in 40 CFR.

(11) Comminuted.

(a) "Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing.

(b) "Comminuted" includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and in a mixture of 2 or more types of meat that have been reduced in size and combined, such as sausages made from 2 or more meats.

(12) "Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism and epidemiological analysis implicates the food as the source of the illness.

(13) "Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

(14) "Corrosion-resistant materials" means a material that maintains acceptable cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

(15) Critical control point.

(a) "Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

(b) "Critical control point" is an operation, practice, procedure, process, location, or step of an operation where a preventive or control measure can be exercised that will eliminate, prevent or minimize a hazard(s) that has occurred prior to this point.

(16) "Critical item" means a provision of this rule that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard. Critical items are identified in the rule with an * (asterisk).

(17) "Critical Limit" means the maximum or minimum

value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

(18) Drinking Water.

(a) "Drinking Water" means water that meets 40 CFR Part 141 National Primary Drinking Water Regulations.

(b) "Drinking Water" is traditionally known as "potable water".

(c) "Drinking Water" includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water", "mop water", "rainwater", "wastewater", and "nondrinking" water.

(19) "Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

(20) Easily Cleanable.

(a) "Easily cleanable" means a characteristic of a surface that:

(i) Allows effective removal of soil by normal cleaning methods;

(ii) Is dependent on the material, design, construction, and installation of the surface; and

(iii) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

(b) "Easily cleanable" includes a tiered application of the criteria that qualify the surface as easily cleanable as specified in Subsection (a) of this definition to different situations in which varying degrees of cleanability are required such as:

(i) The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables; or

(ii) The need for a different degree of cleanability for a utilitarian attachment or accessory in the production area as opposed to a decorative attachment or accessory.

(21) "Easily movable" means:

(a) Weighing 14 kg (30 pounds) or less; mounted on casters, gliders, or rollers; or provided with a mechanical means requiring no more than 14 kg (30 pounds) of force to safely tilt a unit of equipment for cleaning; and

(b) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

(22) "Employee" means the person in charge, person having supervisor or manager, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

(23) "EPA" means the U.S. Environmental Protection Agency.

(24) Equipment.

(a) "Equipment" means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

(b) "Equipment" does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

(25) Fish.

(a) "Fish" means fresh or saltwater finfish, crustaceans and other forms of aquatic life, including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals, other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.

(b) "Fish" includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

(26) "Food" means a raw, cooked, or processed edible substance, water, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(27) Foodborne Disease Outbreak.

(a) "Foodborne disease outbreak" means an incident, except as specified in Subsection (b) of this definition, in which:

(i) 2 or more persons experience a similar illness after ingestion of a common food; and

(ii) Epidemiological analysis implicates the food as the source of the illness.

(b) "Foodborne disease outbreak" includes a single case of illness such as 1 person ill from botulism or chemical poisoning.

(28) "Food-contact surface" means:

(a) A surface of equipment or a utensil with which food normally comes into contact; or

(b) A surface of equipment or a utensil from which food may drain, drip, or splash:

(i) Into a food, or

(ii) Onto a surface normally in contact with food.

(29) "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

(30) "Food establishment" shall mean grocery store, bakery, candy factory, processor, bottling plant, sugar factory, cannery, rabbit processor, meat processor, flour mill, warehouse (cold or dry storage) and any other facility where food products are manufactured, canned, processed, packaged, stored, transported, prepared, sold or offered for sale. This rule shall not cover food service establishments, dairy farms or plants, or meat establishments under the official meat inspection program.

(31) "Food service establishment" means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term may include convenience stores and delicatessens that offer prepared food in individual service portions. The term does not include private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, and supply vehicles.

(32) "Game animal" means an animal, the products of which are food, that is not classified as cattle, sheep, swine, or goat in 9 CFR Subchapter A - Mandatory Meat Inspection, part 301, as poultry in 9 CFR Subchapter C - Mandatory Poultry Products Inspection, part 381, as elk in Utah Code Annotated 4-

32-4(3), or as fish.

(33) "General use pesticide" means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175.

(34) "Grade A standards" means the requirements of the USPHS/FDA "Grade A Pasteurized Milk Ordinance" and "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey" with which certain fluid and dry milk and milk products comply.

(35) "HACCP Plan" means a written document that delineates the formal procedures for following the Hazard Analysis critical control point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

(36) "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

(37) "Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

(38) "Highly susceptible population" means a group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults and in a facility that provides health care or assisted-living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day-care center.

(39) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:

(a) The number of potential injuries, and

(b) The nature, severity, and duration of the anticipated injury.

(40) "Injected" means manipulating a meat so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat such as with juices which may be referred to as "injecting," "pinning," or "stitch pumping".

(41) "Law" means applicable Local, State, and Federal statutes, ordinances, rules, and regulations.

(42) "Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

(43) "Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals as specified under Subsection 4-2(1)(g) of this rule.

(44) "mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

(45) "Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

(46) Packaged.

(a) "Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped whether packaged in a food establishment or a food service establishment.

(b) "Packaged" does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

(47) "Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

(48) "Person in charge" means the individual present at the food establishment who is responsible for the operation at the time of inspection.

(49) Personal Care Items.

(a) "Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance.

(b) "Personal care items" include: items such as medicines; first aid supplies; and other items such as cosmetics; and toiletries such as toothpaste and mouthwash.

(50) "pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

(51) "Physical facilities" means the structure and interior surfaces of a food establishment including: accessories such as soap and towel dispensers; and attachments such as light fixtures and heating or air conditioning system vents.

(52) "Plumbing fixture" means a receptacle or device that:

(a) Is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or

(b) Discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

(53) "Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

(54) "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in 4 categories:

(a) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(b) Pesticides except sanitizers, which include substances such as insecticides and rodenticides;

(c) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and

(d) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

(55) Potentially Hazardous Food.

(a) "Potentially hazardous food" means a food that is natural or synthetic and requires temperature control because it is in a form capable of supporting:

(i) The rapid and progressive growth of infectious or toxigenic microorganisms;

(ii) The growth and toxin production of Clostridium botulinum; or

(iii) In shell eggs, the growth of Salmonella enteritidis.

(b) "Potentially hazardous food" includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons, and garlic and oil mixtures that are not acidified or otherwise modified at a food establishment in a way that results in mixtures that do not support growth as specified under Subsection (a) of this definition.

(c) "Potentially hazardous food" does not include:

(i) An air-cooled hard-boiled egg with shell intact;

(ii) A food with a a_w or water activity value of 0.85 or less;

(iii) A food with a pH level of 4.6 or below when measured at 24 degrees C (75 degrees F);

(iv) A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and

(v) A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of S. enteritidis in eggs or C. botulinum can not occur, such as a food that has an a_w and a pH that are above the levels specified under Subsections (c)(ii) and (iii) of this definition and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or

(vi) A food that does not support the growth of microorganisms as specified under Subsection (a) of this definition even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

(56) Poultry.

(a) "Poultry" means:

(i) Any domesticated bird; chickens, turkeys, ducks, geese, or guineas, whether live or dead, as defined in 9 CFR 381 Poultry Products Inspection Regulations; and

(ii) Any migratory waterfowl, game bird, or squab such as pheasant, partridge, quail, grouse, or guineas, whether live or dead, as defined in 9 CFR 362 Voluntary Poultry Inspection Program.

(b) "Poultry" does not include ratites.

(57) "Premises" means:

(a) The physical facility, its contents, and the contiguous land or property under the control of the owner of the food establishment; or

(b) The physical facility, its contents, and the contiguous land or property not described under Subsection (a) of this definition if its facilities and contents are under the control of the owner of the food establishment and may impact food establishment personnel, facilities, or operations, if a food establishment is only one component of a larger organization such as a health care facility, hotel, motel, school, recreational camp, or prison.

(58) "Primal cut" means a basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank or veal breast.

(59) "Public water system" has the meaning stated in 40 CFR Part 141 National Primary Drinking Water Regulations.

(60) Ready-to-Eat Food.

(a) "Ready-to-eat food" means food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form.

(b) "Ready-to-eat food" includes:

(i) Potentially hazardous food that is unpackaged and cooked to the temperature and time required for the specific food by this rule;

(ii) Raw, washed, cut fruits and vegetables;

(iii) Whole, raw, fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and

(iv) Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

(61) Reduced Oxygen Packaging.

(a) "Reduced oxygen packaging" means the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is 21% oxygen.

(b) "Reduced oxygen packaging" includes methods that may be referred to as altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen, and vacuum packaging including sous vide.

(62) "Refuse" means solid waste not carried by water through the sewage system.

(63) "Regulatory authority" means the Utah Department of Agriculture and Food (UDAF) which has jurisdiction over the food establishment.

(64) "Restricted-use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175 Pesticides classified for restricted use, and that is limited to use by or under the direct supervision of a certified applicator.

(65) "Safe material" means:

(a) An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food;

(b) An additive that is used as specified in Section 409 or 706 of the Federal Food, Drug, and Cosmetic Act; or

(c) Other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

(66) "Sanitization" means the application of cumulative heat or chemicals on cleaned food contact surfaces that, when evaluated for efficacy, yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

(67) "Sealed" means free of cracks or other openings that allow the entry or passage of moisture.

(68) "Servicing area" means an operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

(69) "Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

(70) "Shellfish control authority" means a state, federal, foreign, tribal or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

(71) "Shellstock" means raw, in-shell molluscan shellfish.

(72) "Shucked shellfish" means molluscan shellfish that have one or both shells removed.

(73) "Single-service articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use.

(74) Single-Use Articles.

(a) "Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded.

(b) "Single-use articles" include items such as: wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, bread wrappers, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under Sections 5-1(1)(a), 5-2(1)(a) and 5-2(2)(a) for multiuse utensils.

(75) "Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -23 degrees C (-10 degrees F) to -4 degrees C (25 degrees F) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach.

(76) "Smooth" means:

(a) A food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number 3 stainless steel;

(b) A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and

(c) A floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

(77) "Support animal" means a trained animal such as a Seeing Eye dog that accompanies a person with a disability to assist in managing the disability and enables the person to perform functions that the person would otherwise be unable to perform.

(78) "Table-mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

(79) "Temperature measuring device" means a thermometer, thermocouple, or other device that indicates the temperature of food, air, or water.

(80) "Temporary or Seasonal food establishment" means a food establishment that operates for a period of no more than 60 consecutive days in conjunction with a single event or celebration.

(81) "Transportation (transported)" means movement of food in commerce; within the food establishment; or delivery of food from that food establishment to another place while under the control of the person in charge.

(82) "UDAF" means the Utah Department of Agriculture and Food.

(83) "USDA" means the U.S. Department of Agriculture.

(84) "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food; such as: kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; and food temperature measuring devices.

(85) "Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

(86) "Vending machine location" means the room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage and servicing areas on the premises that are used in conjunction with the vending machines.

(87) "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

R70-530-3. Management and Personnel.

3-1. Supervision.

(1) Responsibility.

Assignment.*

The owner or manager shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation.

(2) Knowledge.

(a) Demonstration of knowledge.*

Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of this rule. The person in charge shall demonstrate this knowledge by compliance with this rule, by being a certified manager who has demonstrated knowledge of required information through an accredited test or by responding to the compliance officer's questions as they relate to the specific food operation. The areas of knowledge include:

(i) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;

(ii) Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;

(iii) Describe the symptoms associated with the diseases that are transmissible through food;

(iv) Explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food and the prevention of foodborne illness;

(v) Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;

(vi) Stating the required food temperatures and times for safe cooking of potentially hazardous food including meat, poultry, eggs, and fish;

(vii) Stating the required temperatures and times for the

safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food;

(viii) Describing the relationship between the prevention of foodborne illness and the management and control of the following:

(A) Cross contamination,

(B) Hand contact with ready-to-eat foods,

(C) Handwashing, and

(D) Maintaining the food establishment in a clean condition and in good repair;

(ix) Explaining the relationship between food safety and providing equipment that is:

(A) Sufficient in number and capacity, and

(B) Properly designed, constructed, located, installed, operated, maintained, and cleaned;

(x) Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;

(xi) Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections;

(xii) Identifying poisonous or toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law;

(xiii) Identifying critical control points in the operation from purchasing through sale or service that may contribute to foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this rule;

(xiv) Explaining the details of how the person in charge and food employees comply with the HACCP plan if a plan is required by the law, this rule, or an agreement between the regulatory authority and the establishment; and

(xv) Explaining the responsibilities, rights, and authorities assigned by this rule to the:

(A) Food employee,

(B) Person in charge, and

(C) Regulatory authority.

(b) Permits for food establishment personnel.

Every person, before engaging in the manufacturing, preparation or handling of exposed food or drink within a food establishment shall obtain a food establishment personnel permit. Said permit shall be granted only to those persons who, after making proper application, successfully pass a written examination based upon current concepts of food protection.

(i) The permit must be renewed prior to the expiration date or at least every three years.

(ii) The permit must be available for inspection.

(3) Duties.

Person in Charge.

The person in charge shall ensure that:

(i) Food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters.

(ii) Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination;

(iii) Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with this rule;

(iv) Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;

(v) Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;

(vi) Employees are properly cooking potentially hazardous food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures;

(vii) Employees are using proper methods to rapidly cool potentially hazardous foods that are not held hot or are not for consumption within 4 hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;

(viii) Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing; and

(ix) Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets.

(x) Employees are preventing cross-contamination of ready-to-eat food with their bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs or single-use gloves.

(xi) Employees are properly trained in food safety.

3-2. Employee Health

Disease or Medical Condition.

(a) Responsibility of the Person in Charge to Require Reporting by Food Employees and Applicants.*

The employer or person in charge shall require food employees and food employee applicants to whom a conditional offer of employment is made, to report to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food. Appendix 1, Applicant and Food Employee Interview; Appendix 2, Food Employee Reporting Agreement; Appendix 3, Applicant and Food Employee Medical Referral; are sample forms that may be used for the medical condition section. A food employee or applicant shall report the information in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission if the employee or applicant:

(i) Is diagnosed with an illness due to:

(A) Salmonella typhi,

(B) Shigella spp.,

(C) Escherichia coli O157:H7, or

(D) Hepatitis A virus infection;

(ii) Has a symptom caused by illness, infection, or other

source that is:

(A) Associated with an acute gastrointestinal illness such as:

(I) Diarrhea,

(II) Fever,

(III) Vomiting,

(IV) Jaundice, or

(V) Sore throat with fever, or

(B) A lesion containing pus, such as a boil or infected wound, that is open or draining and is:

(I) On the hands, wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover;

(II) On exposed portions of the arms, unless the lesion is protected by an impermeable cover, or

(III) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;

(iii) Had a past illness from an infectious agent specified in Subsection (i) of this section; or

(iv) Meets one or more of the following high-risk conditions:

(A) Is suspected of causing, or being exposed to, a confirmed disease outbreak caused by S. typhi, Shigella spp., E. coli O157:H7, or hepatitis A virus including an outbreak at an event such as a family meal, church dinner, or festival because the food employee or applicant:

(I) Prepared food implicated in the outbreak,

(II) Consumed food implicated in the outbreak, or

(III) Consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a shedder of the infectious agent, or

(B) Lives in the same household as a person who is diagnosed with a disease caused by S. typhi, Shigella spp., E. coli O157:H7, or hepatitis A virus infection,

(C) Lives in the same household as a person who attends or works in a setting where there is a confirmed disease outbreak caused by S. typhi, Shigella spp., E. coli O157:H7, or hepatitis A virus infection,

(D) Traveled out of the United States or to a United States' territory within the last 50 calendar days to an area that is identified as having epidemic or endemic disease caused by S. typhi, Shigella spp., E. coli O157:H7, or hepatitis A virus based on information published by the Centers for Disease Control and Prevention, such as the document titled Health Information for International Travel.

(b) Exclusions and Restrictions.*

The person in charge shall:

(i) Exclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent with a likelihood of it being transmitted through food; or

(ii) Except as specified under Subsection (iii) or (iv) of this section, restrict a food employee from working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles, in a food establishment if the food employee is:

(A) Suffering from a symptom specified under Subsection 3-2 (a)(ii); or

(B) Not experiencing a symptom of acute gastroenteritis specified under Subsection 3-2(a)(ii)(A) but has a stool that yields a specimen culture that is positive for Salmonella typhi, Shigella spp., or Escherichia coli O157:H7;

(iii) If the population served is a highly susceptible population, exclude a food employee who:

(A) Is experiencing a symptom of acute gastrointestinal illness specified under Subsection 3-2(a)(ii)(A) and meets a high-risk condition specified under Subsections 3-2(a)(iv)(A)-(D).

(B) Is not experiencing a symptom of acute gastroenteritis specified under Subsection 3-2(a)(ii)(A) but has a stool that yields a specimen culture that is positive for S. typhi, Shigella spp., or E. coli O157:H7,

(C) Had a past illness from S. typhi within the last 3 months, or

(D) Had a past illness from Shigella spp. or E. coli O157:H7 within the last month; and

(iv) For a food employee who is jaundiced:

(A) If the onset of jaundice occurred within the last 7 calendar days, exclude the food employee from the food establishment, or

(B) If the onset of jaundice occurred more than 7 calendar days before:

(I) Exclude the food employee from a food establishment that serves a highly susceptible population, or

(II) Restrict the food employee from activities specified under Subsection 3-2(1)(b)(ii), if the food establishment does not serve a highly susceptible population.

(v) Restrict or exclude an employee from direct food contact based on the recommendation of the UDAF or the local health department.

(c) Removal of Exclusions and Restrictions.

(i) The person in charge may remove an exclusion specified under Subsection 3-2(b)(i) if:

(A) The person in charge obtains approval from the District Health Department or the regulatory authority; and

(B) The person excluded as specified under Subsection 3-2(b)(i) provides to the person in charge written medical documentation, from a physician licensed to practice medicine, that specifies that the excluded person may work in an unrestricted capacity in a food establishment, including an establishment that serves a highly susceptible population, because the person is free of the infectious agent of concern as specified in Section 10-5(d).

(ii) The person in charge may remove a restriction specified under:

(A) Subsection 3-2(b)(ii)(A) if the restricted person:

(I) Is free of the symptoms specified under Subsection 3-2(a)(ii) and no foodborne illness occurs that may have been caused by the restricted person,

(II) Is suspected of causing foodborne illness but is free of the symptoms specified under 3-2(a)(ii), and provides written medical documentation from a physician licensed to practice medicine stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness, as specified in Section 10-5(d), or

(III) Provides written medical documentation, from a physician licensed to practice medicine, stating that the

symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis; or

(B) Subsection 3-2(b)(i)(B) if the restricted person provides written medical documentation from a physician, licensed to practice medicine, according to the criteria specified in Section 10-5(d) that indicates the stools are free of Salmonella typhi, Shigella spp., or E. coli O157:H7, whichever is the infectious agent of concern.

(iii) The person in charge may remove an exclusion specified under Subsection 3-2(b)(iii) if the excluded person provides written medical documentation from a physician licensed to practice medicine:

(A) That specifies that the person is free of:

(I) The infectious agent of concern as specified in Section 10-5(d), or

(II) Jaundice as specified under Subsection 3-2(c)(iv) if hepatitis A virus is the infectious agent of concern; or

(B) If the person is excluded under Subsection 3-2(1)(b)(iii)(A), stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis.

(iv) The person in charge may remove an exclusion specified under Subsection 3-2(b)(iv)(A) and Subsection 3-2(b)(iv)(B)(II) and a restriction specified under Subsection 3-2(b)(iv)(B)(II) if:

(A) No foodborne illness occurs that may have been caused by the excluded or restricted person and the person provides written medical documentation from a physician licensed to practice medicine that specifies that the person is free of hepatitis A virus as specified in Subsection 10-5(d)(iv)(A); or

(B) The excluded or restricted person is suspected of causing foodborne illness and complies with the requirements in Subsections 10-5(d)(iv)(A) and (B).

(d) Responsibility of a Food Employee or an Applicant to Report to the Person in Charge.*

A food employee or a person who applies for a job as a food employee shall:

(i) In a manner specified in 3-2(1) report to the person in charge the information specified in Subsections 3-2(i)-(iv); and

(ii) Comply with exclusions and restrictions that are specified in this rule.

(e) Reporting by the Person In Charge.*

The person in charge shall notify the regulatory authority of a food employee or a person who applies for a job as a food employee who is diagnosed with, or is suspected of having an illness due to, Salmonella typhi, Shigella species, Escherichia coli O157:H7, or hepatitis A virus.

3-3. Personal Cleanliness.

(1) Hands and Arms.

(a) Clean Condition.*

Food employees shall keep their hands and exposed portions of their arms clean.

(b) Handwash Procedure.*

Food employees shall clean their hands and exposed portions of their arms with a cleaning compound in a lavatory that is equipped to provide water at a temperature of at least 110 degrees F (43 degrees C) through a mixing valve or combination faucet, by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clean water. Employees shall pay particular attention to the areas underneath the fingernails and between the fingers.

(c) When to Wash.*

Food employees shall clean their hands and exposed portions of their arms immediately before engaging in food preparation including working with exposed food, clean equipment, and utensils, and unwrapped single-service and single-use articles, and:

(i) After touching bare human body parts other than clean hands and clean, exposed portions of arms;

(ii) After using the toilet room;

(iii) After caring for or handling support animals;

(iv) After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;

(v) After handling soiled equipment or utensils;

(vi) During food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;

(viii) When switching between working with raw foods and working with ready-to-eat foods; or

(ix) After engaging in other activities that contaminate the hands.

(d) Where to Wash.

Food employees shall clean their hands in a handwashing lavatory and may not clean their hands in a sink used for food preparation, or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

(e) Hand Sanitizer.

(i) A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall:

(A) Have active antimicrobial ingredients that are:

(I) Listed as safe and effective for application to human skin as an Antiseptic Handwash in a monograph for OTC (over-the-counter) Health-Care Antiseptic Drug Products, or

(II) Previously authorized, and listed for such use in the USDA List of Proprietary Substances and Nonfood Compounds, Miscellaneous Publication No. 1419;

(B) Have components that are:

(I) Regulated for the intended use as food additives as specified in 21 CFR 178 - Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers, or

(II) Generally recognized as safe (GRAS) for the intended use in contact with food within the meaning of the Federal Food, Drug, and Cosmetic Act, Section 201(s), or

(III) Exempted from the requirement of being listed in the federal food additive regulations as specified in 21 CFR 170.39 Threshold of regulation for substances used in food-contact articles; and

(III) Be applied only to hands that are cleaned as specified under Section 3-3(1)(b).

(ii) If a hand sanitizer or a chemical hand sanitizing solution used as a hand dip does not meet the criteria specified under Subsection (i)(B) of this section, use shall be:

(A) Followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or

(B) Limited to situations that involve no direct contact

with food by the bare hands.

(iii) A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 ppm chlorine.

(2) Fingernails.

Maintenance.

Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

(3) Jewelry.

Prohibition.

While preparing food, food employees may not wear jewelry on their arms and hands. This section does not apply to a plain ring such as a wedding band.

(4) Outer Clothing.

Clean Condition.

Food employees shall wear clean outer clothing, such as a laundered apron, to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

3-4. Hygienic Practices.

Food Contamination Prevention.

(a) Eating, Drinking, or Using Tobacco.*

(i) Except as specified in (ii) of this section, an employee shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection can not result.

(ii) A food employee may drink from a closed beverage container if the container is handled to prevent contamination of:

(A) The employee's hands;

(B) The container; and

(C) Exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(b) Discharges from the Eyes, Nose, and Mouth.*

Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

(6) Hair Restraints.

Effectiveness.

(i) Food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles, except as provided under (ii) of this section.

(ii) This section does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and wait staff, if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(7) Animals.

Handling Prohibition.*

(i) Food employees may not care for or handle animals that may be present such as patrol dogs, support animals, or pets that are allowed under Subsections 7-5(l)(ii)(B)-(D), except as specified in (ii) of this section.

(ii) Food employees with support animals may handle or care for their support animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in a display tank if they wash their hands before working with exposed food; clean equip ment, utensils, and linens; or unwrapped single-service and single-use articles.

R70-530-4. Food.

4-1. Characteristics.

Safe, Unadulterated, and Honestly Presented.*

Food shall be safe, unadulterated, and honestly presented.

4-2. Sources, Specifications, and Original Containers and Records.

(1) Sources.

(a) Compliance with Food Law.*

(i) Food shall be obtained from sources that comply with law. Food shall be in sound condition, free from filth, decay and other contamination, and safe for human consumption.

(ii) Food prepared in a private home may not be used or offered for human consumption in a food establishment.

(iii) Packaged food shall be labeled as specified in law, including 21 CFR 101 Food Labeling, 9 CFR 317 Labeling, Marking Devices, and Containers, and 9 CFR 381 Subpart N Labeling and Containers.

(iv) Fish, other than molluscan shellfish, that are intended for consumption in their raw form shall be obtained from a supplier that freezes the fish as required by this rule; or shall be frozen on the premises as required by this rule; and records shall be retained as required.

(b) Food in a Hermetically Sealed Container.*

Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

(c) Fluid Milk and Milk Products.*

Fluid milk and milk products shall be obtained from sources that comply with Title 4, Chapter 3.

(d) Fish.*

Fish may not be received for sale or service unless they are commercially and legally caught or harvested.

(e) Molluscan Shellfish.*

(i) Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Manual of Operations Part II Sanitation of the Harvesting, Processing and Distribution of Shellfish.

(ii) Molluscan shellfish received in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List.

(f) Wild Mushrooms.*

Wild mushroom species shall be obtained from an approved cultivated source under inspection by an appropriate regulatory authority.

(g) Game Animals.*

If game animals or other animals are received for sale or service they shall be:

Commercially raised for food and:

(A) Raised, slaughtered, and processed under a voluntary meat inspection program by UDAF, Division of Animal Industry, or

(B) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR 352 Voluntary Exotic Animal Program, or

(C) Raised, slaughtered, and processed under a routine inspection program conducted by UDAF, Division of Regulatory Services. Game meat under this program shall be:

(I) Slaughtered in facility approved by UDAF and with considerations of a antemortem and postmortem examination done by a veterinarian or a trained veterinarian's designee, or as approved by the regulatory authority.

(II) Processed under a HACCP plan according to laws governing meat and poultry products.

(2) Specifications for Transporting and Receiving.

(a) Temperature.*

(i) Refrigerated, potentially hazardous food shall be at a temperature of 5 degrees C (41 degrees F) or below when received, except as specified under Subsection (ii) of this section.

(ii) If a temperature other than 5 degrees C (41 degrees F) for a potentially hazardous food is specified in law governing its distribution such as laws governing milk, molluscan shellfish, and shell eggs, the food may be received at the specified temperature.

(iii) Potentially hazardous food that is cooked to a temperature and for a time specified under Sections 4-4(1)(a)-(c) and received hot shall be at a temperature of 60 degrees C (140 degrees F) or above.

(iv) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen.

(v) Upon receipt, potentially hazardous food shall be free of evidence of previous temperature abuse.

(b) Food Transportation.

Food, other than hanging primal cuts, quarters, or sides of meat, and raw fruits and raw vegetables, shall be protected from contamination by use of packaging or covered containers while being transported. All food being transported shall meet the applicable requirements of this rule relating to food protection and food storage. Foods packaged in immediate closed containers do not need to be overwrapped or covered if the immediate closed containers have not been opened, torn, or broken.

(c) Food Protection.

(i) During transportation and storage; food, food related items, and water, shall be protected from potential cross-contamination from toxic materials, insects, rodents, or other substances that may render the food adulterated.

(ii) The use of vehicles or vessels to transport food or water to backhaul non-food compatible materials is prohibited unless:

(A) Reconditioning has occurred that would render the vehicle or vessel safe for the transportation of food.

(B) The vehicle or vessel is properly cleaned and sanitized between the different items.

(d) Additives.*

Food may not contain unapproved food additives or additives that exceed amounts allowed in 21 CFR 170-180, relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts allowed in 21 CFR, 181-186, substances that exceed amounts specified in 9 CFR 318.7 Approval of substances for use in the preparation of products, or pesticide residues that exceed provisions specified in 40 CFR 185 Tolerances for Pesticides in Food.

(e) Shell Eggs.*

Shell eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in 7 CFR Part 56 - Regulations Governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight classes for Shell Eggs, and 7 CFR Part 59 - Regulations Governing the Inspection of Eggs and Egg Products.

(f) Egg and Milk Products, Pasteurized.*

(i) Liquid, frozen, and dry eggs and egg products shall be obtained pasteurized.

(ii) Fluid and dry milk and milk products complying with Grade A standards as established by R70-310 and Title 4, Chapter 3 shall be obtained pasteurized.

(iii) Frozen milk products such as ice cream, shall be obtained pasteurized in accordance with 21 CFR 135 Frozen Desserts.

(iv) Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are provided for in the CFR, such as in 21 CFR 133 - Cheeses and Related Cheese Products, for curing certain cheese varieties.

(g) Package Integrity.*

Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

(h) Ice.*

Ice for use as a food or a cooling medium shall be made from potable drinking water.

(i) Shucked Shellfish, Packaging and Identification.

(i) Raw and frozen shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the:

(A) Name, address, and certification number of the shucker-packer or repacker of the molluscan shellfish; and

(B) The "sell by" date for packages with a capacity of less than 1.87 L (one-half gallon) or the date shucked for packages with a capacity of 1.87 L (one-half gallon) or more.

(ii) A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified under Subsection (i) of this section shall be subject to a hold order, and destruction.

(j) Shellstock Identification.*

Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships, or reships the shellstock, as specified in the National Shellfish Sanitation Program Manual of Operations, Part II Sanitation of the Harvesting, Processing and Distribution of Shellfish, and that list:

(i) Except as specified under Subsection (iii) of this section, on the harvester's tag or label, the following information in the following order:

(A) The harvester's identification number that is assigned by the shellfish control authority,

(B) The date of harvesting,

(C) The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested,

(D) The type and quantity of shellfish, and

(E) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days;" and

(ii) Except as specified under Subsection (iv) of this section, on each dealer's tag or label, the following information in the following order:

(A) The dealer's name and address, and the certification number assigned by the shellfish control authority,

(B) The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested,

(C) The information specified under Subsections (i)(B)-(D) of this section, and

(D) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty and thereafter kept on file for 90 days."

(iii) A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under Subsection (i) of this section shall be subject to a hold order and destruction.

(iv) If a place is provided on the harvester's tag or label for a dealer's name, address, and certification number, the dealer's information shall be listed first.

(v) If the harvester's tag or label is designed to accommodate each dealer's identification as specified under Subsections (ii)(A) and(B) of this section, individual dealer tags or labels need not be provided.

(k) Shellstock, Condition.

When received by a food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.

(3) Molluscan Shellfish, Original Containers and Records.

(a) Molluscan Shellfish, Original Container.

(i) Molluscan shellfish may not be removed from the container in which they were received other than immediately before sale or preparation for service, except as specified under Subsections (ii) and (iii) of this section.

(ii) Shellstock may be removed from the container in which they were received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:

(A) The source of the shellstock on display is identified as specified under Section 4-2(2)(j) and recorded as specified under Section 4-2(3)(b); and

(B) The shellstock are protected from contamination.

(iii) Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:

(A) The labeling information for the shellfish on display as specified under Section 4-2(2)(i) is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and

(B) The shellfish are protected from contamination.

(b) Shellstock, Maintaining Identification.*

Except as specified under Subsection (ii)(B) of this section, shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty. The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date the container is emptied by:

(i) Using an approved record keeping system approved by the regulatory authority that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served; and

(ii) If shellstock are removed from their tagged or labeled container:

(A) Using only 1 tagged or labeled container at a time, or

(B) Using more than 1 tagged or labeled container at a time and obtaining a variance from the regulatory authority as specified under Section 10-1(3)(a) based on a HACCP plan that:

(I) Is submitted by the owner or person in charge and approved by the regulatory authority as specified under Section 10-1(3)(b),

(II) Preserves source identification by using a record keeping system as specified under Subsection (i) of this section, and

(III) Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container before being ordered by the consumer.

4-3. Protection from Contamination after Receiving.

(1) Preventing Contamination by Employees.

(a) Preventing Contamination from Hands.*

(i) Food employees shall wash their hands as specified under Section 3-3(1)(b) and (c).

(ii) Except when washing fruits and vegetables as specified under 4-2(2)(e) or when otherwise approved, food employees shall avoid contact with exposed ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissues, spatulas, tongs, single-use gloves or dispensing equipment.

(iii) Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

(b) Preventing Contamination when Tasting.*

A food employee may not use a utensil more then once to taste food that is to be sold or served.

(2) Preventing Food and Ingredient Contamination.

(a) Packaged and Unpackaged Food - Separation, Packaging, and Segregation.*

(i) Food shall be protected from cross contamination by:

(A) Separating raw animal foods during storage, preparation, holding, and display from:

(I) Raw ready-to-eat food including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as vegetables, and

(II) Cooked ready-to-eat food;

(B) Except when combined as ingredients, separating

types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:

(I) Using separate equipment for each type, or

(II) Arranging each type of food in equipment so that cross contamination of one type with another is prevented, and

(III) Preparing each type of food at different times or in separate areas;

(C) Cleaning equipment and utensils as specified under Section 5-6(2)(i) and sanitizing as specified under Section 5-7(2);

(D) Except as specified under Subsection (ii) of this section, storing the food in packages, containers, or wrappings;

(E) Cleaning hermetically sealed containers of food of visible soil before opening;

(F) Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;

(G) Storing damaged, spoiled, or recalled food being held in the food establishment in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles; and

(H) Separating fruits and vegetables, before they are washed from ready-to-eat food.

(ii) Subsection (i)(D) of this section does not apply to:

(A) Whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;

(B) Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;

(C) Whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks; or

(D) Food being cooled as specified under Subsection 4-5(e)(ii)(B).

(E) Shellstock.

(b) Food Storage Containers, Identified with Common Name of Food.

Working containers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the food except that containers holding food that can be readily and unmistakably recognized, such as dry pasta, need not be identified.

(c) Pasteurized Eggs, Substitute for Shell Eggs for Certain Recipes and Populations.*

Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or bernaise sauce, mayonnaise, eggnog, ice cream, and egg-fortified beverages that are not:

(i) Cooked as specified under Subsections 4-4(1)(i)(A) or (B) or

(ii) Included under Subsection 4-4(1)(iii)(A).

(d) Protection from Unapproved Additives.*

(i) Food shall be protected from contamination that may result from the addition of:

(A) Unsafe or unapproved food or color additives; and

(B) Unsafe or unapproved levels of approved food and color additives.

(ii) A food employee may not:

(A) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B_1; or

(B) Serve or sell food specified under Subsection (ii) (A) of this section that is treated with sulfiting agents before receipt by the food establishment, except that grapes need not meet this subsection.

(e) Washing Fruits and Vegetables.

(i) Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form except that whole, raw fruits and vegetables that are intended for washing by the consumer before consumption need not be washed before they are sold.

(ii) Fruits and vegetables may be washed by using chemicals as specified under Section 8-2(4)(b) of this rule.

(3) Preventing Contamination from Ice used as a Coolant.

(a) Ice Used as Exterior Coolant, Prohibited as Ingredient.

After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food.

(b) Storage or Display of Food in Contact with Water or Ice.

(i) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(ii) Unpackaged food may only be stored in direct contact with drained ice, except as specified under Subsections (iii) and (iv) of this section.

(iii) Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in potable ice or water.

(iv) Raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.

(4) Preventing Contamination from Equipment, Utensils, and Wiping Cloths.

(a) Food Contact with Equipment and Utensils.*

Food may not contact:

(i) Probe-type price or identification tags; and

(ii) Surfaces of utensils and equipment that are not cleaned as specified under Section 5-6 and sanitized under Section 5-7 of this rule.

(b) In-Use Utensils, Between-Use Storage.

During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

(i) In the food with their handles above the top of the food and the container; except as specified under Subsection (ii) of this section.

(ii) In food that is not potentially hazardous with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;

(iii) On a clean portion of the food preparation table or

cooking equipment and shall be cleaned and sanitized at a frequency specified under Sections 5-6(2) and 5-7(2);

(iv) In running water of sufficient velocity or flow to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes; or

(v) In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous.

(c) Linens and Napkins, Use Limitation.

Linens and napkins may not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer.

(d) Wiping Cloths, Used for One Purpose.

(i) Cloths that are in use for wiping food spills shall be used for no other purpose.

(ii) Cloths used for wiping food spills shall be:

(A) Dry and used for wiping food spills from tableware and carry-out containers; or

(B) Moist and cleaned, stored in a chemical sanitizer, and used for wiping spills from food-contact and nonfood-contact surfaces of equipment.

(iii) Dry or moist cloths that are used with raw animal foods shall be kept separate from cloths used for other purposes, and moist cloths used with raw animal foods shall be kept in a separate sanitizing solution.

(e) Gloves, Use Limitation.

(i) If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

(ii) Except as specified under Subsection (iii) of this section, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified under Section 4-4 such as frozen food or a primal cut of meat.

(iii) Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove, or a single-use glove.

(iv) Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required under Section 4-4 such as frozen food or a primal cut of meat.

(f) Using Clean Tableware for Second Portions and Refills.

(i) Food employees may not use tableware, including single-service articles, soiled by the consumer to provide second portions or refills.

(ii) Self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment, except as specified under Subsection (iii) of this section.

(iii) Cups and glasses may be reused by self-service consumers if refilling is a contamination-free process as specified under Subsections 5-2(4)(c)(i), (ii), and (iv).

(g) Refilling Returnables.

(i) A take-home food container returned to a food establishment may not be refilled at a food establishment with a potentially hazardous food.

(ii) Except as specified in Subsection (iii), a take-home food container refilled with food that is not potentially hazardous shall be cleaned as specified under Subsection 5-6(3)(g)(ii).

(iii) Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified under Subsections 5-2(4)(c)(i),(ii), and (iv).

(5) Preventing Contamination from the Premises.

(a) Food Storage.

(i) Except as specified under Subsections (ii) and (iii) of this section, food shall be protected from contamination by storing the food:

(A) In a clean, dry location;

(B) Where it is not exposed to splash, dust, or other contamination; and

(C) At least 15 cm (6 inches) above the floor.

(ii) Food in packages and working containers may be stored less than 15 cm (6 inches) above the floor on case lot handling equipment as specified under Section 5-2(4)(u).

(iii) Pressurized beverage containers, cased food in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture provided that the containers are cleaned before placing on a food contact surface.

(b) Food Storage, Prohibited Areas.

Food may not be stored:

(i) In locker rooms;

(ii) In toilet rooms;

(iii) In dressing rooms;

(iv) In garbage rooms;

(v) In mechanical rooms;

(vi) Under sewer lines that are not shielded to intercept potential drips;

(vii) Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;

(viii) Under open stairwells; or

(ix) Under other sources of contamination.

(c) Vended Potentially Hazardous Food, Original Container.

Potentially hazardous food dispensed through a vending machine shall be in the package in which it was placed at the food establishment or food processing plant at which it was prepared.

(d) Food Processing Areas.

(i) Food processing areas where exposed food is handled, processed, and packaged, shall be:

(A) Limited to the processing of food.

(B) Completely enclosed or have a solid barrier that prevents the access of unauthorized personnel.

(C) Operated in a way where food items that are not compatible are processed in a separate area or in such a manner that cross-contamination does not occur between the foods. Examples of this type of situation would be, a retail meat market that processes game animals during hunting season and inspected meat products, or a processing area that handles raw

meat and cheeses.

(D) Operated so unpackaged food is protected from environmental sources of contamination.

(ii) The processing area shall be protected against dirt and other debris during remodeling or construction by:

(A) Remodeling at a time when no food processing is occurring, after which a thorough cleaning and sanitizing of food contact surfaces is done; or

(B) Erecting a temporary barrier that protects the food processing area; and

(C) During food processing, covering any existing openings to the outside.

(iii) The processing of hazardous chemicals or other non food-compatible items is prohibited unless permission is granted by the UDAF.

(iv) Trucks or vehicles used to transport food shall not be repaired or parked in food processing areas.

(v) Molluscan shellfish shall be repackaged in approved facilities that specialize in the processing of fish or fish-related products.

(6) Preventing Contamination from Consumers

(a) Food Display.

Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means.

(b) Bulk Foods.

(i) Bulk foods and product modules shall be protected from contamination during display, customer self-service, refilling and storage.

(ii) Containers of bulk pet foods and bulk non-food items shall be separated by a barrier or open space from food modules.

(iii) Bulk food returned to the store by the customer shall not be offered for resale.

(iv) Only containers provided by the store in the display area shall be filled with bulk foods, except as provided under Section 5-6(3)(g).

(v) Customers shall be instructed to use dispensing utensils to dispense bulk products and that handling the products without using the dispensing utensils is prohibited.

(c) Dispensing utensils.

(i) To avoid unnecessary manual contact with the food, suitable dispensing utensils and single-service articles shall be used by employees. Consumers who serve themselves bulk food shall be provided suitable dispensing utensils.

(ii) Manual contact of bulk foods by the customer during dispensing shall be avoided. Methods considered suitable are:

(A) Mechanical dispensing devices including gravity dispensers, pumps, extruders and augers;

(B) Manual dispensing utensils including tongs, scoops, ladles and spatulas; and

(C) Wrapping or sacking.

(iii) If the dispensing devices and utensils listed under Subsection (ii)(A) and (B) of this section do not prevent manual customer contact with certain bulk foods, then these foods must be wrapped or sacked prior to display.

(iv) Manual dispensing utensils listed under Subsection (ii)(B) shall be protected against becoming contaminated and serving as vehicles for introducing contamination into bulk food. Means considered suitable include, but are not limited to:

(A) Using a tether which is easily removable from the product module, constructed of easily cleanable material, is of such length that the utensil cannot contact the floor, and is designed to prevent interference with the requirement for close fitting covers, or

(B) Storing the utensil in a sleeve or protective housing attached or adjacent to the display unit when not in use, or utilizing a utensil designed so that the handle cannot contact the product if left in the product module.

(d) Condiments, Protection.

(i) Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions.

(ii) Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at an approved location, such as the food establishment that provides food to the vending machine location, a food processing plant that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the vending machine location.

(e) Consumer Self-Service Operations.*

(i) Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service. This Subsection does not apply to consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish, or to ready-to-cook individual portions for immediate cooking and consumption on the equipment such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue.

(ii) Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination.

(iii) Consumer self-service operations, such as buffets and salad bars, shall be monitored by food employees trained in safe operating procedures.

(f) Food sample demonstrations and food promotions.

(i) When food sample demonstrations and food promotions are conducted in the food establishment, the person in charge shall ensure that such activities comply with the applicable sanitation provisions of this rule.

(ii) Food demonstrations involving unpackaged food shall not be conducted in a food establishment unless a processing area is provided. The area shall have:

(A) A three (3) compartment sink; supplied with:

(I) Hot and cold water running water; and

(II) Soap and sanitizer.

(B) A Handwashing lavatory; supplied with:

(I) Hot and cold running water,

(II) Soap and hand towels.

(C) Proper waste disposal; and

(D) A conveniently located restroom.

(iii) If the food demonstration is being conducted by a business other than the owner of the food establishment, written permission issued by the owner, manager, or person in charge,

shall be on file at the office of the business conducting the food demonstration that indicates they may use the food establishment's processing area for equipment cleaning and handwashing.

(iv) The food demonstration employee shall have a:

(A) Food handler permit as specified under 3-2(a),

(B) A basic knowledge of food sanitation that pertains to the food they are dispensing to the consumer for samples,

(v) Employees shall not use household or personal utensils or equipment, such as pans or cutting boards, for the demonstration, preparation or sampling of food.

(vi) Advanced preparation of any food items shall be prepared in an approved facility and not in an individual's home, as specified under 7-2(k).

(vii) In store sampling areas shall be located so the food samples can be under constant observation by a food employee trained in safe operating procedures to ensure product safety.

(g) Returned Food, Reservice or Sale.*

(i) Except as specified under Subsection (ii) of this section, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.

(ii) Except as specified under Section 4-8 food that is not potentially hazardous, such as crackers and condiments, in an unopened original package, and maintained in sound condition may be re-served or resold.

4-4. Destruction of Organism of Public Health Concern.

(1) Cooking.

(a) Raw Animal Foods.*

(i) Except as specified under Subsections (ii) and (iii) of this section, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

(A) 63 degrees C (145 degrees F) or above for 15 seconds for:

(I) Raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service, and

(II) Except as specified under Subsections (i)(B) and (C) and Subsection (ii) of this section, fish and meat including game animals commercially raised for food as specified under Section 4-2(1)(g);

(B) 68 degrees C (155 degrees F) for 15 seconds or the temperature specified in the following table that corresponds to the holding time for pork, ratites, and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified under Section 4-2(1)(g); and raw eggs that are not prepared as specified under Subsection (i)(A)(I) of this section:

TABLE 1

Minimum Temperature deg F (deg C)	Time
145 (63)	3 minutes
150 (66)	1 minute

or

(C) 74 degrees C (165 degrees F) or above for 15 seconds for poultry, wild game animals as specified under Section 4-2(1)(g), stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites.

(ii) Whole beef roasts and corned beef roasts shall be cooked:

(A) In an oven that is preheated to the temperature specified for the roast's weight in the following table and that is held at that temperature:

TABLE 2

Oven Type	Oven Temperature Based on Roast Weight: Less than 4.5 kg (10 lbs) deg F (deg C)	4.5 kg (10 lbs) or More deg F (deg C)
Still Dry	350 (177) or more	250 (121) or more
Convection	325 (163) or more	250 (121) or more
High Humidity(1)	250 (121) or less	50 (121) or less

(1) Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

and:

(B) As specified in the following table, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature:

TABLE 3

Temperature deg F (deg C)	Time(1) in Minutes	Temperature deg F (deg C)	Time(1) in Minutes
130 (54)	121	136 (58)	32
132 (56)	77	138 (59)	19
134 (57)	47	140 (60)	12

Temperature deg F (deg C)	Time(1) in Minutes
142 (61)	8
144 (62)	5
145 (63)	3

(1) Holding time may include postoven heat rise.

(iii) Subsections (i) and (ii) of this section do not apply if:

(A) Except for food service establishment serving a highly susceptible population, the food is a raw animal food such as raw egg; raw fish; raw-marinated fish; raw molluscan shellfish; steak tartare; or a partially cooked food such as lightly cooked fish, rare meat, and soft cooked eggs that is served or offered for sale in a ready-to-eat form, and the consumer is informed as specified under Section 3-6(3) that to ensure its safety, the food should be cooked as specified under Subsection (i) of this section; or

(B) The regulatory authority grants a variance from Subsection (i) or (ii) of this section as specified in Section 10-1(3)(a) based on a HACCP plan that:

(I) Is submitted by the owner or person in charge and approved as specified under Section 10-1(3)(b),

(II) Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food, and

(III) Verifies that equipment and procedures for food

preparation and training of food employees at the food establishment meet the conditions of the variance.

(b) Microwave Cooking.*

Raw animal foods cooked in a microwave oven shall be:

(i) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

(ii) Covered to retain surface moisture;

(iii) Heated to a temperature of at least 74 degrees C (165 degrees F) in all parts of the food; and

(iv) Allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

(c) Plant Food Cooking for Hot Holding.

Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 60 degrees C (140 degrees F).

(2) Freezing.

(a) Parasite Destruction.*

(i) Except as specified under Subsection (ii) of this section, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of:

(A) -20 degrees C (-4 degrees F) or below for 168 hours (7 days) in a freezer; or

(B) -35 degrees C (-31 degrees F) or below for 15 hours in a blast freezer.

(ii) If the fish are tuna of the species Thunnus alalunga, Thunnus albacares (Yellowfin tuna), Thunnus atlanticus, Thunnus maccoyii (Bluefin tuna, Southern), Thunnus obesus (Bigeye tuna), or Thunnus thynnus (Bluefin tuna, Northern), the fish may be served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified under Subsection (i) of this section.

(b) Records, Creation and Retention.

(i) Except as specified under Subsection 4-4(2)(a)(i) and Subsection (ii) of this section, if raw, marinated, or partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records at the food establishment for 90 calendar days beyond the time of service or sale of the fish.

(ii) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under Section 4-4(2)(a) may substitute for the records specified under Subsection (i) of this section.

(3) Reheating.

(a) Reheating for Hot Holding.*

(i) Except as specified under Subsections (ii), (iii), and (v) of this section, potentially hazardous food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74 degrees C (165 degrees F) for 15 seconds.

(ii) Except as specified under Subsection (iii) of this section, potentially hazardous food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74 degrees C (165 degrees F) and the food is rotated or stirred, covered, and allowed to stand covered 2 minutes after reheating.

(iii) Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least 60 degrees C (140 degrees F) for hot holding.

(iv) Reheating for hot holding shall be done rapidly and the time the food is between the temperature specified under 4-5(1)(f)(ii) or (iii) and 74 degrees C (165 degrees F) may not exceed 2 hours.

(v) Remaining unsliced portions of roasts of beef that are cooked as specified in Subsection 4-4(1)(a)(iii) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified in Subsection 4-4(1)(a)(ii).

(b) Reheating for Immediate Service.

Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

4-5. Limitation of Growth of Organism of Public Health Concern

(1) Temperature and Time Control.

(a) Frozen Food.

Stored frozen foods shall be maintained frozen.

(b) Potentially Hazardous Food, Slacking.

Frozen potentially hazardous food that is slacked to moderate the temperature shall be held:

(i) Under refrigeration that maintains the food temperature at 5 degrees C (41 degrees F) or less, or at 7 degrees C (45 degrees F) or less; or less as specified under 4-5(1)(f)(iii) or;

(ii) At any temperature if the food remains frozen.

(c) Thawing.

Except as specified under Subsection (iv) of this section, potentially hazardous food shall be thawed:

(i) Under refrigeration that maintains the food temperature at 5 degrees C (41 degrees F) or less, or at 7 degrees C (45 degrees F) or less, or less as specified under 4-5(1)(f)(iii) or;

(ii) Completely submerged under running water:

(A) At a water temperature of 21 degrees C (70 degrees F) or below,

(B) With sufficient water velocity to agitate and float off loose particles in an overflow, and

(C) For a period of time that does not allow thawed portions of ready-to-eat food to rise above 5 degrees C (41 degrees F), or 7 degrees C (45 degrees F) as specified under 4-5(1)(f)(iii) or,

(D) For a period of time that does not allow thawed portions of ready-to-eat food to rise above 5 degrees C (41 degrees F), or 7 degrees C (45 degrees F); or as specified under 4-5(1)(f)(iii) for more than 4 hours including:

(I) The time the food is exposed to the running water and the time needed for preparation for cooking, or

(II) The time it takes under refrigeration to lower the food temperature to at 5 degrees C (41 degrees F), or at 7 degrees C (45 degrees F) as specified under 4-5(1)(f)(iii);

(iii) As part of a cooking process if the food that is frozen is:

(A) Cooked as specified under Subsections 4-4(1)(a)(i) or (ii) or Section 4-4(1)(b), or

(B) Thawed in a microwave oven and immediately

transferred to conventional cooking equipment, with no interruption in the process; or

(iv) Using any procedure that thaws a portion of frozen ready-to-eat food that is prepared for immediate service in response to an individual consumer's order.

(d) Cooling.*

(i) Cooked potentially hazardous food shall be cooled:

(A) Within 2 hours, from 60 degrees C (140 degrees F) to 21 degrees C (70 degrees F); and

(B) Within 4 hours, from 21 degrees C (70 degrees F) to 5 degrees C (41 degrees F) or less, or at 7 degrees C (45 degrees F) or less as specified under 4-5(1)(f)(iii).

(ii) Potentially hazardous food shall be cooled within 4 hours to 5 degrees C (41 degrees F) or less, or at 7 degrees C (45 degrees F) or less as specified under 4-5(1)(f)(iii) if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

(iii) Except as specified under Subsection (iv) of this section, a potentially hazardous food received in compliance with laws allowing a temperature above 5 degrees C (41 degrees F) during shipment from the supplier as specified under Subsection 4-2(2)(a)(ii), shall be cooled within 4 hours to 5 degrees C (41 degrees F) or less, or 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii).

(iv) Shell eggs need not comply with Subsection (iii) of this section if the eggs are placed immediately upon their receipt in refrigerated equipment that is capable of maintaining food at 5 degrees C (41 degrees F) or less, or 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii).

(e) Cooling Methods.

(i) Cooling shall be accomplished in accordance with the time and temperature criteria specified under Section 4-5(1)(d) by using one or more of the following methods based on the type of food being cooled:

(A) Placing the food in shallow pans;

(B) Separating the food into smaller or thinner portions;

(C) Using rapid cooling equipment;

(D) Stirring the food in a container placed in an ice water bath;

(E) Using containers that facilitate heat transfer;

(F) Adding ice as an ingredient; or

(G) Other effective methods.

(ii) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:

(A) Arranged in the equipment to provide maximum heat transfer through the container walls; and

(B) Loosely covered, or uncovered if protected from overhead contamination, such as splash, dust, or other contamination, during the cooling period to facilitate heat transfer from the surface of the food.

(f) Potentially Hazardous Food, Hot and Cold Holding.*

Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under Section 4-5(1)(i), potentially hazardous food shall be maintained:

(i) At 60 degrees C (140 degrees F) or above; except that roasts cooked to a temperature and for a time specified under Section 4-4(3) may be held at a temperature of 54 degrees C (130 degrees F); or

(ii) At 5 degrees C (41 degrees F) or less, except as specified under Subsection (iii) of this section, Sections 4-5(1)(g) and (h), and 5-2(4)(k).

(iii) At 45 degrees F or between 7 degrees C (45 degrees F) and 5 degrees C (41 degrees F) in existing refrigeration equipment that is not capable of maintaining the food at 5 degrees C (41 degrees F) or less if:

(A) The equipment is in place and in use in the food establishment; and

(B) Within 5 years of the regulatory authority's adoption of this rule, the equipment is upgraded or replaced to maintain food at a temperature of 5 degrees C (41 degrees F) or less.

(g) Ready-to-Eat, Potentially Hazardous Food, Date Marking.*

(i) Except as specified under Subsection (v) of this section, refrigerated, ready-to-eat, potentially hazardous food prepared and held refrigerated for more than 24 hours in a food establishment shall be clearly marked at the time of preparation to indicate the date by which the food shall be consumed which is, including the day of preparation:

(A) 7 calendar days or less from the day that the food is prepared, if the food is maintained at 5 degrees C (41 degrees F) or less; or

(B) 4 calendar days or less from the day the food is prepared, if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii).

(ii) Except as specified under Subsection (v) of this section, a ready-to-eat, potentially hazardous food prepared in a food establishment and subsequently frozen, shall be clearly marked:

(A) When the food is thawed, to indicate that the food shall be consumed within 24 hours; or

(B) When the food is placed into the freezer, to indicate the length of time before freezing that the food is held refrigerated and which is, including the day of preparation:

(I) 7 calendar days or less from the day of preparation, if the food is maintained at 5 degrees C (41 degrees F) or less, or

(II) 4 calendar days or less from the day of preparation, if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii); and

(C) When the food is removed from the freezer, to indicate the date by which the food shall be consumed which is:

(I) 7 calendar days or less after the food is removed from the freezer, minus the time before freezing, that the food is held refrigerated if the food is maintained at 5 degrees C (41 degrees F) or less before and after freezing, or

(II) 4 calendar days or less after the food is removed from the freezer, minus the time before freezing, that the food is held refrigerated if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii) before and after freezing.

(iii) Except as specified under Subsections (v) and (vi) of this section, a container of refrigerated, ready-to-eat potentially hazardous food, prepared and packaged by a food processing plant, shall be clearly marked at the time the original container is opened in a food establishment, to indicate the date by which the food shall be consumed which is, including the day the original container is opened:

(A) 7 calendar days or less after the original container is

opened, if the food is maintained at 5 degrees C (41 degrees F) or less; or

(B) 4 calendar days or less from the day the original container is opened, if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii).

(iv) Except as specified under Subsections (v) and (vi) of this section, a container of refrigerated, ready-to-eat, potentially hazardous food prepared and packaged by a food processing plant and subsequently opened and frozen in a food establishment shall be clearly marked:

(A) When the food is thawed, to indicate that the food shall be consumed within 24 hours; or

(B) To indicate the time between the opening of the original container and freezing that the food is held refrigerated and which is, including the day of opening the original container:

(I) 7 calendar days or less, after opening the original container if the food is maintained at 5 degrees C (41 degrees F) or less, or

(II) 4 calendar days or less after opening the original container if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii); and

(C) When the food is removed from the freezer, to indicate the date by which the food shall be consumed which is:

(I) 7 calendar days, minus the time before freezing, that the food is held refrigerated if the food is maintained at 5 degrees C (41 degrees F) or less before and after freezing, or

(II) 4 calendar days, minus the time before freezing, that the food is held refrigerated if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii) before and after freezing.

(v) Subsections (i)-(iv) of this section do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(vi) Subsections (iii) and (iv) of this section do not apply to whole, unsliced portions of a cured and processed product with original casing maintained on the remaining portion, such as bologna, salami, or other sausage in a cellulose casing.

(h) Ready-to-Eat, Potentially Hazardous Food, Disposition.*

(i) A food specified under Subsection 4-5(1)(g)(i) shall be discarded if not consumed within:

(A) 7 calendar days from the date of preparation if the food is maintained at 5 degrees C (41 degrees F) or less; or

(B) 4 calendar days from the date of preparation if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii).

(ii) A food specified under Subsection 4-5(1)(g)(ii)(A) or (iv)(A) shall be discarded if not consumed within 24 hours after thawing.

(iii) A food specified under Subsections 4-5(1)(g)(ii)(A) and (C) or (iv)(B) and (C) shall be discarded on or before the most recent date marked on the food container or package if the food is not consumed by that date.

(iv) A food specified under Subsection 4-5(1)(g)(iii) shall be discarded if not consumed within, including the day of opening the original container:

(A) 7 calendar days after the date that the original package is opened in a food establishment if the food is maintained at 5 degrees C (41 degrees F) or less; or

(B) 4 calendar days after the date that the original package is opened in a food establishment if the food is maintained at 7 degrees C (45 degrees F) or less as specified under Subsection 4-5(1)(f)(iii).

(v) A food specified under Subsection 4-5(1)(g)(i),(ii),(iii), or (iv) shall be discarded if the food is:

(A) Marked with the date specified under Subsection 4-5(1)(g)(i), (ii), (iii), or (iv) and the food is not consumed before the most recent date expires;

(B) In a container or package which does not bear a date or time; or

(C) Inappropriately marked with a date or time that exceeds the date or time specified under Subsection 4-5(1)(g)(i), (ii), (iii), or (iv).

(vi) Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shut-off control that is activated at a temperature of:

(A) 5 degrees C (41 degrees F) shall be discarded if not sold within 7 days; or

(B) 7 degrees C (45 degrees F) shall be discarded if not sold within 4 days.

(i) Time as a Public Health Control.*

If time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption:

(i) The food shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the food is removed from temperature control;

(ii) The food shall be cooked and served, served if ready-to-eat, or discarded, within 4 hours from the point in time when the food is removed from temperature control;

(iii) The food in unmarked containers or packages or marked to exceed a 4 hour limit shall be discarded; and

(iv) Written procedures shall be maintained in the food establishment and made available to the regulatory authority upon request, that ensure compliance with:

(A) Subsections (i)-(iii) of this section, and

(B) Section 4-5(1)(d) for food that is prepared, cooked, and refrigerated before time is used as a public health control.

(2) Specialized Processing Methods.

(a) Variance Requirement.*

A food establishment shall obtain a variance from the regulatory authority as specified in Section 10-1(3)(a) and under Section 10-1(3)(b) before smoking or curing food; adding components such as vinegar as a method of food preservation rather than as a method of flavor enhancement or to render a food so that it is not potentially hazardous; using a reduced oxygen method of packaging food except as specified under Section 4-5(2)(b) where a barrier to Clostridium botulinum in addition to refrigeration exists; custom processing animals that are for personal use as food and not for sale or service in a food establishment; or preparing food by another method that is determined by the regulatory authority to require a variance.

(b) Reduced Oxygen Packaging, Criteria.*

(i) A food establishment that packages food using a

reduced oxygen packaging method shall have a HACCP plan that contains the information specified under Section 10-2(1)(d)(iv) and that:

(A) Identifies the food to be packaged;

(B) Limits the food packaged to a food that does not support the growth of Clostridium botulinum because it complies with one of the following:

(I) Has an AW(a_w) of 0.91 or less,

(II) Has a PH(pH) of 4.6 or less,

(III) Is a meat or poultry product cured at a food processing plant regulated by the U.S. Department of Agriculture using substances specified in 9 CFR 318.7 Approval of substances for use in preparation of products and 9 CFR 381.147 Restriction on the use of substances in poultry products and is received in an intact package, or

(IV) Is a food with a high level of competing organisms such as raw meat or raw poultry;

(C) Specifies methods for maintaining food at 5 degrees C (41 degrees F) or below;

(D) Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

(I) Maintain the food at 5 degrees C (41 degrees F) or below, and

(II) Discard the food if within 14 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;

(E) Limits the shelf life to no more than 14 calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first;

(F) Includes operational procedures that:

(I) Prohibit contacting food with bare hands,

(II) Identify a designated area and the method by which the physical barriers or methods of separation of raw foods and ready-to-eat foods or non-food such as chemicals are minimized to prevent cross contamination, and access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation, and

(III) Delineate cleaning and sanitization procedures for food-contact surfaces; and

(G) Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:

(I) Concepts required for a safe operation,

(II) Equipment and facilities, and

(III) Procedures specified under Subsection (i)(F) of this section and Subsection 10-2(1)(d)(iv).

(ii) Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.

4-6. Food Identity, Presentation, and On-Premise Labeling.

(1) Accurate Representation.

(a) Standards of Identity.

Packaged foods shall comply with standards of identity, including 21 CFR 131-169 and 9 CFR 319 Definitions and Standards of Identity or Composition, and the general requirements of 21 CFR 130-Food Standards: General and 9 CFR 319 Subpart A-General.

(b) Honestly Presented.

(i) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

(ii) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of food.

(2) Labeling.

(a) Food Labels.

(i) Food packaged in a food establishment shall be labeled according to law, including 21 CFR 101-Food Labeling, 9 CFR 317 Labeling, Marking Devices, and Containers.

(ii) Food that is not packaged need not be labeled unless a health or nutrient claim is made, except as specified in Subsection (iii).

(ii) Label information shall include:

(A) The common name of the food, or absent a common name, an adequately descriptive identity statement;

(B) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;

(C) An accurate declaration of the net quantity of contents;

(D) The name and place of business of the manufacturer, packer, or distributor; and

(E) Except as exempted in the Federal Food, Drug, and Cosmetic Act, Section 403(Q)(3)-(5), nutrition labeling as specified in 21 CFR 101 - Food Labeling and 9 CFR 317 Subpart B Nutrition Labeling.

(iii) Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:

(A) The manufacturer's or processor's label that was provided with the food; or

(B) A card, sign, or other method of notification that includes the information specified under Subsections (ii)(A) and (B) of this section.

(I) The ingredient statement shall be printed in type size not less than 1/8 inch in height and shall be easily legible.

(II) Bulk food bins are exempt from nutritional labeling provided that a health, nutrient content, or other claim is not made in any context on the label or advertising.

(b) Full-service Food, Wrapped or Unwrapped.

Food items which are accessible to customers only through employee-assistance, such as products from delis, bakeries, candy counters, etc., need not be labeled with ingredient information. However, complete and correct ingredient information for all products offered for sale shall be:

(A) Readily available to all store personnel in case of consumer questions. This information must be accurate and kept current for the benefit of any customer who may need it.

(B) Any nutrition or health information or claims about any such product also mandates the availability of Nutrition Facts for that product.

(c) Other Forms of Information.

(i) If required by law, consumer warnings shall be provided.

(ii) Food establishment or manufacturers' dating information on foods may not be concealed or altered.

(iii) Food not intended for human consumption in a

storage warehouse shall be conspicuously labeled, "Inedible - Not For Human Consumption."

(d) Labeling Requirements of Refrigerated Foods.

(i) Except as specified under Subsection (iv) of this section, highly perishable, packaged, processed foods and shipping containers which contain these products that must be refrigerated for safety reasons shall be labeled in the following manner:

(A) "IMPORTANT, Must be Kept Refrigerated", in the following format:

(I) The statement should be set off by the use of hairlines at the top and bottom of the statement area. The type should be on a clear contrasting background. All type should utilize a single easy-to-read style and size, have at least one point leading and ensure that letters should never touch. The word "IMPORTANT" shall be in all capital letters. The rest of the statement shall capitalize the first letter in each word.

(II) The "IMPORTANT Must Be Kept Refrigerated" statement shall be placed in a clear and prominent place on the label.

(B) If these products are frozen for storage and distribution only, they shall still bear the "IMPORTANT Must Be Kept Refrigerated" statement after they are thawed for refrigerated marketing.

(ii) Food products intended to be refrigerated, that do not pose a safety hazard if temperature abused shall bear the "Keep Refrigerated" statement. Products that possess one or more of the following attributes could be considered products that would not cause a public health hazard if improperly handled:

(A) Product has a pH less than 4.6; or

(B) Water activity that is 0.85 or less; or

(C) Receives a thermal process adequate to inactivate foodborne pathogens which could, through persistence or growth in the product, cause a health hazard under moderate condition of temperature abuse during storage and distribution, or

(D) None of the above, but has a barrier(s) imparted by either intrinsic or extrinsic factors scientifically demonstrated to eliminate foodborne pathogens or prevent their growth. Combinations of individual barriers in some products may provide a synergistic inhibitory effect which is greater than achieved by the use of a single barrier alone.

(iii) Products that are shelf-stable until opening, but need refrigeration after opening shall bear the label statement "Refrigerate after opening" or variation thereof.

(iv) These labeling requirements need not apply to food products traditionally sold under refrigeration, such as dairy products; cured meats; poultry and seafood; or raw uncut agricultural commodities.

(v) Deviations from this specific wording in (i) through (iv) of this section must be reviewed by the Utah Department of Agriculture and Food before being used on product labels.

(3) Consumer Advisory.

Consumption of Raw or Undercooked Animal Foods.*

(i) If a raw or undercooked animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish is offered in a ready-to-eat form as a deli, menu, vended, or other item; or as a raw ingredient in another ready-to-eat food, the owner may inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means of the significantly increased risk associated with certain especially vulnerable consumers eating such foods in raw or undercooked form.

(ii) The following language will satisfy the consumer advisory requirements. "Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of foodborne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information".

4-7. Contamination.

Disposition.

(a) Discarding or Reconditioning Unsafe, Adulterated, or Contaminated Food.*

(i) A food that is unsafe, adulterated, or not honestly presented shall be reconditioned according to a procedure approved by the regulatory authority or discarded.

(ii) Food that is not from an approved source as specified under Sections 4-2(1) shall be discarded.

(iii) Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded shall be discarded.

(iv) Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded.

4-8. Additional Safeguards.

Pasteurized Foods, Prohibited Reservice, and Prohibited Food.*

In a food establishment that serves a highly susceptible population:

(i) Apple juice, apple cider, and other beverages containing apple juice served to a highly susceptible population shall be obtained pasteurized, or in a commercially sterile shelf-stable form in a hermetically sealed container;

(ii) Pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of:

(A). Foods such as Caesar salad, hollandaise or bernaise sauce, mayonnaise, egg nog, ice cream, and egg-fortified beverages, and

(B) Eggs that are broken, combined in a container, and not cooked immediately or eggs that are held before service following cooking;

(iii) Food in an unopened original package may not be re-served; and

(iv) Raw animal food such as raw, raw-marinated fish; raw molluscan shellfish; steak tartare; or a partially cooked food such as lightly cooked fish, rare meat; and soft-cooked eggs may not be served or offered for sale in a ready-to-eat form.

R70-530-5. Equipment, Utensils, and Linens.

5-1. Materials for Construction and Repair.

(1) Multiuse.

(a) Characteristics.*

Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to

food and under normal use conditions shall be:

(i) Safe;

(ii) Durable, corrosion-resistant, and nonabsorbent;

(iii) Sufficient in weight and thickness to withstand repeated warewashing;

(iv) Finished to have a smooth, easily cleanable surface; and

(v) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.

(b) Cast Iron, Use Limitation.

(i) Cast iron may not be used for utensils or food-contact surfaces of equipment except as specified in Subsections (ii) and (iii) of this section.

(ii) Cast iron may be used as a surface for cooking.

(iii) Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

(c) Lead in Ceramic, China, and Crystal Utensils, Use Limitation.

Ceramic, china, crystal utensils, and decorative utensils such as hand painted ceramic or china that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits of the following utensil categories:

TABLE 4

Utensil Category	Description	Maximum Lead (mg/L)
Hot Beverage Mugs	Coffee Mugs	0.5
Large Hollowware	Bowls>1.1 L (1.16 QT)	1
Small Hollowware	Bowls<1.1 L (1.16 QT)	2.0
Flat Utensils	Plates, Saucers	3.0

(d) Copper, Use Limitation.*

(i) Except as specified in Subsection (ii) of this section, copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.

(ii) Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the prefermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.

(e) Galvanized Metal, Use Limitation.*

Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used in contact with acidic foods.

(f) Sponges, Use Limitation.

Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

(g) Lead in Pewter Alloy, Use Limitation.

Pewter alloy containing lead in excess of 0.05% may not be used as a food-contact surface.

(h) Lead in Solder and Flux, Use Limitation.

Solder and flux containing lead in excess of 0.2% may not be used on surfaces that contact food.

(i) Wood, Use Limitation.

(i) Wood and wood wicker may not be used as a food-contact surface, except as specified in Subsections (ii), (iii), and (iv) of this section,

(ii) Hard maple or an equivalently hard, close-grained wood may be used for:

(A) Cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and

(B) Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110 degrees C (230 degrees F) or above.

(iii) Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

(iv) If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:

(A) Untreated wood containers; or

(B) Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800 Preservatives for wood.

(j) Nonfood-Contact Surfaces.

Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a durable, corrosion-resistant, nonabsorbent, and smooth material.

(k) Nonstick Coatings, Use Limitation.

Multiuse kitchenware such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.

(2) Single-Service and Single-Use.

Characteristics.*

Materials that are used to make single-service and single-use articles:

(i) May not:

(A) Allow the migration of deleterious substances; or

(B) Impart colors, odors, or tastes to food; and

(ii) Shall be:

(A) Safe; and

(B) Clean.

5-2. Design and Construction.

(1) Durability and Strength.

(a) Equipment and Utensils.

Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

(b) Food Temperature Measuring Devices.*

Food temperature measuring devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.

(2) Cleanability.

(a) Food-Contact Surfaces.*

Multiuse food-contact surfaces shall be:

(i) Smooth;

(ii) Free of breaks, open seams, cracks, chips, pits, and similar imperfections;

(iii) Free of sharp internal angles, corners, and crevices;

(iv) Finished to have smooth welds and joints; and

(v) Accessible for cleaning and inspection by one of the

following methods:

(A) Without being disassembled,

(B) By disassembling without the use of tools, or

(C) By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screw drivers, pliers, open-end wrenches and Allen wrenches that are kept near the equipment.

(b) CIP Equipment.

(i) CIP equipment shall meet the characteristics specified under Section 5-2(2)(a) cleanability of food contact surfaces, and shall be designed and constructed so that:

(A) Cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces; and

(B) The system is self-draining or capable of being completely drained of cleaning and sanitizing solutions; and

(ii) CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.

(c) "V" Threads, Use Limitation.

"V" type threads may not be used on food-contact surfaces. This section does not apply to hot oil cooking or filtering equipment.

(d) Hot Oil Filtering Equipment.

Hot oil filtering equipment shall meet the characteristics specified under Section 5-2(2)(a) or Section 5-2(2)(b) and shall be readily accessible for filter replacement and cleaning of the filter.

(e) Can Openers.

Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.

(f) Nonfood-Contact Surfaces.

Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

(g) Kick Plates, Removable.

Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

(i) Removable by one of the methods specified in Subsections 5-2(2)(a)(v)(A) through (C) or capable of being rotated open; and

(ii) Removable or capable of being rotated open without unlocking equipment doors.

(h) Ventilation Hood Systems, Filters.

Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

(3) Accuracy.

Temperature Measuring Devices, Food.

(i) Food temperature measuring devices that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to +/- 1 degrees C in the intended range of use.

(ii) Food temperature measuring devices that are scaled only in Fahrenheit shall be accurate to +/- 2 degrees F in the intended range of use.

(b) Temperature Measuring Devices, Ambient Air and Water.

(i) Ambient air and water temperature measuring devices that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to +/- 1.5 degrees C (2.7 degrees F) in the intended range of use range.

(ii) Ambient air and water temperature measuring devices that are scaled only in Fahrenheit shall be accurate to +/- 3 degrees F in the intended range of use.

(c) Pressure Measuring Devices, Mechanical Warewashing Equipment.

Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of 7 kilopascals (1 pounds per square inch) or smaller and shall be accurate to +/- 14 kilopascals (+/- 2 pounds per square inch) in the 100-170 kilopascals (15-25 pounds per square inch) range.

(4) Functionality.

(a) Ventilation Hood Systems, Drip Prevention.

Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.

(b) Equipment Openings, Closures and Deflectors.

(i) A cover or lid for equipment shall overlap the opening and be sloped to drain.

(ii) An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least 5 millimeters (2/10 of an inch).

(iii) Fixed piping, temperature measuring devices, rotary shafts, and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment, except as specified under Subsection (iv) of this section.

(iv) If a watertight joint is not provided:

(A) The piping, temperature measuring devices, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from food openings; and

(B) The opening shall be flanged as specified under Subsection (ii) of this section.

(c) Dispensing Equipment, Protection of Equipment and Food.

In equipment that dispenses or vends liquid food or ice in unpackaged form:

(i) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;

(ii) The delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;

(iii) The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:

(A) Located in an outside area that does not otherwise afford protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment, or

(B) Available for self-service during hours when it is not under the full-time supervision of a food employee; and

(iv) The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

(d) Vending Machines, Vending Stage Closure.

The dispensing compartment of vending machines including a machine that is designed to vend prepackaged snack foods that is not potentially hazardous such as chips, party mixes, and pretzels shall be equipped with a self-closing door or cover if the machines is:

(i) Located in an outside area that does not otherwise afford protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

(ii) Available for self-service during hours when it is not under the full-time supervision of a food employee.

(e) Bearings and Gear Boxes, Leakproof.

Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.

(f) Beverage Tubing, Separation.

Beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice. This section does not apply to cold plates that are constructed integrally with an ice storage bin.

(g) Ice Units, Separation of Drains.

Liquid waste drain lines may not pass through an ice machine or ice storage bin.

(h) Condenser Unit, Separation.

If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.

(i) Can Openers on Vending Machines.

Cutting or piercing parts of can openers on vending machines shall be protected from manual contact, dust, insects, rodents, and other contamination.

(j) Molluscan Shellfish Tanks.

(i) Molluscan shellfish life support system display tanks may only be used to display shellfish that are not offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only, except as specified under Subsection (ii) of this section.

(ii) Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption shall be operated and maintained in accordance with a variance granted by a regulatory authority as specified under 10-1(3)(a) and a HACCP plan that:

(A) Is submitted by the owner or person in charge as specified under 10-1(3)(b); and

(B) Ensure that:

(I) Water used with fish other than molluscan shellfish does not flow into the molluscan tank,

(II) The safety and quality of the shellfish as they were received are not compromised by use of the tank, and

(III) The identity of the source of the shellstock is retained as specified under Section 4-2(2)(j).

(k) Vending Machines, Automatic Shutoff.*

(i) A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food:

(A) If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that can not maintain food temperatures as specified under Chapter 4; and

(B) If a condition specified in Subsection (i)(A) of this section occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under Chapter 4.

(ii) When the automatic shutoff within a machine vending potentially hazardous food is activated:

(A) In a refrigerated vending machine, the ambient temperature may not exceed 5 degrees C (41 degrees F) or 7 degrees C (45 degrees F) as specified under Subsection 4-5(1)(f)(iii) for no more than 30 minutes immediately after the machine is filled, serviced, or restocked; or

(B) In a hot holding vending machine, the ambient temperature may not be less than 60 degrees C (140 degrees F) for more than 120 minutes after the machine is filled, serviced, or restocked.

(l) Temperature Measuring Devices.

(i) In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

(ii) Cold or hot holding equipment used for potentially hazardous food shall be designed to include and shall be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display, except as specified in Subsection (iii) of this section.

(iii) Subsection (ii) of this section does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated food transport containers, and salad bars.

(iv) Temperature measuring devices shall be designed to be easily readable.

(v) Food temperature measuring devices shall have a numerical scale, printed record, or digital readout in increments no greater than 1 degrees C or 2 degrees F in the intended range of use.

(m) Warewashing Machines, Sanitizer Level Indicator.

A warewashing machine that uses a chemical for sanitization and that is installed after adoption of this rule by the regulatory authority, shall be equipped with a device that indicates audibly or visually when more chemical sanitizer needs to be added.

(n) Warewashing Machine, Data Plate Operating Specifications.

A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating

specifications including the:

(i) Temperatures required for washing, rinsing, and sanitizing;

(ii) Pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse; and

(iii) Conveyor speed for conveyor machines or cycle time for stationary rack machines.

(0) Warewashing Machines, Internal Baffles.

Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

(p) Warewashing Machines, Temperature Measuring Devices.

A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water:

(i) In each wash and rinse tank; and

(ii) As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.

(q) Manual Warewashing Equipment, Heaters and Baskets.

If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall be:

(i) Designed with an integral heating device that is capable of maintaining water at a temperature not less than 77 degrees C (171 degrees F); and

(ii) Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

(r) Warewashing Machines, Flow Pressure Device.

(i) Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine; and

(ii) If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a 6.4 millimeter or 1/4-inch Iron Pipe Size (IPS) valve.

(iii) Subsections (i) and (ii) of this section do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

(s) Warewashing Sinks and Drainboards, Self-Draining.

Sinks and drainboards of warewashing sinks and machines shall be self-draining.

(t) Equipment Compartments, Drainage.

Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice shall be sloped to an outlet that allows complete draining.

(u) Vending Machines, Liquid Waste Products.

(i) Vending machines designed to store beverages that are packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

(ii) Vending machines that dispense liquid food in bulk shall be:

(A) Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and

(B) Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

(iii) Shutoff devices specified in Subsection (ii)(B) of this section shall prevent water or liquid food from continuously running if there is a failure of a flow control device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

(v) Case Lot Handling Equipment, Moveability.

Equipment, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available equipment such as hand trucks and forklifts.

(w) Vending Machine Doors and Openings.

(i) Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than 1.5 millimeters or 1/16 inch by:

(A) Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than 1.5 millimeters or 1/16 inch. Screening of 12 or more mesh to 2.5 centimeters (12 mesh to 1 inch) meets this requirement;

(B) Being effectively gasketed;

(C) Having interface surfaces that are at least 13 millimeters or 1/2 inch wide; or

(D) Jambs or surfaces used to form an L-shaped entry path to the interface.

(ii) Vending machine service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1.5 millimeters or 1/16 inch.

(x) Restraining of Pressurized Containers

Carbon dioxide, helium or other similar pressurized containers must be restrained or secured to prevent the tanks from falling over.

(y) Food Equipment, Certification and Classification.

Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI) accredited certification program will be deemed to comply with Sections 5-1 and 5-2 of this chapter.

5-3. Numbers and Capacity.

(1) Equipment.

(a) Cooling, Heating, and Holding Capacities.

Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under Chapter 4.

(b) Manual Warewashing, Sink Compartment Requirements.

(i) A sink with at least 3 compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils, except as specified in Subsection (iii) of this section.

(ii) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in

Subsection (iii) of this section shall be used.

(iii) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and the regulatory authority has approved the use of the alternative equipment. Alternative manual warewashing equipment may include:

(A) High-pressure detergent sprayers;

(B) Low- or line-pressure spray detergent foamers;

(C) Other task-specific cleaning equipment;

(D) Brushes or other implements;

(E) Receptacles that substitute for the compartments of a multicompartment sink if approved by the regulatory authority.

(c) Drainboards.

Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.

(d) Ventilation Hood Systems, Adequacy.

Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

(e) Clothes Washers and Dryers.

(i) If work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer shall be provided and used, except as specified in Subsection (ii) of this section,

(ii) If on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under Section 5-9(1)(b), a mechanical clothes washer and dryer need not be provided.

(2) Utensils, Temperature Measuring Devices, and Testing Devices

(a) Utensils, Consumer Self-Service.

A food dispensing utensil shall be available for each display container displayed at a consumer self-service unit such as a buffet or salad bar.

(b) Food Temperature Measuring Devices.

Food temperature measuring devices shall be provided and readily accessible for use in assuring attainment and maintenance of food temperatures as specified under Chapter 4.

(c) Temperature Measuring Devices, Manual Warewashing.

In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.

(d) Sanitizing Solutions, Testing Devices.

A test kit or other device that accurately measures the concentration in mg/L of sanitizing solutions shall be provided.

5-4. Location and Installation.

(1) Location.

Equipment, Clothes Washers and Dryers, and Storage Cabinets, Contamination Prevention.

(i) Except as specified in Subsection (ii) of this section, equipment, a cabinet used for the storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be located:

(A) In locker rooms;

(B) In toilet rooms;

(C) In garbage rooms;

(D) In mechanical rooms;

(E) Under sewer lines that are not shielded to intercept potential drips;

(F) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

(G) Under open stairwells; or

(H) Under other sources of contamination.

(ii) A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.

(iii) If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles. Separate rooms shall be provided for laundry facilities, except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.

(2) Installation.

(a) Fixed Equipment, Spacing or Sealing.

(i) Equipment that is fixed because it is not easily movable shall be installed so that it is:

(A) Spaced to allow access for cleaning along the sides, behind, and above the unit;

(B) Spaced from adjoining equipment, walls, and ceilings a distance of not more than 1 millimeter or 1/32 inch; or

(C) Sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

(ii) Table-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

(A) Sealed to the table; or

(B) Elevated on legs as specified under Subsection 5-4(2)(iv).

(b) Fixed Equipment, Elevation or Sealing.

(i) Floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a 15 centimeter (6 inches) clearance between the floor and the equipment, except as specified in Subsection (ii) and (iii) of this section.

(ii) If no part of the floor under the floor-mounted equipment is more than 15 centimeters (6 inches) from the point of cleaning access, the clearance space may be only 10 centimeters (4 inches).

(iii) This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.

(iv) Table-mounted equipment that is not easily movable shall be elevated on legs that provide at least a 10 centimeter (4 inches) clearance between the table and the equipment, except as specified in Subsection (v) of this section.

(v) The clearance space between the table and table-mounted equipment may be:

(A) 7.5 centimeters (3 inches) if the horizontal distance of the table top under the equipment is no more than 50 centimeters (20 inches) from the point of access for cleaning; or

(B) 5 centimeters (2 inches) if the horizontal distance of the table top under the equipment is no more than 7.5

centimeters (3 inches) from the point of access for cleaning.

(c) Aisles and Working Spaces.

Aisles and working spaces between units of equipment and between equipment and walls , shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact. All easily movable storage equipment such as dollies, skids, racks, and opened-ended pallets shall be positioned to provide accessibility to working areas.

5-5. Maintenance and Operation.

(1) Equipment.

(a) Good Repair and Proper Adjustment.

(i) Equipment shall be maintained in a state of good repair and condition that meets the requirements specified in Sections 5-1 and 5-2.

(ii) Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturers' specifications.

(iii) Cutting or piercing parts of can openers shall be kept sharp to eliminate the creation of metal fragments that can contaminate food when the container is opened.

(b) Cutting Surfaces.

Surfaces such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.

(c) Warewashing Equipment, Cleaning Frequency.

A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards, shall be cleaned:

(i) Before use;

(ii) Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and

(iii) If used, at least every 24 hours.

(d) Warewashing Machines, Manufacturers' Operating Instructions.

(i) A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.

(ii) A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.

(e) Warewashing Sinks, Use Limitation.

(i) A warewashing sink may not be used for hand washing or dumping mop water.

(ii) If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under Section 5-5(1)(c) before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified under Section 5-7 before and after using the sink to wash produce or thaw food.

(f) Warewashing Equipment, Cleaning Agents.

When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment, shall, when used for warewashing, contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.

(g) Warewashing Equipment, Clean Solutions.

The wash, rinse, and sanitize solutions shall be maintained clean.

(h) Manual Warewashing Equipment, Wash Solution Temperature.

The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than 43 degrees C (110 degrees F) unless a different temperature is specified on the cleaning agent manufacturer's label instructions.

(i) Mechanical Warewashing Equipment, Wash Solution Temperature.

(i) The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than:

(A) For a stationary rack, single temperature machine, 74 degrees C (165 degrees F);

(B) For a single tank, conveyor, dual temperature machine, 71 degrees C (160 degrees F);

(C) For a stationary rack, dual temperature machine, 66 degrees C (150 degrees F); or

(D) For a multitank, conveyor, multitemperature machine, 66 degrees C (150 degrees F).

(ii) The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than 49 degrees C (120 degrees F).

(j) Manual Warewashing Equipment, Hot Water Sanitization Temperatures.*

If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at 77 degrees C (171 degrees F) or above.

(k) Mechanical Warewashing Equipment, Hot Water Sanitization Temperatures.

(i) Except as specified in Subsection (ii) of this section, in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than 90 degrees C (194 degrees F), or less than:

(A) For a stationary rack, single temperature machine, 74 degrees C (165 degrees F); or

(B) For all other machines, 82 degrees C (180 degrees F).

(ii) The maximum temperature specified under Subsection (i) of this section, does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

(l) Mechanical Warewashing Equipment, Sanitization Pressure.

The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine may not be less than 100 kilopascals (15 pounds per square inch) or more than 170 kilopascals (25 pounds per square inch) as measured in the water line immediately upstream from the fresh hot water sanitizing rinse control valve.

(m) Manual and Mechanical Warewashing Equipment, Chemical Sanitization - Temperature, pH, Concentration, and Hardness.*

A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at exposure times specified in Subsection 5-7(3)(iii) shall be listed in 21 CFR 178.1010 Sanitizing solutions, shall be used in accordance with the EPA-approved manufacturer's label use instructions, and shall be used as follows:

(i) A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following table:

TABLE 5

Minimum Concentration (mg/L)	Minimum Temperature pH 10 or less deg F (deg C)	Minimum Temperature pH 8 or less deg F (deg C)
25	120 (49)	120 (49)
50	100 (38)	75 (24)
100	55 (13)	55 (13)

(ii) An iodine solution shall have a:

(A) Minimum temperature of 24 degrees C (75 degrees F),

(B) pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective, and

(C) Concentration between 12.5 mg/L and 25 mg/L;

(iii) A quaternary ammonium compound solution shall:

(A) Have a minimum temperature of 24 degrees C (75 degrees F),

(B) Have a concentration as specified under Section 8-2(4)(a) and as indicated by the manufacturer's use directions included in the labeling, and

(C) Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the manufacturer's label;

(iv) If another solution of a chemical specified under Subsections (i) through (iii) of this section is used, the person in charge shall demonstrate to the regulatory authority that the solution achieves sanitization and the use of the solution shall be approved; or

(v) If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the manufacturer's use directions included in the labeling.

(n) Warewashing Equipment, Determining Chemical Sanitizer Concentration.

Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.

(2) Utensils and Temperature Measuring Devices.

(a) Good Repair and Proper Calibration.

(i) Utensils shall be maintained in a state of repair or condition that complies with the requirements specified in Sections 5-1 and 5-2 or shall be discarded.

(ii) Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

(iii) Ambient air temperature, water pressure, and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.

(b) Food establishments without proper ware-washing facilities.

Food establishments that do not have facilities for proper cleaning and sanitizing of utensils and equipment shall not prepare or package food or dispense unpackaged food other than raw fruits and raw vegetables which have not been processed.

(c) Bulk Food Sections.

Food establishments with bulk food sections shall have facilities or equipment conveniently available, either in a servicing area or in place to provide for proper cleaning and sanitizing of all food-contact surfaces including product modules, lids and dispensing utensils.

(d) Single-Service and Single-Use Articles, Required Use.*

If approved by the UDAF a food establishment without facilities specified in Sections 5-6 and 5-7 for cleaning and sanitizing kitchenware and tableware may provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by the consumer.

(e) Single-Service and Single-Use Articles, Reuse Limitation.

(i) Single-service and single-use articles may not be reused. Articles such as number 10 cans, aluminum pie pans, egg containers, bread wrappers, and similar articles into which food has been packaged by the manufacturers shall not be used as single service or multi-use articles.

(ii) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than 1 inch protruding from the chilled dispensing head.

(f) Shells, Use Limitation.

Mollusk and crustacea shells may not be used more than once as serving containers.

5-6. Cleaning of Equipment and Utensils.

(1) Objective.

Equipment, Food-Contact Surfaces, Nonfood-Contact Surfaces, and Utensils.*

(i) Equipment food-contact surfaces and utensils shall be clean to sight and touch.

(ii) The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.

(iii) Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

(2) Frequency.

Equipment Food-Contact Surfaces and Utensils.*

(i) Equipment food-contact surfaces and utensils shall be cleaned:

(A) Before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry, except as specified in Subsection (ii) of this section;

(B) Each time there is a change from working with raw foods to working with ready-to-eat foods;

(C) Between uses with raw fruits or vegetables and with potentially hazardous food;

(D) Before using or storing a food temperature measuring device; and

(E) At any time during the operation when contamination may have occurred.

(ii) Subsection (ii)(A) of this section does not apply if raw animal foods that require cooking temperatures specified under

Subsection 4-4(1)(a)(i)(C) are prepared after foods that require cooking temperatures specified under Subsections 4-4(1)(a)(i)(A) and (B) and 4-4(1)(a)(ii).

(iii) If used with potentially hazardous food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every 4 hours, except as specified in Subsection (iv) of this section.

(iv) Surfaces of utensils and equipment contacting food may be cleaned less frequently than every 4 hours if:

(A) In storage, containers of potentially hazardous food and their contents are maintained at temperatures specified under Chapter 4 and the containers are cleaned when they are empty;

(B) Utensils and equipment are used to prepare food in a refrigerated room that maintains the utensils, equipment, and food under preparation at temperatures specified under Chapter 4 and the utensils and equipment are cleaned at least every 24 hours;

(C) Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat potentially hazardous food that is maintained at the temperatures specified under Chapter 4, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every 24 hours;

(D) Temperature measuring devices are maintained in contact with foods, such as when left in a container of deli food or in a roast, held at temperatures specified under Chapter 4; or

(E) Equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues; or

(F) The cleaning schedule is approved based on consideration of:

(I) Characteristics of the equipment and its use,

(II) The type of food involved,

(III) The amount of food residue accumulation, and

(IV) The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease.

(v) Except when dry cleaning methods are used as specified under Section 5-6(3)(a), surfaces of utensils and equipment contacting food that is not potentially hazardous shall be cleaned:

(A) At any time when contamination may have occurred;

(B) At least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;

(C) Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers;

(D) Equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, beverage dispensing lines or tubes, coffee bean grinders, and water vending equipment:

(I) At a frequency specified by the manufacturer, or

(II) Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

(b) Cooking and Baking Equipment.

(i) The food-contact surfaces of cooking and baking equipment shall be cleaned at least every 24 hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified under Subsection 5-6(2)(iv)(E).

(ii) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

(c) Nonfood-Contact Surfaces.

Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

(3) Methods.

(a) Dry Cleaning.

(i) If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not potentially hazardous.

(ii) Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose.

(b) Precleaning.

(i) Food debris on equipment and utensils shall be scrapped over a waste disposal unit, scupper, or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

(ii) If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.

(c) Loading of Soiled Items, Warewashing Machines.

Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:

(i) Exposes the items to the unobstructed spray from all cycles; and

(ii) Allows the items to drain.

(d) Wet Cleaning.

(i) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

(ii) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

(e) Washing, Procedures for Alternative Manual Warewashing Equipment.

If washing in sink compartments or a warewashing machine is impractical such as when the equipment is fixed or the utensils are too large, washing shall be done by using alternative manual warewashing equipment as specified in Subsection 5-3(1)(b)(iii) in accordance with the following procedures:

(i) Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts;

(ii) Equipment components and utensils shall be scrapped or rough cleaned to remove food particle accumulation; and

(iii) Equipment and utensils shall be washed as specified under Subsection 5-6(3)(d)(i).

(f) Rinsing Procedures.

Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or

diluted through the use of water or a detergent-sanitizer solution by using one of the following procedures:

(i) Use of a distinct, separate water rinse after washing and before sanitizing if using:

(A) A 3-compartment sink,

(B) Alternative manual warewashing equipment equivalent to a 3-compartment sink as specified under Subsection 5-(1)(b)(iii)(A), or

(C) A 3-step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment;

(ii) Use of a detergent-sanitizer if using:

(A) Alternative warewashing equipment as specified in Subsection 5-3(1)(b)(iii) that is approved for use with a detergent-sanitizer, or

(B) A warewashing system for CIP equipment;

(iii) If using a warewashing machine that does not recycle the sanitizing solution as specified under Subsection (iv) of this section, or alternative manual warewashing equipment such as sprayers, use of a nondistinct water rinse that is:

(A) Integrated in the application of the sanitizing solution, and

(B) Wasted immediately after each application; or

(iv) If using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.

(g) Returnables, Cleaning for Refilling.*

(i) Returned empty containers intended for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant, except as specified in Subsections (ii) and (iii) of this section.

(ii) A food-specific container for beverages may be refilled at a food establishment if:

(A) Only a beverage that is not a potentially hazardous food is used as specified under Subsection 4-3(4)(g);

(B) The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;

(C) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided;

(D) The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and

(E) The container is refilled by:

(I) An employee of the food establishment, or

(II) The owner of the container if the beverage system includes a contamination-free transfer process that can not be bypassed by the container owner.

5-7. Sanitization of Equipment and Utensils.

(1) Objective.

Food-Contact Surfaces and Utensils.*

Equipment food-contact surfaces and utensils shall be sanitized.

(2) Frequency.

Before Use After Cleaning.

Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.

(3) Methods.

Hot Water and Chemical.*

After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

(i) Hot water manual operations by immersion for at least 30 seconds in water whose temperature is maintained at 77 degrees C (170 degrees F) or above.

(ii) Hot water mechanical operations by being cycled through equipment that is set up as specified under Sections 5-5(1)(d) and 5-5(1)(h) and (i) and achieving a utensil surface temperature of 71 degrees C (160 degrees F) as measured by an irreversible registering temperature indicator; or

(iii) Chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under Section 5-51)(m) by providing:

(A) An exposure time of at least 10 seconds for a chlorine solution,

(B) An exposure time of at least 30 seconds for other chemical sanitizer solutions, or

(C) An exposure time used in relationship with a combination of temperature, concentration, and pH that yields sanitization.

5-8. Laundering.

(1) Clean Linens.

Clean linens shall be free from food residues and other soiling matter.

(2) Specifications.

(i) Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

(ii) Cloth gloves specified in Subsection 4-3(4)(e)(iv) shall be laundered before being used with a different type of raw animal food such as beef, lamb, pork, and fish.

(iii) Linens that are used for food service and cloth napkins shall be laundered between each use.

(iv) Wet wiping cloths shall be laundered before being used with a fresh solution of cleanser or sanitizer.

(v) Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

(3) Methods.

(a) Storage of Soiled Linens.

Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.

(b) Mechanical Washing.

(i) Linens shall be mechanically washed, except as specified in Subsection (ii) of this section.

(ii) In food establishments in which only wiping cloths are laundered as specified in Subsection 5-3(1)(e)(ii), the wiping cloths may be laundered in a mechanical washer, a sink designated only for laundering wiping cloths, or a warewashing or food preparation sink that is cleaned as specified under Section 5-5(1)(c).

(c) Use of Laundry Facilities.

(i) Laundry facilities on the premises of a food establishment shall be used only for the washing and drying of items used in the operation of the establishment, except as

specified in Subsection (ii) of this section.

(ii) Separate laundry facilities located on the premises for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering food establishment items.

5-9. Protection of Clean Items.

(1) Drying.

(a) Equipment and Utensils, Air-Drying Required.

After cleaning and sanitizing, equipment and utensils:

(i) Shall be air-dried or used after adequate draining as specified in Subsection (a) of 21 CFR 178.1010 Sanitizing solutions, before contact with food; and

(ii) May not be cloth dried except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

(b) Wiping Cloths, Air-Drying Locations.

Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer as specified in Subsection 5-3(1)(e)(ii) shall be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single-service and single-use articles and the wiping cloths. This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under Section 5-5(1)(m).

(2) Lubricating and Reassembling.

(a) Food-Contact Surfaces.

Lubricants shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces. The use of food-grade lubricants is acceptable.

(b) Equipment.

Equipment shall be reassembled so that food-contact surfaces are not contaminated.

(3) Storing.

(a) Equipment, Utensils, Linens, and Single-Service and Single-Use Articles.

(i) Except as specified in Subsection (iv) of this section, cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:

(A) In a clean, dry location;

(B) Where they are not exposed to splash, dust, or other contamination; and

(C) At least 15 cm (6 inches) above the floor.

(ii) Clean equipment and utensils shall be stored as specified under Subsection (i) of this section and shall be stored:

(A) In a self-draining position that permits air drying; and

(B) Covered or inverted.

(iii) Single-service and single-use articles shall be stored as specified under Subsection (i) of this section and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(iv) Items that are kept in closed packages may be stored less than 15 cm (6 inches) above the floor on dollies, pallets, racks, and skids that are designed as provided under Section 5-2(4)(u).

(b) Prohibitions.

(i) Except as specified in Subsection (ii) of this section, cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be stored:

(A) In locker rooms;

(B) In toilet rooms;

(C) In garbage rooms;

(D) In mechanical rooms;

(E) Under sewer lines that are not shielded to intercept potential drips;

(F) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

(G) Under open stairwells; or

(H) Under other sources of contamination.

(ii) Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.

(4) Handling.

(a) Kitchenware and Tableware.

(i) Single-service and single-use articles and cleaned and sanitized utensils shall be handled, displayed, and dispensed so that contamination of food and lip-contact surfaces is prevented.

(ii) Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided.

(iii) Except as specified under Subsection (ii) of this section, single-service articles that are intended for food- or lip-contact shall be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.

(b) Soiled and Clean Tableware.

Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

(c) Preset Tableware.

Tableware may be preset if:

(i) It is protected from contamination by being wrapped, covered, or inverted;

(ii) Exposed and unused settings are removed when a consumer is seated; or

(iii) Exposed and unused settings shall be cleaned and sanitized before further use if the settings are not removed when a consumer is seated.

R70-530-6. Water, Plumbing and Waste.

6-1. Water.

(1) Source.

(a) Approved System.*

Drinking water shall be obtained from an approved source that is:

(i) A "community water systems" which is a public drinking water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents; or

(ii) A "non-transient, non-community water system" which is a public water system that is not a community water system and that regularly serves at least 25 of the same persons over a six months per year.

(iii) A "non-community water system" which is a public drinking water system that is not a community water system or a non-transient, non-community water system.

(iv) A private water system that is constructed, maintained,

and operated according to R309 101-113, Rules for Public Drinking Water Systems.

(b) System Flushing and Disinfection.*

A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.

(c) Bottled Drinking Water.*

Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 21 CFR 129 - Processing and Bottling of Bottled Drinking Water.

(2) Quality.

(a) Standards.*

Except as specified under Section (b) of this part:

(i) Water from a public water system shall meet R309 101-113.

(ii) Water from a private water system shall meet Utah's drinking water quality standards as set forth in R309.

(b) Nondrinking Water.*

(i) The use of a nondrinking water supply shall be approved by the regulatory authority; and

(ii) Nondrinking water shall be used only for non-culinary purposes such as air conditioning, nonfood equipment cooling, fire protection, and irrigation.

(iii) A person shall not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.

(c) Sampling.

Water from a non-community water system, a non-transient, non-community water system, or a private water system, shall be sampled as required by R309-103 Drinking Water: Water Quality Maximum Contamination Levels (MCLs) and R309-104 Drinking Water: Monitoring, Reporting, and Public Notification and local drinking water quality regulations.

(d) Sample Report.

The most recent sample report of the non-community water system, non-transient, non-community water system or private water system shall be retained on file in the food establishment or the report shall be maintained as specified by the Utah Department of Agriculture and Food (UDAF).

(3) Quantity and Availability.

(a) Capacity.*

The water source and system shall be of sufficient capacity to meet the water demands of the food establishment.

(b) Pressure.

Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water except that water supplied as specified under Subsections 6-1(2)(4)(b)(i) and (ii) to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure.

(c) Hot Water.

(i) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment, and

(ii) Hot and cold water shall be provided through tempered mixing faucets at all handwashing lavatories, food preparation sinks, warewashing sinks, service sinks, or curbed cleaning facilities.

(4) Distribution, Delivery, and Retention.

(a) System.

Water shall be received from the source through the use of:

(i) An approved public water main; or

(ii) One or more of the following that shall be constructed, maintained, and operated according to law:

(A) Nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances,

(B) Water transport vehicles, and

(C) Water containers.

(b) Alternative Water Supply.

Water from an approved source shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

(i) A supply of containers of commercially bottled drinking water;

(ii) One or more closed portable water containers;

(iii) An enclosed vehicular water tank;

(iv) An on-premises water storage tank; or

(v) Piping, tubing, or hoses connected to an adjacent approved source.

6-2. Plumbing System.

(1) Materials.

Approved.*

(i) A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to the International Plumbing Code as adopted by the State of Utah Building Codes Commission.

(ii) A water filter shall be made of safe materials.

(2) Design, Construction, and Installation.

(a) Approved System and Cleanable Fixtures.*

(i) A plumbing system shall be designed, constructed, installed, and operated according to the International Plumbing Code as adopted by the State of Utah Building Codes Commission.

(ii) A plumbing fixture such as a handwashing lavatory, toilet, or urinal shall be easily cleanable.

(b) Handwashing Lavatory, Water Temperature, and Flow.

(i) A handwashing lavatory shall be equipped to provide water at a temperature of at least 43 degrees C (110 degrees F) within 10 seconds, through a mixing valve or combination faucet.

(ii) A steam mixing valve may not be used at a handwashing lavatory.

(iii) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(c) Backflow Prevention, Air Gap.*

An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 mm (1 inch).

(d) Backflow Prevention Device, Design Standard.

A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineers (ASSE) standards for construction, installation, maintenance, inspection, and testing for that

specific application and type of device.

(e) Conditioning Device, Design.

A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

(3) Numbers and Capacity.

(a) Handwashing Lavatory.*

(i) Except as specified in Subsection (ii) and (iii) of this section, at least 1 handwashing lavatory, a number of handwashing lavatories necessary for their convenient use by employees in areas specified under Section 6-2(4)(a), and not fewer than the number of handwashing lavatories required by law shall be provided.

(ii) An adequate number of handwashing stations shall be provided for each temporary food establishment to include: a minimum of one handwashing station equipped with one enclosed container with a spigot, soap, paper towels, and a collection container for waste water.

(iii) If approved by the regulatory authority, when food exposure is limited and handwashing lavatories are not conveniently available, such as in some mobile or temporary food establishment or at some vending machine location, employees my use chemically treated towelettes for handwashing.

(b) Toilets and Urinals.*

At least 1 toilet and not fewer than the number of toilets required by law shall be provided. In accordance with law, urinals may be substituted for toilets if more than the required minimum number of toilets are provided.

(c) Service Sink.

At least 1 service sink or 1 curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

(d) Backflow Prevention Device, When Required.*

A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bib if a hose is attached or on a hose bib if a hose is not attached and backflow prevention is required by law, by:

(e) Providing an air gap as required by the International Plumbing Code as adopted by the State of Utah Building Codes Commission; or

(ii) Installing an approved backflow prevention device as required by the International Plumbing Code as adopted by the State of Utah Building Codes Commission.

(iii) Water heater drains and clothes washers are exempt from the requirements of this section.

(j) Backflow Prevention Device, Carbonator.*

A double check valve shall be installed so that it is upstream from a carbonating device and downstream from any copper in the water supply line.

(4) Location and Placement.

(a) Handwashing Lavatory.*

A handwashing lavatory shall be located:

(i) In, or immediately adjacent to, toilet rooms and;

(ii) To allow convenient use by employees in food processing, food dispensing, and warewashing areas. Convenient means:

(A) In the food processing area where it shall be accessible to employees at all times; or,

(B) In large food manufacturing areas or lines, handwashing lavatories shall be located in traffic areas, such as hallways leading into the processing area, and throughout the facility where food is handled.

(b) Backflow Prevention Device, Location.

A backflow prevention device shall be located so that it may be serviced and maintained.

(c) Conditioning Device, Location.

A water filter, screen, and other water conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

(5) Operation and Maintenance.

(a) Using a Handwashing Lavatory.

(i) A handwashing lavatory shall be maintained so that it is accessible at all times for employee use.

(ii) A handwashing lavatory may not be used for purposes other than handwashing.

(b) Prohibiting a Cross Connection.*

(i) Except as allowed under 9 CFR 308.3(d) for firefighting, a person may not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.

(ii) The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.

(c) Scheduling Inspection and Service for a Water Treatment Device or Backflow Preventer.

(i) Water treatment devices shall be scheduled for inspection and service, in accordance with manufacturer's recommendations and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.

(ii) The premise owner or responsible person shall have the backflow prevention assembly tested by a certified backflow assembly tester at the time of installation, repair, or relocation and at least on a annual schedule or more often when required by the regulatory authority.

(d) Water Reservoir of Fogging Devices, Cleaning.*

(i) A reservoir that is used to supply water to a device such as a produce fogger shall be:

(A) Maintained in accordance with manufacturer's specifications; and

(B) Cleaned in accordance with manufacturer's specifications or according to the procedures specified under Subsection (ii) of this section, whichever is more stringent.

(ii) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

(A) Draining and complete disassembly of the water and aerosol contact parts;

(B) Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;

(C) Flushing the complete system with water to remove the detergent solution and particulate accumulation; and

(D) Rinsing by immersing, spraying, or swabbing the

reservoir, aerosol tubing, and discharge nozzles with at least 50 ppm hypochlorite solution.

(e) System Maintained in Good Repair.*

A plumbing system shall be:

(i) Repaired according to law; and

(ii) Maintained in good repair.

6-3. Mobile Water Tank and Mobile Food Establishment Water Tank

(1) Materials.

Approved.

Materials that are used in the construction of a mobile water tank, mobile food establishment water tank, and appurtenances shall be:

(i) Safe;

(ii) Durable, corrosion-resistant, and nonabsorbent; and

(iii) Finished to have a smooth, easily cleanable surface.

(2) Design and Construction.

(a) Enclosed System, Sloped to Drain.

A mobile water tank shall be:

(i) Enclosed from the filling inlet to the discharge outlet; and

(ii) Sloped to an outlet that allows complete drainage of the tank.

(b) Inspection and Cleaning Port, Protected and Secured.

If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:

(i) Flanged upward at least 13 mm (1/2 inch); and

(ii) Equipped with a port cover assembly that is:

(A) Provided with a gasket and a device for securing the cover in place, and

(B) Flanged to overlap the opening and sloped to drain.

(c) "V" Type Threads, Use Limitation.

A fitting with "v" type threads on a water tank inlet or outlet may be allowed only when a hose is permanently attached.

(d) Tank Vent, Protected.

If provided, a water tank vent shall terminate in a downward direction and shall be covered with:

(i) 16 mesh to 25.4 mm (16 mesh to 1 inch) screen or equivalent when the vent is in a protected area; or

(ii) A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

(e) Inlet and Outlet, Sloped to Drain.

(i) A water tank and its inlet and outlet shall be sloped to drain.

(ii) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

(f) Hose, Construction and Identification.

A hose used for conveying drinking water from a water tank shall be:

(i) Safe;

(ii) Durable, corrosion-resistant, and nonabsorbent;

(iii) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;

(iv) Finished with a smooth interior surface; and

(v) Clearly and durably identified as to its use if not permanently attached.

(3) Numbers and Capacity.

(a) Filter, Compressed Air.

A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system.

(b) Protective Equipment or Device.

A cap and keeper chain, closed cabinet, closed storage tube, or other approved protective equipment or device shall be provided for a water inlet, outlet, and hose.

(c) Mobile Food Establishment Tank Inlet.

A mobile food establishment's water tank inlet shall be:

(i) 19.1 mm (3/4 inch) in inner diameter or less; and

(ii) Provided with a hose connection of a size or type that will prevent its use for any other service.

(4) Operation and Maintenance.

(a) System Flushing and Disinfection.*

A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse.

(b) Using a Pump and Hoses.

(i) Unloading water or liquid food products shall be done through a hose port or in such a manner that the processing area is protected against contamination.

(ii) A person shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

(c) Protecting Inlet, Outlet, and Hose Fitting.

If not in use, a water tank and hose inlet and outlet fitting shall be protected.

(d) Tank, Pump, and Hoses, Dedication.

(i) A water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose, except as specified in Subsection (ii) of this section.

(ii) Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized after each use.

6-4. Sewage, Other Liquid Waste, and Rainwater

(1) Mobile Holding Tank

(a) Capacity and Drainage.

A waste water holding tank in a mobile food establishment shall be:

(i) Sized 15 percent larger in capacity than the water supply tank; and

(ii) Sloped to a drain that is 25 mm (1 inch) in inner diameter or greater, equipped with a shut-off valve.

(2) Retention, Drainage, and Delivery

(a) Establishment Drainage System.

Food establishment drainage systems, including grease traps, that convey sewage shall be sized and installed according to the International Plumbing Code as adopted by the State of Utah Building Codes Commission.

(b) Backflow Prevention.*

(i) A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed, except as specified in Subsection (v) of this section.

(ii) If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain

when the machine is located within 1.5 m (5 feet) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

(iii) Equipment which is used for the storage or holding of food or drink, shall not have a drain in direct connection to a sewage line.

(iv) Warewashing or culinary sinks in any food preparation room which is used for soaking, washing, or preparing food shall not have a drain in direct connection to a sewage line.

(v) Three compartment sinks in dishwashing rooms, if not used for food preparation, may be directly connected to the sewer.

(c) Grease Trap.

If required, a grease trap shall be located to be easily accessible for cleaning.

(d) Conveying Sewage.*

Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law.

(e) Removing Mobile Food Establishment Wastes.

Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.

(f) Flushing a Waste Retention Tank.

A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.

(3) Disposal System.

(a) Approved Sewage Disposal System.*

Sewage shall be disposed through an approved facility that is:

(i) A public sewage treatment plant; or

(ii) An individual sewage disposal system that is sized, constructed, maintained, and operated according to law.

(b) Other Liquid Wastes and Rainwater.

Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to law.

6-5. Refuse, Recyclables, and Returnables.

(1) Facilities on the Premises.

(a) Indoor Storage Area.

(i) If located within the food establishment, a storage area for refuse, recyclables, and returnables shall be non-absorbent, smooth and cleanable.

(ii) Studs, joist, and rafters may not be exposed in areas subject to moisture.

(b) Outdoor Storage Surface.

An outdoor storage surface for refuse, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.

(c) Outdoor Enclosure.

If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

(d) Receptacles.

(i) Equipment and receptacles for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent, except as specified in Subsection (ii) of this section.

(ii) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment or within closed outside receptacles.

(e) Receptacles in Vending Machines.

A refuse receptacle may not be located within a vending machine, except that a receptacle for beverage bottle crown closures may be located within a vending machine.

(f) Outside Receptacles.

(i) Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers.

(ii) Receptacles and waste handling units for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the equipment is not installed flush with the base pad, under the unit.

(g) Storage Areas, Rooms, and Receptacles, Capacity and Availability.

(i) An inside storage room and area and outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold refuse, recyclables, and returnables that accumulate.

(ii) A receptacle shall be provided in each area of the food establishment or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed.

(iii) If disposable towels are used at handwashing lavatories, a waste receptacle shall be located at each lavatory or group of adjacent lavatories.

(h) Toilet Room Receptacle, Covered.

A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

(i) Cleaning Equipment and Supplies.

(i) Suitable cleaning equipment and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of equipment and receptacles for refuse, recyclables, and returnables, except as specified in Subsection (ii) of this section.

(ii) If approved by the regulatory authority, off-premises-based cleaning services may be used if on-premises cleaning equipment and supplies are not provided.

(2) Location and Placement.

Storage Areas, Redeeming Machines, Equipment, and Receptacles, Location.

(i) An area designated for refuse, recyclables, returnables, and redeeming machines for recyclables or returnables shall be located so that it is separate from food, equipment, utensils, linens, and single-service and single-use articles and a public health nuisance is not created, except as specified in Subsection (ii) of this section.

(ii) A redeeming machine may be located in the packaged

food storage area or consumer area of a food establishment if food, equipment, utensils, linens, and single-service and single-use articles are not subject to contamination from the machines and a public health nuisance is not created.

(iii) The location of equipment and receptacles for refuse, recyclables, and returnables may not create a public health nuisance or interfere with the cleaning of adjacent space.

(3) Operations and Maintenance.

(a) Storing Refuse, Recyclables, and Returnables.

Refuse, recyclables, and returnables shall be stored in equipment or refuse receptacles so that they are inaccessible to insects and rodents.

(b) Areas, Enclosures, and Receptacles, Good Repair.

Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

(c) Outside Storage Prohibitions.

(i) Refuse receptacles not meeting the requirements specified under Subsection 6-5(1)(d)(i) such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside, except as specified in Subsection (ii) of this section,.

(ii) Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

(d) Covering Receptacles.

Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:

(i) Inside the food establishment if the equipment and receptacles:

(A) Contain food residue and are not in continuous use; or

(B) After they are filled; and

(ii) With tight-fitting lids or doors if kept outside the food establishment.

(e) Using Drain Plugs.

Drains in equipment and receptacles for refuse, recyclables, and returnables shall have drain plugs in place.

(f) Maintaining.

A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items and clean.

(g) Cleaning Receptacles.

(i) Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens, or single-service and single-use articles, and waste water shall be disposed of to an approved sewage disposal system.

(ii) Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

(4) Removal.

(a) Frequency.

Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

(b) Receptacles or Vehicles.

Refuse, recyclables, and returnables shall be removed from the premises by way of:

(i) Portable receptacles that are constructed and maintained according to law; or

(ii) A transport vehicle that is constructed, maintained, and operated according to law.

(5) Facilities for Disposal and Recycling.

Community or Individual Facility.

Solid waste not disposed of through the sewage system such as through grinders and pulpers shall be recycled or disposed of in an approved public or private community recycling or refuse facility; or solid waste shall be disposed of in an individual refuse facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to law.

R70-530-7. Physical Facilities.

7-1. Materials for Construction and Repair.

(1) Indoor Areas.

Surface Characteristics.

(i) Walls, Wall Coverings, and Ceilings.

Except as specified in Subsection (D) of this section, materials for indoor walls, wall coverings, and ceiling surfaces under conditions of normal use shall be designed, constructed, and installed so that they are:

(A) Smooth, light-colored, durable, and easily cleanable for areas where food establishment operations are conducted.

(B) Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.

(C) Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

(D) In a temporary food establishment:

(I) If graded to drain, a floor may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other suitable materials approved by the regulatory authority that are effectively treated to control dust and mud; and

(II) Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.

(ii) Floors.

(A) Floors and floor coverings of all food preparation, food storage, and warewashing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, toilet rooms and vestibules, shall be constructed of smooth durable material such as sealed concrete, terrazzo, quarry tile, ceramic tile, durable grades of vinyl asbestos or plastic tile, or tight-fitting wood impregnated with plastic, and shall be maintained in good repair. Nothing in this section shall prohibit the use of anti-slip floor covering in areas where necessary for safety reasons.

(B) Floors which are water flushed or which receive discharges of water or other fluid wastes or are in areas where pressure spray methods for cleaning are used, shall be provided with properly installed trapped drains. Such floors shall be

constructed only of sealed concrete, terrazzo, quarry tile, ceramic tile, or similar materials and shall be graded to drain. The floor and wall junctures shall be coved and sealed.

(C) In all establishments utilizing concrete, terrazzo, quarry tile, ceramic tile, or similar flooring materials, or where water flush cleaning methods are used, the junctures between walls and floors shall be coved and sealed. In all other cases, the juncture between walls and floors shall be coved so as not to present an open seam of more than 1/32 inch (1 mm).

(iii) Floor Carpeting, Restrictions and Installation.

(A) Carpeting may not be installed as a floor covering in food preparation areas, walk-in refrigerator, warewashing areas, food storage, and toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas subject to moisture.

(B) Carpeting may be installed as a floor covering if it is:

(I) Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and

(II) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

(iv) Prohibited floor covering.

Sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials shall not be used as floor coverings; however, these materials may be used in amounts necessary for immediate spot clean-up of spills or drippage on floors.

(v) Mats and duckboards.

Mats and duckboards shall be of nonabsorbent, grease resistant materials, and of such size, design, and construction to facilitate cleaning and shall be maintained clean and in good repair.

(2) Outdoor Areas.

Surface Characteristics.

(i) The outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.

(ii) Exterior surfaces of buildings and mobile food establishments shall be of weather-resistant materials and shall comply with law.

7-2. Design, Construction, and Installation.

(1) Cleanability.

(a) Floors, Walls, and Ceilings, Utility Lines.

(i) Utility service lines and pipes may not be unnecessarily exposed.

(ii) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

(iii) Exposed horizontal utility service lines and pipes may not be installed on the floor.

(b) Walls and Ceilings, Attachments.

(i) Except as specified in Subsection (ii) of this section, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.

(ii) In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.

(c) Walls and Ceilings, Studs, Joists, and Rafters.

Studs, joists, and rafters may not be exposed in areas subject to moisture. This requirement does not apply to temporary food establishments.

(2) Functionality.

(a) Light Bulbs, Protective Shielding.

(i) Except as specified in Subsection (ii) of this section, light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food; clean equipment, utensils, and linens; or unwrapped single-service and single-use articles.

(ii) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages, if:

(A) The integrity of the packages can not be affected by broken glass falling onto them; and

(B) The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

(iii) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

(b) Heating, Ventilation, Air Conditioning System Vents.

Heating, ventilation, and air conditioning systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food preparation surfaces, equipment, or utensils.

(c) Insect Control Devices, Design and Installation.

(i) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

(ii) Insect control devices shall be installed so that:

(A) The devices are not located over a food preparation area, and

(B) Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(d) Toilet Rooms, Enclosed.

(i) A toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door. This requirement does not apply to a toilet room that is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall.

(ii) Toilet rooms shall not open directly into a processing area. The requirements of this section can be met in the following manner:

(A) Placing two (2) self-closing doors between the processing area and the toilet room; or

(B) Having the toilet room open into another area, such as a hallway or storage area, with a distance of at least 15 feet between the door of the toilet room and the processing area.

(e) Outer Openings, Protected.

(i) Except in temporary food establishments, openings to a portion of a building that is not part of the food establishment or to the outdoors shall be protected against the entry of insects and rodents by:

(A) Filling or closing holes and other gaps along floors, walls, and ceilings,

(B) Closed, tight-fitting windows, and

(C) Solid self-closing, tight-fitting doors; or

(ii) Subsection (i) of this section does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

(iii) Except as specified in Subsections (ii) and (iv) of this section, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and solid doors, as specified under Subsection (i) of this section, the openings shall be protected against the entry of insects and rodents by:

(A) 16 mesh to 25.4 mm (16 mesh to 1 inch) screens,

(B) Properly designed and installed air curtains, or

(C) Other effective means.

(iv) Subsection (iii) of this section does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

(f) Exterior Walls and Roofs, Protective Barrier.

Perimeter walls and roofs of a food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

(g) Outdoor Food Vending Areas, Overhead Protection.

If located outside, a machine used to vend food shall be provided with overhead protection except that machines vending canned beverages need not meet this requirement.

(h) Outdoor Servicing Areas, Overhead Protection.

Servicing areas shall be provided with overhead protection except that areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.

(i) Outdoor Walking and Driving Surfaces, Graded to Drain.

Exterior walking and driving surfaces shall be graded to drain.

(j) Outdoor Refuse Areas, Curbed and Graded to Drain.

Outdoor refuse areas shall be constructed in accordance with law and shall be curbed and graded to drain to collect and dispose of liquid waste that results from the refuse and from cleaning the area and waste receptacles.

(k) Living areas.

(i) No operation of a food establishment shall be conducted in any room used as living or sleeping quarters.

(ii) An establishment handling only packaged food products may be connected to living or sleeping quarters as long as they are separated by complete partitioning and solid, self-closing doors.

(iii) No establishment processing, preparing, packaging, or manufacturing food products shall have access to living or sleeping quarters through a door, window or other entrance.

7-3. Numbers and Capacities.

(1) Handwashing Provisions.

(a) Handwashing Cleanser Availability.

Each handwashing lavatory or group of 2 adjacent lavatories shall have available a supply of hand cleaning liquid, powder, or bar soap.

(b) Hand Drying Provision.

Each handwashing lavatory or group of adjacent lavatories shall be provided with:

(i) Individual, disposable towels;

(ii) A continuous towel system that supplies the user with a clean towel; or

(iii) A heated-air hand drying device.

(c) Handwashing Aids and Devices, Use Restrictions.

A sink used for food preparation or utensil washing, or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing lavatory.

(d) Disposable Towels, Waste Receptacle.

A handwashing lavatory or group of adjacent lavatories that is provided with disposable towels shall be provided with a waste receptacle.

(e) Minimum Number.

Handwashing lavatories shall be conveniently located and provided as specified under 6-2(3)(a).

(2) Toilet Provisions.

(a) Minimum Number.

Toilets and urinals shall be provided as specified under 6-2(3)(b).

(b) Toilet Tissue, Availability.

A supply of toilet tissue shall be available at each toilet.

(3) Lighting.

Intensity.

The light intensity shall be:

(i) At least 110 lux (10 foot candles) at a distance of 75 cm (30 inches) above the floor, in walk-in refrigeration units and dry food storage areas; and in other areas and rooms during periods of cleaning,

(ii) At least 220 lux (20 foot candles):

(A) At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged food are sold or offered for consumption;

(B) Inside equipment such as reach-in and under-counter refrigerators;

(C) At a distance of 75 cm (30 inches) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage; and in toilet rooms; and

(iii) At least 540 lux (50 foot candles) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

(4) Ventilation.

Mechanical.

If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided. Ventilation systems shall comply with the 1994 Uniform Mechanical Code Part II - Commercial Kitchens, Sections 507 and 508.

(5) Dressing Areas and Lockers.

Designation.

(i) Dressing rooms or dressing areas shall be designated if

employees routinely change their clothes in the establishment.

(ii) Lockers or other suitable facilities shall be provided for the clean and orderly storage of employees' clothing and other possessions.

(6) Service Sinks

A service or curbed cleaning facility shall be provided.

7-4. Location and Placement

(1) Toilet Rooms.

Convenience and Accessibility.

Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.

(2) Employee Accommodations.

Designated Areas.

(i) Areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination.

(ii) Lockers or other suitable facilities shall be located in a designated room or area where contamination of food, equipment, utensils, linens, and single-service and single-use articles can not occur.

(3) Distressed Merchandise.

Segregation and Location.

Products that are held by the owner or manager for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

(4) Refuse, Recyclables, and Returnables.

Units, receptacles, and areas designated for storage or refuse and recyclables and returnable containers shall be located as specified under Section 6-5(2).

7-5. Operation and Maintenance.

Premises, Structures, Attachments, and Fixtures-Methods

(a) Repairing.

The physical facilities shall be maintained in good repair.

(b) Cleaning, Frequency and Restrictions.

(i) The physical facilities shall be cleaned as often as necessary to maintain cleanliness.

(ii) Cleaning shall be done during periods when the least amount of food is exposed such as after closing. This requirement does not apply to cleaning that is necessary due to a spill or other accident.

(c) Cleaning Floors, Dustless Methods.

(i) Except as specified in Subsection (ii) of this section, only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

(ii) Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:

(A) Without the use of dust-arresting compounds; and

(B) In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.

(d) Cleaning Ventilation Systems, Nuisance and Discharge Prohibition.

(i) Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

(ii) If vented to the outside, ventilation systems may not create a public health nuisance or unlawful discharge.

(e) Cleaning Maintenance Tools, Preventing Contamination.*

Food preparation sinks, handwashing lavatories, and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.

(f) Drying Mops.

After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.

(g) Maintaining and Using Handwashing Lavatories.

Handwashing lavatories shall be kept clean, and maintained and used as specified under Section 6-2(5)(a).

(h) Closing Toilet Room Doors.

Toilet room doors shall be kept closed except during cleaning and maintenance operations.

(i) Using Dressing Rooms and Lockers.

(i) Dressing rooms shall be used by employees if the employees regularly change their clothes in the establishment.

(ii) Lockers or other suitable facilities shall be used for the clean and orderly storage of employee clothing and other possessions.

(j) Controlling Pests.*

(i) The presence of insects, rodents, and other pests shall be controlled to minimize their presence on the premises by:

(A) Routinely inspecting incoming shipments of food and supplies;

(B) Routinely inspecting the premises for evidence of pests;

(C) Using methods, if pests are found, such as trapping devices or extermination by approved methods; and

(D) Eliminating harborage conditions.

(i) Removing Dead or Trapped Birds, Insects, Rodents, and Other Pests.

Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

(j) Storing Maintenance Equipment.

Maintenance tools such as brooms, mops, vacuum cleaners, and similar equipment shall be:

(i) Stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and

(ii) Stored in an orderly manner that facilitates cleaning of the maintenance equipment storage location.

(k) Maintaining Premises, Unnecessary Items and Litter.

The premises shall be free of:

(i) Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and

(ii) Litter.

(l) Prohibiting Animals.*

(i) Live animals may not be allowed on the premises of a food establishment, except as specified in Subsections (ii) and (iii) of this section.

(ii) Live animals may be allowed in the following situations if the contamination of food; clean equipment,

utensils, and linens; and unwrapped single-service and single-use articles can not result:

(A) Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

(B) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(C) In areas that are not used for food preparation such as dining and sales areas, support animals such as guide dogs that are trained to assist an employee or other person who is handicapped, are controlled by the handicapped employee or person, and are not allowed to be on seats or tables; and

(D) Pets in the common dining areas of group residences at times other than during meals if:

(I) Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas,

(II) Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present, and

(III) Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service.

(iii) Live or dead fish bait shall be stored so that contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles can not result.

R70-530-8. Poisonous or Toxic Materials.

8-1. Labeling and Identification.

(1) Original Containers.

Identifying Information, Prominence.*

Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.

(2) Working Containers.

Common Name.*

Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.

8-2. Labeling and Identification.

(1) Storage.

Separation.*

Poisonous or toxic materials shall be stored so they may not contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(i) Separating the poisonous or toxic materials by spacing or partitioning; and

(ii) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. This Subsection does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

(2) Presence and Use.

(a) Restriction.*

(i) Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishments.

(ii) Subsection (i) of this section does not apply to packaged poisonous or toxic materials that are for retail sale.

(b) Conditions of Use.*

Poisonous or toxic materials shall be:

(i) Used according to:

(A) Law and this rule,

(B) Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment,

(C) The conditions of certification, if certification is required, for use of the pest control materials, and

(D) Additional conditions that may be established by the regulatory authority; and

(ii) Applied so that:

(A) A hazard to employees or other persons is not constituted; and

(B) Contamination including toxic residues due to drip, drain, fog, splash, or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted-use pesticide, this is achieved by:

(I) Removing the items,

(II) Covering the items with impermeable covers, or

(III) Taking other appropriate preventive actions, and

(IV) Cleaning and sanitizing equipment and utensils after the application.

(iii) Restricted and non-restricted-use pesticides for commercial purposes shall be applied by a licensed commercial pesticide applicator.

(iv) A license is required for private and non-commercial pesticide applicators only if they use restricted-use pesticides.

(3) Container Prohibitions.

Poisonous or Toxic Material Containers.*

A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.

(4) Chemicals.

(a) Sanitizers, Criteria.*

Chemical sanitizers and other chemical antimicrobials applied to food contact surfaces shall meet the requirements specified in 21 CFR 178.1010 Sanitizing solutions.

(b) Chemicals for Washing Fruits and Vegetables, Criteria.*

Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315 Chemicals used in washing or to assist in the lye peeling of fruits and vegetables.

(c) Boiler Water Additives, Criteria.*

Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR 173.310 Boiler water additives.

(d) Drying Agents, Criteria.*

Drying agents used in conjunction with sanitization shall:

(i) Contain only components that are listed as one of the following:

(A) Generally recognized as safe for use in food as

specified in 21 CFR 182 - Substances Generally Recognized As Safe, or 21 CFR 184 - Direct Food Substances Affirmed As Generally Recognized as Safe;

(B) Generally recognized as safe for the intended use as specified in 21 CFR 186 - Indirect Food Substances Affirmed as Generally Recognized As Safe;

(C) Approved for use as a drying agent under a prior sanction specified in 21 CFR 181 - Prior-Sanctioned Food Ingredients;

(D) Specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR Sections 175-178;

(E) Approved for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39 Threshold of regulation for substances used in food-contact articles; and

(ii) When sanitization is with chemicals, the approval required in Subsection (i)(C) or (i)(E) of this section or the regulation as an indirect food additive required in Subsection (i)(D) of this section, shall be specified for use with chemical sanitizing solutions.

(e) Incidental Food Contact, Criteria.*

Lubricants shall meet the requirements specified in 21 CFR 178.3570 Lubricants with incidental food contact, if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces.

(f) Restricted Use Pesticides, Criteria.*

Restricted use pesticides specified under 8-2(2)(b) shall meet the requirements specified in 40 CFR 152.1 Classification of Pesticides.

(g) Rodent Bait Stations.

Rodent bait shall be contained in a covered, tamper-resistant bait station and shall not be used in food processing areas.

(h) Tracking Powders, Pest Control and Monitoring.*

(i) A tracking powder pesticide may not be used in a food establishment.

(ii) If used, a nontoxic tracking powder such as talcum or flour may not contaminate food, equipment, utensils, linens, and single-serve, and single-use articles.

(i) Restriction and Storage.*

(i) Only those medicines that are necessary for the health of employees shall be allowed in a food establishment. This Section does not apply to medicines that are stored or displayed for retail sale.

(ii) Medicines that are in a food establishment for the employees' use shall be labeled as specified under Section 8-1(1) and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.

(j) Refrigerated Medicines, Storage.*

Medicines belonging to employees that require refrigeration and are stored in a food refrigerator shall be:

(i) Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of employees' medicines; and

(ii) Located on the lowest shelf.

(k) Storage.*

First aid supplies that are in a food establishment for the employees' use shall be:

(i) Labeled as specified under Section 8-1(1); and

(ii) Stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, and linens, and single-service and single-use articles.

(l) Storage.

Except as specified under 8-2(4)(i) and 8-2(4)(k). employees shall store their other personal care items as specified under Subsection 7-3(5)(ii).

8-3. Stock and Retail Sale.

Separation.*

Poisonous or toxic materials shall be stored and displayed for retail sale so they may not contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(i) Separating the poisonous or toxic materials by spacing or partitioning; and

(ii) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles.

R70-530-9. Special Requirements.

9-1. General.

In addition to all other applicable requirements of this rule, the following requirements shall pertain to the specific processors referenced in this chapter.

9-2. Rabbit Processors.

Special Processing Requirements.

(a) Separate Rooms.

The killing and skinning area shall be separated by a self-closing door from the packaging and processing rooms.

(b) Pelts.

Pelts shall not be stored in the slaughtering or packaging rooms, or in rooms used for storing equipment or supplies.

(c) Hutches and Rearing Pens.

(i) If hutches or rearing pens are located on the same premises as the slaughtering and processing building, they must be so made and maintained as to constitute a suitable operation free of fly breeding and manure storing areas that may constitute a nuisance or health hazard.

(ii) Hutches and rearing pens shall not be located in the same building as the slaughtering and packaging rooms, or other food establishment operations.

9-3. Canneries.

(1) Low Acid Foods.

All low acid canning regulations adopted under authority of the Federal Food, Drug and Cosmetic Act are the low acid canning rules in this state. This specifically refers to the Code of Federal Regulations (CFR), 21 CFR 113 and 108 B and 108.35, and generally refers to any other cross-referenced or otherwise pertinent regulations in the CFR. Where state rules conflict or are more stringent than the federal requirements, the state rules shall have precedence.

(2) Acidified Foods.

All acidified foods regulations adopted under authority of the Federal Food, Drug and Cosmetic Act are the acidified food rules of this state. This specifically refers to 21 CFR 114 and 108 B, and 108.25, and generally refers to any other cross referenced or otherwise pertinent regulations in the Code of Federal Regulations. Where state rules conflict or are more

stringent than the federal requirements, the state rules shall have precedence.

(3) Other canned or thermally processed foods.

All other foods not covered under (1) or (2) of this Section which are to be packaged into hermetically sealed containers shall be mechanically capped or sealed. However, this does not pertain to home canned foods which are for the owners and his family's personal use.

9-4. Bottling Plants.

Bottled Water.

(a) Source Development.

Bottled water sources, such as springs or wells, shall be developed so they are in compliance with R309 200-211.

(b) Bottled Water Standards and Plant Sanitation.

Bottled water shall meet the standards for quality, sanitation and plant construction, as outlined in 21 CFR 129 and 165. Where state rules are more stringent than the federal requirements, the state rules shall have precedence.

(c) Capping.

All bottled water operations shall use mechanical capping or closure devices.

(d) Caustics.

All bottling plants using caustics for the cleaning of multi-use containers shall use the caustics in conformance with the manufacturers' requirements, or according to the table listed below, and shall have available and use a caustic test kit to determine caustic strength.

TABLE 6

Combinations of Causticity, Time and Temperature of Equal Bactericidal Value, for Soaker Tank of Soaker-Type Bottle Washers

Temperature, degrees							
F	170	160	150	140	130	120	110
C	77	71	66	60	54	49	43

Time In Minutes	Concentration of NaOH, percent						
3	0.57	0.86	1.28	1.91	2.86	4.27	6.39
5	0.43	0.64	0.96	.43	2.15	3.22	.80
7	0.36	0.53	0.80	1.19	1.78	2.66	3.98

9-4. Ice Plants.

Special Requirements.

Ice plants using water for the manufacturing of ice must obtain their water from an approved source. If the water is obtained from a community water system as defined in Section 6-1(1)(a)(i) of this rule, no additional testing is necessary. If the water is obtained from other than a community water system, it must meet R309 101-113 standards for a non-community water system. This would include an initial test for inorganic chemicals, turbidity and microbiological standards. After the initial test, it would require testing for:

(a) Microbiological standards once in each quarter of the calendar year in which the plant operates January-March, April-June, July-September, October-December.

(b) Turbidity, sulfate and nitrate once each three years.

9-5. Produce Stands.

Special Requirements.

Produce stands shall be exempt from these requirements as long as they meet the following requirements:

(a) They operate on a seasonal basis.

(b) They do not cut, process, prepare or package produce products for sale.

(c) They handle only raw, unprocessed fruits and vegetables.

(d) They have access to toilet and handwashing facilities.

(e) All food products are stored at least 6 inches off the ground.

(f) The surroundings are maintained clean and free of litter and garbage.

9-7. Game Processors.

Special Requirements.

Retail meat establishments processing game shall meet the following requirements:

(a) Separate coolers shall be provided for game animals, and unpackaged, inspected meat products.

(b) Game animals shall not be processed at the same time as inspected meat, or other food products.

(c) After the completion of processing game animals, all equipment and utensils must be completely cleaned and sanitized prior to processing any inspected meat products or other food products.

9-8. Mobile Food Vendors.

Requirements.

Vendors who sell or offer for sale potentially hazardous food, such as meat, directly to the consumer out of a truck or other mobile vehicle shall:

(a) Be registered annually with/or under inspection by the UDAF.

(b) Supply UDAF with the following information:

(i) The name, mailing address, telephone number, driver's license of the owner or agent of the business.

(ii) Information specifying whether the business is owned by an association, corporation, individual, partnership, or other legal entity;

(iii) A statement signed by the owner or responsible party that:

(A) Attests to the accuracy of the information provided, and

(B) Affirms that the applicant will:

(I) Comply with this rule, and

(II) Allow the regulatory authority to inspect the vehicle.

(iv) Identify the source of the food products.

(v) Other information as required by the regulatory authority.

(c) The food product shall:

(i) Be stored and maintained at the temperature required in Chapter 4.

(ii) Be protected from contamination by keeping the equipment clean and the food product covered.

(d) The vehicle shall be kept clean.

9-9. Distressed and Salvaged Food.

(1) Definitions.

For the purpose of this Section:

(a) "Distressed merchandise" shall mean any food which has no label or which has been subjected to possible damage due to accident, fire, flood, adverse weather, or to any other similar cause, and which may have been rendered unsafe or unsuitable for human or animal consumption or use.

"Distressed merchandise" shall not include food products that fail to meet manufacturer's or packer's specifications, but which do meet applicable federal and state regulations.

(b) "Non-salvageable merchandise" means "distressed merchandise," as defined in Subsection (a) of this section, which cannot be safely or practicably reconditioned.

(c) "Perishable" means that there exists a significant risk of spoilage or deterioration when a food has not been properly stored or handled.

(d) "Reconditioning" means any appropriate process or procedure by which distressed merchandise or salvageable merchandise can be brought into compliance with all the requirements of the Utah Wholesome Food Act, Title 4, Chapter 5 and R70-530, making it suitable for consumption or use as human or animal food.

(e) "Salvageable merchandise" includes:

(i) Food products that fail to meet manufacturer's or packer's specifications, but which do meet applicable federal and state regulations.

(ii) Foods sent to a salvage food establishment which are safe and wholesome and may need reconditioning.

(iii) Distressed merchandise, as defined in Subsection (a) of this section, which can be reconditioned to the satisfaction of the UDAF.

(iv) Food that has been donated to a charitable food organization under the Utah Charitable Food Act, Title 4, Chapter 34.

(f) "Salvage processing facility" means a food establishment engaged in the business of reconditioning or by other means salvaging distressed or salvageable merchandise for human or animal consumption or use.

(g) "Salvage dealer" means any person who is engaged in selling or distributing salvaged merchandise.

(h) "Salvage Supplier" means any person who transfers distressed merchandise to a salvage processor or dealer.

(2) Notification of the Utah Department of Agriculture and Food

Emergency Occurrences.

(i) The person in charge of a food establishment that is affected by a fire, flood, extended power outage, or a similar significant occurrence that creates a reasonable probability that food in the food establishment may have been contaminated or that the temperature level of food which is in a potentially hazardous form may have caused that food to become hazardous to health, shall take such action as is necessary to protect the public health and shall promptly notify the regulatory authority of the emergency.

(ii) If emergency removal of distressed merchandise is required, notice to the UDAF shall be made as soon thereafter as possible. No interstate movement of known distressed merchandise shall be made without prior approval of the UDAF and the responsible USDA, FDA, or State agency, in the State to receive the merchandise.

(iii) It shall be the duty of the salvage distributor or manager of the salvage processing facility to make contact with the UDAF within forty-eight (48) hours whenever distressed merchandise subject to the provisions of this rule is obtained.

(3) Protection of Distressed and Salvaged Merchandise.

(a) Contamination Protection.

Distressed merchandise shall be moved from the site of a fire, flood, sewer backup, wreck or other cause as expeditiously as possible after compliance with Section (2) so as not to become putrid, rodent or insect harborages, or otherwise a menace to public health. All distressed and salvageable merchandise of a perishable nature shall, prior to the reconditioning, be transported only in vehicles provided with sufficient refrigeration or freezing capabilities, if necessary, for product maintenance.

(b) Segregation of Merchandise.

All salvageable merchandise shall be promptly sorted and segregated from non-salvageable merchandise to prevent further contamination of the merchandise to be reconditioned for sale or distribution.

(c) Handling of Non-Salvageable Merchandise.

Foods contaminated and/or adulterated by pesticides or other chemicals; potentially hazardous foods (frozen or those requiring refrigeration) which have been exposed to a temperature above 7 degrees C (45 degrees F) for a period exceeding 4 hours; foods found unfit for salvage on examination; and foods packaged in paper or other porous materials which have been subject to contamination, shall be deemed to be non-salvageable merchandise, as defined in Section (1)(b).

(d) Cross Contamination Protection.

Sufficient precautions shall be taken to prevent cross-contamination among the various types of merchandise which are salvageable or salvaged; such as between animal feed and human food, or chemicals and food.

(e) Shipment Containers.

(i) Boxes or other containers used to ship or distribute salvaged or distressed foods shall be kept clean and in good condition.

(ii) If the boxes or containers are contaminated with chemicals, rodent droppings or urine, they shall be discarded.

(4) Reconditioning.

(a) Reconditioning of food.

The reconditioning of food and food related items shall be done:

(i) In a room or processing area that complies with the construction requirements for a food establishment as set forth in R70-530.

(ii) In a manner that prevents contamination of the food after it has been reconditioned.

(b) Safe.

Foods or food-related items, after they have been reconditioned, shall be wholesome and safe for human consumption and shall be handled in a manner that complies with the applicable provisions of R70-530.

(c) Condition of Containers.

All metal cans of food offered for sale or distribution shall be essentially free from rust, pitting and dents especially at rim, end double seams and/or side seams. Leakers, springers, flippers, and swells shall be deemed unfit for sale or distribution. Containers, including metal and glass containers with press caps, screw caps, pull rings or other types of openings, which have been in contact with water, liquid foam, or other deleterious substances, as a result of fire fighting efforts, flood, sewer backups or similar mishaps, shall be

deemed adulterated and unfit for sale or distribution.

(d) Sanitizing of Containers.

All metal containers of food, other than those mentioned in (c) of this section, whose integrity has not been compromised and whose integrity would not be compromised by reconditioning, and which have been partially or totally submerged in water, liquid foam, or other deleterious substance as the result of flood, sewer backup or other reasons shall, after thorough cleaning, be subjected to sanitizing rinse of a concentration of 100 ppm available chlorine for a minimum period of one minute, or shall be sanitized by another method approved by the UDAF.

(e) Pinholes.

Cans showing surface rust shall, after having their labels removed, be inspected and destroyed if they contain pinholes.

(f) Condition of Food Packages.

Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

(5) Public Notification.

Sign.

A sign shall be prominently placed by the door of the salvage food establishment that notifies the consumer that this establishment sells distressed or salvaged food. For example, "This store sells Salvaged or Reconditioned Food Items". The lettering of the sign shall be at least 1/4 inch in height as measured by the lower case letter "o".

(6) Labeling.

(a) Labels.

All salvaged merchandise containers shall be properly labeled in accordance with the requirements of the Fair Packaging and Labeling Act in the Federal Food, Drug, and Cosmetic Act.

(b) Overlabeling.

When original labels are missing or illegible, relabeling or overlabeling is required.

(c) No Labels.

Any container of food with the label or mandatory information missing, that cannot be identified and relabeled correctly, shall not be sold.

(d) Sell-by or Use-by Dates.

Distressed or salvaged food that contains a use-by or sell-by date indicated on the container shall not be sold or offered for sale:

(i) After the date indicated on the label if the date is placed on the label for public health reasons, or

(ii) For more than six (6) months after the use-by or sell-by date if it the date relates to a quality issue or the conditions of storage have been changed, for example the product has been frozen; or except as specified in (iii).

(iii) The salvage food establishment has written verification from the original manufacturer that the product is still wholesome and safe for human consumption after six (6) months under the current conditions of sale. The written verification shall include the shelf life of the product under the current conditions of sale or length of time the product may be sold after the indicated date.

(7) Records.

(a) Record Information.

Records or receipts of distressed, salvageable, and salvaged merchandise shall be kept by the salvage facility; the regulatory authority shall be allowed to inspect these records during business hours. These records shall include: the product name; the source of the distressed or salvaged merchandise; the date received; the type of damage, if any; and any other unusual circumstances.

(b) Keeping of Records.

These records shall be kept on the premises for a period of two years following the completion of transactions involving any lot of merchandise.

(8) Salvage Processing Facilities and Distributors Outside the Jurisdiction of the UDAF.

(a) Salvage Food Establishments Outside of Utah.

Salvaged merchandise from salvage processing facilities and distributors located outside the jurisdiction of the State of Utah, may be sold or distributed within the State, if such facilities and distributors conform to the provisions of this rule or substantially equivalent provisions.

(b) Proof of Compliance.

To determine the extent of compliance with such provisions, the UDAF may accept reports from responsible authorities in other jurisdictions where such facilities and distributors' operations are located.

R70-530-10. Compliance and Enforcement.

10-1. Rule Applicability.

(1) Public Health Protection.

Use for Intended Purpose.

(i) The regulatory authority shall apply this rule to promote its underlying purpose of safeguarding public health and assuring that food is safe, unadulterated, and honestly presented when offered to the consumer.

(ii) In enforcing the provisions of this rule, the regulatory authority shall assess existing facilities or equipment that were in use before the effective date of this rule based on the following considerations:

(A) Whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;

(B) Whether food-contact surfaces comply with Section 5-1(1);

(C) Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with Section 5-3(1)(a); and

(D) The existence of a documented agreement of the owner that the facilities or equipment will be replaced as specified under Subsection 10-3(3)(e)(vi) or upgraded or replaced as specified under Subsection 10-3(3)(e)(vii).

(2) Additional Requirements.

Preventing Health Hazards, Provision for Conditions Not Addressed.

(i) If necessary to protect against public health hazards, the regulatory authority may impose specific requirements in addition to the requirements contained in this rule that are authorized by law.

(ii) The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the owner, or person in charge and a copy shall

be maintained in the regulatory authority's file for the food establishment.

(3) Variances.

(a) Modifications and Waivers.

The regulatory authority may grant a variance by modifying or waiving the requirements of this rule if in the opinion of the regulatory authority a health hazard will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under Section 10-1(3)(b) in its records for the food establishment.

(b) Documentation of Proposed Variance and Justification.

Before a variance from a requirement of this rule is approved by the regulatory authority, the information that shall be provided by the person requesting the variance and retained in the regulatory authority's file on the food establishment includes:

(i) A statement of the proposed variance of the rule requirement citing relevant rule section numbers;

(ii) An analysis of the rationale how the potential public health hazards addressed by the relevant rule sections will be alternatively addressed by the proposal; and

(iii) A HACCP plan if required as specified under Section 10-2(c)(i) that includes the information specified under Section 10-2(d) as it is relevant to the variance requested.

(c) Conformance with Approved Procedures.*

If the regulatory authority grants a variance as specified under Section 10-1(3)(a), or a HACCP plan is otherwise required as specified under Section 10-2(c)(i), the owner shall:

(i) Comply with the HACCP plans and procedures that are submitted and approved as specified under Section 10-2(d) as a basis for the modification or waiver; and

(ii) Maintain and provide to the regulatory authority, upon request, records specified under Subsection 10-2(iv) and (v) that demonstrate that the following are routinely employed:

(A) Procedures for monitoring critical control points,

(B) Monitoring of the critical control points,

(C) Verification of the effectiveness of an operation or process, and

(D) Necessary corrective actions if there is failure at a critical control point.

10-2. Plans Submission and Approval.

(1) Facility and Operating Plans

(a) When Plans Are Required.

An owner shall submit to the regulatory authority properly prepared plans and specifications for review and approval before:

(i) The construction of a food establishment;

(ii) The conversion of an existing structure for use as a food establishment; or

(iii) The remodeling of a food establishment or a change in the type of food operation if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this rule.

(b) Contents of the Plans and Specifications.

The plans and specifications for a food establishment, including a food establishment specified under Section 10-2(c)(i), shall include, as required by the regulatory authority based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with rule provisions:

(i) Intended food to be packaged, processed, prepared, stored, or sold;

(ii) Anticipated volume of food to be prepared, stored, or sold;

(iii) Proposed layout, mechanical schematics, construction materials, and finish schedules;

(iv) Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;

(v) Written standard operating procedures that reflect the knowledge specified under Section 3-2(a) and implement the requirements of this rule, including indication of how practices ensure that:

(A) The transmission of foodborne disease is prevented by managing job applicants and food employees as specified under Section 3-2,

(B) Food is received from approved sources as specified under Section 4-2(1)(a),

(C) Food is managed so that the safety and integrity of the food from the time of delivery to the establishment throughout its storage, preparation, and transportation to the point of sale or service to the consumer is protected,

(D) Potentially hazardous food is maintained, including freezing, cold holding, cooking, hot holding, cooling, reheating, and serving in conformance with the temperature and time requirements specified under Sections 4-4 and 4-5,

(E) Warewashing is effective, including assurance that the chemical solutions and exposure times necessary for cleaning and sanitizing utensils and food-contact surfaces of equipment are provided as specified under Sections 5-6 and 5-7, and

(F) Records that are specified under Sections 6-2(5)(c), 4-2(3)(a) and (b) are retained for inspection;

(vi) Proposed program of training for the persons in charge and food employees pertaining to protecting public health and the safety and integrity of food; and

(vii) Other information that may be required by the regulatory authority for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.

(c) When a HACCP Plan Is Required.

(i) Before engaging in an activity that requires a HACCP plan, a person in charge or an owner shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under Section 10-2(1)(d) and the relevant provisions of this rule if:

(A) Submission of a HACCP plan is required according to law;

(B) A variance is required as specified under Section 4-5(2)(a), Subsection 5-2(4)(j), or Subsections 4-4(1)(a)(iii)(B), or 4-4(4-2(3)(b)(ii)(B); or

(C) The regulatory authority determines that a food preparation or processing method requires a variance based on a plan submittal specified under Section 10-2(1)(b), an inspectional finding, or a variance request.

(ii) The owner or responsible party shall have a properly prepared HACCP plan as specified under Section 4-5(2)(b).

(d) Contents of a HACCP Plan.

For a food establishment that is required under Section 10-

2(1)(c) to have a HACCP plan, the plan and specifications shall indicate:

(i) A categorization of the types of potentially hazardous foods that will be manufactured or processed, such as soups and sauces; salads; bulk solid foods, such as meat roasts; or of other foods that are specified by the regulatory authority;

(ii) A flow diagram by specific food or category type identifying critical control points and providing information on the following:

(A) Ingredients, materials, and equipment used in the preparation of that food, and

(B) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;

(iii) Food employee and supervisory training plan specified under Subsection 10-2(1)(vi) that addresses the food safety issues of concern;

(iv) A statement of standard operating procedures for the plan under consideration including clearly identifying:

(A) Each critical control point,

(B) The critical limits for each critical control point,

(C) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge,

(D) The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points,

(E) Action to be taken by the person in charge if the critical limits for each critical control point are not met, and

(F) Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and

(v) Additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal.

(2) Trade Secrets.

The regulatory authority shall treat as confidential in accordance with law, information that meets the criteria under law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under Sections 10-2(1)(b) and 10-2(1)(d).

(3) Preoperational Inspections.

The regulatory authority shall conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans and is in compliance with law and this rule.

10-3. Permission to Operate.

(1) Prerequisite for Operation.

A person may not operate a food establishment without being under inspection by the UDAF.

(2) Notification Procedure.

(a) Notification 30 Calendar Days Before Proposed Opening.

An applicant shall notify the UDAF of it's intent to operate a food establishment at least 30 calendar days before the date planned for opening a food establishment.

(b) Qualifications and Responsibilities of Applicants.

To qualify to operate a food establishment, an applicant shall:

(i) Be an owner of the establishment or an officer of the legal ownership;

(ii) Comply with the requirements of this rule;

(iii) As specified under Section 10-4(2)(a), agree to permit access to the food establishment and to provide required information.

(c) Information Required.

The information shall include:

(i) The name, mailing address, telephone number, of the owner of the food establishment and the name, mailing address, and location of the food establishment;

(ii) Information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;

(iii) A statement specifying whether the food establishment:

(A) Is mobile or stationary and temporary or permanent, and

(B) Is an operation that includes one or more of the following:

(I) Prepares, offers for sale, or serves potentially hazardous food, or

(II) Prepares potentially hazardous food in advance using a food preparation method that involves two or more steps which may include combining potentially hazardous ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing,

(III) Prepares food as specified under Subsection (iii)(B)(II) of this section for delivery to and consumption at a location off the premises of the food establishment where it is prepared,

(IV) Prepares food as specified under Subsection (iii)(B)(II) of this section for service to a highly susceptible population,

(V) Will be using time as a public health control for specific food,

(VI) Prepares only food that is not potentially hazardous, or

(VI) Does not prepare, but offers for sale only prepackaged food that is not potentially hazardous;

(iii) The names, title, address, and telephone number of the person directly responsible for the food establishment:

(iv) The names, titles, and addresses of:

(A) The persons comprising the legal ownership as specified under Subsection (ii) of this section including the owners and officers, and

(B) The local resident agent if one is required based on the type of legal ownership;

(iv) A statement signed by the owner or responsible party that:

(A) Attests to the accuracy of the information provided, and

(B) Affirms that the applicant will:

(I) Comply with this rule, and

(II) Allow the regulatory authority access to the establishment as specified under Section 10-4(2)(a) and to the records specified under Sections 4-2(3)(b) and 6-2(5)(c) and

Subsection 10-2(1)(d)(iv); and

(v) Other information required by the regulatory authority.

(3) New, Converted, or Remodeled Establishments.

(a) Permission to operate.

For food establishments that are required to submit plans as specified under Section 10-2(1)(a) the regulatory authority shall give them permission to operate a food establishment after:

(i) The information is obtained;

(ii) The required plans, specifications, and information are reviewed and approved; and

(iii) A preoperational inspection shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this rule.

(b) Existing Establishments and Change of Ownership.

(i) The regulatory authority shall be notified of a change of ownership in an existing food establishment.

(ii) The information required under 10-3(2)(c) shall be obtained.

(iii) An inspection shall show that the establishment is in compliance with this rule.

(c) Denial of Approval to Operate a Food Establishment, Written Notification.

If an application for a business license or permission to operate a food establishment is denied, the regulatory authority shall provide the owner with a notice that includes:

(i) The specific reasons and rule citations for the denial;

(ii) The actions, if any, that the applicant must take to qualify; and

(iii) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided under law.

(d) Responsibilities of the Regulatory Authority.

(i) Upon request, the regulatory authority shall provide a copy of the Utah Food Protection Rule at it's cost.

(ii) Failure to provide the information specified under Subsection (i) of this section does not prevent the regulatory authority from taking authorized action or seeking remedies if the owner fails to comply with this rule or an order, warning, or directive of the regulatory authority.

(e) Responsibilities of the Owner or Responsible Party.

The owner or responsible party shall:

(i) Comply with the provisions of this rule including the conditions of a granted variance as specified under Section 10-1(3)(c), and approved plans as specified under Section 10-2(1)(b);

(ii) If a food establishment is required under Section 10-2(1)(c) to operate under a HACCP plan, comply with the plan as specified under Section 10-1(3)(c);

(iii) Immediately contact the regulatory authority to report an illness of an applicant or employee as specified under Section 3-2(e);

(iv) Immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist as specified under Section 10-4(2)(j);

(v) Allow representatives of the regulatory authority access to the food establishment as specified under Section 10-4(2)(a);

(vi) Except as specified under (vii) of this section, replace existing facilities and equipment specified under Section 10-1(1) with facilities and equipment that comply with this rule if:

(A) The regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or no longer comply with the criteria upon which the facilities and equipment were accepted,

(B) The regulatory authority directs the replacement of the facilities and equipment because of a change of ownership, or

(C) The facilities and equipment are replaced in the normal course of operation.

(vii) Upgrade or replace refrigeration equipment as specified under Subsection 4-5(1)(f)(iii), if the circumstances specified under Subsections (v)(A)-(C) of this section do not occur first, and 5 years pass after the regulatory authority adopts this rule;

(viii) Comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the owner's food establishment or in response to community emergencies;

(ix) Accept notices issued and served by the regulatory authority according to law; and

(x) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this rule or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

10-4. Inspections and Correction of Violations.

(1) Performance- and Risk-Based.

The regulatory authority shall prioritize, and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with this rule and the establishment's potential as a vector of foodborne illness by evaluating:

(i) Past performance, for nonconformance with rule or HACCP plan requirements that are critical;

(ii) Past performance, for numerous or repeat violations of rule or HACCP plan requirements that are noncritical;

(iii) Past performance, for complaints investigated and found to be valid;

(iv) The hazards associated with the particular foods that are prepared, stored, or served;

(v) The type of operation including the methods and extent of food storage, preparation, and service.

(2) Access.

(a) Allowed at Reasonable Times after Due Notice.

After the regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the food establishment is in compliance with this rule by permitting access to the establishment within 15 minutes, allowing inspection, and providing information and records specified in this rule and to which the regulatory authority is entitled according to law, during the food establishment's hours of operation and other reasonable times.

(b) Refusal, Notification of Right to Access, and Final Request for Access.

If a person denies access to the regulatory authority, the regulatory authority shall:

(i) Inform the person that:

(A) The owner or responsible party is required by law to allow access to the regulatory authority; and

(B) If access is denied, an order may issued by the appropriate authority requesting access or a search warrant obtained to allow access; and

(ii) Make a final request for access.

(c) Refusal, Reporting.

If after the regulatory authority presents credentials and provides notice as specified under Section 10-4(2)(a), explains the authority upon which access is requested, and makes a final request for access as specified under Section 10-4(2)(b), the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

(d) Order to Gain Access.

If denied access to a food establishment for an authorized purpose and after complying with 10-4(2)(c) of this rule may issue a Violation and Order for Corrective Action or obtain a search warrant to gain access as provided under law.

(e) Documenting Information and Observations.

The regulatory authority shall document on an inspection report form:

(i) Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under Subsection 10-3(2)(c)(iii), inspection date, and other information such as type of water supply and sewage disposal; and

(ii) Specific factual observations of violative conditions or other deviations from this rule that require correction by including:

(A) Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this rule specified under Section 3-1(2)(a),

(B) Failure of food employees and the person in charge to demonstrate their knowledge of their responsibility to report a disease or medical condition as specified under Sections 3-2(d) and (e),

(C) Nonconformance with critical items of this rule,

(D) Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under Subsection 10-1(3)(c),

(E) Failure of the person in charge to provide records required by the regulatory authority for determining conformance with a HACCP plan as specified under Subsection 10-2(1)(d)(iv), and

(F) Nonconformance with critical limits of a HACCP plan.

(f) Specifying Time Frame for Corrections.

The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified under Sections 10-4(2)(f),(l),and (n).

(g) Issuing Report and Obtaining Acknowledgment of Receipt.

At the conclusion of the inspection and according to law, the regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations to the owner or to the person in charge, and request a signed acknowledgment of receipt.

(h) Refusal to Sign Acknowledgment.

The regulatory authority shall:

(i) Inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified under Section 10-4(2)(a):

(A) An acknowledgment of receipt is not an agreement with findings,

(B) Refusal to sign an acknowledgment of receipt will not affect the person in charge's obligation to correct the violations noted in the inspection report within the time frames specified, and

(C) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the regulatory authority's historical record for the food establishment; and

(ii) Make a final request that the person in charge sign an acknowledgment of receipt of inspectional findings.

(i) Public Information.

Except as specified under Section 10-2(2), the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it under law.

(j) Ceasing Operations and Reporting.

(i) A person in charge shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health, except as specified in Subsection (ii) of this section;

(ii) A person in charge need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

(k) Resumption of Operations.

If operations are discontinued as specified under Section 10-4(2)(f) or otherwise according to law, the owner or person in charge shall obtain approval from the regulatory authority before resuming operations.

(l) Timely Correction.

(i) A person in charge shall at the time of inspection correct a critical violation of this rule and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit, except as specified in Subsection (ii) of this section.

(ii) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the person in charge to correct critical rule violations or HACCP plan deviations.

(m) Verification and Documentation of Correction.

(i) After observing at the time of inspection a correction of a critical violation or deviation, the regulatory authority shall enter the violation and information about the corrective action on the inspection report.

(ii) As specified under Subsection 10-4(2)(l)(ii), after receiving notification that the person in charge has corrected a

critical violation or HACCP plan deviation, or at the end of the specified period of time, the regulatory authority shall verify correction of the violation, document the information on an inspection report, and enter the report in the regulatory authority's records.

(n) Time Frame for Correction.

(i) The owner or person in charge shall correct noncritical violations by the next regular inspection, a date and time agreed to, or as specified by the regulatory authority, except as specified under Subsection (ii) of this section.

(ii) The regulatory authority may approve a compliance schedule that extends beyond the time limits specified under Subsection (i) of this section if a written schedule of compliance is submitted by owner or person in charge and no health hazard exists or will result from allowing an extended schedule for compliance.

10-5. Prevention of Foodborne Disease Transmission by Employees.

(a) Obtaining Information: Personal History of Illness, Medical Examination, and Specimen Analysis.

The regulatory authority shall act when it has reasonable cause to believe that a food employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

(i) Securing a confidential medical history of the employee suspected of transmitting disease or making other investigations as deemed appropriate; and

(ii) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees, and

(iii) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703.

(b) Restriction or Exclusion of Food Employee.

Based on the findings of an investigation related to an employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected employee or owner or person in charge instituting one or more of the following control measures:

(i) Restricting the employee's services to specific areas and tasks in a food establishment that present no risk of transmitting the disease;

(ii) Excluding the employee from a food establishment.

(c) Restriction or Exclusion Order: Warning or Hearing Not Required, Information Required in Order.

Based on the findings of the investigation as specified under Section 10-5(a) and to control disease transmission, the regulatory authority may issue an order of restriction or exclusion to a suspected employee or the owner without prior warning, notice of a hearing, or a hearing if the order:

(i) States the reasons for the restriction or exclusion that is ordered;

(ii) States the evidence that the employee or owner shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;

(iii) States that the suspected employee or the owner holder may request an appeal hearing by submitting a timely request as provided under law; and

(iv) Provides the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

(d) Release of Employee from Restriction or Exclusion.

The regulatory authority shall release an employee from restriction or exclusion according to law and the following conditions:

(i) An employee who was infected with Salmonella typhi if the employee's stools are negative for S. typhi based on testing of at least 3 consecutive stool specimen cultures that are taken:

(A) Not earlier than 1 month after onset,

(B) At least 48 hours after discontinuance of antibiotics, and

(C) At least 24 hours apart; and

(ii) If one of the cultures taken as specified under Subsection (i) of this section is positive, repeat cultures are taken at intervals of 1 month until at least 3 consecutive negative stool specimen cultures are obtained.

(iii) An employee who was infected with Shigella spp. or Escherichia coli O157:H7 if the employee's stools are negative for Shigella spp. or E. coli O157:H7 based on testing of 2 consecutive stool specimen cultures that are taken:

(A) Not earlier than 48 hours after discontinuance of antibiotics; and

(B) At least 24 hours apart.

(iv) An employee who was infected with hepatitis A virus if:

(A) Symptoms cease; or

(B) At least 2 blood tests show falling liver enzymes.

10-6. Embargo and Destruction of Adulterated Food Products Authorized.

(1) The embargo of adulterated food products is authorized under 4-5.

(a) The regulatory authority may place a hold order on food found to be adulterated and unfit for human consumption.

(b) The regulatory authority may issue a hold order to the person in charge or to a person who owns or controls the food, without prior warning, notice of a hearing, or a hearing on the hold order.

(2) If a hold order is sustained upon appeal or if a timely request for an appeal hearing is not filed, the regulatory authority may order the person in charge or the owner or other person who owns or has custody of the food to bring the food into compliance with this rule or to destroy or denature the food under the regulatory authority's supervision.

Continuing Violations.

Each day on which a violation occurs, is a separate violation under this rule.

KEY: inspections
September 15, 1998 **4-5-17**
Notice of Continuation October 16, 1997

R307. Environmental Quality, Air Quality.
R307-101. General Requirements.
R307-101-1. Foreword.

Chapter 19-2 and the rules adopted by the Air Quality Board constitute the basis for control of air pollution sources in the state. These rules apply and will be enforced throughout the state, and are recommended for adoption in local jurisdictions where environmental specialists are available to cooperate in implementing rule requirements.

National Ambient Air Quality Standards (NAAQS), National Standards of Performance for New Stationary Sources (NSPS), National Prevention of Significant Deterioration of Air Quality (PSD) standards, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) apply throughout the nation and are legally enforceable in Utah.

R307-101-2. Definitions.

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Area of Nonattainment" means an area which is shown by monitored data or modeling actually to exceed the National Ambient Air Quality Standards (Boundaries are established in the Utah State Implementation Plan).

"Actual Emissions" means the actual rate of emissions of a pollutant from a source determined as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the source actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The Executive Secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The Executive Secretary may presume that source-specific allowable emissions for the source are equivalent to the actual emissions of the source.

(3) For any source which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the source on that date.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices, pages 15 - 72 (1998)."

"Air Contaminant" means any particulate matter or any gas, vapor, suspended solid or any combination of them, excluding steam and water vapors (Section 19-2-102(1)).

"Air Contaminant Source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated (Section 19-2-102(2)).

"Air Pollution" means the presence in the ambient air of one or more air contaminants in such quantities and duration and under conditions and circumstances, as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Air Quality Related Values" means, as used in analyses under R307-401-4(1), Public Notice, those special attributes of a Class I area, assigned by a federal Land Manager, that are adversely affected by air quality.

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-6.

"Ambient Air" means the surrounding or outside air (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"Asphalt or Asphalt Cement" means the dark brown to black cementitious material (solid, semisolid, or liquid in consistency) of which the main constituents are bitumens which occur naturally or as a residue of petroleum refining.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the state Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Baseline Date":

(1) Major source baseline date means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(2) Minor source baseline date means the earliest date after the trigger date on which the first complete application under 40 CFR 52.21 or R307-405 is submitted by a major source or major modification subject to the requirements of 40 CFR 52.21 or R307-405. The minor source baseline is the date after which emissions from all new or modified sources consume or expand increment, including emissions from major and minor sources as well as any or all general commercial, residential, industrial, and other growth. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) In the case of nitrogen dioxide, February 8, 1988.

"Best Available Control Technology (BACT)" means an emission limitation and/or other controls to include design, equipment, work practice, operation standard or combination thereof, based on the maximum degree or reduction of each pollutant subject to regulation under the Clean Air Act and/or the Utah Air Conservation Act emitted from or which results from any emitting installation, which the Air Quality Board, on a case-by-case basis taking into account energy, environmental and economic impacts and other costs, determines is achievable for such installation through application of production processes and available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall applications

of BACT result in emissions of any pollutants which will exceed the emissions allowed by Section 111 or 112 of the Clean Air Act.

"Board" means Air Quality Board. See Section 19-2-102(6)(a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices, pages 15 - 72 (1998)."

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices, pages 15 - 72 (1998)."

"Clean Air Act" means federal Clean Air Act as amended in 1990.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is calculated by the National Weather Service from daily measurements of temperature lapse rates and wind speeds from ground level to 10,000 feet. The State has been divided into three separate air quality areas for purposes of the clearing index system:

(1) Area 1 includes those valleys below 6500 feet above sea level and west of the Wasatch Mountain Range and extending south through the Wasatch and Aquarius Plateaus to the Arizona border. Included are the Salt Lake, Utah, Skull and Escalante Valleys and valleys of the Sevier River Drainage.

(2) Area 2 includes those valleys below 6500 feet above sea level and east of the Wasatch Mountain Range. Included are Cache Valley, the Uintah Basin, Castle Valley and valleys of the Green, Colorado, and San Juan Rivers.

(3) Area 3 includes all valleys and areas above 6500 feet above sea level.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Emission" means the act of discharge into the atmosphere of an air contaminant or an effluent which contains or may contain an air contaminant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air contaminant which has been emitted by the source operation, equipment, or control apparatus;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

(3) A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k)).

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-

103(2).

"Executive Secretary" means the Executive Secretary of the Board.

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Heavy Fuel Oil" means a petroleum product or similar material with a boiling range higher than that of diesel fuel.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Indirect Source" means a building, structure or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

(1) routine maintenance, repair and replacement;

(2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;

(4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) use of an alternative fuel or raw material by a source:

(a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or

(b) which the source is otherwise approved to use;

(6) an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;

(7) any change in ownership at a source.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

(b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

(c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following

categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum or reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Modification" means any planned change in a source which results in a potential increase of emission.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

(c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means for any pollutant, "an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator, EPA to be reliable) to exceed any National Ambient Air Quality Standard for such pollutant" (Section 171, Clean Air Act). Such term includes any area designated as nonattainment under Section 107, Clean Air Act.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM10 Nonattainment Area" means Salt Lake County, Utah County, or Ogden City.

"PM10 Particulate Matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent

method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10. It includes sulfur dioxide and nitrogen oxides.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"Peak Ozone Season" means June 1 through August 31, inclusive.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Production Equipment Exhaust System" means a device for collecting and directing out of the work area VOC fugitive emissions from reactor openings, centrifuge openings, and other vessel openings for the purpose of protecting employees from excessive VOC exposure.

"Reactor" means any vat or vessel, which may be jacketed to permit temperature control, designed to contain chemical reactions.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);

Nitrogen oxides: 40 tpy;

Sulfur dioxide: 40 tpy;

PM10 Particulate matter: 15 tpy;

Particulate matter: 25 tpy;

Ozone: 40 tpy of volatile organic compounds;

Lead: 0.6 tpy.

(2) For purposes of R307-405 it shall also additionally mean for:

(a) A rate of emissions that would equal or exceed any of the following rates:

Asbestos: 0.007 tpy;

Beryllium: 0.0004 tpy;

Mercury: 0.1 tpy;

Vinyl Chloride: 1 tpy;

Fluorides: 3 tpy;

Sulfuric acid mist: 7 tpy;

Hydrogen Sulfide: 10 tpy;

Total reduced sulfur (including H2S): 10 tpy;

Reduced sulfur compounds (including H2S): 10 tpy;

Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2 grams per year (3.5×10^{-6} tons per year);

Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year);

Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year);

Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year);

(b) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act not listed in (1) and (2) above, any emission rate.

(c) Notwithstanding the rates listed in (1) and (2) above, any emissions rate or any net emissions increase associated with a major source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 ug/cubic meter, (24-hour average).

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as dissolvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Synthesized Pharmaceutical Manufacturing" means the manufacture of pharmaceutical products by chemical synthesis.

"Temporary" means not more than 180 calendar days.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices (1998), pages 15 - 72."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices (1998), pages 15 - 72."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air contaminant equal to a threshold limit value - ceiling (TLV- C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"Vertically Restricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed in a downward or horizontal direction due to the alignment of the opening or a physical obstruction placed beyond the opening, or at a height which is less than 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vertically Unrestricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed upward without any physical obstruction placed beyond the opening, and at a height which is at least 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Volatile Organic Compound (VOC)" as defined in 40 CFR Subsection 51.100(s)(1), as published on July 1, 1998, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

KEY: air pollution, definitions*
May 6, 1999 **19-2-104**

R307. Environmental Quality, Air Quality.
R307-205. Emission Standards: Fugitive Emissions and Fugitive Dust.
R307-205-1. Applicability.

(1) Except where otherwise specified, R307-205 applies statewide.

(2) The provisions of R307-205 shall not apply to any sources for which limitations for fugitive dust or fugitive emissions are assigned pursuant to R307-401, R307-305, or R307-307 nor shall they apply to agricultural or horticultural activities.

(3) The following definitions apply throughout R307-205:

"Material" means sand, gravel, soil, minerals or other matter which may create fugitive dust.

"Road" means any public or private road.

R307-205-2. Fugitive Emissions.

Fugitive emissions from sources in areas outside Davis, Salt Lake and Utah Counties, Ogden City and any nonattainment area for PM10 and which were constructed before April 25, 1971, shall not exceed 40% opacity. Fugitive emissions from sources constructed after April 25, 1971, shall not exceed 20% opacity.

R307-205-3. Fugitive Dust.

(1) Storage and Handling of Aggregate Materials. Any person owning, operating or maintaining a new or existing material storage, handling or hauling operation shall minimize fugitive dust from such an operation. Such control may include the use of enclosures, covers, stabilization or other equivalent methods or techniques as approved by the executive secretary.

(2) Construction and Demolition Activities.

(a) Any person engaging in clearing or leveling of land greater than one-quarter acre in size, earthmoving, excavation, or movement of trucks or construction equipment over cleared land greater than one-quarter acre in size or access haul roads shall take steps to minimize fugitive dust from such activities. Such control may include watering and chemical stabilization of potential fugitive dust sources or other equivalent methods or techniques approved by the executive secretary.

(b) The owner or operator of any land area greater than one-quarter acre in size that has been cleared or excavated shall take measures to prevent fugitive particulate matter from becoming airborne. Such measures may include:

(i) planting vegetative cover,

(ii) providing synthetic cover,

(iii) watering,

(iv) chemical stabilization,

(v) wind breaks, or

(vi) other equivalent methods or techniques approved by the executive secretary.

(c) Any person engaging in demolition activities including razing homes, buildings, or other structures or removing paving material from roads or parking areas shall take steps to minimize fugitive dust from such activities. Such control may include watering and chemical stabilization or other equivalent methods or techniques approved by the executive secretary.

R307-205-4. Roads.

(1) Any person planning to construct or operate a new unpaved road which is anticipated to have an average daily traffic volume of 150 vehicle trips per day or greater, averaged over a consecutive five day period,shall submit a notice of intent to construct or operate such a road to the executive secretary pursuant to R307-401. Such notice shall include proposed action to minimize fugitive dust emissions from the road.

(2) The executive secretary may require persons owning, operating or maintaining any new or existing road, or having right-of-way easement or possessory right to use the same to supply traffic count information as determined necessary to ascertain whether or not control techniques are adequate or additional controls are necessary.

(3) Any person who deposits materials which may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-205-5. Mining Activities.

(1) Fugitive dust, construction activities, and roadways associated with mining activities are regulated under the provisions of R307-205-5 and not by R307-205-3 and 4.

(2) Any person who owns or operates a mining operation shall minimize fugitive dust as an integral part of site preparation, mining activities, and reclamation operations.

(3) The fugitive dust control measures to be used may include:

(a) periodic watering of unpaved roads,

(b) chemical stabilization of unpaved roads,

(c) paving of roads,

(d) prompt removal of coal, rock minerals, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface,

(e) restricting the speed of vehicles in and around the mining operation,

(f) revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are a source of fugitive dust,

(g) restricting the travel of vehicles on other than established roads,

(h) enclosing, covering, watering, or otherwise treating loaded haul trucks and railroad cars, to minimize loss of material to wind and spillage,

(i) substitution of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subject to wind erosion,

(j) minimizing the area of disturbed land,

(k) prompt revegetation of regraded lands,

(l) planting of special windbreak vegetation at critical points in the permit area,

(m) control of dust from drilling, using water sprays, hoods, dust collectors or other controls approved by the executive secretary,

(n) restricting the areas to be blasted at any one time,

(o) reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization,

(p) restricting fugitive dust at spoil and coal transfer and loading points,

(q) control of dust from storage piles through use of enclosures, covers, or stabilization and other equivalent methods

or techniques as approved by the executive secretary, or

(r) other techniques as determined necessary by the executive secretary.

(4) Any person owning or operating an existing mining operation in an actual area of nonattainment for particulate or an existing mining operation outside an actual area of nonattainment from which fugitive dust impacts an actual area of nonattainment for particulate shall submit plans for control of fugitive dust from such operations to the executive secretary for approval no later than September 29, 1981, 180 days after the effective date of this regulation.

R307-205-6. Tailings Piles and Ponds.

(1) Fugitive dust, construction activities, and roadways associated with tailings piles and ponds are regulated under the provisions of R307-205-6 and not by R307-205-3 and 4.

(2) Any person owning or operating an existing tailings operation where fugitive dust results from grading, excavating, depositing, or natural erosion or other causes in association with such operation shall take steps to minimize fugitive dust from such activities. Such controls may include:

(a) watering,

(b) chemical stabilization,

(c) synthetic covers,

(d) vegetative covers,

(e) wind breaks,

(f) minimizing the area of disturbed tailings,

(g) restricting the speed of vehicles in and around the tailings operation, or

(h) other equivalent methods or techniques which may be approvable by the executive secretary.

(3) Any person owning or operating an existing tailings operation in a nonattainment area for particulate or an existing mining operation outside an actual area of nonattainment from which fugitive dust impacts an actual area of nonattainment for particulate shall submit plans for control of fugitive dust from such operations to the executive secretary for approval no later than September 29, 1981, 180 days after the effective date of this regulation.

KEY: air pollution, fugitive emissions*, mining*, tailings*
May 4, 1999 **19-2-101**
19-2-104
19-2-109

R307. Environmental Quality, Air Quality.
R307-309. Davis, Salt Lake and Utah Counties, Ogden City and Any Nonattainment Area for PM10: Fugitive Emissions and Fugitive Dust.
R307-309-1. Applicability and Definitions.

(1) Applicability. R307-309 applies to all sources of fugitive dust and fugitive emissions located in Davis, Salt Lake and Utah Counties, Ogden City, and any nonattainment area for PM10, except as specified in (2) below. Any source located in those areas for which limitations for fugitive dust or fugitive emissions are assigned pursuant to R307-401 is subject to R307-309 on May 4, 1999, unless the source has an operating permit issued under R307-415 prior to that date. If the source has an operating permit, the source is subject to R307-309 on the date of permit renewal or permit reopening as specified in R307-415, whichever occurs first.

(2) Exemptions.

(a) The provisions of R307-309 do not apply to agricultural or horticultural activities.

(b) Any source which is subject to R307-305-2 through 7 or R307-307 is exempt from all provisions of R307-309 except for R307-309-4.

(c) Any source regulated by R307-205-5 or R307-205-6 is exempt from all provisions of R307-309 except for R307-309-4.

(3) The following additional definitions apply to R307-309:

"Material" means sand, gravel, soil, minerals or other matter which may create fugitive dust.

"Road" means any public or private road.

R307-309-2. Fugitive Emissions.

Fugitive emissions from any source shall not exceed 15% opacity.

R307-309-3. General Requirements for Fugitive Dust.

(1) Opacity caused by fugitive dust shall not exceed: (a) 10% at the property boundary; and (b) 20% on site unless an approval order issued under R307-401 or a dust control plan specifies a lower level; except when the wind speed exceeds 25 miles per hour and the owner or operator is taking appropriate actions to control fugitive dust. If the source has a dust control plan approved by the executive secretary, control measures in the plan are considered appropriate. Wind speed may be measured by a hand-held anemometer or equivalent device.

(2) Any source with a dust control plan approved by the executive secretary prior to March 4, 1999, shall review and revise the plan in accordance with R307-309-4 below. The revised plan shall be submitted to the executive secretary no later than May 4, 1999.

R307-309-4. Fugitive Dust Control Plan.

(1) Any person owning or operating a new or existing source of fugitive dust, including storage, hauling or handling operations or engaging in clearing or leveling of land one-quarter acre or greater in size, earthmoving, excavation, or movement of trucks or construction equipment over cleared land one-quarter acre or greater in size or access haul roads shall submit a plan to control fugitive dust to the executive secretary no later than 30 days after the source becomes subject to the rule. The plan shall address fugitive dust control strategies for the following operations as applicable:

(a) Material Storage;
(b) Material handling and transfer;
(c) Material processing;
(d) Road ways and yard areas;
(e) Material loading and dumping;
(f) Hauling of materials;
(g) Drilling, blasting and pushing operations;
(h) Clearing and leveling;
(i) Earth moving and excavation;
(j) Exposed surfaces;
(k) Any other source of fugitive dust.

(2) Strategies to control fugitive dust may include:

(a) Wetting or watering;
(b) Chemical stabilization;
(c) Enclosing or covering operations;
(d) Planting vegetative cover;
(e) Providing synthetic cover;
(f) Wind breaks;
(g) Reducing vehicular traffic;
(h) Reducing vehicular speed;
(i) Cleaning haul trucks before leaving loading area;
(j) Limiting pushing operations to wet seasons;
(k) Paving or cleaning road ways;
(l) Covering loads;
(m) Conveyor systems;
(n) Boots on drop points;
(o) Reducing the height of drop areas;
(p) Using dust collectors;
(q) Reducing production;
(r) Mulching;
(s) Limiting the number and power of blasts;
(t) Limiting blasts to non-windy days and wet seasons;
(u) Hydro drilling;
(v) Wetting materials before processing;
(w) Using a cattle guard before entering a paved road;
(x) Washing haul trucks before leaving the loading site; or
(y) Terracing.

(3) Each source shall comply with all provisions of the fugitive dust control plan as approved by the executive secretary.

R307-309-5. Storage, Hauling and Handling of Aggregate Materials.

Any person owning, operating or maintaining a new or existing material storage, handling or hauling operation shall prevent, to the maximum extent possible, material from being deposited onto any paved road other than a designated deposit site. Any such person who deposits materials which may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-6. Construction and Demolition Activities.

Any person engaging in clearing or leveling of land with an area of one-quarter acre or more, earthmoving, excavating, construction, demolition, or moving trucks or construction equipment over cleared land or access haul roads shall prevent, to the maximum extent possible, material from being deposited

onto any paved road other than a designated deposit site. Any such person who deposits materials which may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-7. Roads.

(1) Any person responsible for construction or maintenance of any existing road or having right-of-way easement or possessing the right to use the same whose activities result in fugitive dust from the road shall minimize fugitive dust to the maximum extent possible. Any such person who deposits materials which may create fugitive dust on a public or private paved road shall clean the road promptly.

(2) Unpaved Roads.

(a) When unpaved roads have an average daily traffic volume of less than 150 vehicle trips per day, averaged over a consecutive 5-day period, fugitive dust shall be minimized to the maximum extent possible.

(b) When unpaved roads have an average daily traffic volume of 150 vehicle trips per day or greater, averaged over a consecutive 5 day period, control techniques shall be used which are equal to or better than 2-inch bituminous surface.

(c) Any person responsible for construction or maintenance of any new or existing unpaved road shall prevent, to the maximum extent possible, the deposit of material from the unpaved road onto any intersecting paved road during construction or maintenance. Any person who deposits materials which may create fugitive dust on a public or private paved road shall clean the road promptly.

KEY: air pollution, dust*
May 4, 1999 **19-2-101**
19-2-104
19-2-109

R307. Environmental Quality, Air Quality.
R307-403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas.
R307-403-1. Definitions.

The following additional definition applies to R307-403:

"Lowest Achievable Emission Rate (LAER)" means for any source, that rate of emissions which reflects:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

R307-403-2. Emission Limitations.

Any source constructed in an actual area of nonattainment, or in the Salt Lake City and Ogden maintenance areas for carbon monoxide, or in an area which will impact on an actual area of nonattainment or on the Salt Lake City and Ogden maintenance areas for carbon monoxide must meet all applicable emission requirements of R307 and the State Implementation Plan incorporated by reference under R307-110. A proposed source which is not a major source may be approved without further analysis provided such source meets all such applicable emission limitations and offset requirements in R307-403-4, 5, and 6. The emission limitations shall be stated as a condition of the approval order.

R307-403-3. Review of Major Sources of Air Quality Impact.

Every major new source or major modification must be reviewed by the Executive Secretary to determine if a source will cause or contribute to a violation of the NAAQS. The determination of whether a source will cause or contribute to a violation of the NAAQS will be made by the Executive Secretary as of the new source's projected start-up date. He will make an analysis of the proposed new source's operation data using the best information and analytical techniques available.

(1) If the owner or operator of a source proposes to locate the source outside an area of nonattainment where the source will not cause an increase greater than the following increments in actual areas of nonattainment or in the Salt Lake City and Ogden maintenance areas for carbon monoxide and the source otherwise meets the requirements of these regulations, such source shall be approved.

TABLE

MAXIMUM ALLOWABLE MICROGRAM/CUBIC METER IMPACT BY AVERAGING TIME

Pollutant	Annual	24-Hr	8-Hr	3-Hr	1-Hr
SULFUR DIOXIDE	1.0	5		25	
PM10	1.0	3			
CO			500		2000

(2) If the Executive Secretary finds that the emissions from a proposed source would cause a new violation of the NAAQS but would not contribute to an existing violation, the Executive Secretary shall approve the proposed source if and only if:

(a) the new source is required to meet a more stringent emission limitation, sufficient to avoid a new violation of the NAAQS and

(b) the new source has acquired sufficient offset to avoid a new violation of the NAAQS and

(c) the new emission limitations for the proposed source and for any affected existing sources are enforceable.

(3) If the Executive Secretary finds that the emissions from a proposed source in a nonattainment area would contribute to an existing violation of a national ambient air quality standard at the time of the source's proposed start-up date, approval shall be granted if and only if:

(a) the new source meets an emission limitation which is the Lowest Achievable Emission Rate (LAER) for such source and

(b) the applicant has certified that all existing major sources in the State, owned or controlled by the owner or operator (or by any entity controlling, controlled by or under common control with such owner or operator) of the proposed source, are in compliance with all applicable rules in R307, including the Utah Implementation Plan requirements or are in compliance with an approved schedule and timetable for compliance under the Utah Implementation Plan, R307, or an enforcement order, and that the source is complying with all requirements and limitations as expeditiously as practicable.

(c) emission offsets to the extent provided in R307-403-4, 5 and 6 are sufficient such that there will be reasonable further progress toward attainment of the applicable NAAQS.

(d) the emission offsets provide a positive net air quality benefit in the affected area of nonattainment.

(e) there is an approved implementation plan in effect for the pollutant to be emitted by the proposed source.

(4) A source which is locating outside a nonattainment area or the Salt Lake City and Ogden maintenance areas for carbon monoxide and which causes the significant increments in (1) above to be exceeded in the nonattainment or maintenance area is subject to the requirements of (3) above.

R307-403-4. Offsets: General Requirements.

(1) Emission offsets must be obtained from the same source or other sources in the same nonattainment area except that the owner or operator of a source may obtain emission offsets in another nonattainment area if:

(a) the other area has an equal or higher nonattainment classification than the area in which the source is located; and

(b) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located or which is impacted by the source.

(2) Any emission offsets shall be enforceable by the time a new or modified source commences construction, and, by the time a new or modified source commences operation, any emission offsets shall be in effect and enforceable and shall

assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

(3) Emission reductions otherwise required by the federal Clean Air Act or R307, including the State Implementation Plan shall not be creditable as emission reductions for purposes of any offset requirement. Incidental emission reductions which are not otherwise required by federal or state law shall be creditable as emission reductions if such emission reductions meet the requirements of (1) and (2) above.

(4) Sources shall be allowed to offset, by alternative or innovative means, emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the conditions outlined in 42 U.S.C. 7503(e) (Section 173(e)(1) through Section 173(e)(4) of the federal Clean Air Act as amended in 1990).

R307-403-5. Offsets: PM10 Nonattainment Areas.

(1) New sources which have a potential to emit, or modified sources which would produce an emission increase equal to or exceeding the tonnage total of combined PM10, sulfur dioxide, and oxides of nitrogen listed below which are located in or impact a PM10 Nonattainment Area as defined in (a) below, shall obtain an enforceable offset as defined in (b) and (c) below.

(a) For the purpose of determining whether the owner or operator which proposes to locate a source outside a nonattainment area is required to obtain offsets, the maximum allowable impact on any nonattainment area is 1.0 microgram/cubic meter for a one-year averaging period and 3.0 micrograms/cubic meter for a 24-hour averaging period for any combination of PM10, sulfur dioxide and nitrogen dioxide.

(b) For a total of 50 tons/year or greater, an offset of 1.2:1 of the emission increase is required.

(c) For a total of 25 tons/year but less than 50 tons/year, an offset of 1:1 of the emission increase is required.

(2) For the offset determinations, PM10, sulfur dioxide, and oxides of nitrogen shall be considered on an equal basis. In areas where offsets are required for both PM10 and ozone, the most stringent emission offset ratio for oxides of nitrogen required by R307-403 or R307-420 shall apply.

R307-403-6. Offsets: Ozone Nonattainment Areas.

In any ozone nonattainment area, new sources and modifications to existing sources as defined and outlined in 42 U.S.C. 7511a (Section 182 of the Clean Air Act) shall meet the offset requirements and conditions listed in that section for the applicable classified area and for the identified pollutants.

R307-403-7. Offsets: Baseline.

The baseline to be used for determination of credit for emission and air quality offsets will be the emission limitations and/or other requirements in the State Implementation Plan (SIP), revised in accordance with the Clean Air Act or subsequent revisions thereto in effect at the time the application to construct or modify a source is filed.

R307-403-8. Offsets: Banking of Emission Offset Credit.

Banking of emission offset credit will be permitted to the fullest extent allowed by applicable Federal Law as identified in EPA's document "Emissions Trading Policy Statement" published in the Federal Register on December 4, 1986, and 40 CFR 51.165(a)(3)(ii)(c) as amended on June 28, 1989, and 40 CFR 51.165, Appendix S. To preserve banked emission reductions, the Executive Secretary must identify them in either the Utah SIP or an order issued pursuant to R307-401 and shall provide a registry to identify the person, private entity or governmental authority that has the right to use or allocate the banked emission reductions, and to record any transfers of, or liens on these rights.

R307-403-9. Construction in Stages.

When a source is constructed or modified in stages which individually do not have the potential to emit more than 100 tons per year, the allowable emission from all such stages shall be added together in determining the applicability of R307-403.

KEY: air quality, nonattainment*, offset*
May 6, 1999 **19-2-104**
19-2-108

R307. Environmental Quality, Air Quality.
R307-417. Permits: Acid Rain Sources.
R307-417-1. Part 72 Requirements.

The provisions of 40 CFR Part 72, as in effect on July 1, 1998, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the Executive Secretary of the Air Quality Board, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 72 conflict with or are not included in R307-415, Permits: Operating Permit Requirements, provisions and requirements of 40 CFR Part 72 shall apply and take precedence.

KEY: acid rain, air quality, permitting authority*, operating permit*
March 5, 1999 19-2-101
Notice of Continuation March 5, 1999 19-2-104(3)(q)

R307. Environmental Quality, Air Quality.
R307-420. Permits: Ozone Offset Requirements in Davis and Salt Lake Counties.
R307-420-1. Purpose.

The purpose of R307-420 is to maintain the offset provisions of the nonattainment area new source review permitting program in Salt Lake and Davis Counties after the area is redesignated to attainment for ozone. R307-420 also establishes more stringent offset requirements for nitrogen oxides that may be triggered as a contingency measure under the ozone maintenance plan.

R307-420-2. Definitions.

The following additional definitions apply to R307-420:

"Major Source" means:

(1)(a) any stationary source of air pollutants which emits, or has the potential to emit, fifty tons per year or more of volatile organic compounds; or

(b) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of nitrogen oxides; or

(c) any physical change that would occur at a source not qualifying under (1)(a) or (b) as a major source, if the change would constitute a major source by itself.

(2) The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412 (section 111 or 112 of the federal Clean Air Act).

"Significant" means, for the purposes of determining what is a significant net emission increase and therefore a major modification, a rate of emissions that would equal or exceed any of the following rates:

(1) for volatile organic compounds, 25 tons per year,
(2) for nitrogen oxides, 40 tons per year.

R307-420-3. Applicability.

(1) Nitrogen Oxides. Effective August 18, 1997, any new major source or major modification of nitrogen oxides in Davis County or Salt Lake County shall offset the proposed increase in nitrogen oxide emissions by a ratio of 1.15:1 before the executive secretary may issue an approval order to construct, modify, or relocate under R307-401.

(2) Volatile Organic Compounds. Effective December 2, 1998 any new major source or major modification of volatile organic compounds in Davis County or Salt Lake County shall offset the proposed increase in volatile organic compound emissions by a ratio of 1.2:1 before the executive secretary may issue an approval order to construct, modify, or relocate under R307-401.

R307-420-4. General Requirements.

(1) All emission offsets shall meet the general requirements for calculating and banking emission offsets that are established in R307-403-4, R307-403-7 and R307-403-8.

(2) Emission offset credits generated in Davis County or Salt Lake County may be used in either county.

(3) Offsets may not be traded between volatile organic compounds and nitrogen oxides.

R307-420-5. Contingency Measure: Offsets for Oxides of Nitrogen.

If the nitrogen oxide offset contingency measure described in Section IX, Part D.2.h(3) of the state implementation plan is triggered, the following conditions shall apply in Davis County and Salt Lake County.

(1) Paragraph (1)(b) in the term "major source," which is defined in R307-420-2, shall be changed to read: any stationary source of air pollutants which emits, or has the potential to emit, fifty tons per year or more of nitrogen oxides.

(2) The nitrogen dioxide level that is included in the term "significant", which is defined in R307-420-2, shall be changed from 40 tons per year to 25 tons per year.

(3) The emission offset ratio shall be 1.2:1 for nitrogen oxides.

KEY: air pollution, ozone, offset*
May 6, 1999 **19-2-104**
19-2-108

R315. Environmental Quality, Solid and Hazardous Waste.
R315-303. Landfilling Standards.
R315-303-1. Applicability.

(1) These standards apply to:

(a) Class I, II, and V Landfills;

(b) Class III Landfills as specified in Rule R315-304; and

(c) Class IV Landfills as specified in Rule R315-305.

(2) An owner or operator of an existing landfill unit shall not be required to install liners or leachate collection systems in that unit.

R315-303-2. Standards for Performance.

(1) Ground Water. An owner or operator of a disposal facility shall not contaminate the ground water underlying the facility beyond the ground water quality standard set in Section R315-308-4 or, for constituents not set in Section R315-308-4, as established by the Executive Secretary based on health risk standards.

(2) Air Quality and Explosive Gas Emissions.

(a) An owner or operator of a disposal facility shall not allow concentrations of explosive gases generated by the facility to exceed:

(i) twenty-five percent of the lower explosive limit for explosive gases in facility structures, excluding gas control or recovery system components; and

(ii) the lower explosive limit for explosive gases at the property boundary or beyond.

(b) An owner or operator of a disposal facility shall not cause a violation of any ambient air quality standard at the property boundary or emission standard from any emission of landfill gases, combustion or any other emission associated with the facility.

(3) Surface Waters. An owner or operator of a disposal facility:

(a) shall not cause a violation of any Utah Pollution Discharge Elimination System permit or standard from discharges of surface run-off, leachate or any liquid associated with the facility; and

(b) shall be in compliance under the Clean Water Act for any discharge as well as in compliance with any area-wide or state-wide plan under Section 208 or 319 of the Clean Water Act.

R315-303-3. Standards for Design.

(1) Minimizing Liquids. An owner or operator of a landfill shall minimize liquids admitted to active areas by:

(a) covering according to Subsection R315-303-4(4);

(b) prohibiting the disposal of containerized liquids larger than household size, noncontainerized liquids, sludge containing free liquids, or any waste containing free liquids in containers larger than household size;

(c) designing the landfill to prevent run-on of all surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and

(d) designing the landfill to collect and treat the run-off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.

(e) If the owner or operator of a landfill has received a storm water permit as issued by the Utah Division of Water Quality and is meeting the requirements of the permit, the landfill may be exempt, upon approval of the Executive Secretary, from the run-on and run-off control requirements of Subsections R315-303-3(1)(c) and (d).

(2) Leachate Collection Systems.

(a) An owner or operator of a landfill required to install liners shall:

(i) install a leachate collection system sized according to water balance calculations or using other accepted engineering methods either of which shall be approved by the Executive Secretary;

(ii) install a leachate collection system so as to prevent no more than one foot depth of leachate developing at any point in the bottom of the landfill unit; and

(iii) install a leachate treatment system or a pretreatment system, if necessary, in the case of discharge to a municipal water treatment plant.

(b) The returning of leachate to the landfill or the recirculation of leachate in the landfill may be done only in landfills that have a composite liner system or an approved equivalent liner system.

(3) Liner Designs. An owner or operator of a new landfill or a landfill seeking lateral expansion shall use liners of one of the following designs:

(a) Standard Design. The design shall have a composite liner system consisting of two liners and the associated liner protection layers and a drainage system for leachate collection:

(i) an upper liner made of synthetic material with a thickness of a least 60 mils; and

(ii) a lower liner of at least two feet thickness of recompacted clay or other soil material with a permeability of no more than 1×10^{-7} cm/sec having the bottom liner sloped no less than 2% and the side liners sloped no more than 33%, except where construction and operational integrity can be demonstrated at steeper slopes, with the synthetic liner installed in direct and uniform contact with the compacted soil component; or

(b) Alternative Design.

(i) The Executive Secretary may approve an alternative liner design, on a site specific basis, if it can be documented that, under the conditions of location and hydrogeology, the performance standard of Subsection R315-303-2(1) can be met. When approving an alternative liner design, the Executive Secretary shall consider the following factors:

(A) the hydrogeologic characteristics of the facility and surrounding land;

(B) the climatic factors of the area; and

(C) the volume and physical and chemical characteristics of the leachate.

(ii) The liner shall be constructed of at least a three feet thick layer of recompacted clay or other material with a permeability of no greater than 1×10^{-7} cm/sec having the bottom liner sloped no less than 2% and the side liners sloped no more than 33%, except where construction and operational integrity can be demonstrated at steeper slopes; or

(c) Equivalent Design.

(i) The owner or operator may use, as approved by the Executive Secretary, alternative design, operating practices, and location characteristics which will minimize the migration of

solid waste constituents or leachate into the ground or surface water which are at least as effective as the liners of Subsections R315-303-3(3)(a) or (b).

(ii) The owner or operator must demonstrate that the standard of Subsection R315-303-2(1) can be met. The demonstration must be approved by the Executive Secretary, and must be based upon:

(A) the hydrogeologic characteristics of the facility and the surrounding land;

(B) the climatic factors of the area;

(C) the volume and physical and chemical characteristics of the leachate;

(D) predictions of contaminate fate and transport in the subsurface that maximize contaminant migration and consider impacts on human health and the environment; or

(d) Stringent Design. When conditions of location, hydrogeology, or waste stream justify, the Executive Secretary may require that the liner of a landfill be constructed to meet standards more stringent than the liner designs of Subsection R315-303-3(3)(a).

(e) Small Landfill Design. Subject to the location standards of Section R315-302-1 and the performance standards of Section R315-303-2, a Class II Landfill may be exempt from the liner, leachate collection system, and ground water monitoring requirements of Rule R315-303.

(i) A Class II Landfill will be approved only if:

(A) there is no evidence of existing ground water contamination; and

(B) the landfill serves a community that has no practicable waste management alternative as determined by the Executive Secretary; and

(C) the landfill is located in an area which receives less than 25 inches of annual precipitation.

(ii) A Class II Landfill may lose the exemption of the small landfill design if at anytime the landfill receives more than 20 tons of solid waste per day, based on an annual average, or has caused ground water contamination.

(f) Design of a Landfill that Accepts No Municipal Waste. Subject to the performance standards of Section R315-303-2:

(i) a landfill that accepts no municipal waste, no conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5, or no other hazardous waste that is exempt from Section R315-2-4, may be exempt from the liner, leachate collection system, ground water monitoring, and closure requirements of Rule R315-303; or

(ii) a landfill that accepts no municipal waste but accepts conditionally exempt small quantity generator hazardous waste or other exempt hazardous waste, may be exempt from the liner and the leachate collection system requirements of Rule R315-303.

(4) Closure. An owner or operator shall design the landfill so, that at closure, the final cover shall be:

(a) a layer to minimize infiltration, consisting of at least 18 inches of compacted soil, or equivalent with a permeability of 1 x 10^{-5} cm/sec or less, or equivalent, shall be placed upon the final lifts:

(i) synthetic liners may cover the compacted soil layer, provided that a minimum of either 20 mils reinforced or 40 mils non-reinforced thickness is used;

(ii) in no case shall the cover of the final lifts be more permeable than the bottom liner system or natural subsoils present in the unit; and

(iii) the grade of surface slopes shall not be less than 2%, nor the grade of side slopes more than 33%, except where construction integrity and the integrity of erosion control can be demonstrated at steeper slopes; and

(b) a layer to minimize erosion, consisting of:

(i) at least 6 inches of soil capable of sustaining vegetative growth placed over the compacted soil cover or the artificial liner and seeded with grass, other shallow rooted vegetation or other native vegetation; or

(ii) other suitable material, approved by the Executive Secretary.

(c) The Executive Secretary may approve an alternative final cover design, on a site specific basis, if it can be documented that:

(i) the infiltration layer achieves an equivalent reduction in infiltration as the infiltration layer specified in Subsection R315-303-3(4)(a): and

(ii) the erosion layer provides equivalent protection from wind and water erosion as the erosion layer specified in Subsection R315-303-3(4)(b).

(5) Gas Control.

(a) An owner or operator shall design each landfill so that explosive gases are monitored quarterly.

(b) If the concentration of these gases ever exceed the standard set in Subsection R315-303-2(2)(a), the owner or operator must:

(i) immediately take all necessary steps to ensure protection of human health and, within 24 hours or the next business day, notify the Executive Secretary;

(ii) within seven days of detection, place in the operating record the explosive gas levels detected and a description of the steps taken to protect human health; and

(iii) within 60 days of detection, implement a remediation plan, that has been approved by the Executive Secretary, for the explosive gas release, place a copy of the plan in the operating record, and notify the Executive Secretary that the plan has been implemented.

(c) Collection and handling of explosive gases shall not be required if it can be shown that the explosive gases will not support combustion.

(d) The Executive Secretary may, on a site specific basis, waive the requirement of monitoring explosive gases at a Class II Landfill. The wavier may be granted after:

(i) considering the characteristics of the landfill and the waste stream accepted;

(ii) taking into account climatic and hydrogeologic conditions of the site; and

(iii) completing a public comment period as specified by Section R315-311-3.

(iv) The Executive Secretary may revoke any waiver from the requirement of monitoring explosive gases if the lack of monitoring explosive gases at the landfill presents a threat to human health or the environment.

(v) The requirement to monitor explosive gases inside buildings at a landfill may not be waived.

(e) A landfill that accepts no municipal waste is exempt

from the gas monitoring requirement of Subsection R315-303-3(5)(a).

(6) Other Requirements. An owner or operator shall design each landfill to provide for:

(a) fencing at the property or unit boundary or the use of other artificial or natural barriers to impede entry by the public and large animals. A lockable gate shall be required at the entry to the landfill;

(b) monitoring ground water according to Rule R315-308 using a design approved by the Executive Secretary. The Executive Secretary may also require monitoring of:

(i) surface waters, including run-off;

(ii) leachate; and

(iii) subsurface landfill gas movement and ambient air;

(c) weighing or estimating the tonnage of all incoming waste and recording the tonnage in the facility's operation record;

(d) erecting a sign at the facility entrance that identifies at least the name of the facility, the hours during which the facility is open for public use, unacceptable materials, and an emergency telephone number. Other pertinent information may also be included;

(e) adequate fire protection to control any fires that may occur at the facility. This may be accomplished by on-site equipment or by arrangement made with the nearest fire department;

(f) preventing potential harborage in buildings, facilities, and active areas of rat and other vectors, such as insects, birds, and burrowing animals;

(g) minimizing the size of the unloading area and working face as much as possible, consistent with good traffic patterns and safe operation;

(h) approach and exit roads of all-weather construction, with traffic separation and traffic control on-site and at the site entrance; and

(i) communication, such as telephone or radio, between employees working at the landfill and management offices on-site and off-site to handle emergencies.

R315-303-4. Standards for Maintenance and Operation.

(1) Plan of Operation. An owner or operator of a landfill shall maintain and operate the facility to conform to the approved plan of operation.

(2) Operating Details. An owner or operator of a landfill shall operate the facility to:

(a) control fugitive dust generated from roads, construction, general operations, and covering the waste;

(b) allow no open burning;

(c) collect scattered litter as necessary to avoid a fire hazard or an aesthetic nuisance;

(d) prohibit scavenging;

(e) conduct on-site reclamation in an orderly sanitary manner and in a way that does not interfere with the disposal site operation;

(f) ensure that landfill personnel, trained in landfill operations, are on-site when the site is open to the public;

(i) at least one person on-site for landfills that receive, on an average annual basis, less than 15,000 tons per year; and

(ii) at least two persons on-site, with one person at the active face, for each landfill that receives, on an average annual basis, more than 15,000 tons per year.

(g) control insects, rodents, and other vectors; and

(h) ensure that reserve operational equipment will be available to maintain and meet these standards.

(3) Boundary Posts. An owner or operator of a landfill shall clearly mark the active area boundaries authorized in the permit with permanent posts or using an equivalent method clearly visible for inspection purposes.

(4) Daily and Intermediate Cover.

(a) An owner or operator of a landfill shall, at the close of each day of operation, completely cover the waste with at least six inches of soil or other suitable material approved by the Executive Secretary that will control vectors, fires, odor, blowing litter, and scavenging without presenting a threat to human health or the environment.

(b) The Executive Secretary may, on a site specific basis, waive the requirement for daily cover of the waste at a landfill that accepts no municipal waste if the owner or operator demonstrates that an alternative schedule for covering the waste does not present a threat to human health or the environment. The demonstration from the owner or operator of the landfill must include at least the following:

(i) certification that the landfill accepts no municipal waste;

(ii) a detailed list of the waste types accepted by the landfill;

(iii) the alternative schedule on which the waste will be covered; and

(iv) any other operational practices that may reduce the threat to human health or the environment if an alternative schedule for covering the waste is followed.

(v) In granting any wavier from the daily cover requirement, the Executive Secretary may place conditions on the owner or operator of the landfill as to the frequency of covering, depth of the cover, or type of material used as cover that will minimize the threat to human health or the environment.

(vi) The Executive Secretary may revoke any waiver from the daily cover requirement if any condition is not met or if the alternative schedule for covering the waste presents a threat to human health or the environment.

(c) If an area of the working face of a landfill that accepts municipal waste will not receive waste for a period longer than 30 days, the owner or operator shall cover the area with a minimum of 12 inches of soil as an intermediate cover or an alternative intermediate cover as approved by the Executive Secretary.

(i) No alternative intermediate cover will be approved by the Executive Secretary without application from the owner or operator.

(ii) Approval for an alternative intermediate cover may be granted after:

(A) considering the design of the landfill, waste stream accepted, and waste handling practices; and

(B) taking into account climatic, hydrogeologic, and soil conditions of the site.

(iii) In granting approval for an alternative intermediate cover, the Executive Secretary may place conditions on the

owner or operator of the landfill as to the depth or type of material used and maintenance of the integrity of the cover that will minimize the threat to human health or the environment.

(iv) The Executive Secretary may revoke the approval of an alternative intermediate cover if any condition is not met or if the alternative intermediate cover is determined to present a threat to human health or the environment.

(5) Monitoring Systems. An owner or operator of a landfill shall maintain the monitoring systems required in Subsection R315-303-3(6)(b).

(6) Recycling Required.

(a) An owner or operator of a landfill at which the general public delivers household solid waste shall provide containers in which the general public may place recyclable materials for which a market exists that are brought to the site:

(i) during the normal hours of operation; and

(ii) at a location convenient to the public, i.e., near the entrance gate.

(b) An owner or operator may demonstrate alternative means to providing an opportunity for the general public to recycle household solid waste.

(7) Disposal of Hazardous Waste and Waste Containing PCBs.

(a) An owner or operator of a solid waste disposal facility shall not knowingly dispose, treat, store, or otherwise handle hazardous waste or waste containing PCBs except under the following conditions:

(i) hazardous waste:

(A) the waste meets the conditions specified in Subsections R315-2-4; or

(B) the waste meets the conditions specified in 40 CFR 261.5 (1996) as incorporated by reference in Section R315-2-5; or

(ii) waste containing PCB's:

(A) the facility meets the requirements specified in Subsection R315-315-7(3)(a); or

(B) the waste meets the requirements specified in Subsections R315-315-7(2) or (3)(b).

(b) An owner or operator of a solid waste disposal facility shall include and implement, as part of the plan of operation, a plan that will inspect loads or take other steps, as approved by the Executive Secretary, that will prevent the disposal of prohibited hazardous waste and prohibited waste containing PCBs, including:

(i) inspection frequency and inspection of loads suspected of containing prohibited hazardous waste or prohibited waste containing PCBs;

(ii) inspection in a designated area or at a designated point in the disposal process;

(iii) a training program for the facility employees in identification of prohibited hazardous waste and prohibited waste containing PCBs; and

(iv) maintaining written records of all inspections, signed by the inspector.

(c) If the receipt of prohibited hazardous waste or prohibited waste containing PCBs is discovered, the owner or operator of the facility shall:

(i) notify the Executive Secretary, the hauler, and the generator within 24 hours;

(ii) restrict the inspection area from public access and from facility personnel; and

(iii) assure proper cleanup, transport, and disposal of the waste.

KEY: solid waste management, waste disposal

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	19-6-108
	40 CFR 258

R315. Environmental Quality, Solid and Hazardous Waste.
R315-318. Permit by Rule.
R315-318-1. General Requirements.

(1) Any facility that disposes of solid waste, including incinerators, may be permitted by rule upon application to the Executive Secretary if the Executive Secretary determines the facility is regulated by Federal or state agencies which have regulations or rules as stringent as, or more stringent than, Rules R315-301 through R315-320.

(2) No permit by rule may be granted to a new facility, as defined by Subsection R315-301-2(47) or R315-304-3(4), as appropriate, without application to the Executive Secretary.

(3) Any facility permitted by rule is not required to obtain a permit or comply with any other provisions of Rules R315-301 through R315-320 except where operation of the facility may endanger human health or the environment or otherwise violate the provisions of the Solid and Hazardous Waste Act.

R315-318-2. Facilities Permitted by Rule.

The following existing facilities, as defined by Subsection R315-301-2(21) or R315-304-3(3), as appropriate, are permitted by rule:

(1) solid waste disposal and incineration facilities which are required to operate under the conditions of a state or Federal hazardous waste permit or plan approval;

(2) disposal operations or activities which are required to operate under the conditions of a Utah Division of Oil, Gas, and Mining permit or plan approval;

(3) non-commercial underground injection facilities regulated by the Utah Division of Water Quality; and

(4) disposal operations or activities which accept only radioactive waste and are required to operate under the conditions of a Utah Division of Radiation Control permit or plan approval.

KEY: solid waste management, waste disposal

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	19-6-108

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-1. Utah Medicaid Program.

R414-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

(1) "Act" means the federal Social Security Act.

(2) "Applicant" means any person who requests assistance under the medical programs available through the Division.

(3) "Categorically needy" means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for Medicaid; and

(i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or

(ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or

(iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or

(iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or

(v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or

(vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or

(vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or

(viii) who is a child for whom an adoption assistance agreement with the state is in effect.

(b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "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, or has had a premium paid to a managed care entity.

(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) Utilization review provides for review and evaluation of the utilization of Medicaid services provided in acute care general hospitals, and by members of the medical staff to patients entitled to benefits under the Medicaid plan.

(2) The Department shall conduct hospital utilization review as outlined in the Superior Utilization Waiver state implementation plan, November 1997 edition, which is incorporated by reference in this rule.

(3) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Medical Review Criteria and System, published by InterQual, Inc., January 1998 edition, 293 Boston Post Road West, Suite 180, Marlborough, MA, 07152, which is incorporated by reference in this rule, or by following other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan.

(4) The standards in the InterQual Medical Review Criteria and System shall not apply to services that are:

(a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in R414-2B; or

(c) organ transplant services as described in R414-10A. In these three exceptions, or where InterQual is silent, the Medicaid agency shall approve or deny claims based upon appropriate administrative rules or its own criteria as incorporated in provider contracts that incorporate the Medicaid Provider Manuals.

(5) The Department may take remedial action as outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan for inappropriate services identified through utilization review.

(6) In accordance with 42 CFR 431, Subpart E, the Utilization Review Committee shall send written notification of remedial action to the provider.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) The Medicaid agency has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services available under the plan. The plan also safeguards against excess payments, assesses the quality of services, and provides for control and utilization of inpatient services as outlined in the Superior Utilization Waiver state implementation plan. The program meets the requirements of 42 CFR Part 456.

(2) In order to control utilization, and in accordance with 42 CFR 440.230(d), services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program, are not a covered benefit.

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, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The

agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 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
April 23, 1999 **26-1-5**
Notice of Continuation May 1, 1997 **26-18-1**

R426. Health, Health Systems Improvement, Emergency Medical Services.

R426-6. Emergency Medical Services Grants Program Rules.

R426-6-1. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8.

(2) The purpose of R426-6 is to provide guidelines for the equitable distribution of grant funds specified under the Emergency Medical Services Grants Program.

R426-6-2. Definitions.

(1) Competitive grant means a grant awarded on a competitive basis for a share of available funds.

(2) Department means Utah Department of Health.

(3) EMS Committee means the State Emergency Medical Services (EMS) Committee defined in Title 26, Chapter 8.

(4) County EMS Council or Committee means a group of persons recognized by the county commission as the legitimate entity within the county to formulate policy regarding the provision of EMS. It is recommended that the committee have the following representation: A physician and a nurse involved in the provision of emergency medical care; an ambulance service representative; a paramedic service representative, if available within county; a dispatcher representative; a local health department director or his designee and; a county commissioner or his designee; other members as locally appointed.

(5) Multi-county EMS council or committee means a group of persons recognized by an association of counties as the legitimate entity within the association to formulate policy regarding the provision of EMS. It is recommended that the committee have the following representation: A physician and a nurse involved in the provision of emergency medical care; an ambulance service representative; a paramedic service representative, if available within county; a dispatcher representative; a local health department director or his designee and; a county commissioner or his designee; other members as locally appointed.

(6) Grants Review Subcommittee means a subcommittee appointed by the EMS Committee to review, evaluate, prioritize and make grant funding recommendations to the EMS Committee.

(7) Matching Funds means that portion of funds, in cash, contributed by the grantee to total project expenditures.

(8) Per Capita grants mean block grants determined by prorating available funds on a per capita basis as delineated in Title 26, Chapter 8.

R426-6-3. Eligibility.

Grantees shall be limited to agencies or political subdivisions of local or state government or incorporated non-profit entities.

R426-6-4. Grant Implementation.

In accordance with Title 26, Chapter 8, awards shall be implemented by grants between the Department and the grantee.

(1) Grant awards are effective on July 1 and must be used by June 30 of the following year.

(2) Grant funding is on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.

R426-6-5. Competitive Grant Process.

(1) The Grant Program Guidelines, outlining the review schedule, funding amounts, eligible expenditures, and awards schedule shall be established annually by the EMS Committee.

(2) The department may accept only complete applications which are submitted by the deadlines established by the EMS Committee.

(3) It is the intent of the EMS Committee that there be local EMS council or committee review and prioritization of grant applications. Therefore, copies of grant applications shall be provided by grant applicants to their respective county EMS councils or committees and the multi-county EMS councils or committees, where organized, for a period of at least 30 days for review and prioritization before consideration by the State Grants Review subcommittee. State reviews may not be conducted for grant proposals which have not been first submitted to the county or the multi-county EMS councils or committees.

(4) State or non-profit agencies whose service area includes multiple local EMS Committee jurisdictions shall bypass county and multi-county reviews.

(5) The Grants Review Subcommittee shall review the competitive grant applications and forward its recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Review Subcommittee recommendations and forward to the Department.

(6) Grant recipients shall provide matching funds in the amount of 50% of total approved expenditures or a greater amount as annually set forth in the Grant Guidelines.

(7) The Grants Review Subcommittee may recommend reducing or waiving the matching fund requirements where appropriate in order to respond to special or pressing local or state EMS problems.

(8) The Grants Review Subcommittee shall make recommendations based upon the following criteria:

(a) the impact on patient care;

(b) a description of the size and significant impediments of the geographic service area;

(c) the population demographics of the service area;

(d) the urgency of the need;

(e) call volume;

(f) the per capita grant allocated to each agency, and its relative benefit on the agency to provide EMS service;

(g) local county prioritization;

(h) a description of the agency; and

(i) percent of responses to non-residents of the service area.

(9) Applications requesting grant award extensions past June 30, must be made to the department by May 30 of the grant year. Requests made after that time will not be accepted. Grants extensions may only be given for unforeseen circumstances.

R426-6-6. Per Capita Grant Process.

(1) Agency applicants shall verify agency personnel rosters as part of the grant application process.

(2) The department shall determine the amounts of the per capita grants by prorating available funds on a per capita basis by county.

(3) The Department shall allocate funds to licensed EMS providers, designated dispatch agencies and designated first response units by using the following point totals for their personnel: certified Dispatchers, Basic EMTs, EMT-IVs = 1; certified Intermediate EMTs = 2; and certified Paramedics = 3. The number of certified personnel is based upon the personnel rosters of each licensed EMS provider, designated dispatch agency and designated first response unit as of January 1 immediately prior to the grant year, which begins July 1.

(4) No matching funds are required for per capita grants.

(5) Grant awards are effective on July 1 and must be used by June 30 of the following year. No extensions will be given.

(6) Per capita funds may be used as matching funds for competitive grants.

R426-6-7. High School Training Program Grant.

(1) The department shall provide a grant by contract with a single non-profit entity for the purpose of teaching the "What To Do Until the Ambulance Arrives" program or a similar program to Utah high school students. Any change to the curriculum of the program must be approved by the Department and the Utah State Board of Education. These programs are limited to Utah high schools for Utah high school students.

(2) The contract will be effective from July 1 through June 30. Contract awards may not be extended or amended.

R426-6-8. Interim or Emergency Grant Awards.

(1) The Grants Review Subcommittee may recommend interim or emergency grants if all the following are met:

(a) Grant funds are available;

(b) The applicant clearly demonstrates the need;

(c) the application was not rejected by the Grants Review Subcommittee during the current grant cycle; and

(d) Delay of funding to the next scheduled grant cycle would impair the agency's ability to provide EMS care.

(2) Applicants for interim or emergency grants shall:

(a) submit an interim/emergency grant application, following the same format as annual grant applications; and

(b) submit the interim/emergency grant application to the Department at least 30 days prior to the EMS Committee meeting at which the grant application will be reviewed.

(3) The Grants Review Subcommittee shall review the interim/emergency grant application and forward recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Review Subcommittee recommendations and forward to the Department.

KEY: emergency medical services
May 14, 1999 **26-8**
Notice of Continuation December 2, 1997

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 HRE 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) The accrual rate for employees hired on or after July 1, 1995 shall be based on all State employment in which the employee was eligible to accrue leave.

(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.

(iii) When the five years provided by the employing department is exhausted, the employee may acquire additional health insurance and if eligible, low option Medicare supplemental insurance by converting sick leave hours from his unused sick leave account for the desired coverage.

(A) Only hours in excess of 480 in the employees unused sick leave account are eligible for conversion.

(B) The employee may acquire state provided health insurance up to the age of eligibility for Medicare by converting 8 hours of unused sick leave for one month of coverage. 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.

(C) At the age of eligibility for Medicare, the employee may acquire health insurance coverage for a spouse until the spouse is eligible for Medicare by converting 8 hours of unused sick leave for one month of coverage.

(D) The employee may acquire low option Medicare supplement for the employee by converting 8 hours of unused sick leave for one month of coverage and for a spouse by converting an additional 8 hours of unused sick leave for one month of coverage.

(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 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.

(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 leave 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
May 4, 1999 67-19-6
Notice of Continuation July 1, 1997

R495. Human Services, Administration.
R495-879. Parental Support for Children in Care.
R495-879-1. Child Support Liability.

The Office of Recovery Services will establish and enforce child support obligations against parents whose children are in out-of-home placement programs, administered by the Department of Human Services or Department of Health. The department shall consider fees for outpatient and day services separate from child support payments. Establishment and enforcement of child support shall be pursuant to the Uniform Civil Liability for Support Act, Section 78-45.1 et seq.; Public Support of Children, 62A-11-301 et seq.; Support and expenses of child in custody of an individual or institution, 78-3a-609;

R495-879-2. Support Guidelines.

Child support obligations shall be calculated in accordance with Child Support Guidelines, Section 78-45-7.2 through 78-45-7.21.

R495-879-3. Criteria For Deviating From Guidelines.

The following criteria may be used to deviate from the guidelines when a prior order does not exist.

1. Deduction For a Disabled Child.

A deduction from gross income shall be allowed each year, equal to the federal tax exemption for dependents, for each year a child was cared for at home if that child's disability would ordinarily have qualified him for residential care.

2. Medical Payments.

A deduction from gross income shall be allowed for medical expenses equal to the IRS deduction allowed the previous year on the parents' 1040 tax return.

3. Children Over 18 Years Old.

Children up to 23 years of age shall be included on the Child Support Worksheet if the parents are claiming the child as an exemption on their income tax return. Parents must provide prior year's tax return and a statement that they will be claiming child on current year tax return.

4. Federal Poverty Level.

If the parent is not under employed and is responsible for providing food, clothing, shelter, transportation, and other life sustaining items for his family, and lives at or below the federal poverty level, he shall not be assessed child support for a child placed in out-of-home care.

5. Loss of child's Social Security Survivor Payments. If the parent's income is below 133% of the poverty level, allow a direct credit against the child support amount from the child's social security survivor's benefit paid to the state.

R495-879-4. Establishing an Order.

ORS may modify and establish child support orders through the Public Support of Children Act, 62A-11-301 et seq.; Administrative Procedures Act, Section 63-46b-1 et seq.; Jurisdiction - Determination of Custody questions by Juvenile Court, Sections 78-3a-17(7)(a) through (b) and Section 78-3a-17(8); and in accordance with R527-200.

R495-879-5. Good Cause Deferral and Waiver Request.

If collections interfere with family unification, a division may, using the Good Cause-Deferral/Waiver (form 602), request a deferral or waiver of arrears payments. The request may be applied to current support when an undue hardship is created by an unpreventable loss of income to the present family. A loss of income may include non payment of child support from the other parent for the children at home, loss of employment, or loss of monthly pension or annuity payments. The request shall be sent to ORS for review and to the director of the Division for approval. The request shall not be approved when it proposes actions that are contrary to state or federal law.

R495-879-6. In-Kind Support.

ORS may accept in-kind support, based on parents' service to the program in which the child is placed. The service provided by a parent must be approved by the director of the Division responsible for the child's care. The approval should be based on a monetary savings or an enhancement to a program. It is preferable for the service to benefit the program in which the child is receiving care. However, if geographical distances prohibit direct service, then the division director may approve support services for in-kind support that do not directly offset costs to the agency. A memorandum of understanding shall be signed by the agency and the parent specifying the type, length, and value of service. Verification of the service hours worked must be provided by the division to ORS (using Form 603) within 10 days of the end of the month in which the service was performed. The verification shall include the dates the service was performed, the number of hours worked, and the total credit amount allowed. Unless approved by the director of the Department, in-kind support approved by one agency shall not be used to reduce child support owed to another agency. In-kind support shall not be approved when it proposes actions that are contrary to state or federal law.

R495-879-7. Extended Visitation During The Year.

A rebate shall be granted to a parent for support paid when a child's overnight visits equal 25% or more of the service period. The rebate will only be provided when the service period lasts six months or more. The rebate will be proportionate to the number of days at home compared to the number of days in care. One continuous 24-hour period equals one day.

KEY: child support, custody of children
May 10, 1999 **62A-1-111(16)**
Notice of Continutation March 11, 1999 **62a-4a-116**
62A-5-109(1)
62A-7-124
62A-11-302
62A-12-206
78-3a-906
78-45-7.2 through 78-45-7.21

R590. Insurance, Administration.
R590-93. Replacement of Life Insurance and Annuities.
R590-93-1. Authority.

This rule is adopted and promulgated by the Insurance Commissioner pursuant to Subsection 31A-2-201(3), Utah Code, which empowers the Commissioner of Insurance to make reasonable rules necessary for, or as an aid to, the effectuation of any provision of the Insurance Code, and to define acts and practices reasonably found to be unfair or deceptive.

The issuance or offer to issue any insurance, as defined herein, which is a replacement of existing insurance, as defined herein, shall, if not done in compliance with the terms of this rule, be deemed a misrepresentation in violation of Subsection 31A-23-302(1)(a)(i), Utah Code, and provide unfair inducement which is prohibited by Subsection 31A-23-302(8), Utah Code.

It is hereby recognized and ordered that insurance purchasers have inherent interests and rights in the continuance of existing insurance coverage which may be compromised if purchasers are not allowed sufficient time and provided with sufficient information to enable them to make an informed choice regarding their desire to continue existing insurance or replace it with alternative coverage. This rule is adopted to assure that sufficient time and information shall be provided to all persons so situated and failure to meet the requirements set forth herein shall be deemed to be an unfair and deceptive trade practice by any insurer or any representative of an insurer.

R590-93-2. Purpose.

The purpose of this rule is to protect the interests of life insurance and annuity purchasers during a replacement transaction by establishing minimum standards to be observed by insurers and agents in providing adequate and timely information concerning the existing and proposed policies or contracts so that the purchasers may make a better informed decision.

R590-93-3. Definition or Replacement.

"Replacement" means any transaction in which new life insurance or a new annuity contract is to be purchased, and it is known or should be known to the proposing agent, or to the proposing insurer if there is no agent, that by reason of such transaction, an existing life insurance policy(ies) or an annuity contract(s) has been or is to be:

A. Lapsed, forfeited, surrendered, exchanged or otherwise terminated;

B. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

C. Amended so as to effect a reduction either in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

D. Reissued with any reduction in cash value; or

E. Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time.

R590-93-4. Other Definitions.

A. "Conservation" means any attempt by the existing insurer or its agent to dissuade a policyholder from the replacement of existing insurance. A conservation effort does not include such routine administrative procedures as late payment reminders, late payment offers or reinstatement offers.

B. "Direct-Response Sales" means any sale of insurance where the insurer does not utilize an agent or company representative in the sale or delivery of the policy. Normally the entire transaction is handled by way of correspondence.

C. "Existing Insurance" means any insurance in force including insurance under a binding or conditional receipt, an insurance policy or contract that is within an unconditional refund period or an insurance policy while in the premium grace period.

D. "Existing Insurer" means the insurance company whose policy is or will be changed or terminated in such a manner as described within Section 3, "Definition of Replacement," of this rule.

E. "Insurance" means any life insurance policy or annuity contract issued by an insurance company except as provided within Section 5, "Exemptions," of this rule.

F. "Notice" means the required one-page three-part format which includes the "Explanation", the statement of "Existing Insurance Which May Be Replaced or Changed," and the list of "Items to Consider" followed by signatures and identifying information. A sample "Notice" is incorporated herein by reference (see addendum) and is to be made available by the replacing insurance company. The "Notice" must have imprinted the name, address and telephone number of the replacing insurer.

G. "Replacing Insurer" means the insurance company to which application is made for a new policy or contract which is a replacement of existing insurance.

R590-93-5. Exemptions.

Unless otherwise specifically included, this rule shall not apply to:

A. Credit life insurance;

B. Group life insurance or group annuities;

C. Proposed insurance that is to replace insurance applied for under a binding or conditional receipt issued by the same company;

D. Proposed insurance to be provided by the insurer that issued existing insurance where a contractual change or conversion privilege is being exercised; and

E. Proposed insurance offered on a direct response basis to a class or classes of existing policyholders by the same insurer, for the principal purpose of upgrading existing insurance. The rationale and proposed process and related policyholder information must be filed with the Department and approved to qualify for this exemption and the cost benefit to policyholders must be reasonable.

R590-93-6. Duties of Agents.

A. In connection with or as part of each application for insurance, an agent must complete and submit to the insurer the required statement from the applicant as well as the agent's own statement as to whether or not replacement may be involved in the transaction.

B. Where a replacement is involved, the agent shall:

1. Present to and leave with the applicant, not later than at

the time of taking the application, a properly completed and signed copy of the three-part Notice which includes a list of all existing insurance to be replaced;

2. Submit to the replacing insurer with the application a copy of the properly completed and signed Notice; and

3. Leave with the applicant the original or a copy of written or printed communications used in connection with the presentation.

C. Each agent who uses written or printed communications in a conservation effort shall leave with the policyholder the original or a copy of such materials used. Each agent should explain optional modifications or changes within the existing insurance.

D. The current Utah Insurance Department rule(s) regarding the solicitation of life insurance and annuities also apply in replacement and conservation situations. If applicable, Security and Exchange Commission disclosure requirements must also be followed.

R590-93-7. Duties of Insurers Represented by Agents.

Each insurer shall:

A. Inform its agents, field representatives or other personnel responsible for compliance with this rule concerning the requirements of this rule.

B. Require with or as a part of each completed application for insurance:

1. A statement in connection with the application signed by the applicant as to whether such proposed insurance will replace existing insurance; and

2. A statement signed by the agent as to whether or not he or she knows replacement is or may be involved in the transaction.

C. Where a replacement is involved, the replacing insurer shall:

1. Require from the agent with the application for insurance a copy of the three-part Notice properly completed and signed;

2. Send to the existing insurer at its home office within three (3) working days of the date the Notice is received, a copy of the Notice advising of the replacement or proposed replacement of existing insurance. Forwarding of the Notice is not required if the replacing insurer and existing insurer are one and the same in name and direct management control;

3. Maintain copies of the Notice, all written communications with respect to replacement, and a replacement register, cross-indexed by replacing agent and existing insurer to be replaced, for at least three years or until the conclusion of the next regular examination by the Insurance Department of its state of domicile, whichever is later;

4. Furnish to the applicant a Policy Summary and/or disclosure material in accordance with the provisions of the current rules concerning the solicitation of insurance. In connection with registered contracts, applicants shall be furnished premium or contract contribution amounts and identification of the appropriate prospectus or offering circular; and

5. Provide the applicant with a right to an unconditional refund of all premiums paid, which right may be exercised within a period of at least twenty (20) days commencing from the date of delivery of the policy or contract.

R590-93-8. Duties of Insurers with Respect to Direct-Response Sales.

Each insurer shall:

A. Inform its personnel responsible for compliance with this rule of the requirements of this rule;

B. Require with or as a part of each completed application for insurance a statement signed by the applicant as to whether such proposed insurance will replace existing insurance;

C. Where a replacement is proposed by an insurer in the solicitation of a direct-response sale or it is known by the insurer on the date of application that a replacement will occur:

1. Provide the applicant or prospective applicant with or as part of the application the three-part Notice with the request that the applicant properly complete, sign and return a copy of the Notice with the application;

2. Send to the existing insurer at its home office within three (3) working days of the date of the Notice is received, a copy of the Notice advising of the replacement or proposed replacement of existing insurance. Forwarding the Notice is not required if the replacing insurer and existing insurer are one and the same in name and direct management control;

3. Maintain copies of the Notice, all written communications with respect to replacement, and a replacement register, cross-indexed by existing insurer to be replaced, for at least three years or until the conclusion of the next regular examination by the insurance department of its state of domicile, whichever is later;

4. Furnish to the applicant a Policy Summary and/or disclosure material in accordance with the provisions of current rules concerning the solicitation of insurance. In connection with registered contracts, applicants shall be furnished premium or contract contribution amounts and identification of the appropriate prospectus or offering circular; and

5. Provide the applicant with a right to an unconditional refund of all premiums paid, which right may be exercised at least twenty (20) days commencing from the date of delivery of the policy or contract.

D. Where no replacement is proposed by an insurer in the solicitation of a direct-response sale and the three-part Notice was not included with or as part of the application and returned to the insurer, but it is indicated on the application that a replacement might occur and the insurer plans to issue a policy:

1. Suspend the application process for no longer than ten (10) days;

2. Provide the applicant with the Notice within three (3) days after receipt of the application;

3. Request that the applicant properly complete, sign and return a copy of the Notice within five (5) days; and

4. Continue the process as outlined in Sections 8(C)(2) through 8(C)(5). The insurer may continue the application process after ten (10) days from receipt of application even if a copy of the Notice has not been received.

R590-93-9. Duties of Existing Insurer.

Each existing insurer in connection with a voluntary conservation effort, may, or upon request from the policyholder shall, furnish current, complete and detailed summary or ledger

statements pertaining to the existing insurance and in accordance with the provisions of current rules concerning the solicitation of insurance. The existing insurer should explain optional modifications or changes within the existing insurance.

R590-93-10. Penalties.

A. Pursuant to the provisions of Sections 31A-2-308, 31A-23-216 and 31A-23-217, Utah Code, violations of this rule shall subject licensees to the following penalties:

1. Any insurer found in violation of this rule may be charged an administrative forfeiture of not more than $1,000 for each separate violation. Additionally, willful violation of this rule could subject the insurer to censorship against its certificate of authority.

2. Any individual or organizational licensee found in violation of this rule may be charged an administrative forfeiture of not more than $1,000 for each separate violation. Additionally, willful violation of this rule could subject the individual or organizational licensee to be placed on probation, license suspension or revocation.

B. Any action on the part of an agent, insurer, or representative to discourage the policyholder from reading, completing or signing the three-part Notice shall be deemed a violation of this rule.

C. Policyholders have the right to replace existing insurance after indicating in or as part of the application for insurance that such is not their intention; however, patterns of such action by policyholders who purchase replacing policies from the same insurer or agent shall be deemed prima facie evidence of the insurer's or agent's knowledge that replacement was intended in connection with the sale of those policies, and such patterns or action shall be deemed prima facie evidence of the insurer's or agent's violation of this rule.

D. This rule does not prohibit the use of additional material other than that which is required that is not in violation of this rule or any other Utah statute or rule.

R590-93-11. Relationship to Other Statutes and Rules.

If any portion of this rule is inconsistent with any provision of any statute or other rule dealing with life insurance or annuity marketing practices or disclosure, said inconsistent portion shall be interpreted so as to provide the greatest information or protection to the policyholder.

R590-93-12. Severability.

If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provisions shall be and remain in full force.

R590-93-13. Effective Date.

This rule shall be effective May 26, 1989.

KEY: insurance law
1989 **31A-2-201**
Notice of Continuation May 27, 1999

R590. Insurance, Administration.
R590-98. Unfair Practice in Payment of Life Insurance and Annuity Policy Values.
R590-98-1. Authority.

This rule is adopted pursuant to Section 31A-2-201, Utah Code, which empowers the Insurance commissioner to make rules necessary to implement the Insurance Code, and pursuant to Section 31A-23-302, which allows the commissioner to define methods of competition and acts and practices found by him to be unfair or deceptive.

R590-98-2. Scope.

This rule shall apply to all persons transacting insurance under the Utah Insurance Code.

R590-98-3. Purpose.

The purpose of this rule is to require a prompt response to policyholder requests for policy values and limit the exercise of the statutory deferral option to situations in which the financial stability of the insurer is at risk.

R590-98-4. Definitions.

A. As used in this rule "Policy Values" are the values to which the insured is entitled upon application for policy loans or the surrender of the policy and include cash values, accumulated dividends, coupons and other values of a similar nature.

B. As used in this rule "Deferral" means the withholding or delay in payment of cash values to the policyholder.

C. As used in this rule "Deferral" does not include the withholding or delay in payment to a policyholder of Variable Life Insurance (VLI) payments when the value of investment assets on which payments are based cannot be obtained because:

(1) the Securities and Exchange commissioner (SEC) has restricted trading;

(2) the stock exchange is closed; or

(3) the SEC permits deferral to protect the policyholder.

R590-98-5. Unfair or Deceptive Acts or Practices.

The following are hereby defined as unfair or deceptive acts or practices:

A. Failing to respond to a policyholder request for cash values within 20 days.

B. Exercising the nonforfeiture deferral option of Section 31A-22-408(2)(f), in response to an application for policy value unless the financial stability of the insurer is at risk.

R590-98-6. Requirements.

A. All companies licensed in this State must file with the commissioner a written notice of election to reserve the right to defer the payment of any policy values after demand has been made by a policyholder for payment. The notice must include an explanation of the reason(s) for such action, the steps to be taken by the company to alleviate the situation, the manner in which the deferment is being imposed fairly and equitably on all policyholders, the notice to policyholders as to why the company is taking such action and the anticipated date on which the cash values are expected to be available.

B. Basic cash values may be computed by the interpolation of values between policy years or by the values shown in the policy nonforfeiture value tables as of the end of each policy year. If the latter method is used, the company may deduct from the cash value any premiums required to pay the policy to the next succeeding anniversary date. In no event, may premiums be deducted that will advance the paid-to date past the next succeeding anniversary date.

C. No surrender or "service charge" will be deducted from the policy values unless specifically provided in the policy.

D. Companies may offer a policy loan in lieu of cash surrender as a means to conserve business, but only if the following criteria are strictly adhered to:

(1) The computation of cash values and premium deductions, if any, will be calculated on the same basis as enumerated in B above.

(2) The policyholder must be informed fully and concisely as to the reasons the company is sending the proceeds of a policy loan as opposed to the policy value, an explanation as to the effect the loan will have upon interest charges, premiums, death benefits, and the procedures for the repayment of the loan.

(3) Applications for the surrender of a policy for cash value shall be processed within 20 days. If a policy loan check is issued in lieu of cash surrender values, the check must be immediately negotiable for either the payment of policy loan values or the partial payment of cash surrender values. If the check is issued for policy loan values only, a stamped, self-addressed envelope and a cash surrender form must accompany the check, together with appropriate instructions as to how the policyholder should proceed to obtain the full policy value. A request for the balance of the cash surrender value must be processed within ten days.

R590-98-7. Penalty.

Insurers found in violation of this rule shall be subject to revocation of the Certificate of Authority or such other penalty as determined by the commissioner in accordance with law.

R590-98-8. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

KEY: insurance law
1989 **31A-2-201**
Notice of Continuation May 27, 1999

R590. Insurance, Administration.
R590-165. Health Benefit Plans.
R590-165-1. Authority.

This rule is issued pursuant to the general rulemaking authority vested in the commissioner by Section 31A-2-201. Section 31A-22-613.5 requires that the commissioner adopt health benefit plans.

R590-165-2. Scope and Purpose.

A. This rule applies to all insurers marketing health insurance policies of any of the following types:

(1) traditional major medical coverage;

(2) preferred provider organization, PPO, coverage; or

(3) health maintenance organization, HMO, coverage.

B. The commissioner has adopted these three types of health care plans, each with a high and a low option. Insurers marketing these types of health insurance policies within the State of Utah are required to quote and offer for sale to the public, at the request of a potential buyer, each of the plans of the same types that the insurer otherwise markets at both the high and low options of those plans.

C. The purpose of this rule is to set standards for these health benefit plans as required by Section 31A-22-613.5. The three types of plans are designed to facilitate price and value comparisons of health insurance disability policies by consumers. An insurer offering the designated benefit plans may also offer plans that provide more or less coverage than the designated benefit plans.

D. If a company markets none of these three types of plans, they are exempt from this rule.

R590-165-3. Definitions.

A. The following definitions shall be used in each of the adopted health care plans:

(1) "Complications of pregnancy" means an illness, distinct from pregnancy, affecting the mother and occurring during pregnancy and requiring separate and specific medical or surgical services for which separate and additional charges are incurred.

(2) Cost Sharing terms.

(a) For the traditional major medical and PPO plans, the terms applicable to amounts payable by insureds for covered services are deductible, coinsurance, and copayment. These terms are to be defined in PPO and major medical plans, in these words or in words of similar meaning, as follows:

(i) "Deductible" is the amount of covered charges incurred during a specific time period payable by the insured before benefits are provided under the plan.

(ii) "Coinsurance" is the insured's cost-sharing amount expressed as a percentage of covered charges.

(iii) "Copayment" is the insured's cost-sharing amount expressed as a fixed dollar amount payable by the insured each time a specified covered service is received.

(b) For the HMO plan, the term applicable to amounts payable by insureds for covered services is "copayment." This term is used for both percentage amounts and fixed dollar amounts payable by the insured. The term may be defined in the insurer's HMO plan.

(3) "Custodial care" means:

(a) institutional care, consisting mainly of room and board, which is for the primary purpose of controlling the covered person's environment; and

(b) professional or personal care, consisting mainly of non-skilled nursing services with or without medical supervision, which is for the primary purpose of managing the covered person's disability or maintaining the covered person's degree of recovery already attained without reasonable expectation of significant further recovery.

(4) "Investigative/experimental technology" means treatment, procedure, facility, equipment, drug, device or supply, "technology", which does not, as determined by the company on a case by case basis, meet all of the following criteria:

(a) The technology must have final approval from all appropriate governmental regulatory bodies, if applicable.

(b) The technology must be available in significant number outside the clinical trial or research setting.

(c) The available research regarding the technology must be substantial. For purposes of this definition, "substantial" means sufficient to allow the company to conclude that:

(i) the technology is both medically necessary and appropriate for the covered person's treatment;

(ii) the technology is safe and efficacious; and

(iii) more likely than not, the technology will be beneficial to the covered person's health.

(d) The technology must be generally recognized as appropriate by the regional medical community as a whole.

R590-165-4. General Requirements.

A. Each insurer may use its own language to present covered services, limitations and exclusions, however, these same services must be covered, limited or excluded by all plans.

B. Each plan must contain a description of the basis for its payments and a statement relative to whether the consumer will be required to pay amounts in excess of the insurer's allowable charges, usual and customary charges, fee schedule amounts, etc.

C. Each insurer's plan must contain a statement relative to whether providers are employed by the insurer or under contract with the insurer and, if so, whether the consumer will be required to pay the full amount or a different amount for services by providers not employed or under contract.

D. Each insurer is to include its usual contracting provisions in its plan: submission of claims, coordination of benefits, eligibility and coverage termination, grievance procedures, general terms and conditions, etc.

E. Each insurer may apply its own "takeover" criteria on group business.

F. If an insurer does not offer an HMO plan, a PPO plan, or a traditional major medical plan, the insurer is not required to offer the designated plan of that type. If the insurer does not offer coverage to either groups or individuals, the insurer is not required to offer the designated plan or plans for any group or individual, respectively.

G. Samples of these three plans; "Designated Health Benefit Plan Revision Traditional Major Medical Coverage" effective 1-12-99, "Designated Health Benefit Plan Revision to Preferred Provider Organization Coverage" effective 1-12-99,

and "Designated Health Benefit Plan Revision to Health Maintenance Organization Coverage" effective 1-12-99, with their high and low options. These plans are incorporated herein and may be obtained from the Insurance Department. They are to be followed taking into consideration the guidelines of this rule.

H. Forms are to be filed with the department before use.

R590-165-5. Compliance.

A. Insurers within the scope of this rule will be required, at the request of a potential buyer, to quote and offer for sale at least one of the proposed plans, 180 days after the effective date of this rule.

B. Insurers will also be required to adopt any changes made to the plans 180 days after being notified of those changes by the commissioner.

R590-165-6. Severability.

If a 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 these provisions may not be affected.

KEY: insurance
March 16, 1999 **31A-2-201**
Notice of Continuation May 27, 1999 **31A-22-613.5**

R590. Insurance, Administration.
R590-166. Home Protection Service Contract Rule.
R590-166-1. Authority.

This rule is issued by the Insurance Commissioner pursuant to the authority granted under Subsection 31A-2-201(3) to adopt rules for the implementation of the Utah Insurance Code and under Subsections 31A-6a-110(1) and (2).

R590-166-2. Purpose and Scope.

The purpose of this rule is to establish certain exemptions from the requirements of Chapter 6a of Title 31A as it relates to home protection companies as defined herein.

R590-166-3. Definition.

A. "Home protection service contract," also referred to as "home service contract" or "home warranty," means a service contract as defined by Subsection 31A-6a-101(3)(a) whereby a person, other than a builder, seller, or lessor of a home which is the subject of the contract, undertakes, for a specified period of time and for a predetermined fee, to repair or replace components, systems, or appliances of such home upon mechanical or operational failure, or to make indemnification to the holder of such contract for such repair or replacement.

B. "Home protection company" means a service contract provider as defined by 31A-6a-101(5) who issues home protection service contracts, excluding insurers authorized for casualty insurance.

R590-166-4. Rule.

A. Upon prior written notification to the commissioner, home protection companies doing business in this state who are, at the time of notification, in compliance with all the terms and provisions set forth in this rule and are in compliance with all of the terms and provisions of Chapter 6a of Title 31A, except those terms and provisions specifically exempted herein, shall be exempt from the requirements of Subsections 31A-6a-103(1), 31A-6a-103(2)(a) and 31A-6a-103 (2)(b) and the requirements of Subsections 31A-6a-104(2) and (8); provided, however, that nothing herein shall abrogate the requirement that home protection companies file copies of the service contracts to be used in this state, and any modifications thereto, and pay filing fees as would otherwise be required pursuant to Subsections 31A-6a-103(2)(a) and (b). So long as a home protection company remains in compliance with this rule, the home protection company's election to be subject to this rule shall remain in effect until written notification to the commissioner by the company of the company's withdrawal of its election. Notwithstanding the foregoing, home protection companies who are doing business in this state prior to the effective date of this rule and who elect to be subject to this rule as of the rule's effective date shall have until 60 days from the rule's effective date to attain compliance with all the terms and provisions of the rule.

B. To assure the faithful performance of its obligations to its contract holders the home protection company shall deposit in accordance with Section 31A-2-206 an amount not less than $10,000 for each 500 home protection service contracts in force in this state, but not to exceed $100,000. In the event of any failure of the home protection company to perform its obligations to its contract holders, the commissioner may make equitable distributions to contract-holders from funds held on deposit.

C. In lieu of the deposit required in paragraph B above, a surety bond or irrevocable letter of credit in favor of the commissioner for $50,000 may be filed by the home protection company. When, based on the home protection company's annual report pursuant to Section 5(A) hereof, the number of home protection service contracts issued by a protection company then in force in this state exceeds 2,500, the amount of the surety bond or letter of credit shall be increased to $100,000. The bond shall be issued by an insurer authorized to transact surety business in this state. Any letter of credit shall be from a bank approved by the commissioner and in a form acceptable to the commissioner. The surety bond or letter of credit shall be held for the same purpose as the deposit in lieu of which it is filed. No bond or letter of credit shall be cancelled or subject to cancellation unless at least 30 days advance notice, in writing, thereof is filed with the commissioner and evidence of other security is provided.

D. The securities, bond or letter of credit of a home protection company deposited as required by this rule shall constitute a claim fund to be administered by the commissioner for the benefit of persons sustaining actionable injury due to the insolvency or impairment of the home protection company. The commissioner may, at his option, seek assumption of an insolvent home protection company's obligations and business by a solvent company, and apply the insolvent home protection company's deposit or proceeds of any surety bond or letter of credit to this purpose.

E. Any deposit, surety bond or letter of credit shall be maintained unimpaired as long as the home protection company continues to do business in this state. Whenever the home protection company ceases to do business in this state and furnishes the commissioner proof that it has discharged or otherwise adequately provided for all its obligations to its home protection service contract holders in this state, the commissioner shall authorize release of the deposited securities, surety bond or letter of credit on file at that time.

R590-166-5. Annual Statements, Interim Reports.

A. A home protection company electing to be subject to this rule shall annually, within 90 days after the close of its fiscal year, file with the commissioner its annual statement in a form prescribed by the commissioner. Such annual statement shall include a current financial statement prepared in accordance with generally accepted accounting principles, reviewed by an independent certified public accountant, and verified by the home protection company's president and principal financial or accounting officer.

B. Each annual statement shall also report the home protection company's volume of business in this state during the preceding fiscal year, the losses thereon, open depositories at year end, and a statement of assets and liabilities.

C. A home protection company which fails to file its annual statement in the form and within the time provided in this rule may be fined $500 for each month, or any part thereof, during which such delinquency continues, and upon notice by the commissioner, its election to be subject to this rule may be

suspended or revoked until such delinquency is cured to the satisfaction of the commissioner.

D. In addition to an annual statement, the commissioner may require of any particular home protection company, in any situation where that home protection company's ability to service its obligations to holders or creditors is in reasonable doubt, such additional regular or special reports as the commissioner may deem necessary.

R590-166-6. Severability.

If a 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 provisions is not effected.

KEY: insurance

1994	**31A-2-201**
Notice of Continuation May 27, 1999	**31A-6a-110**

R590. Insurance, Administration.
R590-190. Unfair Property, Liability and Title Claims Settlement Practices Rule.
R590-190-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Further authority to provide for timely payment of claims is provided by Subsection 31A-26-301(1). Matters relating to proof and notice of loss are promulgated pursuant to Section 31A-26-301 and Subsection 31A-21-312(5). Authority to promulgate rules defining unfair claims settlement practices or acts is provided in Subsection 31A-26-303(4). The authority to require a timely response to the Insurance Department is provided in Section 31A-2-204.

R590-190-2. Purpose.

This rule sets forth minimum standards for the investigation and disposition of property, liability, and title claims arising under contracts or certificates issued to residents of the State of Utah. It is not intended to cover bail bonds. These standards include fair and rapid settlement of claims, protection for claimants under insurance policies from unfair claims adjustment practices and promotion of professional competence of those engaged in claim adjusting. This rule defines procedures and practices which constitute unfair claim practices. This rule is regulatory in nature and is not intended to create any private right of action.

R590-190-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in 31A-1-301, and the following:

(1) "Claim file" means any record either in its original form or as recorded by any process which can accurately and reliably reproduce the original material regarding the claim, its investigation, adjustment and settlement.

(2) "Claimant" means either a first party claimant, a third party claimant, or both and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant.

(3) "Claim representative" means any individual, corporation; association, organization, partnership, or other legal entity authorized to represent an insurer with respect to a claim, whether or not licensed within the State of Utah to do so.

(4) "Days" means calendar days.

(5) "Documentation" includes, but is not limited to, any pertinent communications, transactions, notes, work papers, claim forms, bills, and explanation of benefits forms relative to the claim.

(6) "First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right to a benefit or a payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such policy or contract and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant.

(7) "General business practice" means a pattern of conduct.

(8) "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.

(9) "Notice of claim or loss" means any notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprizes the insurer of the facts pertinent to a claim.

(10) "Proof of loss" shall mean reasonable documentation by the insured as to the facts of the loss and the amount of the claim in accordance with policy provisions and insurer practices.

(11) "Specific disclosure" shall mean notice to the insured by means of policy provisions in boldface type or a separate written notice mailed or delivered to the insured.

(12) "Third party claimant" means any person asserting a claim against any person under a policy or certificate of an insurer.

R590-190-4. File and Record Documentation.

Each insurer's claim files for policies or certificates are subject to examination by the commissioner of insurance or by the commissioner's duly appointed designees. To aid in such examination:

(1) the insurer shall maintain claim data that is accessible and retrievable for examination; and

(2) detailed documentation shall be contained in each claim file to permit reconstruction of the insurer's activities relative to the claim.

R590-190-5. Misrepresentation of Policy Provisions.

(1) The insurer and its representatives shall fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented, including loss of use and household services.

(2) The insurer is prohibited from denying a claim for failure to exhibit the property unless there is documentation of a breach of the policy provision in the claim file.

R590-190-6. Failure to Acknowledge Pertinent Communications.

Within 15-days every insurer shall:

(1) upon receiving notification of a claim, acknowledge the receipt of such notice unless payment is made within such period of time, or unless the insurer has a reason acceptable to the Insurance Department as to why such acknowledgment cannot be made within the time specified. Notice given to an agent of an insurer is notice to the insurer;

(2) provide a substantive response to a claimant whenever a response has been requested; and

(3) upon receiving notification of a claim, provide all necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements.

R590-190-7. Notice of Claim or Loss.

(1) Notice of Claim or Loss to an insurer, if required, shall be considered timely if made according to the terms of the

policy, subject to the definitions and provisions of this rule, and the provisions of Section 31A-21-312.

(2) Notice of Claim or Loss may be given by an insured to any appointed agent, authorized adjuster, or other authorized claim representative of an insurer unless the insurer clearly directs otherwise by means of Specific Disclosure as defined herein.

(3) The general practice of the insurer when accepting a notice of loss or notice of claim shall be consistent for all policyholders in accordance with the terms of the policy.

R590-190-8. Proof of Loss.

Proof of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule and the requirements of Section 31A-21-312.

R590-190-9. Unfair Methods, Deceptive Acts and Practices Defined.

The commissioner, pursuant to Section 31A-26-303(4), hereby finds the following acts, or the failure to perform required acts, to be misleading, deceptive, unfairly discriminatory or overreaching in the settlement of claims:

(1) denying or threatening the denial of the payment of claims or rescinding, canceling or threatening the recission or cancellation of coverage under a policy for any reason which is not clearly described in the policy as a reason for such denial, cancellation or rescission;

(2) failing to provide the insured or beneficiary with a written explanation of the evidence of any investigation or file materials giving rise to the denial of a claim based on misrepresentation or fraud on an insurance application, when such misrepresentation is the basis for the denial;

(3) compensation by an insurer of its employees, agents or contractors of any amounts which are based on savings to the insurer as a result of denying the payment of claims;

(4) failing to deliver a copy of the insurers guidelines for prompt investigation of claims to the Insurance Department when requested to do so;

(5) refusing to pay claims without conducting a reasonable investigation;

(6) offering first party claimants substantially less than the reasonable value of the claim. Such value may be established by one or more independent sources;

(7) making claim payments to insureds or beneficiaries not accompanied by a statement or explanation of benefits setting forth the coverage under which the payments are being made and how the payment amount was calculated;

(8) failing to pay claims within 30-days of properly executed proof of loss when liability is reasonably clear under one coverage in order to influence settlements under other portions of the insurance policy coverage or under other policies of insurance;

(9) refusing payment of a claim solely on the basis of an insured's request to do so unless:

(a) the insured claims sovereign, eleemosynary, diplomatic, military service, or other immunity from suit or liability with respect to such claim; or

(b) the insured is granted the right under the policy of insurance to consent to settlement of claims.

(10) advising a claimant not to obtain the services of an attorney or suggesting the claimant will receive less money if an attorney is used to pursue or advise on the merits of a claim;

(11) misleading a claimant as to the applicable statute of limitations;

(12) requiring an insured to sign a release that extends beyond the occurrence or cause of action that gave rise to the claims payment;

(13) deducting from a loss or claim payment made under one policy those premiums owed by the insured on another policy, unless the insured consents;

(14) failing to settle a first party claim on the basis that responsibility for payment of the claim should be assumed by others, except as may otherwise be provided by policy provisions;

(15) issuing checks or drafts in partial settlement of a loss or a claim under a specified coverage when such check or draft contains language which purports to release the insurer or its insured from total liability;

(16) refusing to provide a written basis for the denial of a claim upon demand of the insured;

(17) denying a claim for medical treatment after preauthorization has been given, except in cases where the insurer obtains and provides to the claimant documentation of the pre-existence of the condition for which the preauthorization has been given or if the claimant is not eligible for coverage;

(18) refusing to pay reasonably incurred expenses to an insured when such expenses resulted from a delay, as prohibited by these rules, in claims settlement or claims payment;

(19) when an automobile insurer represents both a tort feasor and a claimant:

(a) failing to advise a claimant under any coverage that the same insurance company represents both the tort feasor and the claimant as soon as such information becomes known to the insurer; and

(b) allocating medical payments to the tort feasor's liability coverage before exhausting a claimant's personal injury protection coverage.

(20) failing to pay interest at the legal rate, as provided in Title 15, Utah Code, upon amounts that are overdue under these rules. This does not apply to insurers who fail to pay Personal Injury Protection expenses when due. These expenses shall bear interest as provided in 31A-22-309(5)(c).

R590-190-10. Minimum Standards for Prompt, Fair and Equitable Settlements.

(1) The insurer shall provide to the claimant a statement of the time and manner in which any claim must be made and the type of proof of loss required by the insurer.

(2) Within 30-days after receipt by the insurer of a properly executed proof of loss, the insurer shall complete its investigation of the claim and the first party claimant shall be advised of the acceptance or denial of the claim by the insurer unless the investigation cannot be reasonably completed within that time. If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within 30-days after receipt of the proofs of loss, giving the reasons more time is needed. If the

investigation remains incomplete, the insurer shall, within 45-days after sending the initial notification and within every 45-days thereafter, send to the first party claimant a letter setting forth the reasons additional time is needed for the investigation, unless the first party claimant is represented by legal counsel or public adjuster. Any basis for the denial of a claim shall be noted in the insurers claim file and must be communicated promptly and in writing to the first party claimant. Insurers are prohibited from denying a claim on the grounds of a specific provision, condition, or exclusion unless reference to such provision, condition or exclusion is included in the denial.

(3) Unless otherwise provided by law, an insurer shall promptly pay every valid insurance claim. A claim shall be overdue if not paid within 30-days after the insurer is furnished written proof of the fact of a covered loss and of the amount of the loss. Payment shall mean actual delivery or mailing of the amount owed. If such written proof is not furnished to the insurer as to the entire claim, any partial amount supported by written proof or investigation is overdue if not paid within 30-days. Payments are not deemed overdue when the insurer has reasonable evidence to establish that the insurer is not responsible for the payment, notwithstanding that written proof has been furnished to the insurer.

(4) If negotiations are continuing for settlement of a claim with a claimant, who is not represented by legal counsel or public adjuster, notice of expiration of the statute of limitation or contract time limit shall be given to the claimant at least 60 days before the date on which such time limit may expire.

(5) Insurer are prohibited from making statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

(6) Upon receipt of an inquiry from the insurance department regarding a claim, every licensee shall furnish a substantive response to the insurance department within the time period specified in the inquiry.

R590-190-11. Standards for Prompt, Fair and Equitable Settlements Applicable to Automobile Insurance.

(1) When the insurance policy provides for the adjustments and settlement of automobile total losses for first party claimants on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must apply:

(a) the insurer may elect to offer a replacement automobile which is a specific comparable automobile available to the insured, with all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file;

(b) the insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost may be determined by using:

(i) the cost of two or more comparable automobiles in the local market area when a comparable automobile is available or was available within the last 90-days to consumers in the local market area;

(ii) the cost of two or more comparable automobiles in areas proximate to the local market area, including the closest major metropolitan areas within or without the state, that are available or were available within the last 90-days to consumers when comparable automobiles are not available in the local market area pursuant to Subsection R590-190-11.(1)(b)(i);

(iii) one of two or more quotations obtained by the insurer from two or more qualified dealers located within the local market area when a comparable automobile is not available in the local market area; or

(iv) any source of determining statistically valid fair market values that meet all of the following criteria:

(A) the source shall give primary consideration to the values of vehicles in the local market area and may consider data on vehicles outside the area;

(B) the source's database shall produce values for at least 85% of the makes and models for the last 15 model years, taking into account the values of all major options for such vehicles; and

(C) the source shall produce fair market values based on current data available from the area surrounding the location where the insured vehicle was principally garaged or a necessary expansion of parameters, such as time and area, to assure statistical validity.

(v) if the insurer is notified within 30-days of the receipt of the claim draft that the first party claimant cannot purchase a comparable vehicle for such market value, the company shall reopen its claim file and the following procedure(s) shall apply:

(A) the company may locate a comparable vehicle by the same manufacturer, same year, similar body style and similar options and price range for the insured for the market value determined by the company at the time of settlement. Any such vehicle must be available through licensed dealers or private sellers;

(B) the company shall either pay the difference between market value before applicable deductions and the cost of the comparable vehicle of like kind and quality which the insured has located, or negotiate and effect the purchase of this vehicle for the insured;

(C) the company may elect to offer a replacement in accordance with the provisions set forth in Subsection R590-190-11.(1)(a); or

(D) the company may conclude the loss settlement as provided for under the appraisal section of the insurance contract in force at the time of the loss. The company is not required to take action under this subsection if its documentation to the first party claimant, at the time of settlement, included written notification of the availability and location of a specified and comparable vehicle of the same manufacturer, same year, similar body style and similar options in as good or better condition as the total loss vehicle which could be purchased for the market value determined by the company before applicable deductions.

(c) when a first party claimant automobile total loss is settled on a basis which deviates from the methods described in

Subsections R590-190-11.(1)(a) and (b), the deviation must be supported by documentation giving particulars of the automobile condition. Any deductions from such cost, including deductions for salvage, must be measurable, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first party claimant.

(2) Total loss settlements with a third party claimant shall be on the basis of the market value or actual cost of a comparable automobile at the time of loss. Settlement procedures shall be in accordance with Subsection R590-190-11.(1)(b) and (c), except (b)(v) may not apply.

(3) Where liability and damages are reasonably clear, insurers are prohibited from recommending that third party claimants make a claim under their own policies solely to avoid paying claims under such insurer's insurance policy or insurance contract.

(4) Insurers are prohibited from requiring a claimant to travel an unreasonable distance to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.

(5) Insurers shall include the first party claimant's deductible, if any, in subrogation demands initiated by the insurer. Subrogation recoveries may be shared on a proportionate basis with the first party claimant when an agreement is reached for less than the full amount of the loss, unless the deductible amount has been otherwise recovered. The recovery shall be applied first to reimburse the first party claimant for the amount or share of the deductible when the full amount or share of the deductible has been recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense. If subrogation is initiated but discontinued, the insured shall be advised.

(6) If an insurer prepares or approves an estimate of the cost of automobile repairs, such estimate shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. If the insurer prepares an estimate, it shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located repair shops.

(7) When the amount claimed is reduced because of betterment or depreciation, all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions. The insurer shall provide a written explanation of these deductions to the claimant upon request.

(8) When the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

(9) Where coverage exists, loss of use payment shall be made to a claimant for the reasonably incurred cost of transportation, or for the reasonably incurred rental cost of a substitute vehicle, including collision damage waiver, unless the claimant has physical damage coverage available, during the period the automobile is necessarily withdrawn from service to obtain parts or effect repair, or, in the event the automobile is a total loss and the claim has been timely made, during the period from the date of loss until a reasonable settlement offer has been made by the insurer. The insurer is prohibited from refusing to pay for loss of use for the period that the insurer is examining the claim or making other determinations as to the payability of the loss, unless such delay reveals that the insurer is not liable to pay the claim. Loss of use payments shall be an amount in addition to the payment for the value of the automobile.

(10) Subject to Subsections R590-190-11.(1) and (2), an insurer shall fairly, equitably and in good faith attempt to compensate a claimant for all losses incurred under collision or comprehensive coverages. Such compensation shall be based at least, but not exclusively, upon the following standards:

(a) an offer of settlement may not be made exclusively on the basis of useful life of the part or vehicle damaged;

(b) an estimate of the amount of compensation for the claimant shall include the actual wear and tear, or lack thereof, of the damaged part or vehicle;

(c) actual cash value, which shall take into account the cost of replacement of the vehicle and/or the part for which compensation is claimed;

(d) an actual estimate of the true useful life remaining in the part or vehicle shall be taken into account in establishing the amount of compensation of a claim; and

(e) actual cash value, which shall include taxes and other fees which shall be incurred by a claimant in replacing the part or vehicle or in compensating the claimant for the loss incurred.

(11) Insurers are prohibited from demanding reimbursement of personal injury protection payments from a first-party insured of payments received by that party from a settlement or judgement against a third party, except as provided in Subsection 31A-22-309(3).

(12) The insurer shall provide reasonable written notice to a claimant prior to termination of payment for automobile storage charges and documentation of the denial as required by Section R590-190-4. Such insurer shall provide reasonable time for the claimant to remove the vehicle from storage prior to the termination of payment.

R590-190-12. Unfair Claims Settlement Practices Applicable to Automobile Insurance.

The commissioner, pursuant to Section 31A-26-303(4), hereby finds the following acts, or the failure to perform required acts, to be misleading, deceptive, unfairly discriminatory or overreaching in the settlement of claims:

(1) using as a basis for cash settlement with a claimant an amount which is less than the amount which the insurer would be charged if repairs were made, unless such amount is agreed to by the claimant or provided for by the insurance policy;

(2) refusing to settle a claim based solely upon the issuance of, or failure to, issue a traffic citation by a police agency;

(3) failing to disclose all coverages for which an application for benefits is required by the insurer;

(4) failing in good faith to disclose all coverages, including loss of use, household services, and any other coverages available to the claimant;

(5) requiring a claimant to use only the insurer's claim service in order to perfect a claim;

(6) failing to furnish the claimant, when requested, with the name and address of the salvage dealer who has provided a salvage quote for the amount deducted by the insurer in a total loss settlement;

(7) refusing to disclose policy limits when requested to do so by a claimant or claimant's attorney;

(8) using a release on the back of a check or draft which requires a claimant to release the company from obligation on further claims in order to process a current claim when the company knows or reasonably should know that there will be future liability on the part of the insurer;

(9) refusing to use a separate release of a claim document rather than one on the back of a check or draft when requested to do so by a claimant;

(10) intentionally offering less money to a first party claimant than the claim is reasonably worth, a practice referred to as "low-balling;"

(11) refusing to offer to pay claims based upon the Doctrine of Comparative Negligence without a reasonable basis for doing so; and

(12) imputing the negligence of a permissive user of a vehicle to the owner of the vehicle in a bailment situation.

R590-190-13. Standards for Prompt, Fair and Equitable Settlements Applicable to Fire and Extended Coverage Type Policies with Replacement Cost Coverage.

(1) Replacement Cost Value:

When the policy provides for the adjustment and settlement of first party losses based on replacement cost, the following shall apply:

(a) when a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making such repair or replacements not otherwise excluded by the policy, shall be included in the loss. The insured is only responsible for the applicable deductible; and

(b) when a loss requires replacement or repair of items and the repaired or replaced items do not match in color, texture, or size, the insurer shall repair or replace items so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The insured is only responsible for the applicable deductible.

(2) Actual Cash Value:

(a) When the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine actual cash value as the replacement cost of property at the time of the loss less depreciation, if any. Upon the insured's request, the insurer shall provide a copy of relevant documentation from the claim file detailing any and all deductions for depreciation.

(b) In cases in which the insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value, as set forth above, is not required. In such cases, the insurer shall provide, upon the insured's request, a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

R590-190-14. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance law
May 26, 1999 **31A-2-201**
31A-26-301
31A-26-303
31A-21-312
31A-2-308

R590. Insurance, Administration.

R590-191. Unfair Life Insurance Claims Settlement Practices Rule.

R590-191-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Further authority to provide for timely payment of claims is provided by Subsection 31A-26-301(1). Matters relating to proof and notice of loss are promulgated pursuant to Section 31A-26-301 and Subsection 31A-21-312(5). Authority to promulgate rules defining unfair claims settlement practices or acts is provided in Subsection 31A-26-303(4). The authority to require a timely response to the Insurance Department is provided by Section 31A-2-204.

R590-191-2. Purpose.

This rule sets forth minimum standards for the investigation and disposition of life insurance claims arising under policies or certificates issued to residents of the State of Utah. These standards include fair and rapid settlement of claims, protecting claimants under insurance policies from unfair claims settlement practices and promoting the professional competence of those engaged in processing claims. The various provisions of this rule are intended to define procedures and practices which constitute unfair claim settlement practices. This rule is regulatory in nature and is not intended to create a private right of action.

R590-191-3. Definitions.

For the purpose of this rule the Commissioner adopts the definitions as set forth in Section 31A-1-301, and the following:

(1) "Beneficiary" means the party entitled to receive the proceeds or benefits occurring under the policy.

(2) "Claim File" means any record either in its original form or as recorded by any process which can accurately and reliably reproduce the original material regarding the claim, its investigation, adjustment and settlement.

(3) "Claim Representative" means any individual, corporation, association, organization, partnership, or other legal entity authorized to represent an insurer with respect to a claim.

(4) "Claimant" means a person making a claim under a policy, including an insured, policyholder, beneficiary, or the claimant's legal representative, including a member of the claimant's immediate family.

(5) "Days" means calendar days.

(6) "Documentation" includes, but is not limited to, all written and electronic communication records, transactions, notes, work papers, claim forms, and explanation of benefits forms relative to the claim.

(7) "Investigation" means all activities of an insurer related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.

(8) "Notice of Loss" means any notification, whether in writing or other means acceptable under the terms of an insurance policy to an insurer or its representative, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim.

(9) "Proof of Loss" means written proofs, such as claim forms, medical authorizations or other reasonable evidence of the claim that is ordinarily required of all claimants submitting claims.

R590-191-4. Minimum Standards for Prompt, Fair and Equitable Claim Handling Processes and Communications.

(1) Notice of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule, and the provisions of Section 31A-21-312.

(2) Notice of loss may be given to the insurer or its representative unless the insurer clearly directs otherwise in accordance with policy provisions or in a separate written notice mailed or delivered to the claimant.

(3) Subject to policy provisions, a requirement of any notice of loss may be waived by an authorized representative of the insurer.

(4) Insurance policies may not require notice of loss to be given in a manner which is inconsistent with the actual practice of the insurer. For example, if the practice of the insurer is to accept notice of loss by telephone, the policy shall reflect that practice, and not require that the claimant furnish "immediate written notice" of loss.

(5) Within 15 days of receipt of notice of loss from a claimant, the insurer shall provide necessary claim forms, instructions, and reasonable assistance so the claimant can properly comply with company requirements for filing a claim.

(6) Proof of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule, and the provisions of Section 31A-21-312. Proof of loss requirements may not be unreasonable and should consider all of the circumstances surrounding a given claim.

(7) Within 15 days of receipt of proof of loss from a claimant, the insurer shall:

(a) provide written acknowledgment of the receipt of the proof of loss;

(b) request any necessary additional information from claimant; and

(c) commence any necessary investigation of the claim, including requesting additional information from other parties having documentation or information relating to the claim; or

(d) provide the claim settlement and a written explanation of benefits to the claimant if no additional information or investigation is necessary.

(8) Within 15 days of receipt of any communications relating to a claim which reasonably suggests that a response is expected, the insurer shall substantively respond to such communication.

(9) Within 30 days of receipt of proof of loss from the claimant, the insurer shall complete the investigation of a claim, unless such investigation cannot reasonably be completed within such time. It shall be the burden of the insurer to establish, by adequate records, that the investigation could not be completed within 30 days of its receipt of proof of loss. If the investigation cannot be completed within 30 days, the insurer shall communicate to the claimant a written explanation as to the reasons for the delay and shall continue to so communicate at least every 30 days until the claim is either

settled or denied.

(10) Within 15 days of completion of the investigation, the insurer shall either:

(a) provide the claim settlement and a written explanation of benefits to the claimant; or

(b) provide, in writing, a denial of the claim and an explanation to the claimant as to the reasons for the denial.

(11) Closing a claim file without settlement is considered a denial and must be so communicated in writing to the claimant and according to the provisions of the policy.

(12) If recalculation/revisitation of a claim becomes necessary subsequent to either denial or settlement, the insurer shall again comply with the initial claim handling process requirements as described in this section.

(13) Upon receipt of an inquiry from the Insurance Department regarding a claim, every licensee shall furnish a substantive response to the Insurance Department within the time period specified in the inquiry.

R590-191-5. Unfair Claims Settlement Practices.

The commissioner, pursuant to 31A-26-303(4), hereby finds the following acts or failure to perform required acts to be misleading, deceptive, unfairly discriminatory, or overreaching in the settlement of claims:

(1) concealing from or failing to fully disclose to a claimant any benefits, limitations, exclusions, coverages, or other relevant provisions of an insurance policy or insurance contract under which a claim is presented;

(2) denying or threatening the denial of a claim for any reason which is not clearly described in the policy;

(3) refusing to settle claims without conducting a reasonable and complete investigation;

(4) refusing to provide a written basis for the denial of a claim upon demand of the claimant;

(5) failing to provide the claimant with a written explanation of the evidence of any investigation or file materials giving rise to the denial of a claim based on misrepresentation or fraud on an insurance application, when such misrepresentation is the basis for the denial;

(6) compensating employees, agents or contractors of any amounts which are based on savings to the insurer as a result of reducing or denying claims;

(7) making a claim settlement to the claimant not accompanied by a statement or explanation of benefits setting forth the coverage under which the settlement is being made and how the settlement amount was calculated;

(8) failing to settle a claim following receipt of proof of loss when liability is reasonably clear in order to influence other claim settlements under other portions of the insurance policy coverage or under other policies of insurance;

(9) advising a claimant not to obtain the services of an attorney or other advocate or suggesting the claimant will receive less money if an attorney is used to pursue or advise on the merits of a claim;

(10) misleading a claimant as to the applicable statute of limitations;

(11) issuing a check or draft in partial settlement of a loss or a claim under a specified coverage when such check or draft contains language which purports to release the insurer from total liability;

(12) failing to pay interest at the legal rate, as provided in Title 15 of the Utah Code upon amounts that are overdue under these rules. A claim shall be considered overdue if not settled within 15 days of completion of the investigation; and

(13) failing to deliver a copy of the insurer's guidelines for prompt investigation of claims to the Insurance Department when requested to do so.

R590-191-6. File and Record Documentation.

Each insurer's claim files for policies or certificates are subject to examination by the commissioner of insurance or by the commissioner's duly appointed designees. To aid in such examination:

(1) The insurer shall maintain accessible and retrievable claim file data for examination. The insurer shall be able to provide the policy number, certificate number if any, duplicate of the policy as issued, date of loss, date notice of loss was received, date proof of loss was received, date any investigation commenced, date the investigation was completed, date of settlement or denial of the claim or date the claim was closed without settlement, documentation as to how the claim was settled and how any payments were calculated, and any other documentation relied upon for claim settlement by the insurer. This data shall be available for all open and closed files for at least the most recent three year period, or, for a Utah domiciled insurer, since the date of the previous examination by the department, whichever is longer.

(2) Detailed documentation shall be contained in each claim file in order to permit reconstruction of the insurer's activities relative to each claim.

(3) Each document within the claim file shall be noted as to date received, date processed or date mailed.

(4) The claim file records must be maintained either in hard copy files, or some other format that has the capability of duplication to hard copy.

R590-191-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

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31A-21-312
31A-26-301
31A-26-303

R614. Labor Commission, Occupational Safety and Health.
R614-4. Hazardous Materials.
R614-4-1. Flammable Solids.

A. No source of ignition shall be permitted in locations where a hazard of dust explosion might exist until all dust producing operations have been stopped, airborne dust allowed to settle, and accumulated dusts and closed dust containers removed to an extent which will remove the hazard of dust explosion. A well administered flame permit system shall be established requiring inspection and approval by a responsible person prior to allowing spark or flame producing devices into such areas.

B. Adequate separators shall be provided to prevent iron, rocks or other sparking materials from entering, grinding, shredding, pulverizing or mixing where a hazard of dust explosion exists.

C. Machines and equipment in which the hazard of a dust explosion exists shall be so located, constructed, enclosed or vented that the force of an explosion in the machine or equipment may be dissipated without endangering employees in the regular performance of their duties.

D. Dust collectors for combustible dusts which present an explosion hazard shall be located outdoors or in detached rooms of fire resistant construction and shall be provided with adequate explosion vents, except that liquid spray type collectors may be located within buildings. Care must be exercised in the selection of liquid dust collectors.

E. Ignition by static sparks is an extreme hazard in the processing of metal powders. In addition to electrically grounding and crossbonding of all equipment, floor surfaces shall be electrically conductive and employees shall be equipped with conductive footwear. Floors shall not exceed 250,000 ohms resistance to ground. Maintaining a relative humidity between 55 and 60 percent aids in eliminating static buildup; however, relative humidity level is not a positive means of eliminating static electricity hazards. A high relative humidity shall not be used in rooms used to store, handle or process materials which are affected by moisture such as metal dusts.

F. Extreme care shall be exercised in the processing and storage of metal powders such as aluminum and magnesium to prevent water contact with the materials. Moisture reacts with powdered metals and generates hydrogen gas which is highly explosive. Materials shall be stored in tightly sealed containers and shall be brought to ambient temperatures prior to opening to prevent condensation inside the container.

G. Provisions not covered by this section shall be carried out according to the National Fire Code, Volume 3, 1992, Combustible Solids and dust Explosions, or the latest addenda or revision of that code. National fire prevention codes are also distributed as ANSI Z-12.

R614-4-2. Definitions.

A. General Definitions

1. "Act" means the Utah Occupational Safety and Health Act of 1973.

2. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

3. "Administrator" means the director of the Division of Occupational Safety and Health.

4. "Commission" means the Labor Commission.

5. "Employee" includes any person suffered or permitted to work by an employer.

6. "Employer" means:

a. The state;

b. Each county, city, town, and school district in the state; and

c. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

B. Explosives Definitions

1. "American Table of Distances" also known as Quantity Distance Tables - means American Table of Distances for Storage of Explosives as revised and approved by the Institute of the Makers of Explosives, November 5, 1971.

2. "Ammonium nitrate" - A chemical compound represented by the formula NH_4NO_3.

3. "Ammunition" - All components and any explosives case or contrivance prepared to form a charge, complete round, or cartridge for cannon, howitzer, mortar, or small arms, or for any other weapon, torpedo warhead, mine, depth charge, demolition charge, fuse, detonator, projectile, grenade, guided missile, rocket, pyrotechnics; and all chemical agents, fillers and associated hazardous materials.

4. "Ammunition and explosive materials operating area" - A restricted area specifically designed and set aside from other positions of an installation for the manufacturing, processing, storing and otherwise handling of ammunition or explosive materials.

5. "Approved" or "approval" - Means sanctioned, endorsed, accredited, certified, or accepted as satisfactory by a duly constituted and nationally recognized authority or agency.

6. "Authorized person" - Means a person approved or assigned by the employer to perform a specific type of duties or to be at a specific location or locations at the job site.

7. "Barricaded" - An intervening approved barrier, natural or artificial, of such type, size and construction as to limit the effect of an explosion on nearby buildings or exposures.

8. "Blasting agent" - Any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive. Provided, that the finished product as mixed for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined.

9. "Blast area" - The area of a blast, including the area immediately adjacent, within the influence of flying rock missiles.

10. "Blaster" - The person or persons authorized to use explosives for blasting purposes and meeting the qualifications contained in Part 109.22.2.

11. "Blasting cap" - A metallic tube closed at one end, containing a charge of one or more detonating compounds, and designed for and capable of detonation from the sparks or flame from a safety fuse inserted and crimped into the open end.

12. "Bulk mix delivery equipment" - Equipment (Usually a motor vehicle with or without mechanical delivery device) that transports materials in bulk form for mixing, or loading directly into blast holes, or both.

13. "Bus wire" - An expendable wire, used in parallel or series in parallel circuits, to which are connected the leg wires of electric blasting caps.

14. "Compatibility" - The ability of explosives, explosive materials, ingredients or compositions to remain unaffected when in contact with other materials or containers.

15. "Connecting wire" - An insulated expendable wire used between electric blasting caps and the leading wires or between the bus wire and the leading wires.

16. "Deflagration" - A very rapid combustion, sometimes accompanied by flame, sparks, or spattering of burning particles. Although classed as an explosion a deflagration generally implies the burning of a substance with self-contained oxygen so that the reaction zone advances into the unreacted material at less than the velocity of sound.

17. "Delay mechanism" - A mechanism designed to initiate detonation at a predetermined period of time after energy is applied to the ignition system.

18. "Detonate or detonation" - To be changed by exothermic chemical reaction usually from a solid or liquid to a gas with such rapidity that the rate of advance of the reaction zone into the unreacted material exceeds the velocity of sound in the unreacted material; that is, the advancing reaction zone is preceded by a shock wave.

19. "Detonating cord" - A flexible cord containing a center core of high explosive and used to initiate other explosives.

20. "Detonator" - Any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, and the non-electric instantaneous and delay blasting caps.

21. "Electric blasting cap" - A blasting cap designed for and capable of detonation by means of an electric current.

22. "Emulsion explosive" - An explosive material containing substantial amounts of oxidizers dissolved in water droplets surrounded by an immiscible fuel: May be classified as Explosives Class A, Explosives Class B, or blasting agents.

23. "Explosive" - The term explosive includes any chemical compound or mechanical mixture which, when subjected to heat, impact, friction, detonation or other suitable initiation, undergoes a very rapid chemical change with the evolution of large volumes of highly heated gases which exert pressures in the surrounding medium. The term applies to materials that either detonate or deflagrate.

24. "Class A Explosives" - Explosives which possess detonating or otherwise maximum hazard; such as, but not limited to, dynamite, nitroglycerin, lead azide, blasting caps and detonating primers.

25. "Class B Explosives" - Explosives which possess flammable hazard; such as, but not limited to, propellant explosives, photographic flash powders, and some special fireworks.

26. "Class C Explosives" - Explosives which contain Class A or Class B explosives, or both, as components but in restricted quantities.

27. "Explosive Materials" - These include explosives, blasting agents and detonators. This term includes, but is not limited to, dynamite and other high explosives, slurrys, emulsions, water gels, blasting agents, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, igniters, pyrotechnics, pyrotechnic compositions, fireworks (special and common), ammunition, propellent and propellent compositions.

28. "Fireworks" - A common synonym for Pyrotechnics (special and common).

Special Fireworks - are Class B explosives as defined by the U.S. Department of Transportation.

Common Fireworks - are Class C explosives as defined by the U.S. Department of Transportation.

29. "Fuse Lighters" - Special devices for the purpose of igniting safety fuse.

30. "Hazard" - A source of danger; exposure or liability to injury or harm.

31. "Inert" - Containing no explosives, active chemicals or pyrotechnics.

32. "Leading Wire" - An insulated wire used between the electric power source and the electric blasting cap circuit.

33. "Magazine" - Any building or structure or container other than an explosives manufacturing building approved for the storage of explosive materials.

34. "Mass Detonation" - Mass Explode - The virtually instantaneous explosion of a mass of explosives when only a small portion is subjected to fire, severe concussion or impact, the impulse of an initiating agent, or to the effect of a considerable discharge of energy from without.

35. "Misfire" - An explosive charge which failed to detonate.

36. "Motor Vehicle" - Any self-propelled vehicle.

37. "Oxidizer" or "Oxidizing Material" - A substance, such as a nitrate, that readily yields oxygen or other oxidizing substance to stimulate the combustion of organic matter or other fuel.

38. "Plant" - The land, buildings, and machinery used in carrying on a trade or business.

39. "Primer" - A cartridge or container of explosives into which a detonator is inserted or attached.

40. "Propellant" - An explosive material whose rate of combustion is low enough, and its other properties suitable, to permit its use as a propelling charge. A propellant may be either solid or liquid. A single base propellant composition consists primarily of matrix of nitrocellulose. A double base propellant composition contains nitrocellulose and nitroglycerine. A composite propellant composition contains an oxidizing agent in a matrix of binder.

41. "Pyrotechnics or Pyrotechnic Compositions" - A mixture of materials consisting essentially of an oxidizing agent (oxident) and a reducing agent (fuel), that is capable of producing an explosive self sustaining reaction when heated to its ignition temperature; such as, but not limited to, devices used to produce sound, colored lights or smokes for signaling, a bright light for illumination, and time delays.

42. "Qualified" - Means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work or the project.

43. "Restricted Area" - Any area, from which personnel, aircraft, or vehicles, other than required for operations, are

excluded for reasons of safety and security.

44. "Safety Fuse" - A flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to the point of use, usually a detonator.

45. "Semiconductive Hose" - A hose with an electrical resistance high enough to limit flow of stray electric currents to safe levels, yet not so high as to prevent drainage of static electric charges to ground. Hose of not more than 2 megohms resistance over this entire length and of not less than 5,000 ohms per foot meets the requirement.

46. "Sensitivity" - A physical characteristic of an explosive material, classifying its ability to react to externally applied energy or changes in environment.

47. "Shield" - A safeguard securely braced and of a strength proven sufficient to withstand the effects of the maximum credible incident involving the item being handled.

48. "Slurry" - An explosive material containing substantial portions of a liquid, oxidizers, and fuel, plus a thickener. Slurrys may be classified as Explosives Class A, Explosives Class B, or Blasting Agents.

49. "Small Arms Ammunition" - Any shotgun, rifle, pistol, or revolver cartridge, and cartridges for propellant-actuated power devices and industrial guns.

50. "Small Arms Ammunition Primers" - Are small percussion-sensitive explosive charges, encased in a cup, used to ignite propellant powder.

51. "Smokeless Propellants" - Solid propellants, commonly called smokeless powders in the trade, used in small arms ammunition, cannon, rockets, propellant-actuated power devices, etc.

52. "Stability" - The ability of an explosive material to retain chemical and physical properties when exposed to specific environmental conditions over a particular period of time.

53. "Stemming" - A suitable inert or incombustible device used to confine or separate explosives in a drill hole, or to cover explosives in mudcapping.

54. "Substantial Dividing Wall" - A structure designed to resist the effects of accidental explosions or to prevent propagation of detonation by blast or fragments.

55. "Water Gels" - An explosive material containing substantial portions of water, oxidizers, and fuel, plus a cross-linking agent. Water gels may be classified as Explosives Class A, Explosives Class B, or Blasting Agents.

R614-4-3. Explosive Materials, Purpose Scope and Responsibility.

A. Purpose: To set forth safe practices and standards for work performed in the manufacture and use of explosives, explosive material, ammunition, pyrotechnics, and related materials.

B. Scope and Application: These standards shall apply to the manufacture, testing, research, storage and use of explosives, explosive material, ammunition, pyrotechnics, fireworks (special and common), propellants, propellent compositions and related materials within the boundaries of the State of Utah. These standards shall apply to employers who employ one or more employees. These standards shall not apply to the laboratories of schools and colleges when confined to educational purposes or to explosive materials in the forms prescribed by the official United States Pharmacopeia or the National Formulary and used in medicines and medicinal agents.

C. Responsibility: Prior to starting new operations, it shall be the responsibility of every manufacturer within the scope of this standard to notify in writing the Administrator of the Utah Occupational Safety and Health Division of the Labor Commission.

R614-4-4. Explosive Materials, General Requirements.

A. Any new or existing operation shall have written operating rules and practices developed and approved by management as being in accordance with this part. The operating rules and practices shall include but are not limited to such items as:

1. Safety requirements,
2. Personal protective clothing and equipment,
3. Personnel and explosive material limits,
4. Equipment designation, inspection and maintenance,
5. Location and sequence of operations,
6. Housekeeping procedures,
7. Mixing procedures,
8. Destruction or disposal of explosive material,
9. Test on product and ingredients for compatibility and sensitivity before production.

B. No deviations from the operating rules and practices shall be permitted without written management approval.

C. An emergency action plan shall be in writing and shall cover those designated actions employers and employees must take to ensure employee safety in emergencies (i.e., fire, explosion, and adverse weather conditions). The following elements, at a minimum, shall be included in the plan:

1. Emergency evacuation procedures and emergency escape route assignments;
2. Procedures to be followed by employees who remain to operate critical operations or fight fires before they evacuate;
3. Procedures to account for all employees after emergency evacuation has been completed;
4. Rescue and medical duties for all employees after emergency evacuation has been completed;
5. The preferred means of reporting explosions, fires, and other emergencies;
6. Where fire departments or other agencies are depended on for emergency assistance, prior notice shall be given of potential hazards, and
7. Names or regular job titles of persons or departments to be contacted for further information or explanation of duties under the plan.

D. Employees shall be trained regarding pertinent requirements of R614-4-4.A.,B., and C.

E. Applicable portions of the operating rules and practices shall be convenient to all employees involved in the operation. Supervisory personnel shall maintain copies of the overall operating procedure and be responsible for the enforcement of its provisions.

F. Buildings on explosives materials plant sites shall be separated by minimum distances conforming to the requirements of the "Intra Plant Distance Table for Use only Within Confines of Explosives Manufacturing Plants" which Table is contained

in "The American Table of Distances", 1991 edition as published by the Institute of Makers of Explosives, and incorporated herein by this reference in this rule; except those buildings or sites that meet the specific requirements of other organizations such as the Department of Defense.

G. Mixing facilities for blasting agents shall be separated from storage facilities and each other in accordance with the "Table of Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents" which Table is contained in "The American Table of Distances", 1991 edition as published by the Institute of Makers of Explosives, and incorporated herein by this reference in this rule.

H. All explosive material operations shall be scrutinized to devise methods for reducing the number of employees exposed, or the quantity of material subject to a single incident. Where necessary to protect employees, appropriate shields, substantial dividing walls or barricades shall be provided to shield employees from hazards; where this is not practicable, work by remote control shall be utilized.

I. An explosive material shall not be put in production unless safe working limits have been determined and posted. Operations shall be shut down whenever limits are exceeded.

J. Appropriate visual inspections shall be made of mixing, conveying, packaging, or other equipment to establish that such equipment is in safe operating condition. All problems relating to the safety of employees shall be corrected.

K. Floors and work surfaces in hazardous locations shall be constructed to facilitate cleaning and shall have no cracks or crevices in which explosive material may lodge.

L. Buildings shall be cleaned to prevent accumulations of explosive materials. Combustible or explosive waste shall be removed from buildings as often as necessary.

M. Explosive material spills shall be cleaned up immediately. An appropriate cleaning and collection system for hazardous residues shall be provided and used.

N. Waste explosives and materials contaminated with explosives shall be kept separate from all other waste.

O. Care shall be exercised so that foreign objects or materials do not get into explosive materials.

P. Appropriate tools and equipment shall be used in explosive materials operations.

Q. Only properly identified and inspected explosives materials shall be mixed.

R. Finished explosive materials shall be identified.

S. No person shall store, handle or transport explosives or materials when such storage handling, and transportation of explosives or material constitutes an undue hazard to life.

T. Explosive material areas shall be placarded at each entrance. Personnel entering these areas shall present the proper credentials and turn over all articles prohibited by management before entering the area. Plant boundaries shall be fenced unless topography and/or other physical considerations accomplish this; the boundaries of restricted areas shall be posted at intervals to warn against trespassing.

U. Parking of vehicles in restricted areas near explosives facilities shall be controlled to minimize fire and explosion hazards and prevent congestion in event of emergency. Vehicles shall be parked in designated areas only.

R614-4-5. Building Construction.

A. Buildings used for explosive materials shall be of a safe design for the materials being handled and shall be maintained in that condition.

B. Heating equipment shall be installed in a manner to prevent ignition, deflagration or explosion of the materials being handled.

C. Buildings where dust, fumes, or vapors are possible shall be adequately ventilated, at the source of the hazard. Exhaust fans through which combustible dust or flammable vapors pass shall be equipped with nonsparking blades (or casing lined with nonsparking material) and approved motors. The entire ventilating system shall be bonded electrically and grounded properly.

D. Cleaning and collection systems shall be installed and maintained in a manner that takes into consideration the materials being handled.

R614-4-6. Electrical.

A. All electrical switches, controls, motors, wiring and equipment located in explosive material plants shall conform to the requirements of 29 CFR 1910 Chapter S (Electrical).

B. In any operations where a continuous supply of power is required, the lack of which may cause a hazard to employees an alternate source of power shall be provided.

C. The primary electrical supply to an explosives area shall be so arranged that it can be cut off by switches located at one or more central points away from the area.

D. When static electricity is a hazard nonsparking conductive floors and work surfaces or other approved methods to control and disperse static electricity is required, continuity of grounding on all mechanical devices shall be assured.

E. Only artificial lighting devices approved for the location shall be permitted in explosive areas.

R614-4-7. Fire, and/or Explosion Prevention.

A. No person shall take matches, lighters or other fire, flame, heat or spark producing devices into any restricted area containing ammunition, explosive material or readily ignitable flammable materials except by written authorization. When such authority has been received, a carrying device, too large to fit into the pockets, shall be used for matches, lighters, and similar materials. The carrying of and the use of "strike anywhere" matches are prohibited.

B. An employee whose clothing is contaminated with explosive or flammable material to the degree that it may endanger the safety of the employee shall not smoke, go near fire, open flame or spark producing devices.

C. Smoking is prohibited except in designated smoking areas.

D. The land within 25 feet of any explosive material manufacturing or mixing building shall be kept clear of rubbish, brush, dried grass, leaves, dead trees, all live trees less than 10 feet high, and other combustible materials.

R614-4-8. Protective Clothing and Equipment.

A. Management shall assure that appropriate protective clothing, eye and face protection equipment, and respiratory protection equipment, where necessary to protect the safety and

health of employees, shall be used and employees trained in their use.

B. When required by exposure, a shower bath shall be taken at the end of each shift.

C. Shoes shall be cleaned before entering or leaving explosive materials buildings.

D. Contaminated work clothing and shoes shall not be worn off the plant site.

E. Employees who work upon conductive flooring, conductive mats, or conductive runners where explosive materials or flammable vapors are present must wear non-sparking conductive footwear and the conductivity shall be assured. Personnel from other departments or visitors who enter these areas shall also comply (See ANSI/UL 467-1972 Grounds and Grounding and ANSI Z41.3-1976 Conductive Safety-Toe Footwear).

F. Under no circumstances will personnel working on electrical equipment or facilities wear conductive-soled safety shoes or other conductive footwear.

G. Operational safety showers and eye wash facilities, clearly identified, shall be provided in case of contact with corrosives. All personnel employed in corrosive areas shall know the location of safety showers and eye wash facilities and be trained in their use.

R614-4-9. Intra Plant Transportation.

A. When moving explosive materials, the material shall be in acceptable containers, and covered when necessary.

B. Only authorized employees shall operate motorized equipment.

C. Vehicles used for the transportation of explosives shall be of a design to safely handle the material being moved.

R614-4-10. Explosive Materials Ingredient Preparation Operations.

A. When explosive material ingredients are susceptible to ignition by static electricity, shock, friction, spontaneous combustion, or incompatibility, adequate precaution shall be taken.

B. Blending or mixing equipment shall be of a construction suitable for the hazards of the materials being handled or processed.

C. Drive equipment for explosive material blenders, mixers, presses (hydraulic), screeners (mechanical), and other equipment shall be so designed that drive motors and pumps are located outside of the operating room in a dust-free and vapor-free atmosphere.

D. When materials are dried, the safe temperature for drying shall be established and then not exceeded at any point in the dryer apparatus or drying operation.

E. Containers used for handling oxidizers such as sodium nitrate and ammonium nitrate shall be examined for foreign material before use.

F. When necessary, screening of raw materials shall be supplemented by a permanent type magnetic separator.

G. Sulfur shall be handled so as to avoid friction and static electricity ignition.

H. Nitrocotton shall not be subjected to rough handling.

I. Extreme cleanliness shall be maintained in all nitrocotton operations. Any material that has escaped from its container shall be wet down immediately with water for proper disposal. Waste or dirty nitrocotton shall be properly disposed of.

J. Hoops and nuts on nitrocotton barrels or containers shall be wet with water or oil prior to removing them and prior to placing them back on the containers.

K. Nitrocotton shall be stored in closed containers.

L. Frozen nitrocotton shall be thawed before removing from drums.

M. Nitrocotton shall be screened before use; screens shall be of non-sparking material and grounded.

N. Nitrocotton containing less than 25% moisture shall not be screened.

O. Partially filled drums of nitrocotton or similar materials shall be closed to prevent evaporation of moisture.

P. Empty drums shall be thoroughly cleaned of nitrocotton, inside and out.

R614-4-11. Maintenance and Repairs.

A. Repairs to explosive material, machinery or buildings shall not be made without prescribed cleanup, decontamination and approval by authorized supervisory personnel.

B. All new or newly repaired process equipment used in explosive material operations shall be examined and test operated before being placed into routine operation.

C. All tools used for lubrication, repairs or adjustment of explosive material equipment shall be removed from the building or returned to their proper location before routine operations are started or resumed.

D. Refueling shall comply with 29 CFR 1910.106.

R614-4-12. Storage of Explosive Material.

A. Explosives and related materials shall be stored in approved facilities required under the applicable provisions of 27 CFR 55 Commerce in Explosives, and/or the applicable provisions of the U.S. Department of Defense Regulations.

B. All explosive materials shall be stored in an approved magazine or area unless they are in process, being used or being loaded or unloaded into or from transportation vehicles or while in the course of transportation.

R614-4-13. Transportation of Explosive Material.

Transportation of explosives shall meet all the provisions of the U.S. Department of Transportation and/or Utah Department of Transportation.

R614-4-14. Blasting Agents.

A. General. Unless otherwise set forth in this rule, blasting agents, excluding slurry, water gels, and emulsions, shall be manufactured, transported, stored, and used in accordance with these regulations. Slurry, water gels, and emulsion are covered in R614-4.

B. Fixed Location Mixing.

1. Buildings or other facilities used for the mixing of blasting agents shall conform to the following minimum requirements.

2. Buildings shall be of noncombustible construction or sheet metal on wood studs.

3. Floors shall be of concrete or other non-absorbent material. They shall be constructed without enclosed floor drains and piping into which molten materials could flow and be confined in case of fire.

4. All fuel oil storage facilities, including heating oil and process oil, shall be separated from the mixing plant, and located in such a manner that in case of tank rupture the oil will drain away from the mixing plant, or diked in a manner to contain the tank contents in case of rupture.

5. The building shall be well ventilated (See R614-4-5.C.)

6. Only heating units which do not depend on combustion processes, properly designed and located, may be used in the plant. Electric heaters with exposed resistance elements are prohibited. All direct sources of heat shall be provided from units located outside the mixing building.

7. All internal-combustion engines, such as diesel or gasoline-powered generators, shall be located outside the mixing building, or shall be properly ventilated and isolated by a permanent firewall. The exhaust systems on all such engines shall be provided with spark arrester mufflers, or be remotely located, so that any spark emission will not be a hazard to any materials in or adjacent to the building.

C. Equipment used for mixing blasting agents shall conform to the requirements of this subdivision.

1. The design of the processing equipment, including mixing and conveying equipment, shall be compatible with the relative sensitivity of the materials being handled. Equipment shall be designed to minimize the possibility of frictional heating, compaction, overloading, accumulation of dust, and confinement. All bearings and drive assemblies shall be mounted outside the mixer. All surfaces shall be accessible for cleaning. All hollow shafts shall be constructed to permit venting with an opening of at least 1/2 inch diameter.

2. Both equipment and handling procedures shall be designed to prevent the introduction of foreign objects or materials.

3. Mixers, pumps, valves and related equipment shall be designed to permit regular and periodic flushing, cleaning, dismantling and inspection.

4. All electrical equipment, including wiring, switches, controls, motors and lights which is located inside the mixing room shall conform to the requirements of 29 CFR 1910 Subpart S for Class II, Division 2 locations.

5. Mixing and packaging equipment shall be constructed of materials compatible with the materials being handled.

6. Suitable means shall be provided to prevent the flow of fuel to the mixer in case of fire. In gravity flow systems, an automatic spring-loaded shut-off valve with fusible link shall be installed.

D. The provisions of this subdivision shall be considered when determining blasting agent compositions.

1. The sensitivity of the blasting agent shall be determined by means of a No. 8 test blasting cap at regular intervals and after every change in formulations.

2. Oxidizers of small particle size, such as crushed ammonium nitrate prills or fines, may be more sensitive than coarser products and shall, therefore, be handled with greater care.

3. No hydrocarbon liquid fuel with flashpoint lower than that of no. 2 diesel fuel oil 125 degrees F. minimum shall be used.

4. Crude oil and crankcase oil shall not be used.

5. Metal powders such as aluminum shall be kept dry and shall be stored on containers or bins which are moisture-resistant or weather-tight. Solid fuels shall be used in such manner as to minimize dust explosion hazards.

6. Peroxides and chlorates shall not be used.

E. Mixing Operations

1. Safety precautions at mixing plants shall include the requirements of this subdivision.

2. The mixing, loading, and ingredient transfer areas where residues or spilled materials may accumulate shall be cleaned periodically. A cleaning and collection system for dangerous residues shall be provided.

3. A daily visual inspection shall be made of the mixing, conveying and electrical equipment to determine that such equipment is in safe operating condition. All discrepancies shall be corrected prior to operation. A program of systematic maintenance shall be conducted on a regular schedule.

4. The entire mixing and packaging plant shall be cleaned regularly and thoroughly to prevent excessive accumulation of dust, grease, and product ingredients.

5. Empty ingredient bags shall be disposed of daily in a safe manner.

6. No welding shall be permitted nor open flames allowed in or around the mixing or storage area of the plant, unless the equipment and area have been completely washed down and all fuels and oxidizing material removed.

7. Before welding or making repairs to hollow shafts, all fuels and oxidizing material shall be removed from the outside and inside of the shaft by a thorough washing, and the shaft shall be vented.

8. Other explosive material shall not be stored inside of or within 50 feet of any building or facility used for the mixing of blasting agents.

F. Bulk delivery and mixing vehicles.

1. The provisions of this subparagraph shall apply to off-highway private operations as well as to all public highway movements.

2. A bulk vehicle body for delivering and mixing blasting agents shall conform with the requirements of this subdivision.

a. The body shall be constructed of noncombustible materials.

b. Vehicles used to transport bulk premixing blasting agents on public highways shall have closed bodies.

c. All moving parts of the mixing system shall be designed as to prevent a heat buildup. Shafts or axles which contact the product shall have outboard bearings with 1-inch minimum clearance between the bearings and the outside of the product container. Particular attention shall be given to the clearances on all moving parts.

d. A bulk delivery vehicle shall be strong enough to carry the load without difficulty and be in safe mechanical condition.

e. When electric power is supplied by a self-contained motor generator located on the vehicle, the motor generator shall be separated from the blasting agent discharge.

f. A positive action parking brake which will set the wheel brakes on at least one axle shall be provided on vehicles when

equipped with air brakes and shall be used during bulk delivery operations. Wheel chocks shall supplement parking brakes whenever conditions may require.

3. Operation of bulk delivery vehicles shall conform to the requirements of this subdivision. These include the placarding requirements as specified by the Department of Transportation.

a. The operator shall be trained in the safe operation of the vehicle together with its mixing, conveying, and related equipment. The employer shall assure that the operator is familiar with the commodities being delivered and the general procedure for handling emergency situations.

b. The operator shall be familiar with applicable local, state, and federal laws and regulations governing the transportation of explosive materials to the location and on the site.

c. No person shall smoke, carry matches or any flame producing device, or carry any fire-arms while in or about bulk vehicles effecting the mixing, transfer, or down-the-hole loading of blasting agents at or near the blasting site.

d. Caution shall be exercised in the movement of the vehicle in the blasting area to avoid driving the vehicle over or dragging hoses over firing lines, cap wires, or explosive materials. The employer shall assure that the driver, in moving the vehicle, has assistance of a second person to guide his movements.

e. No in transit mixing of materials shall be performed.

4. Pneumatic loading from bulk delivery vehicles into blast holes primed with electric blasting caps or other static-sensitive systems shall conform to the requirements of the subdivision.

a. A positive grounding device shall be used to prevent the accumulation of static electricity.

b. A discharge hose shall be used that has a resistance range that will prevent conducting stray currents, but that is conductive enough to bleed off static buildup.

c. A qualified person shall evaluate all systems to determine if they will adequately dissipate static under potential field conditions.

5. Repairs to bulk delivery vehicles shall conform to the requirements of this Part.

a. No welding or open flames shall be used on or around any part of the delivery equipment unless it has been completely washed down and all oxidizer material removed.

b. Before welding or making repairs to hollow shafts, the shaft shall be thoroughly cleaned inside and out and vented with a minimum one-half inch diameter opening.

G. Bulk Storage Bins

1. The bin, including supports, shall be constructed of compatible materials, waterproof, and adequately supported and braced to withstand the combination of all loads including impact forces arising from product movement within the bin and accidental vehicle contact with the support legs.

2. The bin discharge gate shall be designed to provide a closure tight enough to prevent leakage of the stored product. Provision shall also be made so that the gate can be locked.

3. Bin loading manways or access hatches shall be hinged or otherwise attached to the bin and designed to permit locking.

4. Any electrically driven conveyors for loading or unloading bins shall conform to the requirements of 29 CFR 1910 Subpart S. They shall be designed to minimize damage from corrosion.

5. Bins containing blasting agent shall be located, with respect to inhabited buildings, passenger railroads, and public highways, in accordance with American Table of Distances and separation from other blasting agent storage and explosives storage shall be in conformity with NFPA 492.

6. Bins containing ammonium nitrate shall be separate from blasting agent storage and explosives storage in conformity with NFPA 492.

H. Storage of Blasting Agents shall conform with the requirements of R614-4-12.

I. Transportation of Blasting Agents shall conform with the requirements of R614-4-13.

R614-4-15. Slurry, Water Gel and Emulsions.

A. General Provisions. Unless otherwise set forth in this rule, slurry, water gels, and emulsions shall be manufactured, transported, stored and used in the same manner as explosives or blasting agents in accordance with these regulations.

B. Types and classification.

1. Slurry, water gels, and emulsions which are cap-sensitive as defined in R614-4-2.B. under Blasting Agent shall be classified as an explosive and manufactured, transported, stored, and used as specified for "explosives" in this rule.

2. Slurry, water gels, and emulsions which are not cap-sensitive as defined in R614-4-2.B.of this section under Blasting Agent shall be classified as blasting agents and manufactured, transported, stored, and used as specified for "blasting agents" in this rule.

3. When tests on specific formulations of slurry, water gels, and emulsions result in Department of Transportation classification as a Class B explosive, bullet-resistant magazines are not required. See R614-4-12.

C. Fixed Location Mixing

1. Buildings or other facilities used for the mixing of slurrys, water gels and emulsions shall conform to the following minimum requirements.

2. Buildings shall be of noncombustible construction or sheet metal on wood studs.

3. Floors shall be of concrete or other non-absorbent material. They shall be constructed without enclosed floor drains and piping into which molten materials could flow and be confined in case of fire.

4. All fuel oil storage facilities, including heating oil and process oil, shall be separated from the mixing plant, and located in such a manner that in case of tank rupture the oil will drain away from the mixing plant, or diked in a manner to contain the tank contents in case of rupture.

5. The building shall be well ventilated.

6. Only heating units which do not depend on combustion processes, properly designed and located, may be used in the plant. Electric heaters with exposed resistance elements are prohibited. All direct sources of heat shall be provided from units located outside the mixing building.

7. Internal-combustion engines, such as diesel or gasoline-powered generators, when the hazard exists, shall be located outside the mixing building or shall be properly ventilated and isolated by a permanent firewall. The exhaust systems on all such engines shall be provided with spark-arrester mufflers, or

be remotely located, so that any spark emission will not be a hazard to any materials in or adjacent to the building.

D. Ingredients of Slurry, Water Gels and Emulsions.

1. Ingredients of slurrys, water gels, and emulsions shall conform to the requirements of this subdivision.

2. Ingredients in themselves classified as Class A or Class B Explosives shall be stored in conformity with R614-4-15 of this rule.

3. Nitrate-water solutions may be stored in tank cars, tank trucks, or fixed tanks without quantity or distance limitations. Spills or leaks which may contaminate combustible materials shall be cleaned up immediately.

4. Metal powders such as aluminum shall be kept dry and shall be stored in containers or bins which are moisture-resistant or weathertight. Solid fuels shall be used in such manner as to minimize dust explosion hazards.

5. Ingredients shall not be stored with incompatible materials.

6. Peroxides and chlorates shall not be used.

E. Mixing Equipment

1. Mixing equipment shall comply with the requirements of this subdivision.

2. The design of the processing equipment, including mixing and conveying equipment, shall be compatible with the relative sensitivity of the materials being handled. Equipment shall be designed to minimize the possibility of frictional heating, compaction, overloading, and confinement.

3. Both equipment and handling procedures shall be designed to prevent the introduction of foreign objects or materials.

4. Mixers, pumps, valves and related equipment shall be designed to permit regular and periodic flushing, cleaning, dismantling, and inspection.

5. All electrical equipment including wiring, switches, controls, motors and lights, shall conform to the requirements of 29 CFR 1910 Subpart S.

F. Bulk delivery and mixing vehicles

1. The provisions of this subparagraph shall apply to off-highway private operations as well as to all public highway movements.

2. The design of vehicles shall comply with the requirements of this subdivision.

a. Vehicles used over public highways for the bulk transportation of water gels or of ingredients classified as dangerous commodities, shall meet the requirements of the Department of Transportation and shall meet the requirements of this Part.

b. When electric power is supplied by a self-contained motor generator located on the vehicle the generator shall be at a point separated from where the water gel is discharged.

c. The design of processing equipment and general requirements shall conform to the requirements of this Chapter.

d. A bulk delivery vehicle shall be strong enough to carry the load without difficulty and be in good mechanical condition.

e. A positive action parking brake which will set the wheel brakes on at least one axle shall be provided on vehicles when equipped with air brakes and shall be used during bulk delivery operations. Wheel chocks shall supplement parking brakes whenever conditions may require.

G. Operation of bulk delivery and mixing vehicles shall comply with the requirements of this subdivision.

1. The operator shall be trained in the safe operation of the vehicle together with its mixing, conveying, and related equipment. He shall be familiar with the commodities being delivered and the general procedure for handling emergency situations.

2. The operator shall be familiar with applicable local, state and federal laws and regulations governing the transportation of explosive materials to the location and on the site.

3. No person shall be allowed to smoke, carry matches or any flame-producing devices, or carry any firearms while in or about bulk vehicles effecting the mixing, transfer, or down-the-hole loading of slurry, water gels, and emulsions, at or near the blasting site.

4. Caution shall be exercised in the movement of the vehicle in the blasting area to avoid driving the vehicle over or dragging hoses over firing lines, cap wires, or explosive materials. The employer shall assure the driver the assistance of a second person to guide the driver's movements.

5. No in transit mixing of materials shall be performed.

6. The location chosen for slurry, water gel, and emulsions or ingredient transfer from a support vehicle into the borehole loading vehicle shall be away from the blasting hole site when the boreholes are loaded or in the process of being loaded.

R614-4-16. Small Arms Ammunition, Small Arms Primers, and Small Arms Propellants.

A. Scope - This rule does not apply to in-process storage and intraplant transportation during manufacture of small arms ammunition, small arms primers and smokeless propellants.

B. Small Arms Ammunition

1. No quantity limitations are imposed on the storage of small arms ammunition in warehouses, retail stores, and other general occupancy facilities except those imposed by limitations of storage facilities.

2. Small arms ammunition shall be separated from flammable liquids, flammable solids as classified in 49 CFR 172, and from oxidizing materials, by a fire-resistive wall of 1 hour rating or by a distance of 25 feet.

3. Small arms ammunition shall not be stored together with Class A or Class B explosives unless the storage facility is adequate for this latter storage.

C. Smokeless Propellants

1. All smokeless propellants shall be stored in shipping containers specified in 27 CFR 55 Commerce in Explosives for smokeless propellants.

2. Commercial stocks of smokeless propellants over 20 pounds and not more than 100 pounds shall be stored in portable wooden boxes having wall of at least 1 inch nominal thickness.

3. Commercial stocks in quantities not to exceed 750 pounds shall be stored in nonportable storage cabinets having wooden walls of at least 1 inch nominal thickness. Not more than 400 pounds shall be permitted in any one cabinet.

4. Quantities in excess of 750 pounds shall be stored in magazines in accordance with R614-4-12.

D. Small Arms Ammunition Primers

1. Small arms ammunition primers shall not be stored except in the original shipping container in accordance with the requirements of Department of Transportation for small arms ammunition primers.

2. Small arms ammunition primers shall be separated from flammable liquids, flammable solids as classified in 49 CFR 172, and oxidizing materials by a fire-resistive wall of 1-hour rating or by a distance of 25 feet.

3. Not more than 750,000 small arms ammunition primers shall be stored in any one building, except as provided in R614-4-16.D.4. Not more than 100,000 shall be stored in any one pile. Piles shall be at least 15 feet apart.

4. Quantities of small arms ammunition primers in excess of 750,000 shall be stored in magazines in accordance with R614-4-12.

R614-4-17. Fireworks.

Scope - This rule applies to the manufacture of Class B and C fireworks.

A. All fireworks manufacturing shall comply with the requirements of this rule and the applicable portions of R614-4.

1. No more than 500 pounds of pyrotechnic and explosive composition shall be permitted at one time in any mixing building or any building in which pyrotechnic and explosive compositions are pressed or otherwise prepared for finishing and assembling.

2. No more than 500 pounds of pyrotechnic and explosive composition shall be permitted in a finishing and assembling building at one time.

3. In no case shall oxidizers such as nitrates, chlorates, or perchlorates be stored in the same building with combustible powdered materials such as charcoal, guns, metals, sulfur, or antimony sulfide.

B. Separation Distances.

1. All process buildings shall be separated from inhabited buildings, public highways and passenger railways in accordance with American Table of distance.

2. The separation distance between process buildings shall be in accordance with American Table of Distances.

3. Separation distances of nonprocess buildings from process buildings and magazines shall be in accordance with American Table of Distances.

4. Separation of magazines containing black powder or salutes classified as Class B fireworks from inhabited buildings, highways, and other magazines containing black powder or salutes classified as Class B fireworks shall be in accordance with American Table of Distances.

C. Building Construction

1. The exterior of process buildings constructed after this Code is adopted shall be constructed of materials no more combustible than painted wood.

2. No buildings shall have a basement. Interior wall surfaces and ceilings of buildings shall be smooth, free from cracks and crevices, noncombustible, and with a minimum of horizontal ledges upon which dust may accumulate. Wall joints and openings for wiring and plumbing shall be sealed to prevent entry of dust. Floors and work surfaces shall not have cracks or crevices in which explosives or pyrotechnic compositions may lodge.

3. Mixing, screening, pressing and assembly buildings or areas shall have conductive flooring, properly grounded.

R614-4-18. Use of Explosives and Blasting Agents.

A. General Provision

1. While explosives are being handled or used, smoking shall not be permitted and no one near the explosives shall possess matches,open light or other fire or flame except for ignition purposes. No person shall be allowed to handle explosives while under the influence of intoxicating liquors, narcotics, or other dangerous drugs.

2. Original containers or approved magazines shall be used for taking detonators and other explosives from storage magazines to the blasting area.

3. When blasting is done in congested areas or in close proximity to a structure, or any other installation that may be damaged, the blast shall be covered before firing with a mat constructed so that it is capable of preventing fragments from being thrown.

4. Persons authorized to prepare explosive charges or conduct blasting operations shall use every reasonable precaution including but not limited to warning signals, flags, barricades, or woven wire mats to insure the safety of all employees.

5. Surface blasting operations, except during unusual conditions shall be conducted during daylight hours.

a. Unusual blasting operations associated with industrial processes that are performed inside buildings shall be permitted, regardless of time of day, if both of the following conditions are met:

(1) All requirements concerning the use of explosives during normal blasting operations are implemented; and

(2) A minimum illumination intensity of 20 foot-candles is provided within a 5-foot (1.52m) radius of where explosive charges are being assembled, where explosive charges are being placed, and where explosive materials are being attached to initiating devices.

6. Whenever blasting is being conducted in the vicinity of gas, electric, water, fire alarm, telephone, telegraph, and steam utilities, the blaster shall notify the appropriate representatives of such utilities at least 24 hours in advance of blasting, specifying the location and intended time of such blasting. Verbal notice shall be confirmed with written notice.

7. Due precautions shall be taken to prevent accidental discharge of electric blasting caps from current induced by radar, radio transmitters, lightning, adjacent powerlines, dust storms, or other sources of extraneous electricity. These precautions shall include:

a. The suspension of all blasting operations and removal of persons from the blasting area during the approach and progress of an electric storm; and

b. The posting of signs warning against the use of mobile radio transmitters. (See ANSI C-95.4 and Institute of Makers of Explosive Safety Library Publication #20.)

8. Warning signs, indicating a blast area, shall be maintained at all approaches to the blast area. The warning sign lettering shall not be less than 4 inches in height on a contrasting background.

9. The blaster shall keep an accurate, up-to-date record of

explosives, explosive materials, blasting agents, and blasting supplies used in a blast and shall keep an accurate running inventory of all explosives and blasting agents stored on the operation.

10. No activity of any nature other than that which is required for drilling or for loading holes with explosive material shall be permitted in a blast area.

11. Empty boxes and paper and fiber packing materials which have previously contained explosive material shall not be used again for any purpose, but shall be destroyed by burning at an approved isolated location out of doors, and no person shall be nearer than 100 feet after the burning has started.

12. Containers of explosives shall not be left open in any magazine or within 50 feet of any magazine. In opening kegs or wooden cases, no sparking metal tools shall be used; wooden wedges and either wood, fiber or rubber mallets shall be used. Nonsparking metallic slitters may be used for opening fiberboard cases.

13. Explosives or blasting equipment that are deteriorated or damaged shall not be used.

14. No explosives shall be abandoned.

B. Blaster Qualifications.

1. A blaster shall be able to understand and give written and oral orders.

2. A blaster shall be qualified by reason of training, knowledge, or experience, in the field of transporting, storing, handling, and use of explosives material and have a working knowledge of State and local laws and regulations which pertain to explosives material.

3. Blasters shall be required to furnish satisfactory evidence of competency in handling explosives material and performing in a safe manner the type of blasting that will be required.

4. The blaster shall be knowledgeable and competent in the use of each type of blasting method used.

C. Loading of Explosive Materials.

1. Procedures that permit safe loading shall be established and followed.

2. All drill holes shall be sufficiently large to admit freely the insertion of the cartridges of explosives.

3. Tamping shall be done only with wood rods or plastic tamping poles without exposed metal parts, but nonsparking metal connectors may be used for jointed poles. Violent tamping shall be avoided. The primer shall never be tamped.

4. When loading blasting agents over electric blasting caps, semiconductive delivery hose shall be used and the equipment shall be bonded and grounded.

5. No holes shall be loaded except those to be fired in the next round of blasting.

6. No loaded holes shall be left unattended or unprotected.

7. Drilling shall not be started until all remaining butts of old holes are examined for unexploded charges, and if any are found, they shall be refired before work proceeds.

8. No employee shall be allowed to deepen drill holes which have contained explosives.

9. After loading for a blast is completed, all excess blasting caps or electric blasting caps and other explosives shall immediately be returned to their separate storage magazines.

D. Initiation of Explosive Charges - Electric Blasting.

1. Electric blasting caps shall not be used where sources of extraneous electricity make the use of electric blasting caps dangerous. Blasting cap leg wires shall be kept short-circuited (shunted) until they are connected into the circuit for firing.

2. Before adopting any system of electrical firing, the blaster shall conduct a thorough survey for extraneous currents, and all dangerous currents shall be eliminated before any holes are loaded.

3. In any single blast using electric blasting caps, all caps shall be electrically compatible.

4. Electric blasting shall be carried out by using blasting circuits or power circuits in accordance with the electric blasting cap manufacturer's recommendations.

5. When firing a circuit of electric blasting caps, care must be exercised to ensure that an adequate quantity of delivered current is available, in accordance with the manufacturer's recommendations.

6. Connecting wires and lead wires shall be insulated single solid wires of sufficient current-carrying capacity.

7. Buss wires shall be solid single wires of sufficient current-carrying capacity.

8. When firing electrically, the insulation on all firing lines shall be adequate in good condition.

9. A power circuit used for firing electric blasting caps shall not be grounded.

10. In underground operations when firing from a power circuit, a safety switch shall be placed in the permanent firing line at intervals. This switch shall be made so it can be locked only in the "off" position and shall be provided with a short-circuiting arrangement of the firing lines to the cap circuit.

11. In underground operations there shall be a "lightning" gap of at least 15 feet in the firing system ahead of the main firing switch; that is, between this switch and the source of power. This gap shall be bridged by a flexible jumper cord just before firing the blast.

12. When firing from a power circuit, the firing switch shall be locked in the open or "off" position at all times, except when firing. It shall be so designed that the firing lines to the cap circuit are automatically short-circuited when the switch is in the "off" position. Keys to this switch shall be entrusted only to the blaster.

13. Blasting machines shall be in good condition and the efficiency of the machine shall be tested periodically to make certain that it can deliver power at its rated capacity.

14. When firing with blasting machines, the connections shall be made as recommended by the manufacturer of the electric blasting caps used.

15. The number of electric blasting caps connected to a blasting machine shall not be in excess of its rated capacity. Furthermore, in primary blasting, a series circuit shall contain no more caps than the limits recommended by the manufacturer of the electric blasting caps in use.

16. The blaster shall be in charge of the blasting machines and no other person shall connect the leading wires to the machines.

17. Blasters, when testing initiating circuits, or electric caps, shall use only blasting galvanometers or other instruments which have been designed and approved for this purpose.

18. Whenever the possibility exists that a leading line of

blasting wire might be thrown over a live powerline by the force of an explosion, care shall be taken to see that the total length of wires are kept too short to hit the lines, or that the wires are securely anchored to the ground. If neither of these requirements can be satisfied, a nonelectric system shall be used.

19. In electrical firing, only the employee making leading wire connections shall fire the shot. All connections shall be made from the bore hole back to the source of firing current, and the leading wires shall remain shorted and not be connected to the blasting machine or other source of current until the charge is to be fired.

20. After firing an electric blast from a blasting machine the leading wires shall be immediately disconnected from the machine and short-circuited.

E. Use of Safety Fuse.

1. Safety fuse shall only be used where sources of extraneous electricity make the use of electric blasting caps dangerous. The use of a fuse that has been damaged in any way shall be forbidden.

2. The hanging of a fuse on nails or other projections which will cause a sharp end to be formed in the fuse is prohibited.

3. Before capping safety fuse, a short length shall be cut from the end of the supply reel so as to assure a fresh cut end in each blasting cap.

4. Only a cap crimper of approved design shall be used for attaching blasting caps to safety fuse. Crimpers shall be kept in good repair and accessible for use.

5. No unused cap or short capped fuse shall be placed in any hole to be blasted; such detonators shall be removed from the working place and destroyed.

6. No fuse shall be capped, or primers made up, in any magazine or near any possible source of ignition.

7. No employees shall be permitted to carry detonators or store detonators or primers of any kind in their clothing.

8. The minimum length of safety fuse to be used in blasting shall not be less than 36 inches or a burning time of 120 seconds.

9. At least two employees shall be present when multiple cap and fuse blasting is done by hand lighting methods.

10. Not more than 12 fuses shall be lighted by each blaster when hand lighting devices are used. However, when two or more safety fuses in a group are lighted as one by means of igniter cord, or other similar fuse lighting devices, they may be considered as one fuse.

11. The method of dropping or pushing a primer or any explosive with a lighted fuse attached is forbidden.

12. Cap and fuse shall not be used for firing mudcap charges unless charges are separated sufficiently to prevent one charge from dislodging other shots in the blast.

13. When blasting with safety fuses, consideration shall be given to the length and burning rate of the fuse. Sufficient time, with a margin of safety, shall always be provided for the blaster to reach a place of safety.

F. Use of Detonating Cord.

1. Care shall be taken to select a detonating cord consistent with the type and physical condition of the bore hole and stemming and the type of explosives used.

2. Detonating cord shall be handled and used with the same respect and care given other explosives.

3. The line of detonating cord extending out of a bore hole or from a charge shall be cut from the supply spool before loading the remainder of the bore hole or placing additional charges.

4. Detonating cord shall be handled and used with care to avoid damaging or severing the cord during and after loading and hooking up.

5. Detonating cord connections shall be complete and positive in accordance with approved and recommended methods. Knot-type or other cord-to-cord connections shall be made only with detonating cord in which the explosive core is dry.

6. All detonating cord trunklines and branchlines shall be free of loops, sharp kinks, or angles that direct the cord back toward the oncoming line of detonation.

7. All detonating cord connections shall be inspected before firing the blast.

8. When detonating cord millisecond-delay connectors or short-interval delay electric blasting caps are used with detonating cord, the practice shall conform strictly to the manufacturer's recommendations.

9. When connecting a blasting cap or an electric blasting cap to detonating cord, the cap shall be taped or otherwise attached securely along the side or the end of the detonating cord, with the end of the cap containing the explosive charge pointed in the direction in which the detonation is to proceed.

10. Detonators for firing the trunkline shall not be brought to the loading areas nor attached to the detonating cord until everything else is in readiness for the blast.

G. Firing the Blast.

1. Before a blast is fired, a warning signal shall be given by the blaster in charge, who has made certain that all surplus explosives are in safe place and all employees, vehicles, and equipment are at a safe distance, or under sufficient cover.

2. Before firing any blast, warning shall be given, and all possible entries into the blasting area, shall be carefully guarded. The blaster shall make sure that all employees are out of the blast area before firing a blast.

H. Inspection After Blasting.

1. Immediately after the blast has been fired, the firing line shall be disconnected from the blasting machine, or where power switches are used, they shall be locked open or in the off position.

2. Sufficient time shall be allowed for the smoke and fumes to leave the blast area before returning to the shot. An inspection of the area and the surrounding rubble shall be made by the blaster to determine if all charges have been exploded before employees are allowed to return to the operation. Any unexploded explosives shall be disposed of safely.

I. Misfires.

1. If a misfire is found, the blaster shall provide proper safeguards for excluding all employees from the danger zone.

2. No other work shall be done except that necessary to remove the hazard of misfire and only those employees necessary to do the work shall remain in the danger zone.

3. No attempt shall be made to extract explosives from any charged or misfired hole; a new primer shall be put in and the hole refired. If refiring of the misfired hole presents a hazard,

the explosives may be removed by washing out with water or, where the misfire is under water, blown out with air.

4. If there are any misfires while using cap and fuse, all employees shall be required to remain away from the charge for at least 1 hour. If electric blasting caps are used and a misfire occurs, this waiting period may be reduced to 30 minutes. Misfires shall be handled under the direction of the blaster in charge of the blasting and all wires shall be carefully traced and search made for unexploded charges.

5. No drilling, digging, or picking shall be permitted until all missed holes have been detonated or the authorized representative has approved the work can proceed.

J. Underwater Blasting.

1. Loading tubes and casings of dissimilar metals shall not be used because of possible electric transient currents from galvanic action of the metals and water.

2. Only water-resistant blasting caps and detonating cords shall be used for all marine blasting. Loading shall be done through a non-sparking metal loading tube when tube is necessary.

3. No blast shall be fired while any vessel under way is closer than 1,500 feet to the blasting area. Those on board vessels or craft moored or anchored within 1,500 feet shall be notified before a blast is fired.

4. No blast shall be fired while any swimming or diving operations are in progress in the vicinity of the blasting area. If such operations are in progress, signals and arrangements shall be agreed upon to assure that no blast shall be fired while any person is in the water.

5. Blasting flags shall be displayed.

6. The storage and handling of explosives aboard vessels used in underwater blasting operations shall be according to provisions outlined herein on handling and storing explosives.

7. When more than one charge is placed under water, a float device shall be attached to an element of each charge in such a manner that it will be released by the firing. Misfires shall be handled in accordance with the requirements of R614-4-18.I.

R614-4-19. Product Testing.

A. Every program for testing of explosive materials shall be examined by the employer for all foreseeable hazards involved in the test. When a specific hazard can be foreseen which affects safety, alternate means for attaining the objectives of the test shall be adopted.

B. No test shall be conducted unless safe testing facilities are available. The employer shall determine the adequacy of available facilities and the need for additional safeguards prior to beginning tests.

C. The test crew shall consist of at least two members during tests: one member of the crew shall serve as safety observer and shall be stationed at a safe location so as to summon help and offer aid in an emergency.

D. The quantity of explosive material taken to a test site shall not exceed that required to conduct the test safely.

E. It shall be the responsibility of the person in charge of the test to take the necessary action to protect by location or distance, personnel that may be endangered by the test.

F. If a test item fails to function (explode) no attempt shall be made to determine the nature of the malfunction until sufficient time has elapsed to assure that the test item is not reacting. The test item shall be handled cautiously, preferably by remote control and disposed of as soon as possible. Care shall be taken to avoid inhaling the reaction products of test compositions.

R614-4-20. Storage of Ammonium Nitrate.

A. Storage

1. Except as provided in R614-4-12. this rule applies to the storage of ammonium nitrate in the form of crystals, flakes, grains, or prills, including fertilizer grade, dynamite grade, nitrous oxide grade, technical grade, and other mixtures containing 60 percent or more ammonium nitrate by weight but does not apply to blasting agents.

2. This rule does not apply to the transportation of ammonium nitrate.

3. The storage of ammonium nitrate and ammonium nitrate mixtures that are more sensitive than allowed by the "Definition of Test Procedures for Ammonium Nitrate Fertilizer" (available from the Fertilizer Institute, 1015 18th Street, N.W., Washington, D.C. 20036) is prohibited.

4. Nothing in this rule shall apply to the production of ammonium nitrate or to the storage of ammonium nitrate on the premise of the producing plant.

5. The standards for ammonium nitrate (nitrous oxide grade) are those found in the "Specifications, Properties, and Recommendations for Packaging, Transportation, Storage, and Use of Ammonium Nitrate", Available from the Compressed Gas Association, Inc., 500 Fifth Avenue, New York, New York 10036.

B. General.

1. This rule applies to all persons storing, having, or keeping ammonium nitrate, and to the owner or lessee of any building, premises, or structure in which ammonium nitrate is stored in quantities of 1,000 pounds or more.

2. Approval of large quantity storage shall be subject to due consideration of the fire and explosion hazards, including exposure to toxic vapors from burning or decomposing nitrate.

C. Storage Buildings.

1. Storage buildings shall not have basements unless the basements are open on at least one side. Storage buildings shall not be over one story in height.

2. Storage buildings shall have adequate ventilation, or be of a construction that will be self-ventilating in the event of fire.

3. The wall on the exposed side of a storage building within 50 feet of a combustible building, forest, piles of combustible materials and similar exposure hazards shall be of fire-resistive construction. In lieu of the fire-resistive wall, other suitable means of exposure protection such as a free standing wall may be used. The roof coverings shall be Class C or better, as defined in the Manual on Roof Coverings, NFPA 203M-1970 or latest edition thereof.

4. All flooring in storage and handling areas shall be of noncombustible materials or protected against impregnation by ammonium nitrate and shall be without open drains, traps, tunnels, pits or pockets into which any molten ammonium nitrate could flow and be confined in the event of fire.

5. The continued use of an existing storage building or

structure not in strict conformity with this Rule may be approved in cases where such continued use will not constitute a hazard to life.

6. Buildings and structures shall be dry and free from water seepage through the roof, walls, and floors.

D. Storage of Ammonium Nitrate in Bags, Drums, or Other Containers.

1. Bags and Containers

a. Bags and containers used for ammonium nitrate must comply with specifications and standards required for use in interstate commerce.

b. Containers used on the premises in the actual manufacturing or processing need not comply with provisions of R614-4-20.D.1.a.

2. Storage

a. Containers of ammonium nitrate shall not be accepted for storage when the temperature of the ammonium nitrate exceeds 130 degrees F.

b. Bags of ammonium nitrate shall not be stored within 30 inches of the storage building walls and partitions.

c. The height of piles shall not exceed 20 feet. The width of piles shall not exceed 20 feet and the length 50 feet except that where the building is of noncombustible construction or is protected by automatic sprinklers the length of piles shall not be limited. In no case shall the ammonium nitrate be stacked closer than 36 inches below the roof or supporting and spreader beams over head.

d. Aisles shall be provided to separate piles by a clear space of not less than 3 feet in width. At least one service or main aisle in the storage area shall not be less than 4 feet in width.

E. Storage of Bulk Ammonium Nitrate.

1. Warehouses shall have adequate ventilation or be capable of adequate ventilation in case of fire.

2. Unless constructed of noncombustible material or unless adequate facilities for fighting a roof fire are available, bulk storage structures shall not exceed a height of 40 feet.

F. Bins

1. Bins shall be clean and free of materials which may contaminate ammonium nitrate.

2. Due to the corrosive and reactive properties of ammonium nitrate, and to avoid contamination, galvanized iron, copper, lead, and zinc shall not be used in a bin constructed unless suitably protected. Aluminum bins and wooden bins protected against impregnation by ammonium nitrate are permissible. The partitions dividing the ammonium nitrate storage from other products which would contaminate the ammonium nitrate shall be of tight construction.

3. The ammonium nitrate storage bins or piles shall be clearly identified by signs reading "Ammonium Nitrate" with letters at least 2 inches high.

G. General.

1. Piles or bins shall be so sized and arranged that all material in the pile is moved out periodically in order to minimize possible caking of the stored ammonium nitrate.

2. Height or depth of piles shall be limited by the pressure-setting tendency of the product. However, in no case shall ammonium nitrate be piled higher at any point than 36 inches below the roof or supporting and spreader beams over head.

3. Ammonium nitrate shall not be accepted for storage when the temperature of the product exceed 130 degrees F.

4. Dynamite, other explosives, and blasting agents shall not be used to break up or loosen caked ammonium nitrate.

H. Contaminants.

1. Ammonium nitrate shall be in a separate building or shall be separated by approved type fire-walls of not less than 1 hour fire-resistance rating from storage of organic chemicals, acids, or other corrosive materials, materials that may require blasting during processing or handling, compressed flammable and combustible materials or other contaminating substances, including but not limited to animal fats, baled cotton, baled rags, baled scrap paper, bleaching powder, burlap or cotton bags, caustic soda, coal, coke, charcoal, cork, camphor, excelsior, fibers of any kind, fish oils, fish meal, foam rubber, hay, lubricating oil, linseed oil, or other oxidizable or drying oils, naphthalene, oakum, oiled clothing, oiled paper, oiled textiles, paint straw, sawdust, wood shavings, or vegetable oils. Walls referred to in this subdivision need extend only to the underside of the roof.

2. In lieu of separation walls, ammonium nitrate may be separated from the materials referred to in R614-4-20.H.1. by a space of at least 30 feet.

3. Flammable liquids such as gasoline, kerosene, solvents, and light fuel oils shall not be stored on the premises except when such storage conforms to R614-4-1, and when walls and sills or curbs are provided in accordance with R614-4-20.H.1. or 2.

4. LP-gas shall not be stored on the premises except when such storage conforms to 29 CFR 1910.110.

I. Storage.

1. Sulfur and finely divided metals shall not be stored in the same building with ammonium nitrate except when such storage conforms to R614-4-1. through 20.

2. Explosives and blasting agents shall not be stored in the same building with ammonium nitrate except on the premises of makers, distributors, and user-compounders of explosives or blasting agents.

3. Where explosives or blasting agents are stored in separate buildings, other than on the premises of makers, distributors, and user-compounders of explosives or blasting agents, they shall be separated from the ammonium nitrate by the distances and/or barricades specified in R614-4-21 but not less than 50 feet.

4. Storage and/or operations on the premises of makers, distributors and user-compounders of explosives or blasting agents shall be in conformity with R614-4-1. through 20. of these rules.

J. General Precautions.

1. Electrical

a. Electrical installations shall conform to the requirements of 29 CFR 1910 Subpart S, for ordinary locations. They shall be designed to minimize damage from corrosion.

b. In areas where lightning storms are prevalent, lightning protection shall be provided. (See the Lightning Protection Code, NFPA 78-1979).

c. Provisions shall be made to prevent unauthorized personnel from entering the ammonium nitrate storage area.

2. Fire Protection.

a. Not more than 2,500 tons of bagged ammonium nitrate shall be stored in a building or structure not equipped with an automatic sprinkler system. Sprinkler systems shall be approved type and installed in accordance with 29 CFR 1910.159.

b. Suitable fire control devices such as small hose or portable fire extinguishers shall be provided throughout the warehouse and in the loading and unloading area. Suitable fire control devices shall comply with the requirements of 29 CFR 1910.157 and 1910.158.

c. Water supplies and fire hydrants shall be available in accordance with recognized good practices.

R614-4-21. Sources of Standards.

The following sources and publications were used in the Development of R614-4.

A. Institute of Makers of Explosives Safety Library Publications, 1575 Eye Street, N.W., Suite 550, Washington, D.C. 20005.

B. The American Table of Distances

C. Suggested Code of Regulations for the Manufacture, Transportation, Storage, Sale, Possession, and Use of Explosive Materials.

D. "Do's and Don'ts" Instructions and Warnings

E. Glossary of Industry Terms

F. Safety in the Transportation, Storage, Handling and Use of Explosives.

G. Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Electric Blasting Caps.

H. IME Standard for the Safe Transportation of Class C Detonators (Blasting Caps) in a Vehicle with Certain Other Explosives.

I. Department of Defense Standards.

Superintendent of Documents, Government Printing Office, Washington, D.C. 20402

1. DOD 5154.4S DOD Ammunition and Explosives Safety Standards

2. AMCP 706-186 Engineering Design Handbook, Military Pyrotechnics Series, Part Two--Safety, Procedures and Glossary

3. DOD 4145.26M DOD Contractor's Safety Manual for Ammunition, Explosives and Related Dangerous Material

J. National Fire Protection Association Codes, 470 Atlantic Avenue, Boston MA 02210.

1. NFPA 44a-1974 Code for the Manufacture, Transportation, and Storage of Fireworks

2. NFPA 495-1973 Code for the Manufacture, Transportation, Storage and Use of Explosive Materials

3. NFPA 492-1976 Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents

4. NFPA 203M-1970 Manual on Roof Coverings

5. NFPA 78-1979 Lightning Protection Code

6. NFPA 490-1975 Storage of Ammonium Nitrate

7. NFPA 91-1973 Blower and Exhaust Systems for Dust, Stock, and Vapor Removal or Conveying

K. Code of Federal Regulations Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

1. CFR 14 Aeronautics and Space

2. CFR 27 Alcohol, Tobacco Products, and Firearms

3. CFR 29 Labor

4. CFR 30 Mineral Resources

5. CFR 46 Shipping

6. CFR 49 Transportation

L. National Institute for Occupational Safety and Health Reports available from: U.S. Department of Commerce, National Technical; Information Service, Springfield, VA 22161.

1. PB 297 827 A Safe Practices Manual for the Manufacturing, Transportation, Storage and Use of Explosives

2. PB 297 807 A Safe Practices Manual for the Manufacturing, Transportation, Storage, and Use of Pyrotechnics

KEY: safety
December 2, 1997 **34A-6-202**

R628. Money Management Council, Administration.
R628-2. Investment of Funds of Member Institutions of the State System of Higher Education and Public Education Foundations established under Section 53A-4-205.
R628-2-1. Authority.

This rule is issued pursuant to Sections 51-7-13(2) and 51-7-18(2)(b).

R628-2-2. Scope of Rule.

This rule relates to all funds of member institutions of the state system of higher education and all funds of public education foundations established under Section 53A-4-205 acquired by gift, devise, or bequest or by federal or private grant and the corpus of funds functioning as endowments. For purposes of this rule, funds functioning as endowments means funds whose corpus is intended to be held in perpetuity by formal institutional designation according to the institution's or public education foundation's policy for designating such funds.

R628-2-3. Investment Directions Contained in Gift or Grant.

If any gift, devise, bequest or grant, whether outright or in trust, is made by a written instrument which contains directions as to investment thereof, the funds embodied within the gift or grant shall be invested in accordance with those directions. Common stock received by donation which is lettered stock, or which is restricted from sale because it is not registered with the Securities and Exchange Commission, may be retained by a member institution and public education foundations and shall be considered to be invested according to the terms of the donation.

R628-2-4. Investment of Funds.

A. Funds within the scope of this rule, except funds described in Section R628-2-3, may be invested in any of the following:

1. in any deposit or investment authorized by Section 51-7-11;

2. in professionally managed pooled or commingled investment funds or mutual funds which:

a) have assets with a market value of at least $100 million; and

b) which conform with all investment limitations established by the Securities and Exchange Commission applicable to such funds; and

c) which assess no load factor or surrender charges for participation in the fund. Use of funds which assess a charge on the purchase or sale of shares is prohibited.

3. in equity securities, including common and convertible preferred stock and convertible bonds, issued by corporations listed on a major securities exchange or in the NASDAQ National Market System, in accordance with the following criteria applied at the time of investment:

a) no more than 20% of all funds invested under R628-2, determined on a cost basis, may be invested in securities listed in the NASDAQ National Market System;

b) no more than 5% of all funds invested under R628-2, determined on a cost basis, may be invested in the securities of any one issuer;

c) no more than 25% of all funds invested under R628-2, determined on a cost basis, may be invested in a particular industry;

d) no more than 5% of all funds invested under R628-2, determined on a cost basis, may be invested in securities of corporations that have been in continuous operation for less than three years;

e) no more than 5% of the outstanding voting securities of any one corporation may be held; and

f) at least 50% of the corporations in which equity investments are made under R628-2-4.(A)(3) must appear on the Standard and Poor's 500 Composite Stock Price Index or the Dow Jones Industrial Average Index;

4. in fixed-income securities, including bonds, notes, mortgage securities and zero coupon securities, issued by corporations rated A or higher by Moody's Investors Service, Inc. or by Standard and Poor's Corporation in accordance with the following criteria applied at the time of investment:

a) no more than 5% of all funds invested under R628-2, determined on a cost basis, may be invested in the securities of any one issuer;

b) no more than 25% of all funds invested under R628-2, determined on a cost basis, may be invested in a particular industry;

c) the dollar-weighted average maturity, determined on a cost basis, of fixed-income securities acquired under R628-2-4.(A)(4) may not exceed ten years; and

5. in fixed-income securities issued by agencies of the United States and United States government-sponsored organizations, including mortgage-backed pass-through certificates, mortgage-backed bonds and collateralized mortgage obligations (CMO's).

B. Investments made under this rule shall observe the following investment percentages for specified subsections;

1. no more than 75% of all funds invested under R628-2, determined on a cost basis, may be invested in equity securities (Subsection R628-2-4(A)(3) investments) at any one time.

2. no more than 5% of all funds invested under R628-2, determined on a cost basis, may be invested in collateralized mortgage obligations (CMO's) (Subsection R628-2-4(A)(5) investments) at any one time.

C. The selection criteria established in Section 51-7-14 shall apply to investments permitted by this rule.

D. Professional asset managers may be employed to assist in the investment of funds under this rule. Compensation to asset managers may be provided from earnings generated by the funds' investments.

R628-2-5. Disposition of Nonqualifying Investments.

A. If at any time securities do not qualify for investment in accordance with this rule, investments shall be disposed of within a reasonable time. In determining what constitutes reasonable time for the disposition of assets, the following factors, among others, shall be given consideration:

1. the legality of sale under the rules and regulations of the Securities and Exchange Commission and the Utah State Securities Commission;

2. the size of the investment held in relation to the normal trading volume therein, and the effect upon the market price of the sale of the investment; and

3. the wishes of the donor respecting the sale of the investment.

B. If, in the opinion of the custodian or investment manager of the funds, an orderly liquidation of a nonqualifying investment cannot be accomplished within a period of two years, a request may be made to the Council for approval of a specific plan of disposition of nonqualifying investments. Nothing contained in this paragraph shall make an investment nonqualifying, if the retention of the investment is specifically authorized or directed under terms of the gift, devise, bequest or grant, or if the security is restricted from sale as provided in this rule.

R628-2-6. Nonqualifying Investments Held on Effective Date.

Any nonqualifying investments held on July 3, 1995 shall be treated as having been received on the effective date and shall be disposed of as provided in Subsection R628-2-5.

R628-2-7. Multiple Funds.

If an institution or a public education foundation has more than one fund or investment pool in which funds covered by this rule are managed, the following rules apply in determining investment percentages:

A. If the investment of any funds is covered by a direction in the instrument creating a gift, devise, bequest or grant, or if the donation consists of securities restricted from sale, the funds shall be excluded from any computation of permitted investments.

B. All other funds within the scope of this rule shall be consolidated for determining the propriety of investments. Any restrictions as to investment percentages shall be determined as provided for in Subsection R628-2-4(B).

R628-2-8. Reporting by Institutions and Public Education Foundations.

Each member institution of the state system of higher education and each public education foundation, having funds acquired by gift, devise, bequest or grant and funds functioning as endowments shall file a written report with the Council on or before September 30 and March 31 of each year containing the following information for investments held on June 30 and December 31 respectively:

A. total amount of funds held under gifts, devise, bequest or grant and funds functioning as endowments;

B. amount invested under this rule;

C. amounts invested under this rule indicating the carrying value and market value of each category of investment; and

D. a list of all nonqualifying assets held under this rule containing the date acquired, the carrying value and market value of each asset.

KEY: public investments, higher education, public education

June 1, 1999 **51-7-11(4)**
Notice of Continuation July 18, 1997 **51-7-13**
51-7-18(2)

R651. Natural Resources, Parks and Recreation.
R651-206. Carrying Passengers for Hire.
R651-206-1. Vessel Operator Permit.

(1) As used in this rule: "Operator Permit" means a valid Utah Vessel Operator Permit issued by the division or a valid Coast Guard Motorboat Operator License. The operator permit must be accompanied by a current and original Standard American Red Cross First Aid Card or equivalent and a current and original American Red Cross or American Heart Association "CPR" card.

(2) No person shall operate a vessel engaged in carrying passengers for hire on any lake or reservoir of this state unless the individual has in his possession an Operator Permit or is operating under Section R651-206-2.

(3) To obtain a Utah Vessel Operator Permit, the applicant must be at least 18 years old, complete the prescribed form, possess the required first aid and CPR certification, successfully complete a written examination, pay a $60 fee, and have 80 hours of experience in vessel operation, 20 hours of which was obtained operating an equivalent type and size of vessel which will be used for carriage of passengers. If the applicant fails to pass the written examination, there is a 7-day waiting period and a $15 retest fee per attempt.

(4) A Utah Vessel Operator Permit is valid for three years from date of issue, unless suspended or revoked.

(5) A Utah Vessel Operator Permit may be renewed up to six months prior to expiration, upon completion of the prescribed form, presentation of required first aid and CPR certification, and payment of a $45 fee. The renewed permit shall have the same month and day expiration date as the original permit.

(6) A Utah Vessel Operator Permit which has expired shall not be renewed but is required to obtain a new permit as outlined above.

(7) In the event a Utah Vessel Operator Permit is lost or stolen, a duplicate permit may be issued with the same expiration date as the original permit upon completion of the prescribed form, payment of a $25 fee. An application for a duplicate permit must have original signatures and be accompanied by original documentation of required first aid and CPR certification.

(8) Current Utah Vessel Operator Permit holders shall notify the Division, within 30 days, of any change of address.

(9) A Utah Vessel Operator Permit may be suspended or revoked for a length of time determined by the division director, or individual designated by the division director, if one of the following occurs:

(a) the permit holder is convicted of boating under the influence of alcohol or any drug, or refuses to submit to any chemical test which determines blood or breath alcohol content;

(b) the permit holder's negligence causes personal injury or death as determined by due process of the law;

(c) the permit holder is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a three-year period; or

(d) the division determines that the permit holder intentionally provided false or fictitious statements or qualifications to obtain the permit.

(10) A person shall not operate an unfamiliar vessel carrying passengers for hire or operate on unfamiliar water unless there is an operator permit holder aboard who is familiar with the vessel and the water area.

(11) A valid Coast Guard Motorboat Operator License must be possessed if engaging in carrying passengers for hire on Bear Lake, Flaming Gorge, or Lake Powell.

R651-206-2. River Guide Permit.

(1) As used in this rule:

(a) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company in certifying a river guide's experience.

(b) "Certifying experience" means river running experience obtained within ten years of the date of application for the guide permit.

(c) "Guide 1" means a nonrestrictive river guide permit.

(d) "Guide 2" means a restricted river guide permit, which is valid only on other rivers.

(e) "Guide 3" means an apprentice river guide permit, which is valid only when the holder is accompanied on the white water river by a qualified Guide 1 permit holder. A Guide 3 permit is also valid on other rivers, but must be accompanied by either a Guide 1 or 2 permit holder.

(f) "Guide 4" means a restricted apprentice river guide permit, which is valid only on other rivers when the holder is accompanied on the trip by a qualified Guide 1 or 2 permit holder.

(g) "Guide permit" means a valid Guide 1, 2, 3, or 4 permit issued by the division for carrying passengers for hire. For a Guide 1 or 2 permit to be valid they must be accompanied by a current "Emergency Response" American Red Cross First Aid Card or equivalent and an American Heart Association or an American Red Cross "CPR" Card. For a Guide 3 or 4 permit to be valid they must be accompanied by a current "Standard" American Red Cross First Aid Card or equivalent and an American Heart Association or an American Red Cross "CPR" Card. A photo copy of both sides of the required first aid and CPR certification cards is allowed.

(h) "Low capacity vessel" means a vessel with a carrying capacity of three or fewer occupants (e.g. canoe, kayak, inflatable kayak or similar vessel.

(i) "Other rivers" means all rivers, river sections, or both in Utah not defined in Subsection R651-202-2(1) as a whitewater river.

(j) "Whitewater river" means the following river sections: the Green and Yampa rivers within Dinosaur National Monument, the Green River in Desolation-Gray Canyon (Mile 96 to Mile 20), the Colorado River in Westwater Canyon, the Colorado River in Cataract Canyon, or other division recognized whitewater rivers in other states.

(2) No person shall operate a vessel engaged in carrying passengers for hire on any river of this state unless that person has in his possession the appropriate valid river guide permit. For low capacity vessels not operated by but led by a guide permit holder, there shall be at least one qualified guide permit holder for every four low capacity vessels being led in the group.

(3) To qualify for a Guide 1 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current

in the required first aid and CPR certification, successfully complete a written examination, pay a $60 fee and have operated a vessel on at least nine whitewater river sections. If the applicant fails to pass the written examination, there is a 7-day waiting period and a $15 retest fee per attempt.

(4) To qualify for a Guide 2 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, successfully complete a written examination, pay a $30 fee and have operated a vessel on at least six river sections. If the applicant fails to pass the written examination, there is a 7-day waiting period and a $15 retest fee per attempt.

(5) To qualify for a Guide 3 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, pay a $20 fee and have operated a vessel on at least three whitewater river sections.

(6) To qualify for a Guide 4 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, pay a $20 fee and have operated a vessel on at least three river sections.

(7) Any person applying for a duplicate, renewal, or a new guide permit shall be employed by or be a prospective employee of an outfitting company currently registered with the division. The applicant shall be sponsored by that outfitting company, or be currently employed and sponsored by a federal, state or county agency. Permit applications must have original signatures and be accompanied by original documentation of required first aid and CPR certification.

(8) Guide 3 and 4 permits shall expire annually on December 31. Guide 1 and 2 permits shall expire three years from date of issuance.

(9) Guide 1 or 2 permits may be renewed up to six months prior to expiration upon completion of the prescribed form, presentation of current guide permit, required first aid and CPR certification, and payment of a $30 fee. The renewed permit shall have the same month and day expiration date as the original permit. Any Guide 1 or 2 permit holder whose permit has expired shall be required to obtain a new Guide 1 or 2 permit as outlined above.

(10) In the event a guide permit is lost or stolen a duplicate guide permit may be issued with the same expiration date as the original permit upon completion of the prescribed form, furnishing the required information as described in (7) above and payment of the required fee. The fee shall be $15 for a Guide 1 or 2 permit, and $15 for a Guide 3 or 4 permit.

(11) All boatman permits issued by the division are expired.

(12) Current Guide Permit holders shall notify the Division, within 30 days, of any change of address.

(13) A guide permit holder shall not carry passengers for hire on his first trip on an unfamiliar river unless there is a qualified Guide 1 or 2 permit holder aboard who has operated a similar vessel on that river segment.

(14) A guide permit may be suspended or revoked for a length of time determined by the division director, or individual designated by the division director, if one of the following occurs:

(a) the guide permit holder is convicted of boating under the influence of alcohol or any drug, or refuses to submit to any chemical test which determines blood or breath alcohol content;

(b) the guide permit holder's negligence causes personal injury or death as determined by due process of the law;

(c) the guide permit holder is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a three-year period;

(d) the division determines that the guide permit holder intentionally provided false or fictitious statements or qualifications to obtain the guide permit; or

(e) a guide permit holder has utilized a private river trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation.

(15) Every outfitting company carrying passengers for hire on any river of this state shall register with the division annually prior to commencement of operation. The registration requires the completion of the prescribed form and providing the following: evidence of registration with the Department of Commerce, evidence of river trip authorization from the appropriate controlling state or federal agency, and payment of a $200 fee.

(16) The agent shall certify and guarantee that each river guide sponsored by the outfitting company that he represents has obtained the necessary experience, as required above, depending on the type of guide permit applied for.

(17) An outfitting company's division registration may be suspended or revoked for a length of time determined by the division director, or individual designated by the division director, if one of the following occurs:

(a) the outfitting company's or agent's negligence caused personal injury or death as determined by due process of the law;

(b) the outfitting company or agent is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a calendar year period;

(c) false or fictitious statements were certified or false qualifications were used to qualify a person to obtain a guide permit for an employee or others;

(d) the division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when registering with the division;

(e) an outfitting company has utilized a private river trip permit for carrying passengers for hire and have been prosecuted by the issuing agency and found guilty of the violation; or

(f) the outfitting company used a guide without a valid guide permit or without the appropriate guide permit while engaging in carrying passengers for hire.

KEY: boating
May 18, 1999 **73-18-4(4)**
Notice of Continuation February 10, 1997

R657. Natural Resources, Wildlife Resources.
R657-14. Commercial Harvesting of Protected Aquatic Wildlife.
R657-14-1. Purpose and Authority.

(1) Under authority of Sections 23-14-3, 23-14-18, and 23-14-19, and Sections 23-15-7 through 23-15-9, this rule provides the procedures, standards, and requirements for:

(a) harvesting protected aquatic wildlife for use as fish bait;

(b) commercially harvesting brine shrimp and brine shrimp eggs; and

(c) seining protected aquatic wildlife.

(2) To the extent that this rule applies to the commercial harvest of brine shrimp and brine shrimp eggs, the objective of this rule is to protect, manage, and conserve the brine shrimp resource based upon the best available data and information and adequately preserve the Great Salt Lake ecosystem while recognizing the economic value of allowing the harvest of brine shrimp and brine shrimp eggs and maintaining a sustainable brine shrimp population.

R657-14-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Alternate seiner" means the person in charge of and responsible for supervising a crew of helpers harvesting authorized species of protected aquatic wildlife in the absence of the primary seiner.

(b) "Certified bait dealer" means a person who has obtained a certificate of registration authorizing the harvest, possession, or sale of protected aquatic wildlife for use as live or dead fish bait.

(c) "Harvest" means to seine, or gather in protected aquatic wildlife and reduce it to possession.

(d) "Harvest location" means the location where the gathering or harvesting of protected wildlife takes place. For purposes of harvesting brine shrimp, a harvest location is a 300 yard radius from the location of the fluorescent orange flag as required under Subsection R657-14-16(2).

(e) "Helper" means a person aiding a certificate of registration holder in the harvesting, transporting, or selling of protected aquatic wildlife, including any employee, agent, family member, or donated labor.

(f) "Helper card" means a card authorizing a person to act as a helper.

(g) "Nongame fish" means all species of fish, except:

(i) any species or hybrid species of trout, including albino, brook, brown, cutthroat, golden, grayling, kokanee salmon, lake or mackinaw, rainbow, splake, and tiger;

(ii) Bonneville cisco;

(iii) bluegill;

(iv) bullhead;

(v) catfish;

(vi) crappie;

(vii) green sunfish;

(viii) northern pike;

(ix) largemouth bass;

(x) Sacramento perch;

(xi) smallmouth bass;

(xii) striped bass;

(xiii) tiger muskellunge;

(xiv) walleye;

(xv) white bass;

(xvi) whitefish;

(xvii) wiper; and

(xviii) yellow perch.

(h) "Primary seiner" means the person in charge of and responsible for supervising a crew of helpers harvesting protected aquatic wildlife.

(i) "Purchase" means to buy, acquire, or obtain from sale, exchange, barter, or trade protected aquatic wildlife for pecuniary consideration or advantage.

(j) "Seining" means to harvest protected aquatic wildlife with the use of a net or other similar device.

(k) "Wildlife registration office" means the division office in Salt Lake responsible for processing applications and issuing certificates of registration.

R657-14-3. Certificate of Registration Required.

(1)(a) A person may not harvest, possess, or transport protected aquatic wildlife without first obtaining a certificate of registration and a helper card for each individual assisting that person.

(b) The original copy of the certificate of registration must be present at the harvest location while harvesting protected aquatic wildlife.

(2) Except as provided in Subsection R657-14-13(4), a person must obtain a separate certificate of registration to engage in the following activities:

(a) harvesting or selling designated species of fish, salamanders, leeches, and crayfish for use as fish bait;

(b) seining and selling protected aquatic wildlife for any purpose other than for use as fish bait; and

(c) harvesting brine shrimp and brine shrimp eggs.

(3) A certificate of registration is not required:

(a) for the retail sale of protected aquatic wildlife imported into Utah, provided the product is clearly labeled as to its out-of-state origin;

(b) to process brine shrimp or brine shrimp eggs; or

(c) to sell brine shrimp or brine shrimp eggs, provided the brine shrimp or brine shrimp eggs were taken in accordance with the provisions of this rule by a person who has obtained a certificate of registration or as provided in Subsection R657- 3-18(4).

(4) Certificates of registration are not transferable.

(5)(a) Any certificate of registration issued to a business or any other commercial organization shall be void upon the termination of the business or organization or upon bankruptcy.

(b) If a brine shrimp corporation is sold or transferred during the period in which the certificate of registration is valid, the division may grant a transfer of that certificate of registration to the receiving entity if:

(i) the entity meets the criteria imposed on new applicants; and

(ii) the person responsible for the entity signs a new certificate of registration.

(6)(a) The issuance of a certificate of registration automatically incorporates within its terms the conditions and

requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(b) Any person accepting a certificate of registration under this rule acknowledges the necessity for close regulation and monitoring by the division.

(7) Any certificate of registration issued or renewed by the division under this rule to harvest brine shrimp or brine shrimp eggs is a privilege and not a right. The certificate of registration authorizes the holder to harvest brine shrimp or brine shrimp eggs subject to all present and future conditions, restrictions, and regulations imposed on such activities by the division, the Wildlife Board, the state of Utah, or the United States.

(8) A certificate of registration to harvest brine shrimp or brine shrimp eggs does not guarantee or otherwise legally entitle the holder to any of the following:

(a) a minimum harvest quota in any given season or seasons;

(b) a quota or percentage of the harvestable surplus as determined by the division;

(c) a particular harvesting or processing method;

(d) a particular harvest season duration, commencement date, or termination date;

(e) access to any particular area or site on the Great Salt Lake or on other waters in the state, regardless of historical authorization or use;

(f) marina access on the Great Salt Lake or elsewhere in the state, regardless of historical authorization or use;

(g) an increase, stabilization, or reduction in the number of certificates of registration issued by the division to harvest brine shrimp and brine shrimp eggs;

(h) an exclusive opportunity to harvest;

(i) a particular quantity or quality of brine shrimp or brine shrimp eggs;

(j) a particular water condition or salinity level conducive to brine shrimp production, brine shrimp egg production, or harvest success;

(k) any particular level of protection for brine shrimp or brine shrimp eggs from disease, pesticides, or predators; or

(l) any other right or management philosophy beneficial to harvesting or production of brine shrimp and brine shrimp eggs.

(9) The procedures and processes outlined in this rule regulating the harvest of brine shrimp and brine shrimp eggs are all subject to change as the division and the Wildlife Board gather greater information and data on the impact current harvest regulations have on the sustainability of brine shrimp populations, the Great Salt Lake ecosystem, and the economic viability of the industry.

R657-14-4. Application for Certificate of Registration.

(1) Applications for certificates of registration are available at division offices.

(2)(a) Applications for commercial seining or harvesting protected aquatic wildlife for use as fish bait may be submitted any time during the year.

(b) Applications for harvesting brine shrimp and brine shrimp eggs may be submitted May 1 through May 31. Applications may be submitted by mail if postmarked no later than midnight on the last day of the application period.

(3) If an application for a certificate of registration is made in the name of a commercial organization, the applicant must specify the individual responsible for that entity.

(4)(a) Completed applications must be submitted to the wildlife registration office.

(b) The division may return any application that is incomplete or completed incorrectly.

(5)(a) The application review process may require up to 45 days.

(b) The division may deny issuing a certificate of registration to any applicant for any of the following reasons:

(i) the applicant has previously been issued a certificate of registration and has failed to submit any report required by this rule, the division, or the Wildlife Board;

(ii) the applicant has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(iii) the applicant has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife.

(6) The division may limit the number of certificates of registration issued or deny any application in the interest of wildlife, wildlife habitat, serving the public, or public safety.

(7) If an application is approved, the division shall issue the applicant a certificate of registration that specifies:

(a) the species and amounts of protected aquatic wildlife that may be harvested or sold;

(b) the water and locations where protected aquatic wildlife may be harvested;

(c) the gear that may be used;

(d) the hours during which protected aquatic wildlife may be harvested;

(e) the means and amounts of protected aquatic wildlife that may be transported; and

(f) any restriction imposed on the applicant in addition to the provisions of this rule.

(8)(a) Certificates of registration for seining or harvesting protected aquatic wildlife for use as fish bait are valid for a calendar year.

(b) Certificates of registration for harvesting brine shrimp and brine shrimp eggs are valid only during the harvest season as provided in Subsection R657-14-14(2).

R657-14-5. Use of Helpers.

(1)(a) Except as provided in Subsections (2) and R657-14-14(6), any person aiding the certificate of registration holder in seining protected aquatic wildlife or harvesting brine shrimp and brine shrimp eggs shall be in possession of a helper card.

(b) A helper card shall be deemed to be in possession if it is on the person or on the boat from which the person is working.

(2) A helper card is not required of any person engaged only in the retail sale or transportation of protected aquatic wildlife, except as provided in Subsection R657-14-14(7).

(3) Helper cards are issued in the name of the certificate of registration holder and are transferable among individuals assisting the certificate of registration holder.

(4)(a) A helper may assist in the harvest of protected aquatic wildlife only while working under the direct supervision of a primary or alternate seiner.

(b) For purposes of this rule, "direct supervision" means to be physically present, either on a boat with the helper or within close proximity so as to be able to provide direct instructions to the helper.

(5) Twelve additional helper cards for each Certificate of Registration may be obtained from the wildlife registration office at any time during the year.

R657-14-6. Records -- Report of Activities.

(1) Each person who has been issued a certificate of registration authorizing the harvest or sale of protected aquatic wildlife shall keep accurate records of the number or weight harvested and to whom the products were sold.

(2) The records required under Subsection (1) shall be retained for at least five years and must be available for inspection upon division request.

(3)(a) A person who has been issued a certificate of registration for seining or harvesting protected aquatic wildlife for use as fish bait shall include the following information, broken down by month, in an annual report to the division:

(i) the species of protected aquatic wildlife harvested;

(ii) the water from which the protected aquatic wildlife were harvested; and

(iii) the total number or weight of protected aquatic wildlife harvested.

(b) A person who has been issued a certificate of registration for the retail sale of protected aquatic wildlife shall include the following information, broken down by month, in an annual report to the division:

(i) the name and address of each person from which protected aquatic wildlife was purchased or sold;

(ii) the species of protected aquatic wildlife purchased or sold; and

(iii) the weight and number of protected aquatic wildlife purchased or sold.

(c)(i) A person who has been issued a certificate of registration for harvesting brine shrimp and brine shrimp eggs must submit a weekly harvest report to the wildlife registration office. The report shall include the total amount of brine shrimp and brine shrimp eggs, by raw weight, harvested each day. The reports must be received or postmarked by Monday each week.

(ii) Report forms are provided by the division.

R657-14-7. Species of Protected Aquatic Wildlife That May Be Harvested.

(1)(a) The division may authorize a person to harvest or sell nongame fish, salamanders, leeches, crayfish, brine shrimp or brine shrimp eggs, or overabundant nuisance game species as determined by the division.

(b) The certificate of registration shall identify those species of protected aquatic wildlife that may be harvested or sold.

(2) Any species of protected aquatic wildlife caught that is not authorized for harvest must be immediately returned alive and unharmed to the water from which it was harvested.

R657-14-8. Prohibited Nongame Species.

The following species of protected aquatic wildlife may not be harvested, and if caught must be immediately returned alive and unharmed to the water from which it was taken:

(1) bonytail chub (Gila elegans);
(2) Colorado squawfish (Ptychocheilus lucius);
(3) flannelmouth sucker (Catostomus latipinnis);
(4) gizzard shad (Dorosoma cepedianum);
(5) grass carp (Ctenopharyngodon idella);
(6) humpback chub (Gila cypha);
(7) June sucker (Chasmistes liorus);
(8) least chub (Iotichthys phlegethontis);
(9) leatherside chub (Gila cypha);
(10) razorback sucker (Xyrauchen texanus);
(11) roundtail chub (Gila robusta);
(12) Virgin River chub (Gila robusta seminuda);
(13) Virgin spinedace (Lepidomeda mollispinis); and
(14) woundfin (Plagopterus argentissimus).

R657-14-9. Harvest Hours.

(1)(a) Protected aquatic wildlife, except brine shrimp and brine shrimp eggs may be harvested from 5 a.m. to 10 p.m. year-round, unless otherwise specified on the certificate of registration.

(b) Brine shrimp and brine shrimp eggs may be harvested one hour before official sunrise through official sunset.

(2) Harvesting equipment may not be left in the water after legal harvest hours, except as provided in Subsection R657-14-17(1)(b).

R657-14-10. Identification of Traps and Nets.

(1) A metal tag or plate stamped with the owner's name and certificate of registration number must be securely attached to each seine, trap and net.

(2) Any improperly tagged seine, trap, or net may be seized by the division.

R657-14-11. Transportation, Purchase, or Sale of Live Protected Aquatic Wildlife.

(1) A person may not have in possession any live species of protected aquatic wildlife, except as provided in Subsection R657-14-12(1), or as otherwise provided in Rules R657-3 or R657-16.

(2) A person may not purchase any live protected aquatic wildlife from or sell any live protected aquatic wildlife to any person or entity who has not obtained a certificate of registration to possess or sell live protected aquatic wildlife, except as provided in Subsection R657-14-3(3).

R657-14-12. Certified Bait Dealers.

(1) The division may authorize a person to:

(a) harvest salamanders or leeches and retain them alive as fish bait;

(b) transport live or dead salamanders or leeches into or out of Utah;

(c) establish an outlet for the sale of live or dead salamanders or leeches; or

(d) harvest or sell designated species of dead protected aquatic wildlife for use as fishing bait, including cut baits.

(2) The division may allow a person to harvest, possess, or sell the following species of protected aquatic wildlife for use as dead fish bait:

(a) nongame fish, except those prohibited species described in Section R657-14-8;

(b) crayfish;

(c) salamanders;

(d) leeches; or

(e) any overabundant game species as determined by the division and indicated on the certificate of registration.

(3)(a) A person may not purchase dead fish bait from any person who has not obtained a certificate of registration from the division.

(b) Subsection (a) does not preclude commerce with out-of-state sellers of dead, prepared fish baits if the dead fish bait is clearly labeled as to its origin.

(4)(a) Only a person who has obtained a certificate of registration from the division may harvest, sell, or trade protected aquatic wildlife for use as fish bait.

(b) Any protected aquatic wildlife sold for use as fish bait must be packaged in a suitable container, and have securely attached a clearly discernable business label on each package that provides the brand or business name, business address, type of product, and certificate of registration number.

(5) A person may not purchase or sell any dead fish bait that does not have a label attached to the package as provided in Subsection (4)(b).

R657-14-13. Commercial Seining.

(1) The division may issue a certificate of registration authorizing a person to harvest designated species of protected aquatic wildlife by seining.

(2)(a) Three helper cards are issued with the certificate of registration.

(b) Additional helper cards may be obtained from the division.

(3) A seiner may harvest any species of nongame fish, except those prohibited species as designated in Section R657-14-8, and any overabundant game species as determined by the division and indicated on the certificate of registration.

(4) A seiner may harvest or sell protected aquatic wildlife for use as fish bait as provided in Section R657-14-12, if authorization is obtained from the division and indicated on the certificate of registration.

R657-14-14. Harvesting Brine Shrimp and Brine Shrimp Eggs -- Certificate of Registration -- Helper Cards.

(1)(a) The division may issue a certificate of registration authorizing a person to harvest brine shrimp and brine shrimp eggs.

(b) A separate certificate of registration is required for each harvest location.

(c)(i) The provisions of this rule do not apply:

(A) to the harvest of 200 pounds or less of brine shrimp or brine shrimp eggs, during a single calendar year, for culturing ornamental fish, provided the brine shrimp eggs are not sold, bartered, or traded; or

(B) for the retail sale of brine shrimp or brine shrimp eggs.

(ii) A certificate of registration is required for the activities described in Subsection (i) as provided in Rule R657-3-18.

(2) Except as provided in Subsections R657-14-19(4) and (5), the certificate of registration is valid for harvesting brine shrimp and brine shrimp eggs only during the harvest season beginning October 1 and ending January 31. If October 1 falls on a Sunday, the harvest season shall begin on the following Monday.

(3) The Wildlife Board, after considering the best available biological data and other information received from the division and the public, has determined that:

(a) a limitation on the number of certificates of registration issued by the division to harvest brine shrimp and brine shrimp eggs, is currently necessary to protect the brine shrimp resource and the Great Salt Lake ecosystem;

(b) additional research and scientific data is necessary to adequately understand the dynamics of the brine shrimp populations, the Great Salt Lake ecosystem, and the impact harvesting has on the sustainability of the resource;

(c) given the current number of certificates of registration, the need for additional scientific data, and the increasing efficiency in the industry's ability to harvest large quantities of brine shrimp and brine shrimp eggs in short periods, the issuance of additional certificates at this point in time may compromise the division's ability to effectively regulate the harvest to avoid jeopardizing resource sustainability; and

(d) given these factors and the harvest restrictions adopted in this rule, a total of 79 certificates of registration may be issued.

(4) Certificates of registration that may become available for issuance through revocation, expiration, nonrenewal, or surrender may either be retired by the division or reallocated to eligible persons and entities through random drawings conducted at the Division of Wildlife Resources, Salt Lake City office.

(5) All persons or entities applying for a certificate of registration to harvest brine shrimp and brine shrimp eggs made available for issuance through Subsection (4) shall satisfy the following requirements:

(a) submit a certificate of registration application to the wildlife registration office consistent with the requirements set forth in R657-14-4; and

(b) submit a cashiers check to the division in the amount of $10,000 for each certificate of registration applied for.

(6)(a) One certificate of registration is required for each harvest location.

(b) The original certificate of registration must be in possession at the harvest location and available for inspection by the division or any peace officer upon demand.

(7)(a) Three individual helper cards are issued with the certificate of registration and are transferable.

(b) Additional helper cards may be obtained from the division.

(c) Any crew member harvesting or transporting brine shrimp or brine shrimp eggs from the harvest location must have a helper card in possession. A primary or alternate seiner does not have to be present while transporting brine shrimp or brine shrimp eggs from the harvest location.

(d) An employee directing harvest operations from a plane does not have to have a helper card.

(e) The driver of a truck transporting brine shrimp or brine shrimp eggs from the lake to a storage or processing plant does not have to have a helper card. Any crew member loading brine shrimp and brine shrimp eggs into a truck must have a helper card in possession.

(8)(a) A primary seiner and an alternate seiner card are issued with the certificate of registration and are transferable within the entity holding the certificate of registration.

(b) A primary seiner or an alternate seiner must be present and directly supervise the harvest activity.

(c) The primary or alternate seiner must have a primary or alternate seiner card in possession at the harvest location.

R657-14-15. Certificate of Registration Renewal for Brine Shrimp and Brine Shrimp Egg Harvesting.

(1) Each certificate of registration to harvest brine shrimp and brine shrimp eggs issued under this rule may be renewed by the division on an annual basis consistent with the provisions in this section.

(2) Persons or business entities issued certificates of registration by the division in the harvest year immediately preceding the harvest year for which renewal is sought will have a preference for the same number of certificates of registration, provided the applicant satisfies the renewal criteria for each certificate of registration.

(3) The annual expiration date of a certificate of registration shall be shown on the certificate of registration. A certificate of registration that is not renewed prior to the expiration date shown on the certificate of registration automatically expires.

(a) A certificate of registration automatically expires prior to the expiration date shown on the certificate of registration upon the death of a holder that is a natural person, or upon the dissolution of a holder that is a partnership, corporation, or other business entity.

(b)(i) Failure to annually renew a certificate of registration by satisfying all the renewal criteria outlined in this rule prior to the expiration date shown on the certificate of registration shall automatically deprive the prospective holder of a renewal preference in succeeding years.

(ii) Preference forfeiture results whether unsuccessful renewal is the consequence of automatic expiration, applicant neglect, or division denial.

(iii) Failure to renew in years where the harvest of brine shrimp or brine shrimp eggs is closed for regulatory or management purposes will result in preference forfeiture.

(c) Expiration of a certificate of registration is not an adjudicative proceeding under Title 63, Chapter 46b of the Utah Administrative Procedures Act.

(4) Renewal applications for certificates of registration to harvest brine shrimp and brine shrimp eggs are available at the division's wildlife registration office in Salt Lake City.

(a) Completed renewal applications shall be submitted to the wildlife registration office between May 1 and May 31 of each year. Applications are considered "submitted" for purposes of this rule when hand delivered to the wildlife registration office on or before the application deadline, or when mailed to the wildlife registration office and postmarked no later than midnight on the last day of the application period.

(b) Where a certificate of registration renewal application is submitted in the name of a commercial organization, the applicant must specify the individual responsible for that entity.

(c) The division may return any application that is incomplete or completed incorrectly.

(d) Applications for renewal that are filed within the prescribed time period set in this rule but returned as incomplete or completed incorrectly may be granted where the errors are corrected and the application resubmitted to the wildlife registration office within 30 days from the date the initial application was rejected.

(e) The application review process may require up to 45 days.

(5) The criteria for certificate of registration renewal are as follows:

(a) the applicant was issued a certificate of registration to harvest brine shrimp and brine shrimp eggs in the immediate harvest season preceding the application for renewal;

(b) the applicant has accurately and completely filled out the division's renewal application and submitted it to the division within the time period prescribed in this rule;

(c) the applicant has submitted with the renewal application a cashiers check for $10,000 for each certificate of registration; and

(d) the applicant satisfies all other requirements prerequisite to receiving an initial certificate of registration to harvest brine shrimp or brine shrimp eggs as found in R657-14-4.

(6) The division may refuse to renew a certificate of registration for any of the following reasons:

(a) the applicant has failed to submit any report required by the division in writing, or any report required by this rule or the Wildlife Board;

(b) the applicant has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife;

(c) the applicant has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(d) where the division determines that renewal may significantly damage or is not in the interest of wildlife, wildlife habitat, serving the public, or public safety.

(7) If an application for renewal is approved, the Division shall issue the applicant a new certificate of registration that may specify:

(a) the species and amounts of protected aquatic wildlife that may be harvested or sold;

(b) the water and locations where protected aquatic wildlife may be harvested;

(c) the equipment that may be used;

(d) the hours during which protected aquatic wildlife may be harvested; and

(e) any restriction imposed on the applicant in addition to the provisions of this rule.

(8) Any applicant who has been refused renewal of a certificate of registration may submit a request for agency action to the Wildlife Board, in care of the Division of Wildlife

Resources, within 30 days following notification of the refusal to renew. The format and content of the request for agency action and any subsequent proceedings initiated thereunder shall comply with Rule R657-2.

(9) Certificates of registration for harvesting brine shrimp and brine shrimp eggs are valid only during the harvest season as provided in Subsections R657-14-14(2) and R657-14-19(4).

R657-14-16. Harvesting Brine Shrimp and Brine Shrimp Eggs -- Identification of Equipment.

(1)(a) Any boat, boom, vehicle except an OHV, camper, house trailer, or motor home used for harvesting operations must be identifiable from the air and land with either the company name, company initials, or certificate of registration number.

(b) The letters or numbers shall be written clearly and shall meet the following requirements:

(i) letters or numbers on the top of a boat, vehicle, camper, house trailer, or motor home shall be at least 36 inches in height;

(ii) letters or numbers used on the sides of a boat, vehicle, camper, house trailer, or motor home shall be at least 24 inches in height; and

(iii) letters and numbers used on booms shall be at least three inches in height.

(c) Identification may be done with a magnetic sign placed on top of and the sides of the vehicle or boat.

(2)(a) Only one fluorescent orange flag for each Certificate of Registration will be displayed at each harvest location as follows:

(i) on the boat with the certificate of registration on board;

(ii) on the harvest boat or attached to the boom; or

(iii) on the shore while harvesting brine shrimp or brine shrimp eggs from shore.

(b) The last three numbers of the certificate of registration must be written legibly on the fluorescent orange flag and those numbers shall be at least 6 inches in height.

(c) The fluorescent orange flag must be displayed in a manner that is visible from a distance of at least 300 yards.

R657-14-17. Harvesting Brine Shrimp and Brine Shrimp Eggs -- Use of Booms.

(1)(a) A primary seiner, alternate seiner, or helper must remain within one mile of any boom attached to the shore, whether open or closed, 24 hours a day so that an officer may easily locate the person tending the boom.

(b) A boom may be left in the water after the end of legal harvest hours if:

(i) the boom is properly identified as provided in Subsection R657-14-16; and

(ii) the boom is closed.

(2) On a causeway or dike where camping is not allowed, a primary seiner, alternate seiner, or helper must be stationed at the closest possible camping site, not more than 10 miles away, and that location must be clearly identified on a tag securely attached to the shore end of the boom.

(3) A person may not harvest any brine shrimp or brine shrimp eggs within 300 yards of any fluorescent orange flag displayed at a harvest location as provided in Subsection R657-14-16(2)(a) without permission from the company that first began harvesting in that location.

(4) Brine shrimp and brine shrimp eggs may be removed from another person's boom only with written permission from the person who owns the boom.

(5) A person may not deploy more than one continuous length of boom for each certificate of registration.

R657-14-18. Harvesting Brine Shrimp and Brine Shrimp Eggs -- Unlawful Method -- Use of Equipment.

(1) A person may not intentionally drive a boat through, or create a wake through, a streak of brine shrimp eggs that another person is harvesting.

(2)(a) A person may test the equipment to be used in harvesting brine shrimp from March 1 through September 30.

(b) At least 48 hours before testing the equipment, the person must notify the division's Northern Regional Office.

(c) Any brine shrimp or brine shrimp eggs collected while testing the equipment must be immediately returned within 1/4 mile of the location in which they were collected.

(3) Brine shrimp and brine shrimp eggs may not be taken to a storage facility, test site located greater than 1/4 mile from the location in which they were collected, or to the shore, except as provided in Section R657-14-19(4).

R657-14-19. Harvesting Brine Shrimp and Brine Shrimp Eggs -- Areas of Harvest and Season Dates.

(1) The division may authorize the harvest of brine shrimp and brine shrimp eggs from:

(a) the Great Salt Lake and surrounding areas, including ponds operated in a normal manner for mineral extraction; and

(b) the Sevier River.

(2) The area east of the north-south line from the tip of Promontory Point south along the east shore of Fremont and Antelope Islands and along the dike extending from the south end of Antelope Island to the south shore of the Great Salt Lake is closed to the commercial harvesting of brine shrimp and brine shrimp eggs.

(3) Except as provided in Subsections (4) and (5), brine shrimp and brine shrimp eggs may be harvested only from October 1 through January 31. If October 1 falls on a Sunday, the harvest season shall begin on the following Monday.

(4)(a) Any person who has a valid certificate of registration may cumulatively collect up to 25 pounds of brine shrimp eggs between March 1 and September 30 for the purpose of conducting research.

(b) For the purpose of conducting research, a person may not collect more than one pound of brine shrimp eggs during a single day regardless of the number of certificates of registration issued to that person.

(c) Brine shrimp and brine shrimp eggs collected for research under the authority of this section may not be sold, traded, or bartered.

(5)(a) Brine shrimp and brine shrimp eggs may be harvested from mineral extraction ponds located along the shores of the Great Salt Lake any time during the year.

(b) A pond may not be built solely for the purpose of raising or harvesting brine shrimp or brine shrimp eggs.

(c) Brine shrimp or brine shrimp eggs may not be introduced into the Great Salt Lake or any pond. Brine shrimp and brine shrimp eggs must enter into the pond during normal

mineral extraction processes.

R657-14-20. Violations.

(1) The penalty for any violation of this rule is a class C misdemeanor as provided in Section 23-13-11(2).

(2) Any violation of, or failure to comply with the provisions of this rule, any requirement contained in a certificate of registration issued pursuant to this rule, any Wildlife Board Order, or any statute related to the harvesting, possession or transfer of brine shrimp or brine shrimp eggs may be grounds for revocation, suspension or denial of future certificates of registration as determined by a division hearing officer.

KEY: game laws, bait dealers, commercialization of aquatic wildlife

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R657. Natural Resources, Wildlife Resources.
R657-33. Taking Bear.
R657-33-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, of the Utah Code, the Wildlife Board has established this rule for taking and pursuing bear.

(2) Specific dates, areas, number of permits, limits and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means any lure containing animal, mineral or plant materials.

(b) "Baiting" means the placing, exposing, depositing, distributing or scattering of bait to lure, attract or entice bear on or over any area.

(c) "Bear" means Ursus americanus, commonly known as black bear.

(d) "Canned hunt" means that a bear is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the bear.

(e) "Cub" means a bear less than one year of age.

(f) "Evidence of sex" means the sex organs of a bear, including a penis, scrotum or vulva.

(g) "Green pelt" means the untanned hide or skin of a bear.

(h) "Pursue" means to chase, tree, corner or hold a bear at bay.

(i) "Waiting period" means a specified period of time that a person who has obtained a bear permit must wait before applying for any other bear permit.

(j) "Wildlife Habitat Authorization" means a document granting authority to purchase a license or permit.

R657-33-3. Permits for Taking Bear.

(1) (a) To take a bear, a person must first obtain an annual Wildlife Habitat Authorization, a valid small game or combination license, and a limited entry bear permit for a specified management unit as provided in the proclamation of the Wildlife Board for taking bear.

(b) To pursue bear, a person must first obtain an annual Wildlife Habitat Authorization, a valid small game or combination license, and a bear pursuit permit from a division office.

(c) Beginning July 1, 1999, a valid small game or combination license is no longer required before obtaining a limited entry bear permit or a bear pursuit permit.

(2) Any limited entry bear permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) Residents and nonresidents may apply for limited entry bear permits and purchase bear pursuit permits.

R657-33-4. Purchase of License or Permit by Mail.

(1) A nonresident may purchase a small game license by mail by sending the following information to the Salt Lake division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, driver's license number (if available), proof of hunter education certification and fee.

(2) A person may purchase a pursuit permit by mail by sending the following information to the Salt Lake division office: full name, complete mailing address, phone number, small game or combination license number and fee.

(3)(a) Residents may send a personal check, cashier's check or money order.

(b) Nonresidents must send either a cashier's check or money order. Personal checks are not accepted from nonresidents.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

R657-33-5. Hunting Hours.

Bear may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

R657-33-6. Firearms and Archery Equipment.

(1) A person may use the following to take bear:

(a) any firearm not capable of being fired fully automatic, except a firearm using a rimfire cartridge; and

(b) a bow and arrows, except a crossbow may not be used.

R657-33-7. Traps and Trapping Devices.

(1) Bear may not be taken with a trap, snare or any other trapping device, except as authorized by the division.

(2) Bear accidentally caught in any trapping device must be released unharmed.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a bear from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

R657-33-8. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-603-5.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all area park facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns and archery tackle is prohibited within one quarter mile of the above stated areas.

R657-33-9. Prohibited Methods.

(1) Bear may be taken or pursued only during open seasons and using methods prescribed in this rule and the proclamation of the Wildlife Board for taking and pursuing bear. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare, or in any way harm or transport bear.

(2) After a bear has been pursued, chased, treed, cornered, legally baited or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

R657-33-10. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife.

R657-33-11. Party Hunting.

A person may not take a bear for another person.

R657-33-12. Use of Dogs.

(1) Dogs may be used to take or pursue bear only during open seasons as provided in the proclamation of the Wildlife Board for taking bear.

(2) The owner and handler of dogs used to take or pursue bear must have a valid bear permit or bear pursuit permit in possession while engaged in taking or pursuing bear.

(3) When dogs are used in the pursuit of a bear, the licensed hunter intending to take the bear must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a bear and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3).

R657-33-13. Certificate of Registration Required for Bear Baiting.

(1) A certificate of registration for baiting must be obtained before establishing a bait station.

(2) Certificates of registration are issued only to holders of valid limited entry bear archery permits.

(3) A certificate of registration may be obtained from the division office within the region where the bait station will be established.

(4) The following information must be provided to obtain a certificate of registration for baiting: township, range, section to the nearest 1/4 section, county, drainage, type of bait used, and written permission from the appropriate landowner for private lands or appropriate land management agency for public lands.

(5)(a) The division recommends that any person interested in baiting on any lands administered by the Forest Service or Bureau of Land Management verify that the lands are open to baiting before applying for a limited entry bear archery permit.

(b) Areas which are open to baiting on National Forests are designated on a map which may be obtained from district offices. Baiting locations and applicable travel restrictions must be verified by the district supervisor prior to applying for a certificate of registration.

(c) Areas generally closed to baiting stations by these federal agencies include:

(i) designated Wilderness Areas;

(ii) heavily used drainages or recreation areas; and

(iii) critical watersheds.

(6) A $5 handling fee must accompany the application.

(7) Only hunters listed on the certificate of registration may hunt over the bait station and the certificate of registration must be in possession while hunting over the bait station.

(8) Any person tending a bait station must be listed on the certificate of registration.

R657-33-14. Use of Bait.

(1)(a) A person who has obtained a limited entry bear archery permit may use archery tackle only, even when hunting bear away from the bait station.

(b) A person may establish or use only one bait station. The bait station may be used during both open seasons.

(c) Bear lured to a bait station may not be taken with any firearm or the use of dogs.

(d) Bait may not be contained in or include any metal, glass, porcelain, plastic, cardboard, or paper.

(e) The bait station must be marked with a sign provided by the division and posted within 10 feet of the bait.

(2)(a) Bait may be placed only in areas open to hunting and only during the open seasons.

(b) All materials used as bait must be removed within 72 hours after the close of the season.

(3) A person may use nongame fish as bait, except those listed as prohibited in Rule R657-13 and the proclamation of the Wildlife Board for Taking Fish and Crayfish. No other species of protected wildlife may be used as bait.

(4)(a) Domestic livestock or its parts, including processed meat scraps, may be used as bait.

(b) A person using domestic livestock or their parts for bait must have in possession:

(i) a certificate from a licensed veterinarian certifying that the domestic livestock or their parts does not have a contagious disease, and stating the cause and date of death; and

(ii) a certificate of brand inspection or other proof of ownership or legal possession.

(5) Bait may not be placed within:

(a) 100 yards of water or a public road or designated trail; or

(b) 1/2 mile of any permanent dwelling or campground.

(6) Violations of this rule and the proclamation of the Wildlife Board for taking and pursuing bear concerning baiting on federal lands may be a violation of federal regulations and prosecuted under federal law.

R657-33-15. Tagging Requirements.

(1) The carcass of a bear must be tagged in accordance with Section 23-20-30.

(2) The carcass of a bear must be tagged with a temporary

possession tag before the carcass is moved from or the hunter leaves the site of kill.

(3) A person may not hunt or pursue bear after the notches have been removed from the tag or the tag has been detached from the permit.

(4) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(5) A person may not possess a bear pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

R657-33-16. Evidence of Sex and Age.

(1) Evidence of sex must remain attached to the carcass or pelt of each bear until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) The division may seize any pelt not accompanied by its skull.

R657-33-17. Permanent Tag.

(1) Each bear must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass.

(2) A person may not possess a green pelt after the 48-hour check-in period, ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

R657-33-18. Transporting Bear.

Bear that have been legally taken may be transported by the permit holder provided the bear is properly tagged and the permittee possesses a valid small game or combination license and the appropriate permit.

R657-33-19. Exporting Bear from Utah.

(1) A person may export a legally taken bear or its parts if that person has a valid license and permit and the bear is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a bear pelt without first obtaining a shipping permit issued by an authorized division representative.

R657-33-20. Donating.

(1) A person may donate protected wildlife or their parts to another person in accordance with Section 23-20-9.

(2) A written statement of donation must be kept with the protected wildlife or parts showing:

(a) the number and species of protected wildlife or parts donated;

(b) the date of donation;

(c) the license or permit number of the donor and the permanent possession tag number; and

(d) the signature of the donor.

(3) A green pelt of any bear donated to another person must have a permanent possession tag affixed.

(4) The written statement of donation must be retained with the pelt.

R657-33-21. Purchasing or Selling.

(1) Legally obtained tanned bear hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale or barter a gall bladder, tooth, claw, paw or skull of any bear.

R657-33-22. Waste of Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts in accordance with Section 23-20-8.

(2) The skinned carcass of a bear may be left in the field and does not constitute waste of wildlife, however, the division recommends that hunters remove the carcass from the field.

R657-33-23. Livestock Depredation.

(1) If a bear is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take bear, may kill the bear;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, which shall authorize a local hunter to take the offending bear or notify a Wildlife Services specialist, supervised by the USDA Wildlife Program; or

(c) the livestock owner may notify a Wildlife Services specialist of the depredation who may take the depredating bear.

(2) Depredating bear may be taken at any time by a Wildlife Services specialist while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating bear may be taken with any weapon authorized for taking bear.

(4)(a) Any bear taken pursuant to this section must be delivered to a division office or employee within 72 hours.

(b) A bear that is killed in accordance with Subsection (1)(a) shall remain the property of the state, except the division may sell a bear damage permit to a person who has killed a depredating bear if that person wishes to maintain possession of the bear.

(c) A person may acquire only one bear annually.

(5)(a) Hunters interested in taking depredating bear as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating bear as needed.

R657-33-24. Questionnaire.

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate

population trends, harvest success and other valuable information.

R657-33-25. Taking Furbearers.

(1) Furbearers, including badger, beaver, black-footed ferret, bobcat, fisher, red fox, gray fox, kit fox, lynx, marten, mink, otter, ringtail, skunk, weasel, wolf and wolverine may be taken only in accordance with the Furbearer Proclamation.

(2) A person may not disturb, remove or possess a trap, trapping device or any wildlife held in a trap without first obtaining written permission from the trap owner.

R657-33-26. Taking Bear.

(1) A person may take only one bear during the season and from the limited entry area specified on the permit.

(2)(a) A person may not take or pursue a female bear with cubs.

(b) Any bear, except a cub or a sow accompanied by cubs, may be taken during the prescribed seasons.

(3) Permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking and pursuing bear.

(4) Season dates, closed areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-27. Bear Pursuit.

(1) Bear may be pursued only by persons who have obtained a bear pursuit permit. The bear pursuit permit does not allow a person to kill a bear.

(2) A person may not:

(a) take or pursue a female bear with cubs;

(b) repeatedly pursue, chase, tree, corner or hold at bay the same bear during the same day; or

(c) possess a firearm or any device that could be used to kill a bear while pursuing bear.

(3) If eligible, a person who has obtained a bear pursuit permit may also obtain a limited entry bear permit.

(4) When dogs are used to take a bear and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Section R657-33-12(3).

(5) Season dates, closed areas and bear pursuit permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-28. General Application Information.

(1) A person must apply for or obtain an annual wildlife habitat authorization, and a small game or combination license before the division may issue a bear permit.

(2) A person may not apply for or obtain more than one bear permit for the same year, except as provided in Subsection R657-33-27(3).

(3) A person must be 12 years of age or older prior to the last day of the application period to apply for a bear permit.

(4) Limited entry bear permits are valid only for the management unit and for the specified season designated on the permit.

R657-33-29. Waiting Period.

(1) Any person who purchases a permit valid for the current season, may not apply for a permit for a period of two years.

(2) Any person who draws a permit for the current season, may not apply for a permit for a period of two years.

R657-33-30. Application Procedure.

(1) Applications are available from license agents and division offices.

(2)(a) Group applications are not accepted. A person may not apply more than once annually.

(b) Applicants may select up to three management unit choices when applying for limited entry bear permits. Management unit choices must be listed in order of preference.

(c) Applicants must specify on the application whether they want a limited entry bear permit or a limited entry bear archery permit.

(i) The application may be rejected if the applicant does not specify either a limited entry bear permit or limited entry bear archery permit.

(ii) Any person obtaining a limited entry bear archery permit must also obtain a certificate of registration if intending to use bait as provided in Section R657-33-14.

(3) A wildlife habitat authorization and small game or combination license may be obtained before applying, or will be issued upon successfully drawing a permit. Fees must be submitted with the application.

(4)(a) Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking and pursing bear. Applications filled out incorrectly or received later than the date prescribed in the bear proclamation may be rejected. Late applications will be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

(5) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(6) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Section R657-33-32(6)(b).

R657-33-31. Fees.

(1) Each application must include:

(a) the permit fee, which includes the nonrefundable handling fee;

(b) the wildlife habitat authorization fee, if it has not yet been purchased; and

(c) the small game or combination license fee, if it has not yet been purchased.

(2)(a) Personal checks, money orders, cashier's checks and credit cards are accepted from residents.

(b) Money orders, cashier's checks and credit cards are accepted from nonresidents. Personal checks are not accepted

from nonresidents.

(c) All payments must be made payable to the Utah Division of Wildlife Resources.

(3)(a) Credit cards must be valid at least 30 days after the drawing results are posted.

(b) Handling fees are charged to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(4) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

R657-33-32. Drawings and Remaining Permits.

(1) Drawing results will be posted at the Lee Kay Center, Cache Valley Hunter Education Center and division offices on the date published in the proclamation of the Wildlife Board for taking and pursuing bear.

(2) A list of remaining permits will be available on the date published in the proclamation of the Wildlife Board for taking and pursuing bear.

(3) Permits remaining after the initial drawing are sold only by mail beginning and ending on the dates provided in the proclamation of the Wildlife Board for taking and pursuing bear.

(4) Applications are available from division offices and license agents.

(5) The same application form used for the initial drawing must be used when applying for remaining permits by mail. The handling fees are nonrefundable.

(6)(a) Permits remaining after both drawings will be sold over-the-counter, in person or through the mail on a first-come, first-served basis only from the Salt Lake division office on the date published in the proclamation of the Wildlife Board for taking and pursuing bear.

(b) Residents or nonresidents may purchase any of the remaining permits.

(7) Waiting periods do not apply to the purchase of remaining permits. However, waiting periods are incurred as a result of purchasing remaining permits.

(8)(a) A person may withdraw their application for the bear drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking and pursuing bear.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(c) A person may not amend a withdrawn application, nor reapply after the application has been withdrawn.

(d) Handling fees will not be refunded.

R657-33-33. Bonus Points.

(1) A bonus point is awarded for a valid unsuccessful application in the drawing.

(2) Bonus points are forfeited if the person obtains a permit.

(3) Bonus points are not transferable.

(4) Bonus points are tracked by using the applicant's social security number or division-issued hunter identification number.

R657-33-34. Refunds.

(1)(a) Unsuccessful applicants, who applied in the initial drawing and who applied with a check or money order, will receive a refund in July.

(b) Unsuccessful applicants, who applied for remaining permits and who applied with a check or money order, will receive a refund in August.

(2) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

R657-33-35. Duplicate License, Wildlife Habitat Authorization and Permit.

Whenever any unexpired license, wildlife habitat authorization, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office, for five dollars or half of the price of the original license, wildlife habitat authorization or permit, whichever is less.

KEY: wildlife, bear*, game laws

May 18, 1999	**23-14-18**
Notice of Continuation March 24, 1998	**23-14-19**
	23-13-2

R657. Natural Resources, Wildlife Resources.
R657-37. Cooperative Wildlife Management Units for Big Game.
R657-37-1. Purpose and Authority.

(1) Under authority of Section 23-23-3, this rule provides the standards and procedures applicable to Cooperative Wildlife Management units organized for the hunting of big game.

(2) Cooperative Wildlife Management units are established to:

(a) increase wildlife resources;

(b) provide income to landowners;

(c) provide the general public access to private and public lands for hunting big game within a Cooperative Wildlife Management Unit;

(d) create satisfying hunting opportunities; and

(e) provide adequate protection to landowners who open their lands for hunting.

R657-37-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-23-2.

(2) In addition:

(a) "CWMU" means Cooperative Wildlife Management Unit.

(b) "CWMU agent" means a person appointed by a landowner association member or landowner association operator to protect private property within the CWMU.

(c) "General public" means all persons except landowner association members, landowner association operators and their spouse or dependant children.

(d) "Landowner association member" means a landowner or an organization of owners of private land who sign the CWMU application form.

(e) "Landowner association operator" means a person designated by a landowner association member to operate the CWMU.

(f) "Voucher" means a document issued by the division to a landowner association member or landowner association operator, allowing a landowner association member or landowner association operator, to designate who may purchase a CWMU big game hunting permit from a division office.

R657-37-3. Requirements for the Establishment of a Cooperative Wildlife Management Unit.

(1)(a) The minimum allowable acreage for a CWMU is 10,000 contiguous acres, except as provided in Subsection (2).

(b) A CWMU shall not contain a domestic elk farming operation within, next to, or adjacent to the CWMU boundaries.

(2) The Wildlife Board may renew a CWMU that is less than 10,000 acres provided the CWMU legally possessed a 1999 CWMU Certificate of Registration, allowing for acreage less than 10,000 contiguous acres or allowing noncontiguous land parcels.

(3)(a) Cooperative Wildlife Management Units organized for hunting big game, shall consist of private land to the extent practicable.

(b) The Wildlife Board may approve a CWMU containing public land only if:

(i) the public land is completely surrounded by private land or is otherwise inaccessible to the general public;

(ii) the public land is necessary to establish an enforceable boundary clearly identifiable to both the general public and public and private permit holders; or

(iii) the public land is necessary to achieve statewide and unit management objectives.

(c) If any public land is included within a CWMU, the landowner association member shall meet applicable federal and state land use requirements on the public land.

(d) The Wildlife Board shall increase the number of permits or hunting opportunities made available to the general public to reflect the proportional habitat on public land to private land within the CWMU.

R657-37-4. Cooperative Wildlife Management Unit Management Plan.

(1) The landowner association member shall manage the CWMU in compliance with a CWMU Management Plan consistent with statewide and unit management objectives for the respective big game unit and approved by the Wildlife Board.

(2)(a) The CWMU Management Plan may be approved by the Wildlife Board for a period of five years, expiring on January 31 at the end of the five-year period.

(b) The CWMU Management Plan must be amended when the management plan or land ownership changes.

(c) The CWMU Management Plan may be amended as requested by the Wildlife Board, the division or the CWMU landowner association member or operator.

(3)(a) The CWMU Management Plan must include:

(i) big game management objectives for the CWMU that are consistent with statewide and unit management objectives for the respective big game unit, including population management and antlerless harvest;

(ii) procedures for obtaining age and harvest data;

(iii) an explanation of how comparable hunting opportunities will be provided to both the private and public permit holders on the CWMU as required in Section 23-23-7.5 and Rule R657-37-7(3)(a);

(iv) private and public permit ratio;

(v) rationale and purpose for including public land within the CWMU boundaries, if public land is included;

(vi) rules and guidelines used to regulate a permit holder's conduct as a guest on the CWMU;

(vii) rules and guidelines defining the CWMU landowner association member, landowner association operator or CWMU agent responsibilities;

(viii) County Recorder Plat Maps, dated by receipt of purchase within 30 days of the initial or renewal application deadline for a certificate of registration, depicting boundaries and ownership for all property within the CWMU;

(ix) two original 1:100,000 USGS maps, which shall be filed in the appropriate regional office and the Salt Lake office, depicting all interior and exterior boundaries of the proposed CWMU; and

(x) strategies and methods that avoid adverse impacts to adjacent landowners resulting from the operation of the CWMU.

(b) The division shall, upon the applicant's request,

provide assistance in preparing the CWMU Management Plan.

R657-37-5. Application for Certificate of Registration.

(1) An application for a CWMU Certificate of Registration must be completed and returned to the division regional office where the proposed CWMU is located no later than August 1.

(2) The application must be accompanied by:

(a) the CWMU Management Plan as described in R657-37-4(3), including all maps;

(b) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code;

(c) the name of the designated landowner association operator; and

(d) a $5 nonrefundable handling fee.

(3) The division may reject any application that is incomplete or completed incorrectly.

(4) The division shall forward the complete and correct application and required documentation to the Wildlife Board for consideration.

(5) Upon receiving the application, required documentation, appropriate fee and recommendation from the division, the Wildlife Board may:

(a) authorize the issuance of a certificate of registration, for one year, allowing the landowner association member to operate a CWMU; or

(b) deny the application and provide the landowner association member with reasons for the decision.

(6)(a) A landowner association member or landowner association operator issued a certificate of registration must request an amendment to the original certificate of registration as provided in Subsection (b) or through the renewal process described in R657-37-6 for any variation in:

(i) the CWMU Management Plan; or

(ii) any other matter related to the management and operation of the CWMU not originally included in the certificate of registration.

(b) A request for an amendment to a certificate of registration to allow a CWMU permit holder to hunt within a reciprocal CWMU must be made in writing and submitted to the appropriate division regional supervisor and wildlife manager.

(i) Upon approval by the regional supervisor, an amendment to the original certificate of registration shall be issued in writing.

(7) The Wildlife Board shall consider any violation of the provisions of Title 23, Wildlife Resources Code and any information provided by the division, landowners, and the public in determining whether to authorize the issuance of a certificate of registration for a CWMU.

(8) A CWMU Certificate of Registration is issued on an annual basis and shall expire on January 31, providing the certificate of registration is not suspended or revoked prior to the expiration date.

(9) The CWMU application/agreement is binding upon the landowner association members, landowner association operators and all successors in interest to the CWMU property or the hunting rights thereon as it pertains to allowing public permit holders reasonable access to all CWMU property during the applicable hunting seasons for purposes of filling the permit.

R657-37-6. Renewal of a Certificate of Registration.

(1) A CWMU Certificate of Registration must be renewed by the Wildlife Board annually or when any changes occur in the activities or information authorized by the Wildlife Board in the original certificate of registration or CWMU Management Plan.

(2) An application for renewal of a certificate of registration must be completed and returned to the division regional office where the CWMU is established no later than September 1.

(3) The renewal application must identify all changes from the previous years CWMU Certificate of Registration or CWMU Management Plan.

(4) The renewal application must be accompanied by:

(a) the CWMU Management Plan, including all maps as described in R657-37-4(3), if the plan has expired or is being amended;

(b) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code;

(c) the name of the designated landowner association operator; and

(d) a $5 nonrefundable handling fee.

(5) The division may reject any application that is incomplete or completed incorrectly.

(6) The division shall forward the complete and correct renewal application to the Wildlife Board for consideration.

(7) The Wildlife Board shall consider:

(a) the previous performance of the CWMU, including the actions of the landowner association member or landowner association operator when reviewing renewal of the certificate of registration; and

(b) any violation of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU.

(8) Upon receiving the application, required documentation, appropriate fee and recommendation from the division, the Wildlife Board may:

(a) authorize the issuance of a certificate of registration allowing the landowner association member or landowner association operator to operate a CWMU; or

(b) deny the application and provide the landowner association member with reasons for the decision.

(9) A CWMU Certificate of Registration for renewal is authorized annually and shall expire on January 31, providing the certificate of registration is not revoked or suspended prior to the expiration date.

R657-37-7. Operation by Landowner Association.

(1)(a) A CWMU must be operated by a landowner association member who owns land within the CWMU or a landowner association operator who leases or otherwise controls hunting on land within the CWMU.

(b) A landowner association member or landowner association operator may appoint CWMU agents to protect

private property within the CWMU; however, the landowner association member or landowner association operator must assume ultimate responsibility for the operation of the CWMU.

(2)(a) A landowner association member or landowner association operator may enter into reciprocal agreements with any other landowner association member or landowner association operator to allow hunters who have obtained a CWMU permit to hunt within each other's CWMUs as provided in Subsections R657-37-5(6)(b) and R657-37-7(3)(b).

(b) If a person is authorized to hunt in one or more CWMUs as provided in Subsection (a), written permission from the landowner association member or landowner association operator must be in the person's possession while hunting.

(3)(a) A landowner association member or landowner association operator shall provide any person who has obtained a permit, including general public permittees, a comparable hunting opportunity in terms of hunting area and number of days to hunt big game.

(b) A person who has obtained a CWMU permit may hunt only in the CWMU for which the permit is issued, except as provided under Subsection (2).

(4) Each landowner association member or landowner association operator shall post all boundaries of the CWMU in accordance with Section 23-23-7(6).

R657-37-8. Cooperative Wildlife Management Unit Agents.

(1) A landowner association member may appoint CWMU agents to monitor access and protect the private property of the CWMU.

(2) Each CWMU agent shall wear or have in possession a form of identification prescribed by the Wildlife Board which indicates the agent is a CWMU agent.

(3) A CWMU agent may refuse entry into the private land portions of a CWMU to any person, except owners of land within the unit and their employees, who:

(a) does not have in their possession a CWMU permit;

(b) endangers or has endangered human safety;

(c) damages or has damaged private property within a CWMU; or

(d) fails or has failed to comply with reasonable rules of a landowner association.

(4) A CWMU agent may not refuse entry to the general public onto any public land within the boundaries of a CWMU that is otherwise accessible to the public for purposes other than hunting big game for which the CWMU is authorized.

(5) In performing the functions described in this section, a CWMU agent shall comply with the relevant laws of this state.

R657-37-9. Permit Allocation.

(1) The division shall issue CWMU permits for hunting big game to permittees:

(a) qualifying through a general public drawing; or

(b) named by the landowner association member or landowner association operator.

(2) A landowner association member or landowner association operator shall be issued vouchers that may be used to purchase hunting permits from division offices.

(3) The division and the landowner association member shall, in accordance with the tables provided in Subsection (4), jointly determine:

(a) the total number of permits to be issued for the CWMU; and

(b) the number of permits that may be offered by the landowner association member to the general public as defined in Subsection R657-37-2(c).

(4)(a) Permits may be allocated using an option from:

(i) table one for moose and pronghorn; or

(ii) table two for elk and deer.

(b) At least one buck or bull permit or at least 10% of the bucks or bulls permits, whichever is greater, must be made available to the general public through the big game drawing process.

TABLE 1

MOOSE AND PRONGHORN

Cooperative Wildlife Management Unit's Share

Option	Bucks/Bulls	Antlerless
1	60%	0%
2	60%	40%

Public's Share

Option	Bucks/Bulls	Antlerless
1	40%	0%
2	40%	60%

TABLE 2

ELK AND DEER

Cooperative Wildlife Management Unit's Share

Option	Bucks/Bulls	Antlerless
1	90%	0%
2	85%	25%
3	80%	40%
4	75%	50%
5	50%	0%

Public's Share

Option	Bucks/Bulls	Antlerless
1	10%	100%
2	15%	75%
3	20%	60%
4	25%	50%
5	50%	0%

(5) Antlerless permits must be allocated to the CWMU proportional to the ratio of numbers of big game species using the CWMU compared to the total herd population of the respective big game species on the herd management unit.

(6) A landowner association member or landowner association operator shall provide access free of charge to any person who has received a CWMU permit through the general public big game drawings, except as provided in Section 23-23-11.

(7) If the division and the landowner association member disagree on the number of permits to be issued, the number of permits allocated for a species or sex of big game, or the method of take, the Wildlife Board shall make the determination based on the biological needs of the big game herds, including available forage, depredation, and other mitigating factors.

(8) A CWMU permit entitles the holder to hunt the species and sex of big game specified on the permit and only in accordance with the certificate of registration and the rules and

proclamations of the Wildlife Board.

(9) Vouchers for antlerless permits may be designated by a landowner association member to any eligible person as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, and Rule R657-42.

(11)(a) A complete list of the current CWMUs, big game hunts, and the date, time, and number of permits available for public drawing shall be published in the proclamation of the Wildlife Board for taking big game.

(b) The division reserves the exclusive right to list approved CWMUs in the proclamation of the Wildlife Board for taking big game. The division may unilaterally decline to list a CWMU in the proclamation where the unit is under investigation for wildlife violations, a portion of the property comprising the CWMU is transferred to a new owner, or any other condition or circumstance that calls into question the CWMUs ability or willingness to allow a meaningful hunting opportunity to all the public permit holders that would otherwise draw out on the public permits.

R657-37-10. Permit Cost.

The fee for permits allocated to any CWMU is the same as the applicable:

(a) limited entry permit fee for elk and pronghorn;

(b) general season, limited entry or premium limited entry permit fee for deer; and

(c) once-in-a-lifetime permit fee for moose.

R657-37-11. Possession of Permits and License by Hunters - Restrictions.

(1) A person may not hunt in a CWMU without having in his possession:

(a) a valid CWMU permit; and

(b) the necessary hunting licenses, permits and tags.

(2) A CWMU permit:

(a) entitles the holder to hunt only on the CWMU specified on the permit pursuant to the rules of the Wildlife Board and does not entitle the holder to hunt on any other public or private land, except as provided under Subsection R657-37-7(2)(a); and

(b) constitutes written permission for trespass as required under Section 23-20-14.

(3) Prior to hunting on a CWMU each permittee must:

(a) contact the relevant landowner association member or landowner association operator and request the CWMU rules and requirements; and

(b) make arrangements with the landowner association member or landowner association operator for the hunt.

R657-37-12. Season Lengths.

(1) A landowner association member or landowner association operator may arrange for permittees to hunt on the CWMU during the following dates:

(a) archery buck deer and archery bull elk seasons may be established beginning with the opening of the general archery deer season through October 31;

(b) general season buck deer, general season bull elk, pronghorn, and moose seasons may be established September 1 through October 31, or the closing date of the general season for the respective species, whichever is later;

(c) muzzleloader deer seasons may be established September 1, 1999 through November 14, 1999;

(d) beginning January 1, 2000, muzzleloader deer seasons may be established September 1 through October 31, or the closing date of the muzzleloader deer season on the state wildlife management unit that contains the CWMU, whichever is later;

(e) muzzleloader elk seasons may be established September 1 through the end of the general muzzleloader elk season;

(e) antlerless elk seasons may be established August 15 through January 31; and

(f) antlerless deer seasons may be established August 15 through December 31.

(2) The Wildlife Board may make variances to the seasons provided in Subsection (1) for good cause.

R657-37-13. Rights-of-Way.

A landowner association member may not restrict established public access to public land enclosed by the CWMU.

R657-37-14. Discipline or Violation.

(1) The Wildlife Board may refuse to issue a certificate of registration to an applicant, and may refuse to renew or may revoke, restrict, place on probation, or otherwise act upon a certificate of registration where the holder has:

(a) violated any provision of this rule, the Wildlife Resources Code, the certificate of registration, or the CWMU application/agreement; or

(b) engaged in conduct that results in the conviction of, a plea of no contest to, or a plea held in abeyance to a crime of moral turpitude, or any other crime that when considered with the functions and responsibilities of a CWMU operator bears a reasonable relationship to the operator's or applicant's ability to safely and responsibly operate a CWMU.

(2) The procedures and rules governing any adverse action taken by the division or the Wildlife Board against a certificate of registration or an application for certificate of registration are set forth in Rule R657-2.

KEY: wildlife, cooperative wildlife management unit
May 18, 1999 23-23-3
Notice of Continuation May 3, 1999

R657. Natural Resources, Wildlife Resources.
R657-41. Conservation and Sportsman Permits.
R657-41-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:

(a) conservation permits to conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities; and

(b) sportsman permits.

(2) The division must use all revenue derived from conservation permits for the benefit of the species for which the permit is issued.

R657-41-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Area Conservation Permit" means a permit issued for a specific unit or hunt area for a specific species, and may include an extended season, or legal weapon choice, or both, beyond the general season.

(b) "Conservation Organization" means a nonprofit chartered institution, foundation, or association founded for the purpose of promoting wildlife conservation and has established tax exempt status under Internal Revenue Code, Section 501C-3 as amended.

(c) "Conservation Permit" means any harvest permit authorized by the Wildlife Board and issued by the division to generate revenue for the benefit of the species for which the permit is authorized and issued.

(d) "Sportsman Permit" means a harvest permit authorized by the Wildlife Board and issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(e) "Statewide Conservation Permit" means a permit which allows a permittee to hunt:

(i) big game species on any open unit from September 1 through December 31, except pronghorn and moose from September 1 through October 31; and

(ii) small game species on any open unit during the season authorized by the Wildlife Board.

R657-41-3. Method for Determining the Number of Conservation and Sportsman Permits.

(1) The number of conservation permits authorized by the Wildlife Board is based on:

(a) the species population trend, size, and distribution to protect the long-term health of the population;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) the potential revenue that will support protection and enhancement of the species.

(2) The recommended number of conservation permits available will be based on the following table.

TABLE 1
PERMIT NUMBERS

Public Permits	Conservation Permits
2-14	1
15-24	2
25-34	3
35-44	4
45-54	5
55-70	6
71-85	7
86-100	8
101+	9

(3) One statewide conservation permit may be authorized for each big game and small game species for which limited permits are available.

(4) A limited number of area conservation permits may be authorized, with a maximum of 5% of the permits or eight permits, whichever is less, for any unit or hunt area, unless a higher number is specifically authorized by the Wildlife Board.

(5) The number of conservation and sportsman permits available for use during the following year will be determined by the Wildlife Board annually.

(6) Conservation permits are deducted from the number of public drawing permits.

(7) One sportsman permit may be authorized for each statewide conservation permit authorized.

R657-41-4. Obtaining Conservation Permits.

(1) Statewide and area conservation permits are available to eligible conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities.

(2) Conservation organizations may apply for conservation permits by sending an application to the division for each permit requested.

(3) The application must be submitted to the division by September 1 to be considered for the following year's conservation permits. Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a copy of the conservation organization's mission statement;

(c) verification of the conservation organization's tax exempt status under Internal Revenue Code, Section 501C-3 as amended;

(d) the name of the president or other individual responsible for the administrative operations of the conservation organization;

(e) the type of permit and species for which the permit is requested; and

(f) any requested variances for an extended season or legal weapon choice for area conservation permits.

(4)(a) Conservation organizations must include the information as provided in Subsection (b) or (c).

(b) The estimated revenue expected to be returned to the division.

(i) The estimated revenue must be based on 90% of the auction or fund raising activity amount being submitted to the division, or the recommended minimum amount listed in the following table, whichever is greater.

(ii) The basis for the estimated revenue to the division must include the conservation organization's experience in similar activities, and details of the marketing plan.

(iii) The remaining 10% of the auction or fund raising activity amount may be retained by the conservation

organization for administrative expenses. If the conservation organization is paying the permit and Wildlife Habitat Authorization fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization.

TABLE 2
RECOMMENDED MINIMUM PERMIT BID AMOUNT

Species	Statewide	Area
Rocky Mountain Bighorn (Ram)	$40,000	$20,000
Desert Bighorn (Ram)	30,000	20,000
Buck Deer	10,000	2,000
Bull Elk	10,000	4,000
Bull Moose	10,000	3,000
Bison (Hunter's Choice)	5,000	5,000
Rocky Mountain Goat (Hunter's Choice)	5,000	3,000
Buck Pronghorn	2,000	1,000
Black Bear	2,000	1,000
Cougar	2,000	500
Turkey	350	250

(c) A specific project proposal that includes:

(i) a schedule for project completion;

(ii) the benefits to the affected species;

(iii) justification for the conservation organization retaining more than ten percent of the revenue, showing increased benefit to the species, over remitting the funds to the division. Under this option, the division must receive the cost of the permit.

(iv) Proposals which integrate well with the division's species plans and objectives will be given emphasis in the evaluation.

(5) An application which is incomplete or completed incorrectly may be rejected.

(6) The application of a conservation organization that has not fully reported on the preceding years conservation permits may be rejected.

(7) The division shall recommend the conservation organization to receive each of the conservation permits based on:

(a) first, the bid amount pledged to the species, adjusted by:

(i) the performance of the organization over the previous two years in meeting proposed bids;

(ii) if returning the bid amount to the division, the percent of the proposed bid, at least 90%, returned to the division; and

(iii) if retaining the bid amount for projects, the increased monetary benefit of the projects, which cannot include any other conservation permit revenue or division funding sources, at least 100% of the bid amount, multiplied by the percent the project integrates with species plans and objectives;

(b) second, if two or more conservation organizations are tied using the criteria in Subsection (a), the closeness of the organization's purpose to the species of the permit; and

(c) third, if two or more conservation organizations are tied using the criteria in Subsection (a) and (b), the geographic closeness of the organization to the location of the permit.

(8) Between the time the division recommends that a conservation permit be awarded to a conservation organization and the time the Wildlife Board approves that recommendation, a conservation organization may withdraw their application for any given permit or exchange their application with another conservation organization without penalty, provided the bid amount upon which the permit application was evaluated is not changed.

(9) The Wildlife Board will make the final assignment of conservation permits at a meeting prior to December 1 annually, based on the:

(a) division recommendation;

(b) benefit to the species;

(c) historical contribution of the organization to the conservation of wildlife; and

(d) previous performance of the conservation organization.

(10) The division and conservation organization receiving the permits shall enter into a contract.

(11)(a) The conservation organization receiving permits shall certify that the permits are distributed by lawful means.

(b) The conservation organization must notify the division of the proposed permit recipient within 10 days of the recipient selection or the permit may be forfeited.

(c) If a person is selected by a qualified organization to receive a conservation permit and is also successful in obtaining a permit for the same species in the same year through the Bucks, Bulls and Once-In-A-Lifetime Drawing, that person may designate another person to receive the conservation permit, provided the conservation permit has not been issued by the division to the first selected person.

(d) Except as otherwise provided under Subsection (c), a person designated by a conservation organization as a recipient of a conservation permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.

(12) By September 1 annually, the conservation organization receiving the permit shall report to the division the distribution of each permit and the status of each project contained in the application.

R657-41-5. Obtaining Sportsman Permits.

(1) One sportsman permit is offered to residents through a drawing for each of the following species:

(a) desert bighorn (ram);

(b) bison (hunter's choice);

(c) buck deer;

(d) bull elk;

(e) Rocky Mountain goat (hunter's choice)

(f) bull moose; and

(g) buck pronghorn.

(2) The following information is provided in the proclamation of the Wildlife Board for taking big game:

(a) hunt dates;

(b) open units or hunt areas;

(c) application procedures;

(d) fees; and

(e) deadlines.

R657-41-6. Using a Conservation or Sportsman Permit.

(1)(a) A conservation or sportsman permit allows the

recipient to take only the species for which the permit is issued.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(2) The recipient of a conservation or sportsman permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(3) Bonus points shall not be awarded or utilized:

(a) when applying for conservation or sportsman permits; or

(b) in obtaining conservation or sportsman permits.

(4) Any person who has obtained a conservation or sportsman permit is subject to all waiting periods as provided in Rules R657-5, R657-6, R657-10 and R657-33.

KEY: wildlife, wildlife permits
May 18, 1999 **23-14-18**
23-14-19

R686. Professional Practices Advisory Commission, Administration.

R686-100. Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings.

R686-100-1. Definitions.

A. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional, criminal, or incompetent conduct; is unfit for duty; has lost certification in another state due to revocation or suspension, or through voluntary surrender or lapse of a certificate in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.

B. "Applicant for a certificate" means a person seeking a new certificate or seeking reinstatement of an expired, surrendered, suspended, or revoked certificate.

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

D. "Certificate" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the certificate to provide professional services in the state's public schools.

E. "Commission" means the Professional Practices Advisory Commission as defined and authorized under Section 53A-7-104 et seq.

F. "Chair" means the Chair of the Commission.

G. "Complaint" means a written allegation or charge against an educator.

H. "Complainant" means the Utah State Office of Education.

I. "Days": in calculating any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included; the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Saturdays, Sundays and legal holidays shall not be included in calculating the period of time if the period prescribed or allowed is less than seven days, but shall be included in calculating periods of seven or more days.

J. "Educator" means a person who currently holds a certificate, held a certificate at the time of an alleged offense, is an applicant for a certificate, or is a person in training, to obtain a certificate.

K. "Executive Committee" means a subcommittee of the Commission consisting of the Executive Secretary, Chair, Vice-Chair, and one member of the Commission at large. All Executive Committee members, excluding the Executive Secretary, shall be elected by the Commission. Substitutes may be appointed from within the Commission by the Executive Secretary as needed.

L. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of the Commission.

M. "Hearing" means a proceeding in which allegations made in a complaint are examined, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing the hearing officer, after consulting with members of the Commission assigned to assist in the hearing, prepares a hearing report and submits it to the Executive Secretary.

N. "Hearing Officer" means a person who is experienced in matters relating to administrative procedures, education and education law and is either a member of the Utah State Bar Association or a person not a member of the bar who has received specialized training in conducting administrative hearings, and is appointed by the Executive Secretary at the request of the Commission to manage the proceedings of a hearing. The hearing officer may not be an acting member of the Commission. The hearing officer has broad authority to regulate the course of the hearing and dispose of procedural requests but shall not have a vote as to the recommended disposition of a case.

O. "Hearing Panel" means a hearing officer and three or more members of the Commission agreed upon by the Commission to assist the hearing officer in conjunction with the hearing panel in conducting a hearing and preparing a hearing report.

P. "Hearing report" means a report prepared by the hearing officer with the assistance of the hearing panel at the conclusion of a hearing. The report includes a recommended disposition, detailed findings of fact and conclusions of law based upon the evidence presented in the hearing, relevant precedent, and applicable law and rule.

Q. "Informant" means a person who submits information to the Commission concerning alleged misconduct by a person who may be subject to the jurisdiction of the Commission.

R. "Investigator" means a person who is knowledgeable about matters which could properly become part of a complaint before the Commission, as well as investigative procedures and rules and laws governing confidentiality, who is appointed by the Utah State Office of Education's Investigations Unit at the request of the Executive Secretary to investigate an allegation of misconduct.

S. "Jurisdiction" means the legal authority to hear and rule on a complaint.

T. "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for its members regarding persons whose certificates have been suspended or revoked.

U. "Office" means the Utah State Office of Education.

V. "Party" means the complainant or the respondent.

W. "Recommended disposition" means a recommendation for resolution of a complaint.

X. "Request for agency action" means a document prepared by the Executive Secretary containing one or more allegations of misconduct by an educator, a recommended course of action, and related information.

Y. "Respondent" means the party against whom a complaint is filed.

Z. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical

or practicable of the information contained in the document. Service of a complaint upon an educator shall be by mail to the address of the educator as shown upon the records of the Commission.

AA. "State" means the United States or one of the United States; a foreign country or one of its subordinate units occupying a position similar to that of one of the United States; or a territorial unit, of the United States or a foreign country, with a distinct general body of law.

BB. "Stipulated agreement" means an agreement between a respondent and the Board or a respondent and the Commission under which disciplinary action against an educator's certification status has been taken, in lieu of a hearing.

R686-100-2. Authority and Purpose.

A. This rule is authorized by Section 53A-7-110 which directs the Commission to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures regarding complaints against educators and certification hearings for the Commission to follow. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63-46b-1(2)(d). However, the Commission reserves the right to invoke and use sections or provisions of the Utah Administrative Procedures Act as found in Section 63-46b as necessary to adjudicate an issue.

R686-100-3. Receipt of Allegations of Misconduct.

A. Initiating Proceedings Against an Educator: The Executive Secretary may initiate proceedings against an educator upon receiving an allegation of misconduct or upon the Executive Secretary's own initiative.

(1) An informant may be asked to submit information in writing, including the following:

(a) Name, position (e.g. administrator, teacher, parent, student), telephone number and address of the informant;

(b) Name, position (e.g. administrator, teacher, candidate), and if known, the address and telephone number of the educator against whom the allegations are made;

(c) The allegations and supporting information;

(d) A statement of the relief or action sought from the agency;

(e) Signature of the informant and date.

(2) If an informant submits a written allegation of misconduct as provided in Section R686-100-3A(1) above, the informant shall be told he may receive notification of final actions taken by the Commission or the Board regarding the allegations by filing a written request for information with the Executive Secretary.

(3) Allegations received through telephone calls, letters, newspaper articles, notices from other states or other means may also form the basis for initiating proceedings against an educator.

R686-100-4. Review of Request for Agency Action.

A. Initial Review: Upon reviewing the request, the Executive Secretary or the Executive Committee or both shall recommend one of the following to the Commission:

B. Dismiss: If the Executive Committee determines that the Commission lacks jurisdiction or that the request for agency action does not state a cause of action which the Commission should address, the Executive Committee shall recommend that the Commission dismiss the request. The informant shall be served with notice of the action. If the informant believes that the dismissal has been made in error, the informant may request review by the State Superintendent of Public Instruction within 10 days of the mailing date of the Notice of Dismissal. The Superintendent's decision relative to the dismissal is final.

C. Initiate an Investigation: If the Executive Secretary and the Executive Committee determine that the Commission has jurisdiction and that the request states a cause of action which may be appropriately addressed by the Commission, the Executive Secretary shall ask the Investigations Unit to appoint an investigator to gather evidence relating to the allegations. The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations, including to the extent reasonably practicable all persons specifically named in the request for agency action, and prepare a written report of the findings of the investigation. Should the investigator discover evidence of any additional allegation which should have been included in the original request, it may be included in the investigation report. The completed report shall be submitted to the Executive Secretary, who shall review the report with the Commission. The investigation report shall become part of the permanent case file.

D. Prior to the initiation of any investigation, the Executive Secretary shall send a letter to the educator to be investigated and a copy of the letter to the employing school district or to the district of most recent employment, with information that an investigation has been initiated.

E. Secondary Review: The Executive Committee shall review the investigation report and upon completing its review shall recommend one of the following to the Commission:

(1) Dismiss: If the Executive Committee determines no further action should be taken, the Executive Committee shall recommend to the Commission to dismiss the request for agency action as provided in Section R686-100-5B, above; or

(2) Prepare and Serve COMPLAINT: If the Executive Committee determines further action is appropriate, the Executive Committee shall recommend to the Commission to direct the Executive Secretary to prepare and serve a complaint and a copy of these rules upon the respondent. The complaint shall have a heading similar to that used for the request for agency action, and shall include in the body:

(a) A statement of the legal authority and jurisdiction under which the action is being taken;

(b) A statement of the facts and allegations upon which the complaint is based;

(c) Other information which the Commission believes to be necessary to enable the respondent to understand and address the allegations;

(d) A statement of the potential consequences should the allegations be found to be true;

(e) A statement that, if the respondent wishes to respond to the complaint or request a hearing, or discuss a stipulated agreement, a written response shall be filed with the Executive

Secretary of the Professional Practices Advisory Commission, 250 East 500 South, Salt Lake City, Utah 84111 within 30 days of the date when the complaint was mailed to the respondent, and the potential consequences should the respondent default by failing to respond to the complaint within the designated time;

(f) Notice that, if a hearing is requested, the hearing shall be held not less than 25 days, nor more than 120 days, after receipt of the respondent's response and hearing request by the Executive Secretary, unless a later date is approved by the Commission for good cause shown or is agreed upon by both parties in writing.

(3) Provide the Commission with notice of the action taken.

F. RESPONSE to the complaint: If the respondent wishes to respond to the complaint, the respondent shall submit a written response signed by the respondent or his representative to the Executive Secretary within 30 days of the mailing date of the complaint. The response may include a request for a hearing or a stipulated agreement and shall include:

(1) The file number of the complaint;

(2) The names of the parties;

(3) A statement of the relief that the respondent seeks; and

(4) A statement of the reasons that the relief requested should be granted.

(5) Final Review: As soon as reasonably practicable after receiving the response, or following the passage of the 30 day response period if no response is received, the Executive Secretary shall review any response received, the investigative report, and other relevant information with the Executive Committee. The Executive Committee shall then recommend one of the following to the Commission:

(a) Enter a Default: If the respondent fails to file a response, fails to request a hearing, fails to request a stipulated agreement within 30 days after service of the complaint, or surrenders a certificate in the face of allegations of misconduct without benefit of a stipulated agreement, the Executive Committee shall recommend to the Commission to enter the respondent's default and direct the Executive Secretary to prepare findings in default and a recommended disposition for submission to the Commission in accordance with Section R686-100-16.

(b) Dismiss the Complaint: If the Executive Committee determines that there are insufficient grounds to proceed with the complaint, the Executive Committee shall recommend to the Commission that the complaint be dismissed. If the Commission votes to uphold the dismissal, the informant and respondent shall each be served with notice of the dismissal. If the informant believes that the dismissal has been made in error the informant may request review by the State Superintendent of Public Instruction within 10 days of service of notice of the dismissal. The Superintendent's decision concerning the dismissal is final.

(c) Schedule a Hearing: If the respondent requests a hearing, the Commission shall direct the Executive Secretary to schedule a hearing as provided in Section R686-100-5.

(d) Respond to a request for a stipulated agreement: If the respondent requests to enter into a stipulated agreement, the Executive Secretary shall inform the Commission that the Commission may reject the request or authorize the Executive Secretary to meet with the respondent to prepare recommendations for a stipulated agreement.

(i) A stipulated agreement shall, at minimum, include the following:

(A) A summary of the facts, the allegations, the evidence relied upon by the Commission in its decision, and the respondent's response;

(B) A statement that the respondent has chosen to surrender his certificate rather than contest the charges in a hearing;

(C) A commitment that the respondent shall not provide professional services in a public school in any state or otherwise seek to obtain or use a certificate in any state unless or until the respondent first obtains a valid Utah certificate or clearance from the Board to obtain such a certificate;

(D) Provision for surrender of respondent's certificate;

(E) Acknowledgment that the surrender and the stipulated agreement will be reported to other states through the NASDTEC Educator Information Clearinghouse; and

(F) Other relevant provisions applicable to the case, such as remediation, counseling, and conditions--if any--under which the respondent could seek restoration of certification.

(ii) The stipulated agreement shall be forwarded to the Commission for consideration.

(iii) If the Commission rejects the request or the stipulated agreement, the respondent shall be served with notice of the decision, which shall be final, and the proceedings shall continue from the point under these procedures at which the request was made, as if the request had not been submitted.

(iv) If the Commission accepts the stipulated agreement, the agreement shall be forwarded to the Board for consideration.

(v) If the Board rejects the agreement, the Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the request was made, as if the request had not been submitted.

(e) Recommend that the Commission direct the Executive Secretary to take appropriate disciplinary action against an educator which may include: an admonishment, a letter of warning, or a written reprimand. Documentation of this disciplinary action shall be sent to the respondent's employing school district or to a district where the respondent finds employment. This disciplinary action may be appealed to the Superintendent of Public Instruction, consistent with R686-100-18.

G. Surrender:

(1) Should an educator surrender his certificate, the surrender shall have the effect of revocation unless otherwise designated by the Commission;

(2) The Board shall receive official notification of the surrender at an official Board meeting; and

(3) The Executive Secretary shall enter findings in the educator's certification file explaining the circumstances of the surrender.

R686-100-5. Hearing Procedures.

A. Scheduling the Hearing: The Commission shall agree upon Commission panel members, and the Executive Secretary shall appoint a hearing officer from among a list of hearing

officers approved by the Commission, and schedule the date, time, and place for the hearing. The date for the hearing shall be not less than 25 days nor more than 120 days from the date the response is received by the Executive Secretary. If exceptional circumstances exist which make it impracticable for a party to be present in person, the Executive Secretary may, with the consent of the parties, permit participation by electronic means. The required scheduling periods may be waived by mutual consent of the parties.

B. Change of Hearing Date:

(1) A request for change of hearing date shall be submitted in writing and received by the Executive Secretary at least five days prior to the scheduled date of the hearing. The request may originate from either party and shall show cause.

(2) The Executive Secretary shall make the determination of whether the cause stated in the request is sufficient to warrant a change of hearing date.

(a) If the cause is found to be sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.

(b) If the cause is found to be insufficient, the Executive Secretary shall immediately notify the party making the request and the hearing shall proceed as originally scheduled.

(c) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for exceptional circumstances.

R686-100-6. Appointment and Duties of the Hearing Panel.

A. Hearing Officer: The Executive Secretary shall appoint a hearing officer at the request of the Commission to chair the hearing panel and conduct the hearing. The hearing officer:

(1) May require the parties to submit briefs and lists of witnesses prior to the hearing;

(2) Shall preside at the hearing and regulate the course of the proceedings;

(3) May administer oaths to witnesses as follows: "Do you swear or affirm that the testimony you will give is the truth?";

(4) May take testimony, rule on questions of evidence, and ask questions of witnesses to clarify specific issues;

(5) Shall prepare a hearing report at the conclusion of the proceedings in consultation with other panel members.

B. Commission Panel Members: The Commission shall agree upon three or more Commission members to serve as Commission members of the hearing panel.

(1) If the respondent is a teacher, the majority of the Commission panel members shall be teachers.

(2) If the respondent is not a teacher, the majority of the Commission panel members shall be Commission members other than teachers.

(3) Duties of the Commission panel members include:

(a) Assisting the hearing officer by providing information concerning common standards and practices of educators in the respondent's particular field of practice and in the situations alleged;

(b) Asking questions of all witnesses to clarify specific issues;

(c) Reviewing all briefs and evidence presented at the hearing;

(d) Assisting the hearing officer in preparing the hearing report.

(4) The panel members shall receive for review relevant written materials at least one hour prior to the hearing.

(5) The panel members shall receive available briefs or relevant materials about the hearing for review at least 30 minutes prior to the hearing.

(6) The Executive Secretary may make an emergency substitution of a Commission panel member for cause with the agreement of the parties. The agreement should be in writing but if time does not permit written communication of the agreement to reach the Executive Secretary prior to the scheduled time of the hearing, an Acceptance of Substituted Hearing Panel Member shall be signed by the parties prior to commencement of the hearing.

C. Disqualification of a panel member:

(1) Hearing officer:

(a) A party may seek disqualification of a hearing officer by submitting a written request for disqualification to the Executive Secretary, which request must be received not less than 15 days before a scheduled hearing. The Executive Secretary shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and sufficient, shall appoint a new hearing officer and, if necessary, reschedule the hearing.

(b) If the Executive Secretary denies the request, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may submit a written appeal of the denial to the State Superintendent, which request must be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, he shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

(c) The decision of the State Superintendent is final.

(d) Failure of a party to meet the time requirements of Section R686-100-6C(1) shall result in denial of the request or appeal; if the Executive Secretary fails to meet the time requirements, the request or appeal shall be approved.

(2) Commission panel member:

(a) A party may seek disqualification of a Commission panel member by submitting a written request for disqualification to the hearing officer, which request must be received not less than 15 days before a scheduled hearing. The hearing officer shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and sufficient, shall disqualify the panel member. If the disqualification leaves the hearing panel with fewer than three Commission panel members, the Commission shall appoint a replacement and the hearing officer shall, if necessary, reschedule the hearing.

(b) If the hearing officer denies the request, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may submit a written appeal of the denial to the State Superintendent, which request must be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, he shall direct the hearing officer to disqualify the panel member.

(c) If a disqualification leaves the hearing panel with fewer

than three Commission panel members, the Commission shall agree upon a replacement and the hearing officer shall, if necessary, reschedule the hearing.

(d) The decision of the State Superintendent is final.

(e) Failure of a party to meet the time requirements of Section R686-100-7C(2) shall result in denial of the request or appeal; if the hearing officer fails to meet the time requirements, the request or appeal shall be approved.

R686-100-7. Preliminary Instructions to Parties to a Hearing.

A. Not less than 20 days before the date of a hearing the Executive Secretary shall provide the parties with the following information:

(1) Date, time, and location of the hearing;

(2) Names and school district affiliations of the Commission members on the hearing panel, and the name of the hearing officer;

(3) Procedures for objecting to any member of the hearing panel; and

(4) Procedures for requesting a change in the hearing date.

B. Not less than 15 days before the date of the hearing, the hearing officer may direct the respondent and the complainant to serve the following upon the other party and submit a copy and proof of service to the hearing officer:

(1) A brief setting forth that party's position regarding the allegations, including relevant laws, rules, and precedent;

(2) The name of the person who will represent the party at the hearing, a list of witnesses who will be called, a summary of the testimony which each witness is expected to present, and a summary of documentary evidence which will be submitted. If either party fails to comply with identification of witnesses or documentary evidence in a fair and timely manner and consistent with the provisions of this rule, the hearing officer may limit either party's presentation of witnesses and documentary evidence at the hearing.

C. If the hearing officer requests and receives any of the above documents, he shall provide a copy of the documents to each of the Commission panel members for review at least one hour prior to the hearing.

D. If a party fails to comply in good faith with a directive of the hearing officer under Section R686-100-7A, including time requirements for service, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances including, in extreme cases of noncompliance, entry of a default against the offending party.

R686-100-8. Hearing Parties' Representation.

A. Complainant: The Complainant shall be represented by a person appointed by the Investigations Unit of the Utah State Office of Education.

B. Respondent: A respondent may represent himself or be represented, at his own cost, by another person of his choosing.

C. The informant has no right to individual representation at the hearing or to be present or heard at the hearing unless called as a witness.

R686-100-9. Discovery Prior to a Hearing.

A. Discovery shall be permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the appointed hearing officer.

B. Discovery, especially burdensome or unduly legalistic discovery, may not be used to delay a hearing.

C. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued upon request at least five working days prior to the hearing by the Executive Secretary in accordance with Section 53A-7-110(1)(f) when requested by either party or any of the panel members.

D. Either party or its representative may request the names of witnesses who have been asked to testify for the opposing party and to receive a copy of or examine all documents and exhibits that the opposing party intends to present as evidence during the hearing.

E. No witness or evidence may be presented at the hearing if the opposing party has requested to be notified of such information and has not been fairly apprised at least five days prior to the hearing. The parties may waive such time period only by written agreement.

F. No expert witness report or testimony may be presented at the hearing unless the requirements of Section R686-100-13 have been met.

R686-100-10. Burden and Standard of Proof for Commission Proceedings.

A. In matters other than those involving applicants for certification, and excepting the presumptions under Section R686-100-14G, the complainant shall have the burden of proving that action against the certificate is appropriate.

B. An applicant for certification shall bear the burden of proving that certification is appropriate.

C. Standard of proof: The standard of proof in all Commission hearings is a preponderance of the evidence.

R686-100-11. Deportment.

Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during hearings, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer. The hearing officer may expel persons from the hearing room who fail to conduct themselves in an appropriate manner and may, in response to extreme instances of noncompliance, disallow testimony or declare an offending party to be in default.

R686-100-12. Hearing Record.

A. The hearing shall be tape recorded at the Commission's expense, and the tapes shall become part of the permanent case record, unless otherwise agreed upon by all parties.

B. Individual parties may not make recordings of the proceedings without notice to and consent of the hearing panel.

C. Any party, at his own expense, may have a person approved by the Commission prepare a transcript of the hearing.

D. If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

E. All evidence and statements presented at a hearing shall become part of the permanent case file and shall not be removed except by order of the Board.

F. Taped proceedings may be reviewed upon request of a party under supervision of the Executive Secretary and only at the State Office of Education.

R686-100-13. Expert Witnesses in Commission Proceedings.

A. A party may call an expert witness at its own expense. Notice of intent of a party to call an expert witness, the identity and qualifications of such expert witness and the purpose for which the expert witness is to be called shall be provided to the hearing officer and the opposing party at least 20 days prior to the hearing date.

B. The hearing officer may appoint any expert witness agreed upon by the parties or of the hearing officer's own selection. An expert so appointed shall be informed of his duties by the hearing officer in writing, a copy of which shall become part of the permanent case file. The expert shall advise the hearing panel and the parties of his findings and may thereafter be called to testify by the hearing panel or by any party. He shall be subject to cross-examination by each party or by any of the hearing panel members.

C. Defects in the qualifications of expert witnesses, once a minimum threshold of expertise is established, go to the weight to be given their testimony and not to its admissibility.

D. Experts who are members of the Complainant's staff or a school district staff may testify and have their testimony considered as part of the record along with that of any other expert.

E. Any report of an expert witness which a party intends to introduce into evidence shall be provided to the opposing party at least 10 days prior to the hearing date.

R686-100-14. Evidence and Participation in Commission Proceedings.

A. The hearing officer may not exclude evidence solely because it is hearsay.

B. The hearing officer shall afford each party the opportunity to produce witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

C. If a party intends to submit documentary evidence, the party intending to present such evidence shall provide one copy to each member of the hearing panel at least one hour prior to the hearing, and one copy to the opposing party.

D. 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.

E. In any case involving allegations of child abuse or of a sexual offense against a child, upon request of either party or by a member of the hearing panel, the hearing officer may determine whether a significant risk exists that the child would suffer serious emotional or mental harm if required to testify in the respondent's presence, or whether a significant risk exists that the child's testimony would be inherently unreliable if required to testify in the respondent's presence. If the hearing officer determines either to be the case, then the child's testimony may be admitted in one of the following ways:

(1) An oral statement of a victim or witness younger than 18 years of age which is recorded prior to the filing of a complaint shall be admissible as evidence in a hearing regarding the offense if:

(a) No attorney for either party is in the child's presence when the statement is recorded;

(b) The recording is visual and aural and is recorded on film or videotape or by other electronic means;

(c) The recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered; and

(d) Each voice in the recording is identified.

(2) The testimony of any witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and be transmitted by closed circuit equipment to another room where it can be viewed by the respondent. All of the following conditions shall be observed:

(a) Only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the child may be with the child during his testimony.

(b) The respondent may not be present during the child's testimony;

(c) The hearing officer shall ensure that the child cannot hear or see the respondent;

(d) The respondent shall be permitted to observe and hear, but not communicate with, the child; and

(e) Only hearing panel members and the attorneys may question the child.

(3) The testimony of any witness or victim younger than 18 years of age may be taken outside the hearing room and recorded if the provisions of Sections R686-100-14E(2)(a)(b)(c) and (e) and the following are observed:

(a) The recording is both visual and aural and recorded on film or videotape or by other electronic means;

(b) The recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;

(c) Each voice on the recording is identified; and

(d) Each party is given an opportunity to view the recording before it is shown in the hearing room.

(4) If the hearing officer determines that the testimony of a child will be taken under Section R686-100-14E(1)(2) or (3) above, the child may not be required to testify in any proceeding where the recorded testimony is used.

F. On his own motion or upon objection by a party, the hearing officer:

(1) May exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;

(2) Shall exclude evidence that is privileged under law applicable to administrative proceedings in Utah unless waived;

(3) 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;

(4) May take official notice of any facts that could be judicially noticed under judicial or administrative laws of Utah, or from the record of other proceedings before the agency.

G. Presumptions:

(1) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor child if the person has:

(a) Been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor;

(b) Failed to defend himself against such a charge when given a reasonable opportunity to do so; or

(c) Voluntarily surrendered a certificate or allowed a certificate to lapse in the face of a charge of having committed a sexual offense against a minor.

(2) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has:

(a) Been convicted of a felony;

(b) Been charged with a felony and subsequently convicted of a lesser related charge pursuant to a plea bargain or plea in abeyance; or

(c) Lost certification in another state through revocation or suspension, or through surrender of certification or allowing a certificate to lapse in the face of an allegation of misconduct, if the person would not currently be eligible to regain certification in that state.

H. The Hearing Officer may confer with the Executive Secretary or the panel members or both while preparing the Hearing Report. The Hearing Officer may request the Executive Secretary to confer with the Hearing Officer and panel following the hearing.

R686-100-15. Hearing Report.

A. Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials permitted by the hearing officer, the hearing officer shall prepare, sign and issue a Hearing Report consistent with the recommendations of the panel that includes:

(1) A detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted. Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence;

(2) A statement of relevant precedent;

(3) A statement of applicable law and rule;

(4) A recommended disposition of the Commission panel members which shall be one of the following:

(a) Dismissal of the Complaint: The hearing report shall indicate that the complaint should be dismissed and that no further action should be taken.

(b) Warning: The hearing report shall indicate that respondent's conduct is deemed unprofessional and that the hearing report should constitute an official warning. The hearing report shall indicate that no further action concerning the complaint should be taken, but that the complaint and disposition could be considered should the respondent's conduct be brought into question in the future.

(c) Reprimand: The hearing report shall indicate that the respondent's conduct is deemed unprofessional and that the hearing report should constitute an official reprimand. The hearing report shall indicate that the employing school board shall be notified of the reprimand and that record of the reprimand shall be made on all Utah State Board of Education Certification records maintained in the certification file on the respondent. The hearing report should also include a recommendation for how long the reprimand shall be maintained in the respondent's file and conditions under which it could be removed.

(d) Probation: The hearing report shall determine that the respondent's conduct was unprofessional, that the respondent shall not lose his certification, but that a probationary period is appropriate. If the report recommends probation, the report shall designate:

(i) a probationary time period;

(ii) conditions that can be monitored;

(iii) a person or entity to monitor a respondent's probation;

(iv) a statement providing for costs of probation.

(v) whether or not the respondent may work in any capacity in education during the probationary period.

A probation may be stated as a plea in abeyance: The respondent's penalty is stayed subject to the satisfactory completion of probationary conditions. The decision shall provide for discipline should the probationary conditions not be completed.

(e) Suspension: The hearing report shall recommend to the State Board of Education that the certificate of the respondent be suspended for a specific period of time and until specified reinstatement conditions have been met before respondent may petition for reinstatement of certification. The hearing report shall indicate that, should the Board confirm the recommended decision, the respondent shall return the printed suspended certificate to the State Office of Education and that the Certification Section of the Utah State Office of Education will notify the employing school district, all other Utah school districts, and all other state, territorial, and national certification offices or clearing houses of the suspension in accordance with R277-514.

(f) Revocation: The hearing report shall recommend to the State Board of Education that the certificate of the respondent be revoked for a period of not less than five years. The hearing report shall indicate that should the Board confirm the recommended decision, the respondent shall return the revoked certificate to the State Office of Education and that the Certification Section of the Utah State Office of Education will notify the employing school district, all other Utah school districts, and all other state, territorial, and national certification offices or clearing houses of the revocation in accordance with R277-514.

(5) The hearing report may recommend that the warning letter or that the reprimand remain permanently in the certification file. The hearing report shall also provide that the substance of the warning letter or reprimand or terms of probation may be communicated by designated USOE employees to prospective employers upon request.

(6) Notice of the right to appeal; and

(7) Time limits applicable to appeal.

B. Processing the Hearing Report: The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with the Commission.

(1) If the Commission, upon review of the hearing report, finds by majority vote, that there have been significant procedural errors in the hearing process or that the weight of the evidence does not support the conclusions of the hearing report, the Commission as a whole may direct the Executive Secretary to prepare an alternate hearing report and follow procedures under R686-100-15B(2).

(2) If the Commission finds that there have not been significant procedural errors or that recommendations are based upon a reasonable interpretation of the evidence presented at the hearing, the Commission shall vote to uphold the hearing officer's report and do one of the following:

(a) If the recommendation is for final action to be taken by the Commission, the Commission shall direct the Executive Secretary to prepare a corresponding final order and serve all parties with a copy of the order and hearing report. A copy of the order and the hearing report shall be placed in and become part of the permanent case file. The order shall be effective upon approval by the Commission.

(b) If the recommendation is for final action to be taken by the Board, the Executive Secretary shall forward a copy of the hearing report to the State Board of Education for its further action. A copy of the hearing report shall also be placed in and become part of the permanent case file.

(2) If the Commission determines that procedural errors or that the hearing officer's report is not based upon a reasonable interpretation of the evidence presented at the hearing to the extent that an amended hearing report cannot be agreed upon, the Commission shall direct the Executive Secretary to schedule the matter for rehearing before a new hearing officer and panel.

C. Consistent with Section 63-2-301(1)(c), the final administrative disposition of all administrative proceedings, the Recommended Disposition section of the Hearing Report, of the Commission shall be public. The hearing findings/report of suspensions and expulsions shall be public information and shall be provided consistent with Section 63-2-301(1)(c). The Recommended Disposition portion of the Hearing Report of warnings, reprimands and probations (including the probationary conditions) shall be public information. All references to individuals and personally identifiable information about individuals not parties to the hearing shall be redacted prior to making the disposition public.

R686-100-16. Default Procedures.

A. An order of default may be issued against a respondent under any of the following circumstances:

(1) The Executive Secretary may enter an order of default by preparing a report of default including the order of default, a statement of the grounds for default, and a recommended disposition if the respondent fails to file a response to a complaint for an additional 20 days following the time period allowed for response to a complaint under R686-100-5E.

(2) The hearing officer may enter an order of default against a respondent by preparing a hearing report including the order of default, a statement of the grounds for default and the recommended disposition if:

(a) The respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice. The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin.

(b) The respondent or the respondent's representative is guilty of serious misconduct during the course of the hearing process as provided under Section R686-100-8D.

B. The report of default or hearing report shall be forwarded to the Commission by the Executive Secretary for further action under Section R686-100-16B.

R686-100-17. Appeal.

A. Either party may appeal a final action by the Commission or the Board by requesting review by the State Superintendent of Public Instruction, 250 East 500 South, Salt Lake City, Utah 84111, within 30 days of the date that the final order was postmarked.

(1) The appeal shall consist of the following:

(a) Name, position, and address of appellant;

(b) Issue(s) being appealed;

(c) Signature of appellant.

(2) The State Superintendent shall review the record and information and hearing report upon which the decision was based, and issue a written order regarding his findings and disposition of the matter. A copy of the order or a notice of extension of time to respond shall be served upon the parties by the State Superintendent within 30 days after receiving the appeal.

(3) The State Superintendent's decision is final.

B. Either party may appeal a final action of the Board by following the procedures set forth under R277-514.

R686-100-18. Remedies for Individuals Beyond Commission Actions.

Despite Commission or Board actions, informants or other injured parties who feel that their rights have been compromised, impaired or not addressed by the provisions of this rule, may appeal directly to district court.

R686-100-19. Application for Certification Following Denial or Loss of Certification.

A. An individual who has been denied certification or lost certification through revocation or suspension, or through surrender of a certificate or allowing a certificate to lapse in the face of an allegation of misconduct, may request review to consider the possibility of a grant or reinstatement of a certificate.

(1) The request for review shall be in writing and addressed to the Executive Secretary, Professional Practices Advisory Commission, 250 East 500 South, Salt Lake City, Utah 84111, and shall have the following heading:

TABLE 1

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------------------------------------------------------------
                                    )
Jane Doe,                           ) Request for Agency Action
     Petitioner                     ) Following Denial or Loss of
     vs                             ) Certificate
Utah State Office of Education      ) File no.: ............
     Respondent.                    )
                                    )
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B. The body of the request shall contain the following information:

(1) Name and address of the individual requesting review;

(2) Action being requested;

(3) Evidence of compliance with terms and conditions of

any remedial or disciplinary requirements or recommendations;

(4) Reasons for reconsideration of past disciplinary action;

(5) Signature of person requesting review.

C. The Executive Secretary shall review the request with the Commission.

(1) If the Commission determines that the request is invalid, the person requesting reinstatement shall be notified by certified mail of the denial.

(2) If the Commission determines that the request is valid, a hearing shall be scheduled and held as provided under Section R686-100-6.

D. Burden of Proof: The burden of proof for granting or reinstatement of certification shall fall on the individual seeking the certificate.

(1) Individuals requesting reinstatement of a suspended certificate must show sufficient evidence of compliance with any conditions imposed in the past disciplinary action as well as undergo a criminal background check in accordance with Utah law.

(2) Individuals requesting certification following revocation shall show sufficient evidence of compliance with any conditions imposed in the past disciplinary action as well as providing evidence of qualifications for certification as if the individual had never been certificated in Utah or any other state.

(3) Individuals requesting certification following denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable.

R686-100-20. Temporary Suspension of Certification Pending a Hearing.

A. If the Executive Secretary determines, after affording respondent an opportunity to discuss allegations of misconduct, that reasonable cause exists to believe that the charges will be proven to be correct and that permitting the respondent to retain certification prior to hearing would create unnecessary and unreasonable risks for children, then the Executive Secretary may order immediate suspension of the respondent's certificate pending final Board action.

B. Evidence of the temporary suspension may not be introduced at the hearing.

C. Notice of the temporary suspension shall be provided to other states under R277-514.

KEY: teacher certification, conduct*, hearings*
May 6, 1999 53A-7-110

R686. Professional Practices Advisory Commission, Administration.

R686-103. Professional Practices and Conduct for Utah Educators.

R686-103-1. Definitions.

A. "Basic Administrative/Supervisory Certificate" means the initial certificate issued by the Board which permits the holder to be employed in a public school position which requires administration or supervision of kindergarten, elementary, middle, or secondary levels.

B. "Competent" means an educator who is duly qualified, is skillful, and meets all the legal requirements of the educator's position.

C. "Educator" means a certificated person who is paid on the teachers or administrators salary schedule and whose primary function is to provide instructional, counseling or administrative services in the public schools or administrative offices as assigned.

D. "Sexual contact" means:

(1) the intentional touching of any sexual or intimate part of an individual;

(2) causing, encouraging, or permitting an individual to touch any sexual or intimate part of another; or

(3) any physical conduct of a sexual nature directed at an individual.

E. "Sexual harassment" means any repeated or unwarranted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory or explicit visual material or remarks made or displayed by an individual which is offensive or objectionable to the recipient or which causes the recipient discomfort or humiliation.

F. "Commission" means the Utah Professional Practices Advisory Commission as defined and authorized under Section 53A-7-104 et seq.

R686-103-2. Authority and Purpose.

A. This rule is authorized by Section 53A-7-110 which directs the Commission to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to provide for competent practices and standards of moral and ethical conduct for educators in order to serve the needs of Utah students and to maintain the dignity of the education profession in the state of Utah.

R686-103-3. Commission Action if a Certificated Educator Violates the Provisions of Professional Practice and Conduct for Utah Educators.

A. The individual conduct of a professional educator at all levels reflects upon the practices, values, integrity and reputation of the Utah educational profession as a whole. Violation of this rule may result in the following:

(1) A disciplinary letter that may effect the educator's ability to obtain employment as an educator;

(2) A letter of reprimand that would be placed in the educator's certification file and in the personnel file(s) of the district(s) where the educator is employed or seeks employment;

(3) A designated period of probationary status for a certificate holder. The probation may be for a specific or indefinite time period;

(4) Suspension of the educator's certificate(s) that would prevent the educator from practicing education in the state of Utah or other states during the period of suspension; and

(5) Revocation of the educator's certificate(s) for a minimum of five years.

B. This rule does not preclude alternative action by the Commission consistent with Utah law and Utah State Board of Education rules warranted under the facts of the case.

R686-103-4. Professionalism in Employment Practices.

An educator acting consistent with professional practices and standards shall:

A. assist only qualified persons, as defined by Utah law and Utah State Board of Education rules, to enter or continue in the education profession;

B. employ only persons qualified or certificated appropriately for positions, except as provided under R277-511;

C. document professional misconduct of other educators under the educators' direction as set forth in the law or this rule and take appropriate action based upon the misconduct. Such action shall include supervision or termination of employment when necessary to protect the physical or emotional well-being of students and employees and to protect the integrity of the profession, or both;

D. not personally falsify or direct another person to falsify records or applications of any type;

E. not recommend for employment in another district an educator who has been disciplined for unprofessional or unethical conduct or who has not met minimum professional standards in a current or previous assignment, consistent with Section 34-42-1;

F. adhere to the terms of a contract or assignment unless health or emergency issues requires vacating the contract or assignment. Persons shall in good faith comply with penalty provisions;

G. accept an educational employment assignment only if the educator has the appropriate certification required for that particular employment assignment except as provided for under R277-511 and shall provide only true and accurate pre-employment information or documentation;

H. recommend for employment or continuance of employment only persons who are certificated for the position; and

I. act consistent with Section 67-1-1 through 14, Utah Public Employees Ethics Act.

R686-103-5. Competent Practices.

An educator shall:

A. adhere to federal and state laws, State Board of Education Administrative rules, local board policies and specific directives from supervisors regarding educational practices; and

B. exercise good judgment and prudence in the educator's personal life to avoid the impairment of the educator's professional effectiveness and respect the cultural values and standards of the community in which the educator practices.

R686-103-6. Competent Practice Related to Students.

An educator shall:

A. develop and follow objectives related to learning, organize instruction time consistent with those objectives, and adhere to prescribed subject matters and curriculum.

B. deal with each student in a just and considerate manner.

C. resolve disciplinary problems according to law and school board policy and local building procedures;

D. maintain confidentiality concerning a student unless a revelation of confidential information serves the best interest of the student and serves a lawful purpose;

E. not exclude a student from participating in any program, deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, physical or mental conditions, family, social, or cultural background, or sexual orientation, and may not engage in a course of conduct that would encourage a student to develop a prejudice on these grounds or any others;

F. impart to students principles of good citizenship and societal responsibility by directed learning as well as by personal example;

G. cooperate in providing all relevant information and evidence to the proper authorities in the course of an investigation by a law enforcement agency or by Child Protective Services regarding criminal activity. However, an educator shall be entitled to decline to give evidence against himself in any such investigation if the same may tend to incriminate the educator as that term is defined by the Fifth Amendment of the U.S. Constitution; and

H. take appropriate action to prevent student harassment.

R686-103-7. Moral and Ethical Conduct.

An educator shall:

A. not be convicted of domestic violence or abuse, including physical, sexual, and emotional abuse of any family member;

B. not be convicted of a stalking crime;

C. not use or distribute illegal drugs, or be convicted of any crime related to illegal drugs;

D. not be convicted of any illegal sexual conduct;

E. not attend any school activity or function under the influence of illegal drugs or alcohol, or prescription drugs if the drug affects the educator's ability to perform regular activities;

F. not participate in sexual, physical, or emotional harassment or any combination toward any student or co-worker, nor knowingly allow harassment to continue;

F. not participate in sexual contact with a student;

G. not knowingly fail to protect a student from any condition detrimental to that student's physical health, mental health, safety, or learning;

H. not harass or discriminate against a student or co-worker on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, physical or mental conditions, family, social, or cultural background, or sexual orientation;

I. not interfere with the legitimate exercise of political and civil rights and responsibilities of colleagues or a student acting consistently with law and district and school policies;

J. not threaten, coerce or discriminate against any fellow employee, regardless of employment classification, who reports or discloses to a governing agency actual or suspected violations of law, educational regulations, or standards;

K. conduct financial business with integrity by honestly accounting for all funds committed to the educator's charge and collect and report funds consistent with school and district policy;

L. not accept gifts or exploit a professional relationship for gain or advantage that might create the appearance of impropriety or that may impair professional judgment, consistent with Section 67-16-1 through 14, Utah Public Employees Ethics Act; and

M. not use district or school computers or information systems in violation of the district's acceptable use policy for employees or access information that may be detrimental to young people or inconsistent with the educator's role model responsibility.

KEY: teachers, disciplinary actions
May 6, 1999 **53A-7-110**

R708. Public Safety, Driver License.
R708-30. Motorcycle Rider Training Schools.
R708-30-1. Purpose.

The purpose of this rule is to assist the Driver License Division in administering the Motorcycle Rider Education Program set forth in Title 53, Chapter 3, Part 9, the Motorcycle Rider Education Act.

R708-30-2. Authority.

This rule is authorized by Subsection 53-3-903(1)(b).

R708-30-3. Definitions.

(1) "Agreement" means a written agreement between the Driver License Division, and a school, institution, or individual to provide motorcycle rider training courses for beginner and experienced riders and courses for instructors.

(2) "Division" means the Driver License Division.

(3) "Practice riding" means that portion of instruction during which the student actually rides a motorcycle.

(4) "Program coordinator" means the division representative appointed to oversee and direct the Motorcycle Rider Education Program.

(5) "School" means an institution owned and operated by an individual, partnership or corporation, public or private, licensed to do business in the State of Utah, for the purpose of providing classroom and practical motorcycle rider training.

R708-30-4. Application.

(1) An application for an original or renewal agreement shall be made on a form furnished by the division and shall include the following:

(a) name of the school;

(b) address of the school;

(c) names of all proposed instructors; and

(d) addresses of all instruction sites.

(2) Upon receipt of the application, the division shall schedule an inspection of the school sites, equipment, instructional materials, course curriculum, class schedules, and shall determine eligibility of proposed instructors.

(3) Once the application has been completed and approved, the division and the school may enter into an agreement allowing the school to conduct motorcycle rider training.

R708-30-5. Agreement.

(1) Once the school has executed an agreement with the division to provide training for beginner and experienced motorcycle riders, the school may begin to conduct motorcycle rider training.

(2) The agreement shall allow the school to provide training and instruction for motorcycle riders, but shall not allow the school to bind or obligate the division in any way to issue a motorcycle endorsement or license.

(3) Upon execution of the agreement, the school and all approved instructors will be placed on a list provided to all driver license offices. A certificate of approval will be mailed to the school and will indicate the expiration date of the agreement.

(4) The agreement shall expire on July 1 of each year. No later than three months prior to expiration of the agreement, the school may submit a renewal application to the division.

R708-30-6. Standards.

(1) To be approved, a school shall meet the following standards:

(a) make application to and enter into an agreement with the division;

(b) maintain a place of business with at least one permanent occupied structure within the State;

(c) ensure the place of business meets all requirements of State law and local ordinances;

(d) have at least one qualified and approved instructor;

(e) provide helmets, motorcycles and range equipment for practice riding;

(f) have emergency equipment readily available. The emergency equipment shall include an adequate fire extinguisher and a fully stocked, industrial-quality first-aid kit;

(g) have written procedures for responding to accidents, including emergency telephone numbers, and a telephone within easy access during any range training;

(h) furnish the division with written permission to use any facilities not owned or leased by the school. Specific days of use and intended use of the facilities must be indicated, e.g., days: Thursday, Saturday, Sunday, etc.; and uses: classroom instruction and operation of motorcycles on property;

(i) request approval from the division for any proposed changes in instructor or administrative procedures;

(j) make record of and report to the division within 48 hours any accident or injuries occurring during any instruction;

(k) provide rider training at remote sites only upon approval and/or at the request of the division;

(l) not engage the service of an employee of the division as an instructor, agent or employee of the school; and

(m) maintain for five years, and present upon request of the division, verification that all instructors are certified, and attendance and completion records are accurate.

R708-30-7. Certificate of Approval.

Upon approval, the division will issue a certificate of approval to the school, each branch office, and/or mobile team. The certificate will be conspicuously displayed at all times in the school's permanent place of business and will be displayed during instruction at branch offices and mobile training sites.

R708-30-8. Inspections.

(1) The division may:

(a) conduct random examinations, inspections, and audits without prior notice during normal business hours; and

(b) conduct on-site inspections annually and at any other time deemed necessary by the division.

(2) A person designated by the school shall accompany the division representative while performing on-site inspections. On-site inspections may include:

(a) ensuring that all requirements specified in this rule are met;

(b) examining school records;

(c) ensuring that practice riding procedures comply with criteria established by the Motorcycle Safety Foundation or

another nationally recognized motorcycle safety instructor certifying body and the division; and

(d) reviewing any other items the division may deem necessary to ensure that all requirements specified in the agreement are met.

(3) Random checks may be made by any designated division representative to verify compliance with course instruction standards. Checks by the division may include:

(a) having a division representative take a course administered by the school; and

(b) having the division administer practical skills tests to a sample of riders who have completed the course of instruction presented by the school to determine if the results of the tests administered by the division are comparable to the results submitted by the school.

R708-30-9. Courses.

(1) Course curriculum will be conducted in accordance with this rule. The division may provide supplemental instruction as necessary. Such instruction may include information on course content, practice riding, instructor and administrative procedures and/or changes.

(2) Courses shall be conducted at locations approved by the division.

(3) Courses shall be conducted using division approved content, forms, scoring procedures and equipment.

(4) Courses conducted by mobile teams at remote sites and branches shall be held to the same standards as required at permanent locations.

R708-30-10. Certificate of Course Completion.

(1) The school will provide a certificate of course completion to verify rider competency and successful completion of the prescribed course of instruction.

(2) The certificate of course completion shall include the following:

(a) applicant's name;

(b) title of the course completed;

(c) date of course completion; and

(d) authorized signature from the school.

(3) Upon completion of a beginner class from an approved school, the division may waive the practical skills portion of the application for motorcycle license or endorsement to a current driver license.

(4) Riders must submit to the division the certificate of course completion of a beginner class within six months of the date of course completion to be eligible for waiver of the practical skills test.

R708-30-11. Insurance Coverage.

(1) The division shall obtain through a commercial insurance agency the required insurance coverage for all schools involved in providing motorcycle rider training.

(2) Each school shall submit to the division a list identifying all motorcycles used for instruction purposes.

(3) Motorcycles used by the schools for instruction purposes shall be covered by insurance obtained by the division and will be used only in approved rider training courses and only on division approved ranges.

R708-30-12. Instructors.

(1) Instructors approved by the division to conduct motorcycle rider training shall:

(a) furnish proof of completed training and certification provided by the Motorcycle Safety Foundation or another nationally recognized motorcycle safety instruction certifying organization;

(b) instruct only those classes which have been approved by the division;

(c) instruct only those students who are at least 16 years of age and have completed an approved driver education course;

(d) except as set forth in paragraph two of this section, have a valid Utah driver license with motorcycle endorsement;

(e) have a high school diploma or its equivalent;

(f) be at least 18 years of age;

(g) have at least two years of recent motorcycle riding experience;

(h) possess valid Red Cross standard first-aid and CPR cards, or their equivalent; and

(i) manifest safe riding habits whenever riding.

(2) The requirement for a Utah drive license may be waived by the division if the instructor is assigned as active duty military to an installation in Utah.

(3) Instructors are encouraged to wear all protective gear every time they ride. Protective gear includes helmet and eye protection, over-the-ankle footwear (not cloth, canvas, etc.), long non-flare denim pants or material of equivalent durability, long-sleeved shirt or jacket, and full-fingered gloves (preferably leather).

(4) The division shall refuse approval or will revoke approval if the applicant/instructor:

(a) no longer meets the requirements of this section;

(b) has had a driver license suspended or revoked during the preceding two years or within the preceding five years if the suspension or revocation was for an alcohol or drug related offense; or

(c) fails to successfully complete an instructor course or required course updates, or fails to teach at least two rider training classes per year, one of which must be as the lead instructor. An exception to this requirement may be granted if written justification for not meeting the teaching requirements is submitted by the instructor and is approved/accepted by the division.

R708-30-13. Advertisement.

(1) No school advertisement may:

(a) indicate in any way that a program can issue or guarantee the issuance of a motorcycle license or endorsement;

(b) imply that a program can in any way influence the division in the issuance of a motorcycle license or endorsement; or

(c) imply that preferential or advantageous treatment from the division can be obtained.

(2) No instructor, employee or agent of a school may be permitted to advertise or solicit business or cause business to be solicited in its behalf, or display or distribute any advertising material within 1500 feet of a location rented, leased, or owned by the division.

R708-30-14. Revocation.

(1) In accordance with Subsection 63-46b-4(1), the division designates all adjudicative proceedings associated with this rule as informal adjudicative proceedings.

(2) The division shall deny approval of an application for a school or an instructor if the applicant does not qualify for approval under provisions of this rule.

(3) The division may deny approval or revoke approval of a school or instructor for any of the following reasons:

(a) failure to comply with any provision of this rule or the school's agreement;

(b) falsification of any records or information relating to the school's instruction program;

(c) commission of any act which compromises the integrity of the school's instruction program or the instructor;

(d) failure to notify the division within ten days of any change in instructor personnel or testing locations;

(e) notification that an instructor's driver license is suspended, revoked, canceled or disqualified; or

(f) misstatements or misrepresentation on the application.

(4) If the division determines that reasons for revocation exist because of failure to comply with any provision of this rule or the school's agreement, the division may postpone revocation and allow the school or instructor up to thirty (30) days to correct the deficiency.

(5) A school or instructor who receives notice that the division intends to revoke their approval is entitled to a hearing. The hearing will be conducted by a person appointed by the division director.

(a) The party requesting the hearing must file the request for hearing within ten days from the date notice of the division's intent to revoke is received.

(b) The person conducting the hearing will issue a written decision that complies with Subsection 63-46b-5(1)(i) within ten days following the hearing.

(6) The decision of the person conducting the hearing will be considered final agency action. A party wishing to contest the decision may:

(a) file a request for reconsideration with the division in accordance with Section 63-46b-13; or

(b) seek judicial review in accordance with Section 63-46b-14.

(7) Reinstatement following revocation of approval may take place only after:

(a) a new application for approval is filed;

(b) the division is satisfied that the reason for revocation no longer exists; and

(c) the division is satisfied that approval of the school or instructor is in the best interests of the public and will not jeopardize public safety.

KEY: motorcycle rider training schools
May 18, 1999 **53-3-903**
Notice of Continuation February 17, 1999

R746. Public Service Commission, Administration.
R746-100. Practice and Procedure Governing Formal Hearings.
R746-100-1. General Provisions and Authorization.

A. Procedure Governed -- Sections 1 through 14 of this rule shall govern the formal hearing procedures before the Public Service Commission of Utah, Sections 15 and 16 shall govern rulemaking proceedings before the Commission.

B. Consumer Complaints -- Consumer complaints are designated as informal proceedings.

C. No Provision in Rules -- In situations for which there is no provision in these rules, the Utah Rules of Civil Procedure shall govern, unless the Commission considers them to be unworkable or inappropriate.

D. Words Denoting Number and Gender -- In interpreting these rules, unless the context indicates otherwise, the singular includes the plural, the plural includes the singular, the present or perfect tenses include future tenses, and the words of one gender include the other gender. Headings are for convenience only, and they shall not be used in construing any meaning.

E. Authorization -- This rule is authorized pursuant to Section 54-1-1 which requires the Commission to exercise its rulemaking powers and Subsection 54-1-2.5 which establishes the requirements for Commission procedure, including Hearings, Practice and Procedure, Chapter 7 of Title 54.

R746-100-2. Definitions.

A. "Applicant" is a party applying for a license, right, or authority from the Commission.

B. "Commission" is the Public Service Commission of Utah. In appropriate context, it may include administrative law judges in the Commission's employ.

C. "Committee" is the Committee of Consumer Services, Department of Commerce.

D. "Complainant" is a person who complains to the Commission of an act or omission of a person in violation of law, the rules, or an order of the Commission.

E. "Consumer complaint" is a complaint of a retail customer against a public utility.

F. "Division" is the Division of Public Utilities, Utah State Department of Commerce.

G. "Ex Parte Communication" means an oral or written communication with a member of the Commission, administrative law judge, or Commission employee who is, or may be reasonably expected to be, involved in the decision-making process, relative to the merits of a matter under adjudication unless notice and an opportunity to be heard are given to each party. It shall not, however, include requests for status reports on a proceeding covered by these rules.

H. "Formal proceeding" is a proceeding before the Commission not designated informal by rule, pursuant to Section 63-46b-4.

I. "Informal proceeding" is a proceeding so designated in these rules.

J. "Party" is a participant in a proceeding defined by Subsection 63-46b-2(1)(f).

K. "Interested person" is a person who may be affected by a proceeding before the Commission, but who does not seek intervention. An interested person may not participate in the proceedings except as a public witness, but shall receive copies of notices and orders in the proceeding.

L. "Intervenor" is a person permitted to intervene in a proceeding before the Commission.

M. "Person" means an individual, corporation, partnership, association, governmental subdivision, or governmental agency.

N. "Petitioner" is a person seeking relief other than the issuance of a license, right, or authority from the Commission.

O. "Presiding officer" is a person conducting an adjudicative hearing, pursuant to Subsection 63-46b-2(1)(h), and may be the entire Commission, one or more commissioners acting on the Commission's behalf, or an administrative law judge appointed by the Commission. It may also include the Secretary of the Commission when performing duties identified in Section 54-1-7.

P. "Proceeding" or "adjudicative proceeding" is an action before the Commission initiated by a notice of agency action, or request for agency action, pursuant to Section 63-46b-3. It is not an informal or preliminary inquiry or investigation undertaken by the Commission to determine whether a proceeding is warranted; nor is it a rulemaking action pursuant to Title 63, Chapter 46a, the Administrative Rulemaking Act.

Q. "Public witness" is a person expressing interest in an issue before the Commission but not entitled or not wishing to participate as a party.

R. "Respondent" is a person against whom a notice of agency action or request for agency action is directed.

S. "Staff" is the Commission staff. Staff participation in proceedings shall be limited pursuant to Section 54-1-6.

R746-100-3. Pleadings.

A. Pleadings Enumerated -- Applications, petitions, complaints, orders to show cause, and other traditional initiatory pleadings may be filed with the Commission. Traditional pleadings will be considered requests for agency action, pursuant to Section 63-46b-3, concerning adjudicative proceedings. Answers, protests, and other traditional responsive pleadings may be filed with the Commission and will be considered responses, subject to the requirements of Section 63-46b-6.

1. The following filings are not requests for agency action or responses, pursuant to Sections 63-46b-3 and 63-46b-6:

a. motions, oppositions, and similar filings in existing Commission proceedings;

b. informational filings which do not request or require affirmative action, such as Commission approval.

B. Docket Number and Title --

1. Docket number -- Upon the filing of an initiatory pleading, or upon initiation of a generic proceeding, the Commission shall assign a docket number to the proceeding which shall consist of the year in which the pleading was filed, a code identifying the public utility appearing as applicant, petitioner, or respondent, or generic code designation and another number showing its numerical position among the filings involving the utility or generic proceeding filed during the year.

2. Headings and titles -- Pleadings shall bear a heading substantially as follows:

TABLE

Name of Attorney preparing or Signer of Pleading
Address
Telephone Number
Date Submitted

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the	)	
Application, petition,	)	Docket Number
etc.-- for complaints,	)	
names of both complainant	)	Type of pleading
and respondent should	)	
appear	)	

C. Form of Pleadings -- With the exception of consumer complaints, pleadings shall be double-spaced and typewritten, which may include a computer or word processor, if the type is easily legible and in the equivalent of at least 12 pitch elite type. Pleadings shall be presented on paper 8-1/2 x 11 inches, shall include the docket number, if known, and shall be dated and time stamped upon receipt by the Commission. Pleadings shall also be presented as an electronic word processing document, an exact copy of the paper version filed, and may be on a 3-1/2" floppy disk, using a Commission-approved format. Pleadings over five pages shall be double sided and three-hole punched.

D. Amendments to Pleadings -- The Commission may allow pleadings to be amended or corrected at any time. Initiatory pleadings may be amended without leave of the Commission at any time before a responsive pleading has been filed or the time for filing the pleading has expired. Defects in pleadings which do not affect substantial rights of the parties shall be disregarded.

E. Signing of Pleadings -- Pleadings shall be signed by the party, or by the party's attorney or other authorized representative if the party is represented by an attorney or other authorized representative, and shall show the signer's address. The signature shall be considered a certification by the signer that he has read the pleading and that, to the best of his knowledge and relief, there is good ground to support it.

F. Consumer Complaints --

1. Alternative dispute resolution, informal procedures -- Before a proceeding on a consumer complaint is initiated before the Commission, the Commission shall try to resolve the matter through referral first to the customer relations department, if any, of the public utility complained of and then to the Division for investigation and mediation. Only after these resolution efforts have failed will the Commission entertain a proceeding on the matter.

2. Request for agency action -- Persons requesting Commission action shall be required to file a complaint in writing, requesting agency action. The Commission shall not act on illegible or incomplete complaints and shall return those complaints to the complainant with instructions for correction or completion.

G. Content of Pleadings --

1. Pleadings filed with the Commission shall include the following information as applicable:

a. if known, the reference numbers, docket numbers, or other identifying symbols of relevant tariffs, rates, schedules, contracts, applications, rules, or similar matter or material;

b. the name of each participant for whom the filing is made or, if the filing is made for a group of participants, the name of the group, if the name of each member of the group is set forth in a previously filed document which is identified in the filing being made;

c. if statute, rule, regulation, or other authority requires the Commission to act within a specific time period for a matter at issue, a specific section the the pleading, located after the heading or caption, entitled "Proceeding Time Period," which shall include: reference or citation to the statute, rule, regulation, or other authority; identification of the time period; and the expiration date of the time period identified by day, month, and year

d. the specific authorization or relief sought;

e. copies of, or references to, tariff or rate sheets relevant to the pleading;

f. the name and address of each person against whom the complaint is directed;

g. the relevant facts, if not set forth in a previously filed document which is identified in the filing being made;

h. the position taken by the participant filing a pleading, to the extent known when the pleading is filed, and the basis in fact and law for the position;

i. the name, address, and telephone number of an individual who, with respect to a matter contained in the filing, represents the person for whom the filing is made;

j. additional information required to be included by Section 63-46b-3, concerning commencement of adjudicative proceedings, or other statute, rule, or order.

H. Motions -- Motions may be submitted for the Commission's decision on either written or oral argument, and the filing of affidavits in support or contravention of the motion is permitted. If oral argument is sought, the party seeking oral argument shall place the matter on the Commission's Law and Motion calendar and provide at least five days written notice to affected parties.

I. Responsive Pleadings -- Responsive pleadings shall be filed in formal proceedings in accordance with Section 63-46b-6.

R746-100-4. Filing and Service.

A. Filing of Pleadings -- Originals of pleadings shall be filed with the Commission in the format described in R746-100-3(C), together with the number of copies designated by the secretary of the Commission.

B. Notice -- Notice shall be given in conformance with Section 63-46b-3.

C. Required Public Notice -- When applying for original authority or rate increase, the party seeking authority or requesting Commission action shall publish notice of the filing or action requested, in the form and within the times as the Commission may order, in a newspaper of general circulation in the area of the state in which the parties most likely to be interested are located.

D. Times for Filing -- Responsive pleadings to requests for agency action shall be filed with the Commission and served upon opposing parties within 30 days after service of the request

for agency action or notice of request for agency action, which ever was first received. Motions directed toward initiatory pleadings shall be filed before a responsive pleading is due; otherwise objections shall be raised in responsive pleadings. Motions directed toward responsive pleadings shall be filed within ten days of the service of the responsive pleading.

E. Computation of Time -- The time within which an act shall be done shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday, or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.

R746-100-5. Participation.

Parties to a proceeding before the Commission, as defined in Section 63-46b-2, may participate in a proceeding including the right to present evidence, cross-examine witnesses, make argument, written and oral, submit motions, and otherwise participate as determined by the Commission. The Division and Committee shall be given full participation rights in any case.

R746-100-6. Appearances and Representation.

A. Taking Appearances -- Parties shall enter their appearances at the beginning of a hearing or when designated by the presiding officer by giving their names and addresses and stating their positions or interests in the proceeding. Parties shall, in addition, fill out and submit to the Commission an appearance slip, furnished by the Commission.

B. Representation of Parties -- Parties may be represented by an attorney licensed to practice in Utah; an attorney licensed in a foreign state, when joined of record by an attorney licensed in Utah, may also represent parties before the Commission. Upon motion, reasonable notice to each party, and opportunity to be heard, the Commission may allow an attorney licensed in a foreign state to represent a party in an individual matter based upon a showing that local representation would impose an unreasonable financial or other hardship upon the party. The Commission may, if it finds an irresolvable conflict of interest, preclude an attorney or firm of attorneys, from representing more than one party in a proceeding. Individuals who are parties to a proceeding, or officers or employees of parties, may represent their principals' interests in the proceeding.

R746-100-7. Intervention and Protest.

Intervention -- Persons wishing to intervene in a proceeding for any purpose, including opposition to proposed agency action or a request for agency action filed by a party to a proceeding, shall do so in conformance with Section 63-46b-9.

R746-100-8. Discovery.

A. Informal discovery -- The Commission encourages parties to exchange information informally. Informational queries termed "data requests" which have been typically used by parties practicing before the Commission may include written interrogatories and requests for production as those terms are used in the Utah Rules of Civil Procedure. Informal discovery is appropriate particularly with respect to the clarification of pre-filed testimony and exhibits before hearing so as to avoid unnecessary on-the-record cross-examination. The Commission may require an informal exchange of information as it judges appropriate. The Commission, on its own motion or the motion of a party, may require the parties to participate in an informal meeting to exchange information informally and otherwise simplify issues and expedite the proceeding.

B. Formal Discovery -- Discovery shall be made in accordance with Rules 26 through 37, Utah Rules of Civil Procedure, with the following exceptions and modifications.

C. Exceptions and Modifications --

1. If no responsive pleading is required in a proceeding, parties may begin discovery immediately upon the filing and service of an initiatory pleading. If a responsive pleading is required, discovery shall not begin until ten days after the time limit for filing the responsive pleading.

2. Rule 26(b)(4) restricting discovery shall not apply, and the opinions, conclusions, and data developed by experts engaged by parties shall be freely discoverable.

3. At any stage of a proceeding, the Commission may, on its own motion or that of a party, convene a conference of the parties to establish times for completion of discovery, the scope of, necessity for, and terms of, protective orders, and other matters related to discovery.

4. Formal discovery shall be initiated by an appropriate discovery request served on the party or person from whom discovery is sought. Discovery requests, regardless of how denominated, responses to, and transcripts of depositions shall not be filed with the Commission unless the Commission orders otherwise.

5. In the applicable Rules of Civil Procedure, reference to "the court" shall be considered reference to the Commission.

R746-100-9. Prehearing Conference and Prehearing Briefs.

A. Prehearing Conferences -- Upon the Commission's motion or that of a party, the presiding officer may, upon written notice to parties of record, hold prehearing conferences for the following purposes:

1. formulating or simplifying the issues, including each party's position on each issue;

2. obtaining stipulations, admissions of fact, and documents which will avoid unnecessary proof;

3. arranging for the exchange of proposed exhibits or prepared expert or other testimony, including a brief description of the evidence to be presented and issues addressed by each witness;

4. determining procedure to be followed at the hearing;

5. encouraging joint pleadings, exhibits, testimony and cross-examination where parties have common interests, including designation of lead counsel where appropriate;

6. agreeing to other matters that may expedite the orderly conduct of the proceedings or of a settlement. Agreements reached during the prehearing conference shall be recorded in an appropriate order unless the participants stipulate or agree to a statement of settlement made on the record.

B. Prehearing Briefs -- The Commission may require the filing of prehearing briefs which shall conform to the format described in R746-100-3(C) and may include:

1. the issues, and positions on those issues, being raised and asserted by the parties;

2. brief summaries of evidence to be offered, including the

names of witnesses, exhibit references and issues addressed by the testimony;

3. brief descriptions of lines of cross-examination to be pursued.

C. Final prehearing conferences -- After all testimony has been filed, the Commission may at any time before the hearing hold a final prehearing conference for the following purposes:

1. determine the order of witnesses and set a schedule for witnesses' appearances, including times certain for appearances of out-of-town witnesses;

2. delineate scope of cross-examination and set limits thereon if necessary;

3. identify and prenumber exhibits.

R746-100-10. Hearing Procedure.

A. Time and Place -- When a matter is at issue, the Commission shall set a time and place for hearing. Notice of the hearing shall be served in conformance with Sections 63-46b-3(2)(b) and 63-46b-3(3)(e) at least five days before the date of the hearing.

B. Continuance -- Continuances may be granted upon good cause shown. The Commission may impose the costs in connection with the continuance as it judges appropriate.

C. Failure to Appear -- A party's default shall be entered and disposed of in accordance with Section 63-46b-11.

D. Subpoenas and Attendance of Witnesses -- Commissioners, the secretary to the Commission, and administrative law judges employed by the Commission are delegated the authority to sign and issue subpoenas. Parties desiring the issuance of subpoenas shall submit them to the Commission. The parties at whose behest the subpoena is issued shall be responsible for service and paying the person summoned the statutory mileage and witness fees. Failure to obey the Commission's subpoena shall be considered contempt.

E. Conduct of the Hearing --

1. Generally -- Hearings may be held before the full Commission, one or more commissioners, or administrative law judges employed by the Commission as provided by law and as the Commission shall direct. Hearings shall be open to the public, except where the Commission closes a hearing for the presentation of proprietary or trade secret material. Failure to obey the rulings and orders of the presiding officer may be considered contempt.

2. Before commissioner or administrative law judge -- When a hearing is conducted before less than the full Commission or before an administrative law judge, the presiding officer shall ensure that the taking of evidence and subsequent matters proceed as expeditiously as practicable. The presiding officer shall prepare and certify a recommended decision to the Commission. Except as otherwise ordered by the Commission or provided by law, the presiding officer may schedule and otherwise regulate the course of the hearing; recess, reconvene, postpone, or adjourn the hearing; administer oaths; rule on and receive evidence; cause discovery to be conducted; issue subpoenas; hold conferences of the participants; rule on, and dispose of, procedural matters, including oral or written motions; summarily dispose of a proceeding or part of a proceeding; certify a question to the Commission; permit or deny appeal to the Commission of an interlocutory ruling; and separate an issue or group of issues from other issues in a proceeding and treat the issue or group of issues as a separate phase of the proceeding. The presiding officer may maintain order as follows:

a. ensure that disregard by a person of rulings on matters of order and procedure is noted on the record or, if appropriate, is made the subject of a special written report to the Commission;

b. if a person engages in disrespectful, disorderly, or contumacious language or conduct in connection with the hearing, recess the hearing for the time necessary to regain order;

c. request that the Commission take appropriate action, including removal from the proceeding, against a participant or counsel, if necessary to maintain order.

3. Before full Commission -- In hearings before the full Commission, the Commission shall exercise the above powers and any others available to it and convenient or necessary to an orderly, just, and expeditious hearing.

F. Evidence --

1. Generally -- The Commission is not bound by the technical rules of evidence and may receive any oral or documentary evidence; except that no finding may be predicated solely on hearsay or otherwise incompetent evidence. Further, the Commission may exclude non-probative, irrelevant, or unduly repetitious evidence. Testimony shall be under oath and subject to cross-examination except that of public witnesses.

2. Exhibits --

a. Except as to oral testimony and items administratively noticed, material offered into evidence shall be in the form of an exhibit. Exhibits shall be premarked and parties offering exhibits shall, before the hearing begins, provide copies of their exhibits to the presiding officer, other participants or their representatives, and the original to the reporter, if there is one, otherwise to the presiding officer. If documents contain information the offering participant does not wish to include, the offering party shall mark out, excise, or otherwise exclude the extraneous portion on the original. Additions to exhibits shall be dealt with in the same manner.

b. Exhibits shall be premarked, by the offering party, in the upper right corner of each page by identifying the party, the witness, docket number, and a number reflecting the order in which the offering party will introduce the exhibit.

c. Exhibits shall conform to the format described in R746-100-3(C) and be double sided and three-hole punched. They shall also be adequately footnoted and if appropriate, accompanied by either narrative or testimony which adequately explains the following: Explicit and detailed sources of the information contained in the exhibit; methods used in statistical compilations, including explanations and justifications; assumptions, estimates and judgments, together with the bases, justifications and results; formulas or algorithms used for calculations, together with explanations of inputs or variables used in the calculations. An exhibits offered by a witness shall also be presented as electronic document, an exact copy of the paper version, filed on a 3-1/2" floppy disk, using a format previously approved by the Commission.

3. Administrative notice -- The presiding officer may take administrative or official notice of a matter in conformance with

Section 63-46b-8(1)(b)(iv).

4. Stipulations -- Participants in a proceeding may stipulate to relevant matters of fact or the authenticity of relevant documents. Stipulations may be received in evidence, and if received, are binding on the participants with respect to any matter stipulated. Stipulations may be written or made orally at the hearing.

5. Settlements --

a. Cases may be resolved by a settlement of the parties if approved by the Commission. Issues so resolved are not binding precedent in future cases involving similar issues.

b. Before accepting an offer of settlement, the Commission may require the parties offering the settlement to show that each party has been notified of, and allowed to participate in, settlement negotiations. Parties not adhering to settlement agreements shall be entitled to oppose the agreements in a manner directed by the Commission.

G. Prefiled Testimony -- If a witness's testimony has been reduced to writing and filed with the Commission before the hearing, in conformance with R746-100-3(C), at the discretion of the Commission, the testimony may be placed on the record without being read into the record; if adverse parties shall have been served with, or otherwise have had access to, the prefiled, written testimony for a reasonable time before it is presented. Except upon a finding of good cause, a reasonable amount of time shall be at least ten days. The testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness. If admitted, the testimony shall be marked and incorporated into the record as an exhibit. Parties shall have full opportunity to cross-examine the witness on the testimony. Unless the Commission orders otherwise, parties shall have witnesses present summaries of prefiled testimony orally at the hearing. Witnesses shall reduce their summaries to writing and either file them with their prefiled testimony or deliver them to parties of record before or at the hearing. At the hearing, witnesses shall read their summaries into the record. Opposing parties may cross-examine both on the original prefiled testimony and the summaries.

H. Rate Case Joint Exhibits -- Both narrative and numerical joint exhibits, detailing each party's position on each issue, shall be filed with the Commission before the hearing. These joint exhibits shall:

a. be updated throughout the hearing;

b. depict the final positions of each party on each issue at the end of the hearing; and

c. be in conformance with R746-100-3(C).

I. Recording of Hearing and Transcript -- Hearings shall be recorded by a shorthand reporter licensed in Utah; except that in non-contested matters, or by agreement of the parties, hearings may be recorded electronically.

J. Order of Presentation of Evidence -- Unless the presiding officer orders otherwise, applicants or petitioners, including petitioners for an order to show cause, shall first present their case in chief, followed by other parties, in the order designated by the presiding officer, followed by the proposing party's rebuttal.

K. Cross-Examination -- The Commission may require written cross-examination and may limit the time given parties to present evidence and cross-examine witnesses. The presiding officer may exclude friendly cross-examination. The Commission discourages and may prohibit parties from making their cases through cross-examination.

L. Procedure at Conclusion of Hearing -- At the conclusion of proceedings, the presiding officer may direct a party to submit written proposed findings of fact and conclusions of law. The presiding officer may order proposed findings and conclusions in other matters as judged appropriate. The presiding officer may also order parties to present further matter in the form of oral argument or written memoranda.

R746-100-11. Decisions and Orders.

A. Generally -- Decisions and orders may be drafted by the Commission or by parties as the Commission may direct. Draft or proposed orders shall contain a heading similar to that of pleadings and bear at the top the name, address, and telephone number of the persons preparing them. Final orders shall have a concise summary of the case containing the salient facts, the issues considered by the Commission, and the Commission's disposition of them. Parties preparing final orders shall be responsible for preparing and filing the abstract.

B. Recommended Orders -- If a case has been heard by less than the full Commission, or by an administrative law judge, the official hearing the case shall submit to the Commission a recommended report containing proposed findings of fact, conclusions of law, and an order based thereon.

C. Final Orders of Commission -- If a case has been heard by the full Commission, it shall confer following the hearing. Upon reaching its decision, the Commission shall draft or direct the drafting of a report and order, which upon signature of at least two Commissioners shall become the order of the Commission. Dissenting and concurring opinions of individual commissioners may be filed with the order of the Commission.

D. Deliberations -- Deliberations of the Commission shall be in closed chambers.

E. Effective Date -- Copies of the Commission's final report and order shall be served upon the parties of record. Orders shall be effective the date of issuance unless otherwise stated in the order. Upon petition of a party, and for good cause shown, the Commission may extend the time for compliance fixed in an order.

F. Review or Rehearing -- Petitions for review or rehearing shall be filed within 20 days of the issuance date of the order in accordance with Section 63-46b-13 and served on other parties of record. Following the filing of a petition for review, opposing parties may file responsive memoranda or pleadings within 10 days. Other proceedings on review shall be in accordance with Section 54-7-17.

R746-100-12. Appeals.

Appeals from final orders of the Commission shall be to a court of appropriate jurisdiction.

R746-100-13. Ex Parte Communications.

A. Ex Parte Communications Prohibited -- To avoid prejudice, real or perceived, to the public interest and persons involved in proceedings pending before the Commission:

B. Persons Affected -- Except as permitted in R746-100-13(C), no person who is a party, or the party's counsel, agent, or

other person acting on the party's behalf, shall engage in ex parte communications with a commissioner, administrative law judge, or any other employee of the Commission who is or may reasonably be expected to be involved in the decision-making process, regarding a matter pending before the Commission. No commissioner, administrative law judge, or other employee of the Commission who is or may reasonably be expected to be involved in the decision-making process, shall request or entertain ex parte communications.

C. Exceptions -- The prohibitions contained in R746-100-13(B) do not apply to a communication:

1. from an interceder who is a local, state, or federal agency which has no official interest in the outcome and whose official duties are not affected by the outcome of the on-the-record proceedings before the Commission to which the communication relates;

2. from a party, or the party's counsel, agent, or other person acting on the party's behalf if the communication relates to matters of procedure only;

3. from a person when otherwise authorized by law;

4. related to routine safety, construction, and operational inspections of project works by Commission employees undertaken to investigate or study a matter pending before the Commission;

5. related to routine field audits of the accounts or the books or records of a company subject to the Commission's accounting requirements not undertaken to investigate or study a matter pending in issue before the Commission in a proceeding;

6. related solely to a request for supplemental information or data necessary for an understanding of factual materials contained in documents filed with the Commission in a proceeding covered by these rules and which is made in the presence of or after coordination with counsel.

D. Records of Ex Parte Communications -- Written communications prohibited by R746-100-13(B), sworn statements reciting the substance of oral communications, and written responses and sworn statements reciting the substance of oral responses to prohibited communications shall be delivered to the secretary of the Commission who shall place the communication in the case file, but separate from the material upon which the Commission can rely in reaching its decision. The secretary shall serve copies of the communications upon parties to the proceeding and serve copies of the sworn statement to the communicator and allow him a reasonable time to file a response.

F. Treatment of Ex Parte Communications -- A commissioner, administrative law judge, or an employee of the Commission who receives an oral offer of a communication prohibited by R746-100-13(B) shall decline to hear the communication and explain that the matter is pending for determination. If unsuccessful in preventing the communication, the recipient shall advise the communicator that the communication will not be considered. The recipient shall, within two days, prepare a statement setting forth the substance of the communication and the circumstances of its receipt and deliver it to the secretary of the Commission for filing. The secretary shall forward copies of the statement to the parties.

G. Rebuttal -- Requests for an opportunity to rebut on the record matters contained in an ex parte communication which the secretary has associated with the record may be filed in writing with the Commission. The Commission may grant the requests only if it determines that fairness so requires. If the communication contains assertions of fact not a part of the record and of which the Commission cannot take administrative notice, the Commission, in lieu of receiving rebuttal material, normally will direct that the alleged factual assertion on proposed rebuttal be disregarded in arriving at a decision. The Commission will not normally permit a rebuttal of ex parte endorsements or oppositions by civic or other organizations by the submission of counter endorsements or oppositions.

H. Sanctions -- Upon receipt of a communication knowingly made in violation of R746-100-13(B), the presiding officer may require the communicator, to the extent consistent with the public interest, to show cause why the communicator's interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

I. Time When Prohibitions Apply -- The prohibitions contained in this rule shall apply from the time at which a proceeding is noticed for hearing or the person responsible for the communication has knowledge that it will be noticed for hearing or when a protest or a request to intervene in opposition to requested Commission action has been filed, whichever occurs first.

R746-100-14. Law and Motion Calendar.

There shall be a Law and Motion Calendar on Tuesdays commencing at 9:00 a.m., or as otherwise established and announced by the Commission, for the disposition of motions and like matters. It shall be the responsibility of parties filing law and motion matters to have them placed on the Commission's Law and Motion Calendar and to notify parties of record by written notice, or as otherwise directed by the Commission, of the time and place of hearings not fewer than five days before the hearings.

R746-100-15. Rulemaking.

A. How initiated --

1. By the Commission -- When the Commission perceives the desirability or necessity of adopting a rule, it shall draft or direct the drafting of the rule. During the drafting process, the Commission may request the opinion and assistance of any appropriate person. It may also, in its discretion, conduct public hearings in connection with the drafting. When the Commission is satisfied with the draft of the proposed rule, it may formally propose it in accordance with the Utah Rulemaking Act, 63-46a-4.

2. By others -- Persons may petition the Commission for the adoption of a rule. The petitions shall be accompanied by a draft of the rule proposed. Upon receipt the Commission shall review the petition and draft and if it finds the proposed rule desirable or necessary, it shall proceed as with proposed rules initiated by the Commission, including amending or redrafting. If the Commission finds the proposal unnecessary or undesirable, it shall so notify the petitioner in writing, giving reasons for its findings. No public hearing shall be required in connection with the Commission's review of a petition for

rulemaking.

B. Hearing Procedure -- Hearings conducted in connection with rulemaking shall be informal, subject to requirements of decorum and order. Absent a finding of good cause to proceed otherwise, testimony and statements shall be unsworn, and there shall be no opportunity for participants to cross-examine. The Commission shall have the right, however, to freely question witnesses. Public hearings shall be recorded by shorthand reporter or electronically, at the discretion of the Commission, and the Commission may allow or request the submission of written materials.

R746-100-16. Deviation from Rules.

The Commission may order deviation from a specified rule upon notice, opportunity to be heard and a showing that the rule imposes an undue hardship on a party which outweighs the benefits of the rule.

KEY: government hearings, public utilities, rules and procedures

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R746. Public Service Commission, Administration.
R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.
R746-200-1. General Provisions.

A. Title -- These rules shall be known and may be cited as the Residential Utility Service Rules.

B. Purpose -- The purpose of these Rules is to establish and enforce uniform residential utility service practices and procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

C. Policy --

1. The policy of these rules is to assure the adequate provision of residential utility service, to restrict unreasonable termination of or refusal to provide residential utility service, to provide functional alternatives to termination or refusal to provide residential utility service, and to establish and enforce fair and equitable procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

2. Nondiscrimination -- Residential utility service shall be provided to qualified persons without regard to employment, occupation, race, handicap, creed, sex, national origin, marital status, or number of dependents.

D. Requirement of Good Faith -- Each agreement or obligation within these rules imposes an obligation of good faith, honesty, and fair dealings in its performance and enforcement.

E. Customer Information -- When residential service is extended to an account holder, a public utility shall provide the consumer with a consumer information pamphlet approved by the Commission which clearly describes and summarizes the substance of these rules. The utility shall mail or deliver a copy of this pamphlet, or a summarized version approved by the Commission, to its residential customers annually in September or October. Copies of this pamphlet shall be prominently displayed in the business offices maintained by the utility and furnished to consumers upon request. The utility has a continuing obligation to inform its consumers of significant amendments to these rules. Each utility with over 10,000 customers receiving service shall print and make available upon request a Spanish edition of a consumer information pamphlet. The English edition of the pamphlet shall contain a prominent notice, written in Spanish and English, that the utility has a Spanish edition of its pamphlet and whether or not it has qualified personnel available to help Spanish-speaking customers. In this section, utilities with fewer than 10,000 users may use the pamphlets printed by the Division of Public Utilities for the distribution and availability requirements.

F. Scope --

1. These rules shall apply to gas, water, sewer, and electric utilities that are subject to the regulatory authority of the Commission. Except as provided in R746-200-6(G)(4), Notice of Proposed Termination, these rules do not apply to master metered apartment dwellings. Commercial, industrial, government accounts and special contracts are also excluded from the requirements of these rules.

2. Upon a showing that specified portions of these rules impose an undue hardship and provide limited benefit to its customers, a utility may petition the Commission for an exemption from specified portions of these rules.

G. Customer's Statement of Rights and Responsibilities -- When utility service is extended to an account holder, annually, and upon first notice of an impending service disconnection, a public utility shall provide a copy of the "Customer's Statement of Rights and Responsibilities" as approved by the Commission. The Statement of Rights and Responsibilities shall be a single page document. It shall be prominently displayed in each customer service center.

R746-200-2. General Definitions.

A. "Account Holder" -- A person, corporation, partnership, or other entity which has agreed with a public utility to pay for receipt of residential utility service and to which the utility provides service.

B. "Applicant" -- As used in these rules means a person, corporation, partnership, or other entity which applies to a public utility for residential utility service.

C. "Budget Billing" -- Monthly residential payment plan under which the customer's estimated annual billing is divided into 12 monthly payments.

D. "Deferred Payment Agreement" -- As used in these rules means an agreement to receive, or to continue to receive, residential utility service pursuant to Section R746-200-5 and to pay an outstanding debt or delinquent account owed to a public utility.

E. "Residential Utility Service" -- Means gas, water, sewer, and electric service provided by a public utility to a residence.

F. "Termination of Service" -- The terms "termination," "disconnection," and "shutoff" as used in these rules are synonymous and mean the stopping of service for whatever cause.

G. "Load Limiter" -- Device which automatically interrupts electric service at a residence when the preset kW demand is exceeded. Service is restored when the customer decreases usage and then presses the reset button on the device.

R746-200-3. Deposits, Eligibility for Service, and Shared Meter or Appliance.

A. Deposits and Guarantees --

1. Each utility shall submit security deposit policies and procedures to the Commission for its approval before the implementation and use of those policies and procedures. Each utility shall submit third-party guarantor policies and procedures to the Commission.

2. Each utility collecting security deposits shall pay interest thereon at a rate as established by the Commission. For electric cooperatives and electric service districts, interest rates shall be determined by the governing board of directors of the cooperative or district and filed with the Commission and shall be deemed approved by the Commission unless ten percent or more of the customers file a request for agency action requesting an investigation and hearing. The deposit paid, plus accrued interest, is eligible for return to the customer after the customer has paid the bill on time for 12 consecutive months.

3. A residential customer shall have the right to pay a security deposit in at least three equal monthly installments if the first installment is paid when the deposit is required.

B. Eligibility for Service --

1. Residential utility service is to be conditioned upon payment of deposits, where required, and of any outstanding debts for past utility service which are owed by the applicant to that public utility, subject to Subsections R746-200-3(B)(2), and R746-200-6(B)(2), Reasons for Termination. Service may be denied when unsafe conditions exist, when the applicant has furnished false information to get utility service, or when the customer has tampered with utility-owned equipment, such as meters and lines. An applicant is ineligible for service if at the time of application, the applicant is cohabiting with a delinquent account holder, whose utility service was previously disconnected for non-payment, and the applicant and delinquent account holder also cohabited while the delinquent account holder received the utility's service, whether the service was received at the applicants present address or another address.

2. When an applicant cannot pay an outstanding debt in full, residential utility service shall be provided upon execution of a written, deferred payment agreement as set forth in Section R746-200-5.

C. Shared Meter or Appliance - In rental property where one meter provides service to more than one unit or where appliances provide service to more than one unit or to other occupants at the premises, and this situation is known to the utility, the utility will recommend that service be in the property owner's name and the property owner be responsible for the service. However, a qualifying applicant will be allowed to put service in their own name provided the applicant acknowledges that the request for services is entered into willingly and he has knowledge of the account responsibility.

R746-200-4. Account Billing.

A. Billing Cycle -- Each gas, electric, sewer and water utility shall use a billing cycle that has an interval between regular periodic billing statements of not greater than two months. This section applies to permanent continuous service customers, not to seasonal customers.

B. Estimated Billing --

1. A gas, electric, sewer or water public utility using an estimated billing procedure shall try to make an actual meter reading at least once in a two-month period and give a bill for the appropriate charge determined from that reading. When weather conditions prevent regular meter readings, or when customers are served on a seasonal tariff, the utility will make arrangements with the customer to get meter reads at acceptable intervals.

2. If a meter reader cannot gain access to a meter to make an actual reading, the public utility shall take appropriate additional measures in an effort to get an actual meter reading. These measures shall include, but are not limited to, scheduling of a meter reading at other than normal business hours, making an appointment for meter reading, or providing a prepaid postal card with a notice of instruction upon which an account holder may record a meter reading. If after two regular route visits, access has not been achieved, the utility will notify the customer that he must make arrangements to have the meter read as a condition of continuing service.

3. If, after compliance with Subsection R746-200-4(B)(2), a public utility cannot make an actual meter reading it may give an estimated bill for the current billing cycle in accordance with Subsection R746-200-6(B)(1)(f), Reasons for Termination.

C. Periodic Billing Statement -- Except when a residential utility service account is considered uncollectible or when collection or termination procedures have been started, a public utility shall mail or deliver an accurate bill to the account holder for each billing cycle at the end of which there is an outstanding debit balance for current service, a statement which the account holder may keep, setting forth each of the following disclosures to the extent applicable:

1. the outstanding balance in the account at the beginning of the current billing cycle using a term such as "previous balance";

2. the amount of charges debited to the account during the current billing cycle using a term such as "current service";

3. the amount of payments made to the account during the current billing cycle using a term such as "payments";

4. the amount of credits other than payments to the account during the current billing cycle using a term such as "credits";

5. the amount of late payment charges debited to the account during the current billing cycle using a term such as "late charge";

6. the closing date of the current billing cycle and the outstanding balance in the account on that date using a term such as "amount due";

7. a listing of the statement due date by which payment of the new balance must be made to avoid assessment of a late charge;

8. a statement that a late charge, expressed as an annual percentage rate and a periodic rate, may be assessed against the account for late payment;

9. the following notice: "If you have any questions about this bill, please call the Company."

D. Late Charge --

1. Commencing not sooner than the end of the first billing cycle after the statement due date, a late charge of a periodic rate as established by the Commission may be assessed against an unpaid balance in excess of new charges debited to the account during the current billing cycle. The Commission may change the rate of interest.

2. No other charge, whether described as a finance charge, service charge, discount, net or gross charge may be applied to an account for failure to pay an outstanding bill by the statement due date. This section does not apply to reconnection charges or return check service charges.

E. Statement Due Date -- An account holder shall have not less than 20 days from the date the current bill was prepared to pay the new balance, which date shall be the statement due date.

F. Disputed Bill --

1. In disputing a periodic billing statement, an account holder shall first try to resolve the issue by discussion with the public utility's collections personnel.

2. When an account holder has proceeded pursuant to Subsection R746-200-4(F)(1), the public utility's collections personnel shall investigate the disputed issue and shall try to resolve that issue by negotiation.

3. If the negotiation does not resolve the dispute, the account holder may obtain informal and formal review of the dispute as set forth in Section R746-200-7, Informal Review,

and R746-200-8, Formal Review.

4. While an account holder is proceeding with either informal or formal review of a dispute, no termination of service shall be permitted if amounts not disputed are paid when due.

G. Unpaid Bills - Utilities transferring unpaid bills from inactive or past accounts to active or current accounts shall follow these limitations:

1. A utility company may only transfer bills between similar classes of service, such as residential to residential, not commercial to residential.

2. Unpaid amounts for billing cycles older than four years before the time of transfer cannot be transferred to an active or current account.

3. The customer shall be provided with an explanation of the transferred amounts from earlier billing cycles and informed of the customer's ability to dispute the transferred amount.

4. The customer may dispute the transferred amount pursuant to R746-200-4(F).

R746-200-5. Deferred Payment Agreement.

A. Deferred Payment Agreement --

1. An applicant or account holder who cannot pay a delinquent account balance on demand shall have the right to receive residential utility service under a deferred payment agreement subject to R746-200-5(B), Breach.

2. Gas and electric utilities shall have personnel available 24 hours each day to reconnect utility service, if, before reconnection, the account holder agrees to negotiate and execute a deferred payment agreement and to pay the first installment by visiting the utility's business office within 48 hours after service has been reconnected. A water utility shall have personnel available so that service can be restored before 6:00 p.m. on the next generally recognized business day.

3. The applicant or account holder shall have the right to set the amount of the equal monthly installment of a deferred payment agreement, if the full amount of the delinquent balance plus interest shall be paid within 12 months and if the account holder agrees to make an initial payment not less than the amount of the monthly installment. The account holder shall have the right to pre-pay the outstanding balance due under a deferred payment agreement at any time during the term of the agreement. The account holder also has the option, when negotiating a deferred payment agreement, to include the amount of the current month's bill plus the reconnection charges in the total amount to be paid over the term of the deferred payment agreement.

4. If a utility has a budget billing or equal payment plan available, it shall offer the account holder the option of agreeing to pay the current bills for residential utility service plus the monthly installment necessary to liquidate the delinquent bill or of agreeing to pay a budget billing amount set by the utility plus the monthly deferred payment installment. When negotiating a deferred payment agreement with a utility that does not offer a budget billing plan, the account holder shall agree to pay the current bills for residential utility service plus the monthly installment necessary to liquidate the delinquent bill.

5. The terms of the deferred payment agreement shall be set forth in a written agreement, a copy of which shall be provided to the customer.

6. A deferred payment agreement may include a finance charge as established by the Commission. If a finance charge is assessed, the deferred payment agreement shall contain notice of the charge.

B. Breach -- If an applicant or account holder breaches a condition or term of a deferred payment agreement, the public utility may treat that breach as a delinquent account and shall have the right to disconnect service pursuant to these rules, subject to the right of the customer to seek review of the alleged breach by the Commission, and the account holder shall not have the right to a renewal of the deferred payment agreement. Renewal of deferred payment agreements after the breach shall be at the utility's option.

R746-200-6. Termination of Service.

A. Delinquent Account --

1. A residential utility service bill which has remained unpaid beyond the statement due date is a delinquent account.

2. When an account is a delinquent account, a public utility, before termination of service, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

a. A statement that the account is a delinquent account and should be paid promptly;

b. A statement that the account holder should communicate with the public utility's collection department, by calling the company, if he has a question concerning the account;

c. A statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice the public utility's collections personnel shall investigate disputed issues and shall try to resolve the issues by negotiation. During this investigation and negotiation no other action shall be taken to disconnect the residential utility service if the account holder pays the undisputed portion of the account subject to the utility's right to terminate utility service pursuant to R746-200-6(F), Termination of Service Without Notice.

4. A copy of the "Statement of Customer Rights and Responsibilities" referred to in Subsection R746-200-1(G) of these rules shall be issued to the account holder with the first notice of impending service disconnection.

B. Reasons for Termination of Service --

1. Residential utility service may be terminated for the following reasons:

a. Nonpayment of a delinquent account;

b. Nonpayment of a deposit when required;

c. Failure to comply with the terms of a deferred payment agreement or Commission order;

d. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;

e. Subterfuge or deliberately furnishing false information; or

f. Failure to provide access to meter during the regular route visit to the premises following proper notification and opportunity to make arrangements in accordance with R746-200-4(B), Estimated Billing, Subsection (2).

2. The following shall be insufficient grounds for termination of service:

a. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;

b. Cohabitation of a current account holder with a delinquent account holder whose utility service was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the utility's service, whether the service was received at the current account holder's present address or another address;

c. When the delinquent account balance is less than $25.00, unless no payment has been made for two months;

d. Failure to pay an amount in bona fide dispute before the Commission;

e. Payment delinquency for third party services billed by the regulated utility company, unless prior approval is obtained from the Commission.

C. Restrictions upon Termination of Service During Serious Illness --

1. Residential gas, water, sewer and electric utility service may not be terminated and will be restored if terminated when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence. Utility service will be restored or continue for one month or less as stated in Subsection R746-200-6(C)(2).

2. Upon receipt of a physician's statement, either on a form obtained from the utility or on the physician's letterhead stationery, identifying the health infirmity or potential health hazard, a public utility will continue or restore residential utility service for the period set forth in the physician's statement or one month, whichever is less; however, the person whose health is threatened or illness aggravated may petition the Commission for an extension of time.

3. During the period of continued service, the account holder is liable for the cost of residential utility service. No action to terminate the service may be undertaken, however, until the end of the period of continued service.

D. Restrictions upon Termination of Service to Residences with Life-Supporting Equipment -- No public utility shall terminate service to a residence in which the account holder or a resident is known by the utility to be using an iron lung, respirator, dialysis machine, or other life-supporting equipment, without specific prior approval by the Commission. Account holders eligible for this protection can get it by filing a written notice with the utility. Thereupon, a public utility shall mark and identify applicable meter boxes when this equipment is used.

E. Payments for HEAT, Home Energy Assistance Target, Program -- The Commission approves the provision of the Department of Human Service's standard contract with public utility suppliers in Utah that suppliers will not discontinue utility service to a low-income household for at least 30 days after receipt of utility payment from the state program on behalf of the low-income household.

F. Termination of Service Without Notice -- Any provision contained in these rules notwithstanding, a public utility may terminate residential utility service without notice when, in its judgment, a clear emergency or serious health or safety hazard exists for so long as the conditions exist, or when there is unauthorized use or diversion of residential utility service or tampering with wires, pipes, meters, or other equipment owned by the utility. The utility shall immediately try to notify the customer of the termination of service and the reasons therefor.

G. Notice of Proposed Termination of Service --

1. At least 10 calendar days before a proposed termination of residential utility service, a public utility shall give written notice of disconnection for nonpayment to the account holder. The 10-day time period is computed from the date the bill is postmarked. The notice shall be given by first class mail or delivery to the premises and shall contain a summary of the following information:

a. a Statement of Customer Rights and Responsibilities under existing state law and Commission rules;

b. the Commission-approved policy on termination of service for that utility;

c. the availability of deferred payment agreements and sources of possible financial assistance including but not limited to state and federal energy assistance programs;

d. informal and formal procedures to dispute bills and to appeal adverse decisions, including the Commission's address and telephone number;

e. specific steps, printed in a conspicuous fashion, that may be taken by the consumer to avoid termination of service;

f. the date on which payment arrangements must be made to avoid termination of service; and

g. subject to the provision of Subsection R746-200-1(E), Customer Information, a conspicuous statement, in Spanish, that the notice is a termination of service notice and that the utility has a Spanish edition of its customer information pamphlet and whether it has personnel available during regular business hours to communicate with Spanish-speaking customers.

2. At least 48 hours before termination of service is scheduled, the utility shall make good faith efforts to notify the account holder or an adult member of the household, by mail, by telephone or by a personal visit to the residence. If personal notification has not been made either directly by the utility or by the customer in response to a mailed notice, the utility shall leave a written termination of service notice at the residence. Personal notification, such as a visit to the residence or telephone conversation with the customer, is required only during the winter months, October 1 through March 31. Other months of the year, the mailed 48-hour notice can be the final notice before the termination of service.

If termination of service is not accomplished within 15 days following the 48-hour notice, the utility company will follow the same procedures for another 48-hour notice.

3. A public utility shall send duplicate copies of 10-day termination of service notices to a third party designated by the account holder and shall make reasonable efforts to personally contact the third party designated by the account holder before termination of service occurs, if the third party resides within its service area. A utility shall inform its account holders of the third-party notification procedure at the time of application for service and at least once each year.

4. In rental property situations where the tenant is not the

account holder and that fact is known to the utility, the utility shall post a notice of proposed termination of service on the premises in a conspicuous place and shall make reasonable efforts to give actual notice to the occupants by personal visits or other appropriate means at least five calendar days before the proposed termination of service. The posted notice shall contain the information listed in Subsection R746-200-6(G)(1). This notice provision applies to residential premises when the account holder has requested termination of service or the account holder has a delinquent bill. If nonpayment is the basis for the termination of service, the utility shall also advise the tenants that they may continue to receive utility service for an additional 30 days by paying the charges due for the 30-day period just past.

H. Termination of Service -- Upon expiration of the notice of proposed termination of service, the public utility may terminate residential utility service. Except for service diversion or for safety considerations, utility service shall not be disconnected between Thursday at 4:00 p.m. and Monday at 9:00 a.m. or on legal holidays recognized by Utah, or other times the utility's business offices are not open for business. Service may be disconnected only between the hours of 9:00 a.m. and 4:00 p.m.

I. Customer-Requested Termination of Service --

1. A customer shall advise a public utility at least three days in advance of the day on which he wants service disconnected to his residence. The public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the meter has been delayed by the customer.

2. A customer who is not an occupant at the residence for which termination of service is requested shall advise the public utility at least 10 days in advance of the day on which he wants service disconnected and sign an affidavit that he is not requesting termination of service as a means of evicting his tenants. Alternatively, the customer may sign an affidavit that there are no occupants at the residence for which termination of service is requested and thereupon the disconnection may occur within four days of the requested disconnection date.

J. Restrictions Upon Termination of Service Practices -- A public utility shall not use termination of service practices other than those set forth in these rules. A utility shall have the right to use or pursue legal methods to ensure collections of obligations due it.

K. Policy Statement Regarding Elderly and Handicapped -- The state recognizes that the elderly and handicapped may be seriously affected by termination of utility service. In addition, the risk of inappropriate termination of service may be greater for the elderly and handicapped due to communication barriers which may exist by reason of age or infirmity. Therefore, this section is specifically intended to prevent inappropriate terminations of service which may be hazardous to these individuals. In particular, Subsection R746-200-6(G), requiring adequate notice of impending terminations of service, including notification to third parties upon the request of the account holder, Subsection R746-200-6(C), restricting termination of service when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence, and Subsection R746-200-6(D), restricting terminations of service to residences when life-supporting equipment is in use, are intended to meet the special needs of elderly and handicapped persons, as well as those of the public in general.

L. Load Limiter as a Substitute for Termination of Service, Electric Utilities --

1. An electric utility may, but only with the customer's consent, install a load limiter as an alternative to terminating electric service for non-payment of a delinquent account or for failure to comply with the terms of a deferred payment agreement or Commission order. Conditions precedent to the termination of electric service must be met before the installation of a load limiter.

2. Disputes about the level of load limitation are subject to the informal review procedure of Subsection R746-200-7.

3. Electric utilities shall submit load limiter policies and procedures to the Commission for their review before the implementation and use of those policies.

R746-200-7. Informal Review.

Subject to Subsection R746-100-3(F)(1), Consumer Complaints, a person who cannot resolve a dispute with the utility concerning a matter addressed in these rules may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. This employee shall investigate the dispute, try to resolve it, and inform both the utility and the consumer of his findings within five business days from receipt of the informal review request. The Division of Public Utilities shall inform the consumer of his right to petition the Commission for a formal review of the dispute, and shall make available to the consumer a standardized complaint form with instructions approved by the Commission. While an account holder is proceeding with an informal or a formal review of a dispute, no termination of service shall be permitted, provided any amounts not disputed are paid when due, subject to the utility's right to terminate service pursuant to R746-200-6(F), Termination of Service Without Notice.

R746-200-8. Formal Review.

A. The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon matters arising out of informal complaints.

R746-200-9. Penalties.

A. A residential account holder who claims that a regulated utility has violated a provision of these customer service rules, other Commission rules, company tariff, or other approved company practices may use the informal and formal grievance procedures. If considered appropriate, the Commission may assess a penalty pursuant to Section 54-7-25.

B. Fines collected shall be used to assist low income Utahns to meet their basic energy needs.

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Notice of Continuation December 8, 1997 **54-4-7**
54-7-9
54-7-25

R746. Public Service Commission, Administration.
R746-365. Intercarrier Service Quality.
R746-365-1. General Provisions.

A. Application and Authority -- This rule shall apply to telecommunications corporations that are obligated to interconnect facilities and equipment for the mutual exchange of telecommunications traffic pursuant to 54-8b-2.2.

1. This rule provides service guidelines to ensure that telecommunications corporations, individually and jointly, will engineer, design, equip and provision an efficient public telecommunications network with attendant operational support systems and joint network planning processes that will:

a. prevent impairment of public telecommunication services attributable to the provisioning of essential facilities and services used to provide local exchange service, including unreasonable blocking of telecommunications traffic carried by or exchanged between the networks of multiple telecommunications corporations;

b. ensure that each incumbent local exchange carrier timely provides essential interconnection facilities and services to other telecommunications corporations that is at least equal in quality to that provided by the incumbent local exchange carrier to itself or to any of its subsidiaries or affiliates, or to any other carrier with whom the incumbent local exchange carrier interconnects, or provides interconnection facilities and services or that otherwise is adequate, efficient, just and reasonable.

2. This rule defines guidelines relating to interconnection and the exchange of traffic that apply to all telecommunications carriers and further defines additional guidelines relating to interconnection and the exchange of traffic that apply only to incumbent local exchange carriers, as required by the federal Telecommunications Act of 1996, 47 U.S.C. Section 251.

3. This rule specifies network performance and service quality guidelines applicable to telecommunications corporations interconnecting pursuant to 54-8b-2.2 and upon which the Commission may rely in determining whether service is just, adequate, and reasonable.

4. This rule establishes specific network monitoring and reporting obligations for incumbent local exchange carriers.

5. Incumbent local exchange carriers with less than 50,000 access lines shall be exempt from this rule. If a carrier receives a bona fide request for interconnection made pursuant to the notice and exemption provisions of 47 U.S.C. Section 251 (f), in the event the Commission determines that the requirements of Section 251(f)(1)(B) are met and the Commission terminates the exemption, the Commission may also consider what service standards shall apply to the incumbent local exchange carrier and may promulgate rules to implement applicable standards.

6. The adoption of this rule by the Commission neither precludes subsequent amendment pursuant to applicable statutory procedures, nor the grant of a temporary exemption by the Commission as provided in R746-100-16, Deviation from Rules.

R746-365-2. Definitions.

A. The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined in 54-8b-2, R746-348, or this rule. As used in this rule, unless context states otherwise, the following definitions shall apply:

1. "Affiliate" -- means, with respect to any telecommunications corporation, a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this subsection, the term "own" means to own an equity interest, or the equivalent, of more than ten percent.

2. "Blocking" -- means the occurrence of insufficient capacity between the end office or tandem of a telecommunications corporation and the end office or tandem of another telecommunications corporation, and includes a call not completed because of insufficient capacity usually evidenced by a fast busy signal or message that circuits are busy.

3. "Busy Hour" -- means the uninterrupted period of 60 minutes during the day when the traffic is at its maximum.

4. "Business Day" -- means any day other than Saturday, Sunday or other day on which commercial banks in Utah are authorized or required to close.

5. "CFR" -- means the Code of Federal Regulations.

6. "Commission" -- means the Public Service Commission of Utah.

7. "Competitive Local Exchange Carrier" (CLEC) -- means an entity certificated to provide local exchange services that does not otherwise qualify as an incumbent local exchange carrier.

8. "Delayed Service Order" -- means a written or electronic order for an essential interconnection service or facility that is not filled on or before the standard installation interval or the date specified in a FOC, whichever occurs first.

9. "End User" -- means the person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency purchasing the telecommunications service for its own use, and not for resale.

10. "FCC" -- means the Federal Communications Commission.

11. "Federal Act" -- means the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. Section 151 et seq.).

12. "Firm Order Confirmation" (FOC) -- means notice provided by one telecommunications corporation to another in electronic or manual form of acceptance of a service order and the date that the service order will be completed.

13. "Incumbent Local Exchange Carrier" (ILEC) -- is defined as it is in R746-348, Interconnection.

14. "Interoffice Trunk Facilities" -- means the facilities, including transport, switching and cross-connect facilities, necessary for the transmission and routing of telephone exchange service between two end offices, or an end office and a tandem office.

15. "Local Exchange Carrier" -- means a telecommunications provider, authorized by the Commission, that provides local exchange service in a defined geographic service territory.

16. "Network Element" or "Network Facility" -- is defined as it is in R746-348-2. Interconnection.

17. "Order Completion Notification" (OCN) -- means notice provided by one telecommunications corporation to another in electronic or manual form that a service order has been completed.

18. "OSS Interface" -- means a system of communications links, computer hardware and software and associated equipment providing access into an ILEC's operational support systems for human-to-computer or computer-to-computer communication. This definition is conjunctive to the definition of "operational support" contained in R746-348-2, Interconnection.

19. "Service Order" -- means a written or electronic request for essential facilities or services made to effectuate 54-8b-2.2 and section 251 of the federal act.

20. "Trouble Report" -- means an oral, written or electronic report received by a telecommunications corporation from an end user of public telecommunications service, or, an oral, written or electronic report received by one telecommunications corporation from another who purchases essential facilities or services from the former. In either case, a Trouble Report communicates improper functioning of facilities over which the providing telecommunications corporation exercises control. A trouble report is used by telecommunications corporations to monitor repair and maintenance actions required for disposition of out-of-service or substandard service conditions.

21. "Wholesale Services" -- means essential services available to telecommunications corporations for the purpose of resale to end users.

22. "Wire Center" -- means a building that contains the necessary telecommunications facilities and functions to terminate, switch, route and interconnect local exchange, interoffice, and interexchange public telecommunication services.

R746-365-3. Network Guidelines Applicable to All Telecommunications Corporations.

A. Engineering -- All telecommunications corporations shall construct network facilities in conformance with network design standards and specifications.

B. Stricter Standards -- If an interconnection agreement is adopted pursuant to negotiation or arbitration under the Federal Act, the agreements may contain obligations and performance standards for network facilities and services that are stricter than the guidelines contained in this rule.

R746-365-4. Service Quality Guidelines.

A. Service Quality Applicable to All Telecommunications Corporations --

1. Carrier Provisioning Intervals -- Each telecommunications corporation shall provide essential facilities and associated services in accordance with the following provisioning intervals and shall separately measure each provisioning interval for commonly used circuit or facility types. The provisioning interval is the elapsed time measured in hours from a telecommunications corporation's receipt of a service order to return of an OCN. The percentage of service orders completed on time will be determined by the number of orders completed within the installation interval or the committed due date specified in a FOC. The cumulative elapsed time for each circuit or facility type is divided by the total number of corresponding completed service orders for each circuit or facility type to derive measures of service order flow-through, as further enumerated in R746-365-5. A telecommunications corporation shall return a FOC within two business days of receipt of a service order from another telecommunications corporation.

a. Interoffice Trunking Facilities -- Pursuant to forecasting requirements established in R746-365-6, forecasted trunk, routing and switching facilities shall be provisioned to any requesting local exchange carrier within 30 days of receipt of a service order, unless otherwise agreed to by the requesting carrier.

(i) Service Orders Presented Under Approved Forecasts -- A telecommunications corporation shall complete all service orders for essential facilities and services requested by another telecommunications corporation that comport with four-month projections contained in a joint forecast developed pursuant to R746-365-6(C).

b. Number Portability -- Telecommunications corporations shall provide either interim number portability or permanent number portability to a requesting carrier. The installation interval for interim number portability shall not exceed three business days following receipt of a service order. Permanent number portability shall be provided pursuant to Federal Communications Commission requirements.

2. Trouble Reports --

a. Receipt, Investigation and Recording -- Each telecommunications corporation shall provide for the receipt of trouble reports 24 hours a day, seven days a week. Each telecommunications corporation providing public telecommunications service shall investigate and respond to each trouble report. Each telecommunications corporation shall maintain a record of trouble reports made by end users and other telecommunications corporations which complies with R746-365-5(B)(4).

b. Emergency Out-of-Service -- Provisions shall be made to clear emergency out-of-service trouble at all hours, consistent with the public interest and the personal safety of a telecommunication corporations personnel. Emergency or alternative service shall be provided local law enforcement and public safety agencies during the period of any network interruption.

c. Notice of Unusual Repairs and Planned Interruptions -- If unusual repairs preclude prompt disposition of a reported trouble, telecommunications corporations shall notify all affected telecommunications corporations. If service must be interrupted for purposes of rearranging facilities or equipment, all affected telecommunications corporations shall be notified and the work shall be completed in the least disruptive manner in order to minimize public inconvenience.

d. Repair Intervals -- Each telecommunications corporation shall seek to clear out-of-service trouble reports received from another telecommunications corporation within the following intervals, unless other repair intervals have been agreed to:

TABLE

DS - 3, OC - 3 and higher	2 hours
DS - 1, Fractional DS - 1, Design DS - 0, and Local Interconnection Trunks	4 hours
Residential and Business Resale POTS	24 hours

The repair interval for clearing a trouble between telecommunications corporations is the elapsed time measured in hours and tenths of hours from the time a trouble report is received by a telecommunications corporation to the time the telecommunications corporation returns a valid trouble resolution notification. Elapsed time shall be measured by common circuit or facility types and trouble disposition and closure recorded in accordance with R365-5(B)(4).

3. Network Performance Levels -- Each telecommunications corporation shall engineer, furnish and install essential facilities and services designed to meet busy hour demand, and to prevent unreasonable blocking. The following minimum network performance standards apply to:

a. Interoffice Facilities --

(i) Local and extended area service interoffice trunk facilities shall have a minimum engineering design standard of (P.01) grade of service.

(ii) Intertandem facilities shall have a minimum engineering design standard of B.0025 (P.0025) grade of service.

b. Outside Plant -- Each telecommunications corporation shall engineer, construct and maintain cable and wire between an end user network interface device and the serving wire center in conformance with current industry standards, as described in R746-365-3(B), and common engineering practices.

B. Service Quality and Other Network Guidelines Applicable to ILECs --

1. Operational Support Systems --

a. OSS Interfaces -- Each ILEC shall undertake all commercially reasonable efforts to facilitate parity of access to operational support systems the incumbent local exchange carrier uses to store and retrieve information related to network engineering and administration.

b. Testing of OSS Interfaces -- Each telecommunications corporation shall upon request jointly conduct with one or more telecommunications corporations testing of OSS interfaces used to obtain access to operational support systems. OSS Interface testing shall commence not more than 45 days after a request for testing is received by a telecommunications corporation. The telecommunications corporations shall determine the duration of tests which shall be conducted among noncommercial end user accounts. No unreasonable limitation shall be imposed by an ILEC on another telecommunications corporation's ability to test intercarrier OSS Interfaces to ensure compatibility between ILEC and the other telecommunications corporation's operational support systems.

2. Network Provisioning Intervals -- Each ILEC shall provide essential facilities and services that comply with the following installation intervals:

a. Network Elements -- Each ILEC shall provision essential network facilities and services in accordance with the following intervals and shall measure provisioning intervals for each of the following loop facilities and services as described in R746-365-5-(C)(3)(c).

(i) Unbundled Loops -- Provisioning intervals for an unbundled loop will vary by circuit and facility type, the number of loops requested on a service order, availability of facilities and whether or not a dispatch of ILEC personnel must occur. The following essential facilities will be provisioned for telecommunications corporations within the specified intervals.

TABLE

Facility Type	Quantity	Interval
DSO or analog equivalent, dispatch, facilities available:	1 - 24	5 days
	24 - n	negotiated
DSO or voice grade equivalent, no dispatch:	1 - 24	3 days
	24 - n	7-10 days
DS1 -- Facilities provisioned and available:		5 days
ISDN -- Facilities provisioned and available:		7 days
XDSL -- Facilities provisioned and available:		7 days
DS3 -- Facilities provisioned and available:		7 days
OC3 -- Facilities provisioned and available:		15 days
OC4 - Higher -- Facilities provisioned and available:		15 days or negotiated due date.

b. Wholesale Services -- Installation intervals for wholesale services shall vary depending upon whether an existing end user service provided by an ILEC is transferred to another telecommunications corporation, or, is a new service installation.

(i) An ILEC shall transfer wholesale services without changes for an existing end user served by the ILEC within one business day following receipt of a service order from the telecommunications corporation.

(ii) An ILEC shall transfer wholesale service with changes for an existing end user served by the ILEC within three business days following receipt of a service order from the telecommunications corporation.

(iii) An ILEC shall install new wholesale service to a new end user, if facilities are available, within three days following receipt of a service order from the telecommunications corporation.

c. Collocation -- The following provisioning intervals and optional arrangements are common to both virtual and physical collocation:

(i) Upon receipt by an ILEC of a request for collocation, the ILEC shall within 15 days notify the telecommunications corporation whether sufficient space exists. If the telecommunications corporation disputes an ILECs denial of a request for collocation, and the carriers cannot negotiate a mutually satisfactory resolution, the telecommunications corporation may petition the Commission pursuant to Section 54-8b-17 for an expedited hearing and resolution of the dispute. The burden shall be on the ILEC to demonstrate to the Commission that collocation is not practical due to space limitations or is technically infeasible.

(ii) If collocation is available, the ILEC shall within 25 days following receipt of a request for collocation provide a written quotation containing all non-recurring charges for construction of the telecommunications corporation's requested collocation arrangement.

(iii) The telecommunications corporation shall within 30 days following receipt of the ILEC's quotation, by written notice to the ILEC: 1) accept the quotation; 2) withdraw the request for collocation; or, 3) provide the ILEC an independent contractor

quotation for construction of the requested collocation arrangement.

(iv) If the telecommunication corporation accepts the quotation from the ILEC, collocation equipment shall be installed on the ILEC's premises in accordance with the following provisioning intervals: 1) For physical collocation arrangements, the ILEC shall within 45 days of the telecommunication corporation's acceptance of the ILEC's quotation complete construction of the collocation space necessary and sufficient for installation of the CLEC's collocated interconnection facilities. The ILEC shall grant the telecommunications corporation access to the collocation space to install network elements therein. 2) For virtual collocation arrangements, the ILEC shall within 45 days after delivery of the telecommunication corporation's collocation equipment complete provisioning of all network facilities ordered by the telecommunications corporation.

(v) If the telecommunication corporation provides the ILEC an independent contractor quotation for construction associated with a collocation arrangement, the ILEC shall within 15 days of receipt of the quotation: 1) accept the proposal and grant to the independent contractor access to the ILEC's premises to complete construction of the collocation space and installation of the collocated interconnection facilities; 2) amend the ILEC's own quotation to perform on substantially similar terms, including, without limitation, price, the services specified in the independent contractor's quotation. If the telecommunication corporation accepts the ILEC's amended quotation, construction of the collocation space shall proceed as described in R746-365-4(B)(3)(c)(iv); or, 3) reject the proposal. If the ILEC refuses to accept an independent contractor quotation or amend its own quotation, the telecommunications corporation may petition the Commission for an expedited hearing and resolution of the dispute pursuant to R746-365-8(B).

R746-365-5. Monitoring and Reporting Requirements.

A. Availability and Retention of Records --

1. Availability of Records -- Each telecommunications corporation shall make network engineering and administrative records available for inspection by the Commission or its designee during normal operating hours.

2. Retention of Records -- All information required by this rule shall be preserved for at least 36 months after the date of entry.

3. Information Maintained -- Each telecommunications corporation shall maintain records of its network engineering and administrative operations in sufficient detail to permit review of network performance, provisioning intervals and general service quality provided other telecommunications corporations.

4. Rights of Division of Public Utilities -- Upon request made by the Division of Public Utilities, a telecommunications corporation shall provide within seven business days copies of any information requested. The Division of Public Utilities may request frequent monitoring of network performance, provisioning intervals and general service quality if evidence exists that public telecommunications services are impaired.

5. Special Study -- When requested by the Division of Public Utilities (the Division), an ILEC may file a study with the Division of Public Utilities evidencing actual provisioning intervals for network facilities and services or actual repair intervals for services provided to a telecommunications corporation, to an affiliate, or, aggregated for its ten largest customers. The Division shall investigate the source of the ILEC's operational support evidence and, at its discretion, petition the Commission pursuant to R746-100-16, Deviation from Rules. If the Commission grants consideration of a petition, intervenors may audit the ILEC's operational support evidence underlying the results of its study.

B. Network Monitoring and Performance Reporting Obligations Applicable to All Telecommunications Corporations --

1. Monitoring -- Each telecommunications corporation shall monitor the use of its network so as to:

a. issue the reports required by this section; and

b. monitor the use of all trunk groups and other interconnection facilities and equipment on its own side of the point of interconnection between its network and the network of each interconnecting telecommunications corporation.

2. Call Blocking -- Each telecommunications corporation shall maintain a daily record, by wire center, of call blocking. The record shall indicate the percentage of calls blocked by trunk group utilized by each interconnecting telecommunications corporation. Each telecommunications corporation shall notify an interconnecting telecommunications corporation immediately if call blocking on any trunk group within in any wire center exceeds standard industry levels specified in R746-365-4(A)(2).

3. Delayed Service Orders -- Each telecommunications corporation shall maintain a record, by wire center, of each instance when it fails to supply essential facilities and services to an interconnecting telecommunications corporation in accordance with the provisioning intervals established in R746-365-4. The record shall provide the following data:

a. the name and address of the telecommunications corporation;

b. the circuit or facility type requested in the service order;

c. the date and hour the service order was received;

d. the reason for the delay;

e. the number of days the order has been delayed;

f. the expected order completion date for each service order;

g. whether an initial service order was supplemented by the requesting telecommunications corporation and, if so, the date and time the supplement was approved by the providing carrier;

h. a copy of the FOC provided the requesting telecommunications corporations.

4. Carrier Trouble Reports -- Each telecommunications corporations shall maintain a record, by wire center, of trouble reports received from another telecommunications corporations. The record shall:

a. identify the telecommunications corporation experiencing trouble;

b. the affected services;

c. the time, date and nature of the report;

d. the cause and action taken to clear the trouble and its

recorded disposition;

e. the date and time of trouble clearance.

C. Performance Monitoring and Reporting Obligations Applicable to ILECs --

1. Service Provisioning Reports -- Each ILEC will provide interconnecting telecommunications corporations performance monitoring reports detailing the ILEC's provisioning of:

a. services to the ILEC's retail customers in the aggregate;

b. essential facilities and services provided to itself or any retail affiliate purchasing interconnection or access;

c. essential facilities and services provided in the aggregate to other telecommunications corporations purchasing interconnection; and

d. essential facilities and services provided to individual telecommunications corporations purchasing interconnection.

2. Service Response Description -- The ILEC shall develop a detailed narrative description of the procedures it employs in responding to calls from:

a. its retail customers;

b. its affiliated customers purchasing essential facilities and services for interconnection or local exchange access;

c. interconnecting telecommunications corporations; and

d. The service response description will be made available upon request to telecommunications corporations purchasing essential facilities and services for interconnection. The ILEC shall comply with the procedures outlined in its service response description.

3. Performance Monitoring Reports -- Performance monitoring reports shall include the following reports in addition to any additional reports the Commission may request:

a. Pre-Ordering Data -- Pre-ordering data means network administration data that resides in an ILECs operational support systems that includes, but is not limited to: facility availability, service availability, customer service records, appointment scheduling, telephone number reservation, feature function availability, and street address validation.

(i) Average OSS Response Interval for Pre-Ordering Data -- This report measures average response time per transaction for: customer service records; due date availability, address validation, feature function availability and telephone number selection and reservation. It shall be measured as: the Average Response Interval. The Average Response Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences between minuends expressed in Query Response date and time and subtrahends expressed in Query Submission date and time, the sum total dividend being divided by a divisor expressed as the number of Queries submitted in the reporting period.

(ii) OSS Interface Availability -- This report measures the percentage of time an OSS Interface is actually available for use compared to scheduled availability. It shall be measured as: the Percent System Availability. The Percent System Availability will equal the quotient of the following formula: the dividend expressed in the hours the OSS Interface functionality is actually available to CLECs during the report period divided by a divisor expressed in the number of hours the functionality was scheduled to be available during the reporting period, the quotient being expressed as a percentage.

b. Ordering --

(i) Firm Order Confirmation Timeline -- This report measures the average interval from receipt of a service order to distribution of an order confirmation notice. It shall be measured as: measured as the Mean FOC Interval. The Mean FOC Interval will equal the quotient of the following formula: the dividend expressed as the sum total of the differences of minuends expressed as the date and time of Firm Order Confirmation (FOCs) and subtrahends expressed as the date and time of Order acknowledgment, the sum total dividend being divided by a divisor expressed in the number of Orders confirmed in the reporting period.

(ii) Reject Timelines -- This report measures average response time from receipt of service order to distribution of rejection notice. It shall be measured as: the Mean Reject Interval. The Mean Reject Interval will equal the quotient of the following formula: a dividend expressed as the total sum of the difference of minuends expressed as the date and time of Order Rejection and subtrahends expressed as the date and time of Order Acknowledgment, the sum total dividend being divided by a divisor expressed in the number of Orders Rejected in the reporting period.

(iii) Percentage Rejects -- This report measures the percentage of total service orders received and rejected by the ILEC due to errors or omissions in the service order.

(iv) Timeliness of Order Completion Notification -- This report measures average response time from the actual completion date to distribution of service order completion notification. It shall be measured as: the Completion Interval. The Completion Interval shall equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the date and time of Notice of Completion issued to the telecommunications corporations and subtrahends expressed as the date and time of Work Completion by the ILEC, the sum total dividend being divided by a divisor expressed as the number of Orders completed during the reporting period.

(v) Delayed Order Interval -- This report measures uncompleted orders where the committed due date on a firm confirmation order has passed. It shall be measured as: the Mean Delayed Order Interval. The Mean Delayed Order Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the reporting period close date and subtrahends expressed as the Committed Order Due date, the sum total dividend being divided by a divisor expressed as the number of Orders Pending and Past the Committed Due Date.

c. Provisioning --

(i) Average Completion Interval -- This report measures the average time from an ILECs receipt of service order to the completion date provided on an OCN. It shall be measured as: the Average Completion Interval. The Average Completion Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the OCN date and time and subtrahends expressed as the Service Orders Submission date and time, the sum total dividend being divided by a divisor expressed as the count of Orders completed in the reporting period.

(ii) Percentage of Orders Completed On Time -- This report measures the percentage of total orders completed on or

before the completion date provided on an OCN. It shall be measured as: the Percent Orders Completed on Time. The Percent Orders Completed on Time will equal the quotient of the following formula: a dividend expressed as the count of Orders Completed within ILEC Committed Due Date and a divisor expressed as the count of Orders Completed in the reporting period, the quotient being expressed as a percentage.

(iii) Percentage Missed Installation Appointments -- This report measures the percentage of service orders where installation of service is not performed at a time in which the customer concurs. It excludes misses when the other telecommunications corporation or end user causes the missed appointment. It shall be measured as: the Percentage Missed Installation Appointments. The Percentage Missed Installation Appointments will equal the quotient of the following formula: a dividend expressed as the count of appointments missed and a divisor expressed as the count of Wholesale Orders completed in the reporting period, the quotient being expressed as a percentage.

(iv) New Service Installation Trouble Within 30 Days -- This report measures the percentage of new service installations which prove defective within 30 days following completion of a service order. It shall be measured as: the Percentage New Service Installation Trouble within 30 days. The Percentage New service Installation Trouble within 30 days will equal the quotient of the following formula: a dividend expressed as the count of defective New Service Install in the past 30 days divided by a divisor expressed as the count of total New Service Installs in the past 30 days; the quotient being expressed as a percentage.

d. Maintenance --

(i) Trouble Report Rate -- This report measures the frequency of direct or referred trouble report incidents across a universe of facilities where the cause is determined to be in network facilities. It is measured as a percentile of lines or circuit types in service. It shall be measured as: the Trouble Report Rate. The Trouble Report Rate will equal the quotient of the following formula: a dividend expressed as the count of Initial and Repeated Trouble Reports in the reporting period divided by a dividend expressed as the number of Service Access Lines in service at the end of the reporting period; the quotient being expressed as a percentage. For purposes of R746-365-5C(1)(c) and (d), an ILEC shall exclude from its count of trouble reports queries made to the ILEC from another telecommunications corporation's end-user customers who are not served by the ILEC.

(ii) Missed Repair Appointments -- This report measures the percentage of trouble reports not cleared by the committed date and time. It excludes misses where the telecommunications corporation or end user caused the missed appointment. It shall be measured as: the Percentage Missed Repair Appointments. The Percentage Missed Repair Appointments will equal the quotient of the following formula: a dividend expressed as the count of Repair Appointments Missed divided by a divisor expressed as the count of Total Appointments; the quotient being expressed as a percentage.

(iii) Mean Time to Restore -- This report measures the restoral interval for resolution of maintenance and repair troubles. It measures the elapsed time from receipt of a trouble report to the time the reported trouble is cleared. It shall be measured as: the Mean Time to Restore. The Mean Time to Restore will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the date and time of Ticket Closure and subtrahends expressed as the date and time of Ticket creation, the sum total dividend being divided by a divisor expressed as the count of Trouble Tickets Closed in the reporting period.

(iv) Percentage Repeat Trouble Reports Within 30 Days -- This report measures the percentage of trouble reports on a line or circuit that has had a previous trouble report in the preceding 30 days. It shall be measured as: the Repeat Trouble Rate. The Repeat Trouble Rate will equal the quotient of the following formula: a dividend expressed as the count of Service Access Lines generating more than one Trouble Report within a continuous 30 day period divided by a divisor expressed as the number of Trouble Reports in the report period; the quotient being expressed as a percentage.

e. Billing --

(i) Timeliness of Daily Usage Feed -- This report measures the interval in hours between the recording of usage data and the transmission in proper format to a telecommunications corporation. It shall include usage originating at ILEC switches, resale and UNE switching, and not alternately billed messages received from other ILECs. It shall be measured as: the Mean Time to Provide Recorded Usage Records. The Mean Time to Provide Recorded Usage Records will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the data set transmission time and subtrahends expressed as the time of message recording the sum total dividend being divided by a divisor expressed as the count of all messages transmitted in the reporting period; the quotient being expressed as a percentage.

f. Specific Performance Monitoring Reports -- The Commission, the Division of Public Utilities or a telecommunications corporation may request from the ILEC a report on a specific basis rather than on an average basis with respect to any of the information described in the foregoing performance monitoring reports.

4. Identifiable Carrier-Specific Information -- An ILEC shall ensure that any carrier specific information contained in the performance monitoring reports is disclosed only to the individual carrier. The ILEC shall not use any information specific to a carrier for any purpose other than the reporting requirements contained herein.

R746-365-6. Joint Planning and Forecasting.

A. Planning --A telecommunications corporation will meet with another telecommunications corporation, interconnecting or planning to interconnect within the next calendar quarter, to participate in joint forecasting and planning as necessary to accommodate the design and provisioning responsibilities of both telecommunications corporations. At a minimum, the telecommunications corporations will meet once every calendar quarter.

B. Forecasting --

1. Forecasting is the joint responsibility of the telecommunications corporations. A forecast of interconnecting trunk group and other facilities and equipment required by the

telecommunications corporations is required on a quarterly basis. The quarterly forecast shall project requirements for the following time intervals:

a. four months;

b. one year; and

c. three years.

To the extent practical, the one-year and three-year forecasts will be supplemented with historical data from time to time as necessary to improve the accuracy of the forecasts.

2. The forecasts shall include, for tandem-switched traffic, the quantity of the tandem-switched traffic forecasted for each end office.

3. The use of Common Language Location Identifier (CLLI-MSG) shall be incorporated into the forecasts.

4. The forecasts shall include a description of major network projects anticipated for the following year that could affect the other party to the forecast. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking demand for the succeeding forecasting period.

5. The forecasts, in narrative form, shall also describe anticipated network capacity limitations, including any trunk groups when usage exceeds 80 percent of the trunk group capacity, and the procedure for eliminating capacity problems before any trunk group experiences blocking in excess of the standards set forth in R746-365-5(B)(2).

6. The forecasts shall include the requirements of the telecommunications corporations for each of the following trunk groups:

a. intraLATA toll and switched access trunks;

b. EAS and local trunks;

c. directory assistance trunks;

d. 911 and E911 trunks;

e. operator service trunks;

f. commercial mobile radio service and wireless traffic; and

g. meet point billing trunks.

7. Unless otherwise agreed, forecasting information exchanged between interconnecting local exchange carriers, or disclosed by one interconnecting local exchange carrier to the other, shall be deemed confidential and proprietary.

C. Procedure for Forecasting --

1. At least 14 days before a scheduled joint planning and forecasting meeting, the telecommunications corporations shall exchange information necessary to prepare the forecast described in R746-365-6(B). At a minimum, the telecommunications corporation will provide the other with the following information.

a. Existing Interconnection Locations -- For existing interconnection locations between the telecommunications corporations, each telecommunications corporation shall provide:

(i) blocking reports, at the individual trunk group level, detailing blocking at each end office, including overflow volumes, and blocking between the telecommunications corporation's end offices and tandem switches;

(ii) the existence of any network switching, capacity or other constraints.

(iii) any network reconfiguration plans for the telecommunications corporation's network.

b. New Markets -- They may request the following information concerning a specific market area in the other's Utah service territory into which they desire to expand their own network:

(i) The network design and office types in the market area.

(ii) The capabilities of the network in the market area.

(iii) Any plans to reconfigure the network in the market area.

c. Future need information -- The telecommunications corporation will provide the other with the following information:

(i) The number of trunk lines requested and the projected century call second loads used to formulate such request.

(ii) Whether internet providers will be served and the projected number of internet provider lines needed.

(iii) The projected busy hour(s) of the trunk groups.

(iv) The expected century call seconds on busy hours - how many century call seconds the last idle trunk line will carry.

(v) The projected service dates for the requested trunking groups for the first quarter forecasted.

(vi) The telecommunications corporation's forecast for direct trunk groups to any particular end office.

(viii) Any ramp up time anticipated for the use of the requested trunk lines, and an estimate of when the trunk group will reach capacity limits.

(x) Whether the telecommunications corporation requests usage and overflow data on the trunk groups which are directly connected to the other's end offices.

2. The telecommunications corporation shall prepare a joint forecast consistent with the requirements of R746-365-6(B) and shall submit the forecast to the other at least seven days before the scheduled joint planning meeting.

3. Prior to the scheduled joint planning meeting, the telecommunications corporation shall notify the other whether it accepts the four-month forecast, rejects the four-month forecast, or proposes specific modifications to the four-month forecast.

a. If the telecommunications corporation rejects the four -month forecast or proposes modifications to the forecast, the telecommunications corporation shall submit a written statement to the other outlining the reasons why the forecast, as prepared by the other, is unacceptable. The statement shall be supported by written documentation to support the telecommunications corporation's position.

b. At the joint planning meeting, the telecommunications corporations may agree on the terms of the four-month forecast, as initially presented, or with modifications agreed to by them. If no agreement is reached, the telecommunications corporations shall jointly outline all areas of disagreement.

4. If the telecommunications corporations cannot agree on the terms of the quarterly four-month forecast, either local exchange carrier may commence an expedited dispute resolution proceeding before the Commission, as provided in Section 54-8b-17. In that proceeding, the burden of persuasion shall be on an ILEC to demonstrate that a four-month quarterly forecast submitted by a CLEC is unreasonable.

5. To the extent the telecommunications corporations

agree to the terms of a forecast, the terms shall be deemed approved for purposes of this section, and only those portions of a quarterly forecast actually in dispute shall be subject to the expedited dispute resolution proceeding.

6. If the telecommunications corporations agree on a four-month quarterly forecast, or, to the extent a forecast is approved by the Commission pursuant to the expedited dispute resolution proceeding, a telecommunications corporation shall be obligated to satisfy all service order requests made by the ordering telecommunications corporation that are consistent with the four-month projections contained in the approved forecast. Compliance with the terms of the forecast shall be based on the network provisioning interval standards set forth in R746-365-4(B)(2) as applicable.

D. Capacity Beyond the Four-month Forecast -- If a telecommunications corporation desires to order trunk groups, equipment, or facilities beyond the four-month forecast, but consistent with the one-year and three-year forecast, the telecommunications corporation may order the additional quantity if it pays a capacity reservation charge to the other telecommunications corporation from whom it orders.

E. Trunk Group Underutilization -- If a trunk group is under 60 percent of centum call seconds (ccs) capacity on a monthly average basis for each month of any three-month period, either telecommunications corporation may request to resize the trunk group, which resizing will not be unreasonably withheld. If the resizing occurs, the trunk group shall not be left with less than 25 percent excess capacity. In all cases the network performance levels and the network provisioning intervals as set forth in R746-365-4(A)(2) and R746-365-4(B)(3) shall be maintained. If the telecommunications corporations cannot agree to a resizing, either of them may file a petition with the Commission for an expedited dispute resolution proceeding as provided in Section 54-8b-17.

F. Point of Contact -- Telecommunications corporations shall provide a specified point of contact for planning, forecasting and trunk servicing purposes. The specified point of contact shall have all authority necessary to fulfill the responsibilities as set forth in this section.

R746-365-7. Remedies.

A. Commission Assessed Penalties -- The Commission may assess penalties, as provided in 54-7-25 and 54-8b-17, against any telecommunications corporation that unreasonably fails or refuses to comply with this rule, including, without limitation, the provisioning and forecasting provisions contained in this rule.

B. Carrier Charges and Offsets --

1. Failure to Comply with This Rule -- If a telecommunications corporation fails to meet the network guidelines, service quality guidelines, reporting and monitoring requirements, or other duties imposed on it by this rule, any affected telecommunications corporations may file a petition with the Commission to enforce the provisions of this rule. The proceeding may be brought on an expedited basis as provided in 54-8b-17.

2. Service Interruption -- A telecommunications corporation shall be entitled to a billing credit against amounts owed to an other telecommunications corporation for service interruption as follows:

a. If the telecommunications corporation's service or facility from another telecommunications corporation is interrupted and remains out-of-service for more than four but less than eight continuous hours after being reported by the interrupted telecommunications corporation, or found to be out-of-service by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to one tenth of the providing telecommunications corporation's monthly rate for the affected service.

b. If the interrupted telecommunications corporation's service or facility from the providing telecommunications corporation is interrupted and remains out-of-service for more than eight but less than 24 continuous hours after being reported by the interrupted telecommunications corporation, or found to be out-of-service by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made by the providing telecommunications corporation to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to the providing telecommunications corporation's monthly rate for the affected service.

c. If the interrupted telecommunications corporation's service or facility from the providing telecommunications corporation is interrupted and remains out-of-service for more than 24 continuous hours after being reported by the-of-service interrupted telecommunications corporation or found to be interrupted by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made by the providing telecommunications corporation to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to three times the providing telecommunications corporation's monthly rate for the affected service.

KEY: interconnection, public utilities, telecommunications
June 1, 1999 54-8b-2

R850. School and Institutional Trust Lands, Administration.
R850-40. Easements.
R850-40-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302 and 53C-4-203 which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of easements on, through, and over any Trust Lands Administration land, and to establish price schedules for this use.

R850-40-150. Planning.

Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. Submission of the proposal for review by the Resource Development Coordinating Committee (RDCC); and

2. Evaluation of comments received through the RDCC process.

R850-40-200. Easements Issued on Trust Lands Administration Lands.

1. The agency may issue exclusive, non-exclusive, and conservation easements on trust lands when the agency deems it consistent with trust responsibilities.

R850-40-300. Easements Acquired by Application.

1. Easements across Trust Lands Administration lands may be acquired only by application and grant made in compliance with these rules and the laws applicable thereto. No easement, or other interest in Trust Lands Administration lands may be acquired by prescription, by adverse possession, nor by any other legal doctrine except as provided by statute. All applications shall be made on agency forms. The filing of an application form is deemed to constitute the applicant's offer to purchase an easement under the conditions contained in the conveyance document and these rules.

2. Pursuant to Section 27-12-103,4(2)(a), applications shall be accepted for easements for roads in existence prior to January 1, 1992 for which easements were not in effect on that date. Easements issued under this section shall be subject to all applicable provisions of R850-40.

R850-40-400. Easement Charges.

1. The charge for any easement granted or renewed under these rules, including those granted to municipal or county governments or agencies of the state or federal government, shall be determined pursuant to R850-40-600.

2. The charge for easements issued to a subdivision of the state pursuant to R850-40-300(2) shall be subtracted from the aggregate pool of value collected from sovereign land receipts and other sources allocated for this purpose by the legislature pursuant to statute. Payments may be made over time.

3. The agency may, when issuing easements pursuant to R850-40-300(2), also accept payment from sources other than the aggregate pool and may credit the value of benefits accruing to trust beneficiaries from continued maintenance of the easement and the value of access against accrued interest.

R850-40-500. Surveys.

Anyone desiring to perform a survey on Trust Lands Administration land with the intent of filing an application for an easement, shall prior to entry for surveying activities, file with the agency written notice of intent to conduct a survey of the proposed location of the easement. The notice, which may be in letter form, shall describe the proposed project, including the purpose, general location, potential resource disturbances of the proposed easement and survey, and projected construction time for any improvements. The notice shall contain an agreement to indemnify and hold the agency and any authorized lessees harmless against liability and damages for loss of life, personal injury and property damage occurring due to survey activities and caused by applicant, his employees, his agents, his contractors or subcontractors and their employees. In lieu of an agreement the applicant may submit a surety bond in an amount agreeable to the director. The written notice shall be reviewed by the agency. The agency may require the applicant to obtain a right-of-entry agreement.

R850-40-600. Minimum Charges for Easements.

The agency may establish price schedules for easements based on the cost incurred by the agency in administering the easement and the fair-market value of the particular use.

R850-40-700. Application Procedures.

1. Time of Filing. Applications for an easement shall be received for filing in the office of the agency during office hours pursuant to R850-3.

2. Application approval by the director constitutes acceptance of the applicant's offer.

3. The easement shall be executed by the applicant and returned to the agency within 60 days from the date of applicant's receipt of the written easement. Failure to execute and return the documents to the agency within the 60-day period may result in cancellation of the conveyance and the discharge of any obligation of the agency arising from the approval of the application.

R850-40-800. Term of Easements.

Easements granted under these rules shall normally be for no greater than a 30 year term. Longer or shorter terms may be granted upon application if the director determines that such a grant is in the best interest of the trust beneficiaries.

R850-40-900. Conveyance Documents.

1. Each easement shall contain provisions necessary to ensure responsible surface management, including, the following provisions: the rights of the grantee, rights reserved to the grantor; the term of the easement; payment obligations; reporting of technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; grantee's consent to suit in any dispute arising under the terms of the easement or as a result of operations carried on under the easement; procedures of notification; transfers of easement interest by grantee; terms and conditions of easement forfeiture; and protection of the Trust Lands Administration from liability from all actions of the grantee.

2. In addition to the requirements of R850-40-900(1), conservation easements shall specify the resource(s) which is being protected and the conditions under which the conservation easement may be terminated.

R850-40-1000. Bonding Provisions.

1. Prior to the issuance of an easement, or for good cause shown at any time during the term of the easement, upon 30 days' written notice, the applicant or grantee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the easement.

2. All bonds posted on easements may be used for payment of all monies, rentals, and royalties due to the grantor, also for costs of reclamation and for compliance with all other terms and conditions of the easement, and rules pertaining to the easement. The bond shall be in effect even if the grantee has conveyed all or part of the easement interest to a sublessee, assignee, or subsequent operator until the grantee fully satisfies the easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the agency may decide, provided grantor first gives grantee 30 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Certificate of deposit in the name of "School and Institutional Trust Lands Administration and Grantee, c/o Grantee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency, the grantee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the grantee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the agency.

R850-40-1100. Conflict of Use.

The agency reserves the right to issue non-exclusive easements or other leases, or to dispose of the property by sale or exchange, on land encumbered by existing easements when compatible with the original grant.

R850-40-1200. Amendments.

Any holder of an existing easement desiring to change any of the terms of, or the alignment described in the grant shall make application following the same procedure as is used to make an application for a new easement. An amendment fee pursuant to R850-4 must accompany the amendment request.

R850-40-1210. Easement Conversion.

Easements issued for uses or purposes which would more appropriately be authorized by a special use lease shall be converted, whenever possible, to a special use lease. Any application for the conversion of an easement to a special use lease must follow the process outlined in R850-30-500(2)(g).

R850-40-1300. Renewal of Easement.

Prior to the expiration date of any easement heretofore or hereafter granted for a limited term of years, an application may be submitted for a renewal of the grant upon payment of the consideration as may then be required.

R850-40-1400. Removal of Sand and Gravel.

The removal of ordinary sand and gravel or similar materials from the land by grantee is not permitted except when the grantee has applied for and received a materials purchase permit.

R850-40-1500. Removal of Trees.

In the event the easement crosses forested Trust Lands Administration land, no trees may be cut or removed unless and until a small forest product permit or a timber contract as provided for in agency rules has been obtained.

R850-40-1600. Easement Assignments.

1. An easement may be assigned to any person, firm, association, or corporation qualified under R850-3-200, provided that:

(a) the assignment is approved by the agency;

(b) if the easement term is perpetual, the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15 years, the ending date of the easement shall be set so that there will be 15 years remaining in the easement; and

(c) the assignor agrees to pay:

(i) the difference between what was originally paid for the easement and what the agency would charge for the easement at the time the application for assignment is submitted, or

(ii) an alternate fee established by, and at the discretion of, the director. In allowing for any alternate fee the director may consider the following factors:

(A) the fee established under 1(c)(i) would exceed $10,000, or would otherwise create an undue financial burden upon the applicant, or

(B) the assignment facilitates an agency objective.

2. An assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, land involved, and the name and address of the assignee and, for the purpose of this rule shall include any agreement which transfers control of the easement to a third party.

4. An assignment shall be executed according to agency procedures.

5. An assignment is not effective until approval is given by

the agency. Any assignment made without such approval is void.

R850-40-1700. Termination of Easement.

Any easement granted by the agency across its land may be terminated in whole or in part for failure to comply with any term or conditions of the conveyance document or applicable laws or rules. Upon determination by the director that an easement is subject to termination pursuant to the terms of the grant or applicable laws or rules, the director shall issue an appropriate instrument terminating the easement.

R850-40-1800. Abandonment.

In order to facilitate the determination of an abandonment of easement, the grantee shall pay an administrative charge every three years during the term of the easement as provided in R850-4. This charge shall not be construed as rent. In lieu of this charge, the agency may allow a grantee to pay to the agency a one-time negotiated charge.

KEY: natural resources, management, surveys, administrative procedure

May 18, 1999	**53C-1-302**
Notice of Continuation June 30, 1997	**53C-2-201(1)(a)**
	53C-4-203

R909. Transportation, Motor Carrier.

R909-75. Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes.

R909-75-1. Adoption of Federal Regulations.

Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes, 49 CFR, Sub-Chapter C, of the October 1, 1998, edition as printed in the Regulations Management Corporation Service, are incorporated by reference. In addition, amendments to the same edition, which appear November 1998 and December 1998 are incorporated by reference within this rule. This applies to all private, common, and contract carriers by highway in commerce.

KEY: hazardous materials transportation, hazardous substances, hazardous waste, safety regulation

May 4, 1999 **72-9-103**

Notice of Continuation April 22, 1997 **72-9-104**