R27. Administrative Services, Fleet Operations.
R27-1. Definitions.
R27-1-1. Authority.

(1) This rule is established pursuant to Section 63A-9-401, which requires the Department of Administrative Services, Division of Fleet Operations, to establish rules regarding the State Fleet.

R27-1-2. Definitions.

(1) "Accident" any occurrence, in which a state vehicle is involved in a mishap resulting in harm or injury to persons, or damage to property, regardless of total cost of treatments or repairs. It may also be referred to as an incident.

(2) "Accident Review Committee (ARC)" refers to the panel formed by each agency to review accidents in which agency employees are involved and make a determination as to whether or not said accidents were preventable.

(3) "Agency" for the purposes of this rule, is defined by Subsection 63A-9-101.1 (a)(b)(c).

(4) "Agency Motor Vehicle Policy (AMV)" any policy written by an agency that covers any agency-specific needs involving the use of a state vehicle that are not addressed by state vehicle rules. Agencies shall not adopt policies that are less restrictive than the State vehicle rules.

(5) "Alternative Fuel Vehicles (AFV)"a vehicle designed and manufactured by an original equipment manufacturer or a converted vehicle designed to operate either on a dual-fuel, flexible-fuel, or dedicated mode while using fuels other than gasoline or diesel. Examples of alternative fuel types are electricity, bio-diesel, fossil-fuel hybrids, compressed natural gas, propane, hydrogen, methanol, ethanol, and any other vehicle fuel source approved by the Federal government's Department of Energy (DOE). AFVs shall be identified and tracked in DFO's fleet information system.

(6) "Authorized Driver" Any individual identified by an agency in DFO's Fleet Information System as having the authority, within his or her scope of employment, to operate a state vehicle on the agency's behalf, who holds a valid driver license, and has completed the specific training and other criteria required by DFO, Risk Management or employing agency for the vehicle type that will be operated. An Authorized Driver may also be referred to as operator, employee or customer.

(7) "Authorized Passenger" Any state employee acting within the scope of his or her employment, or any other person or animal whose transport is either necessary for the performance of the authorized driver's employment duties, or has been pre-approved by the appropriate department head to accompany an authorized driver.

(8) "Betterment" any equipment, enhancement or accessory requested by an agency that goes above and beyond the standard features for the standard vehicle established by DFO for a given vehicle class.

(9) "Capital only lease vehicle" vehicle with a lease designed to recover depreciation cost, (vehicle cost less salvage value spread over the estimated useful life of the vehicle, less the incremental cost of Alternative Fuel Configuration), plus overhead costs only. Capital only leases are subject to DFO approval.

(10) "Central Fleet" All state vehicles managed by the Division of Fleet Operations.

(11) "Commute Use" An employee driving a state vehicle from the employee's place of business to the employee's place of residence, until the start of the next business day for more than five calendar days per month.

(12) "Compressed Natural Gas Vehicle (CNG)" refers to a vehicle that may be fueled with compressed natural gas.

(13) "Department" is the Department of Administrative Services.

(14) "Division" is the Division of Fleet Operations.

(15) "Driving Privilege Review Board (DPRB)" refers to the panel formed for the purpose of reviewing Accident Review Committee (ARC) decisions regarding the suspension, withdrawal or revocation of the state vehicle driving privilege.

(16) "Emergency Vehicle" any state vehicle which is primarily used for the purpose of providing law enforcement and public safety services as defined in Section 53-12-102 (3)(a) and (b), or fire service, or emergency medical services.

(17) "Expansion vehicle" is a vehicle purchased when an agency requires an additional vehicle in order to complete the duties assigned to the requesting agency and will increase the size of the state fleet. The purchase of an expansion vehicle requires legislative approval.

(18) "Extreme Duty Vehicle" a designation used for preventive maintenance purposes, includes, but is not limited to, emergency vehicles and vehicles driven primarily off-road.

(19) "Feature" refers to any option or accessory that is available from the vehicle manufacturer.

(20) "Fixed costs" for the purposes of this rule include depreciation, overhead, licensing, betterment, insurance, and title costs, as well as registration fees.

(21) "Fleet Vehicle Advisory Committee" refers to a panel formed for the purpose of advising DFO, after input form user agencies, as to the vehicle, included features, and equipment, that will constitute the standard vehicle for each class in the fleet.

(22) "FO number" refers to a vehicle specific number assigned to each state vehicle for tracking purposes.

(23) "Fuel Network" The state program that provides an infrastructure for fueling state vehicles.

(24) "Full Service Lease" type of lease designed to recover depreciation costs, overhead costs and all variable costs.

(25) "Heavy-duty Vehicle" refers to motor vehicles having a gross vehicle weight range (GVWR) greater than 10,000 pounds. In addition to vehicles licensed for on road use, includes non-road vehicles, as defined in R27-1-2(31), with a GVWR greater than 10,000 pounds. Heavy-duty vehicles shall be tracked in DFO's fleet information system.

(26) "Light-duty Vehicle" refers to motor vehicles having a gross vehicle weight rating (GVWR) of 10,000 pounds or less. In addition to vehicles licensed for on road use, includes non-road vehicles, as defined in R27-1-2(31), with a GVWR of 10,000 pounds or less. Light-duty vehicles shall be tracked in DFO's fleet information system.

(27) "Miscellaneous Equipment" refers to any equipment, enhancement or accessory that is installed on or in a motor vehicle by persons other than the original vehicle manufacturer, and other non-fleet related equipment. Includes, but is not

limited to, light bars, 800 MHz radios, transits, surveying equipment, traffic counters, semaphores, and diagnostic related equipment. Miscellaneous Equipment shall be tracked in DFO's fleet information system.

(28) "Motor Pool" generally, vehicles within the central fleet, as defined in R27-1-2 (10), that is made available to agencies for lease on a short-term basis.

(29) "Motor Vehicle" as defined by Subsection 63A-9-101(6)(a) and (b), and for the purposes of this rule, covers a wide array of self-propelled vehicles that can carry passengers and is not limited in application to automobiles.

(30) "Motor Vehicle Review Committee (MVRC)" refers to the panel formed to advise the Division of Fleet Operations (DFO). The duties of the MVRC are as specified in section 63A-9-302.

(31) "Non-Preventable Accident" defined by the National Safety Council as any occurrence involving an accident/incident in which everything that could have been reasonably done to prevent it was done and the accident/incident still occurred. Non-preventable accidents shall include vandalism of state vehicles being used to conduct state business.

(32) "Non-road vehicle" means a vehicle, regardless of GVWR, that is not licensed for on-road use. Includes, but is not limited to, vehicles used principally for construction and other non-transportation purposes. Golf carts, farm tractors, snowmobiles, forklifts and boats are examples of vehicles in this category. Non-road vehicles shall be tracked in DFO's fleet information system.

(33) "Other Equipment" is used as a category on the state vehicle report to group vehicles and equipment not specifically identified in other standard reporting categories.

(34) "Personal Use" The use of a state vehicle to conduct an employee=s personal affairs, not related to state business.

(35) "Preventable Accident" is defined by the National Safety Council as any occurrence involving a company, or in this case a state vehicle, which results in property damage and/or personal injury, regardless of who was injured, what property was damaged, to what extent, or where it occurred, in which the authorized driver in question failed to do everything that could have reasonably been done to prevent it.

(a) Preventable accidents are not limited to collisions.

(b) As used in this rule, "preventable accidents" include, but are not limited to: damage to the interior of the state vehicle due to improperly locked doors, smoke or burn damage caused by smoking in the vehicle or lack of general care of the vehicles interior.

(36) "Preventive Maintenance (PM)" refers to vehicle services that include lube, oil and filter changes conducted at regular time intervals to deter mechanical breakdowns.

(37) "Regular Duty Vehicle" a designation used for preventive maintenance purposes, means a vehicle that is driven primarily on paved roads under normal driving conditions.

(38) "Replacement cycle" refers to the criteria established to determine when the replacement of a state vehicle is necessary. A replacement cycle has a time and mileage element, and is established according to vehicle type and use.

(39) "Replacement vehicle" refers to a vehicle purchased to replace a state vehicle that has met replacement cycle criteria.

(40) "Service Level Agreement (SLA)" refers to an agreement, signed annually, between an agency and DFO in which the agency agrees to follow all rules, policies and procedures published by DFO concerning the use of state vehicles. This document also clearly defines the level of service between DFO and agencies.

(41) "Specialty Vehicle" any state vehicle that is designed, constructed or equipped in a manner that allows for uses that are beyond the normal capabilities of the standard vehicle in the applicable class.

(42) "State of Utah Fuel Card" refers to a purchase card issued to vehicles by the fuel network program, to be used when purchasing fuel. Fluids and minor miscellaneous items that may also be purchased with the "State of Utah Fuel Card" cannot exceed the monthly monetary limits placed on such purchases by DFO/Fuel Network, unless otherwise authorized.

(43) "State vehicle" for the purposes of this rule, is defined by Subsection 63A-9-101.7.

(44) "Unique Motorized Equipment" (UME) refers to high-cost vehicles and equipment such as trains; locomotives; airplanes; jets; mobile power stations and helicopters. Unique equipment shall be tracked in DFO's fleet information system.

(45) "Variable costs" include, but are not limited to fuel, oil, tires, services, repairs, maintenance and preventive maintenance.

(46) "Vehicle Identification Number (VIN)" refers to the number issued by the vehicle manufacturer to identify the vehicle in the event of a theft; this number can be found on the driver's side of the dashboard below the windshield.

(47) "Vendor" refers to the person or persons offering sales or services for state vehicles, such as preventive maintenance or repair services.

KEY: definitions
January 23, 2002 63A-9-401

R27. Administrative Services, Fleet Operations.
R27-3. Vehicle Use Standards.
R27-3-1. Authority and Purpose.

(1) This rule is established pursuant to Section 63A-9-401(1)(c)(ii) and Section 63A-9-401(1)(c)(viii), which authorize the Division of Fleet Operations (DFO) to establish the requirements for the use of state vehicles, including business and personal use practices, and commute standards.

(2) This rule defines the vehicle use standards for state employees while operating a state vehicle.

R27-3-2. Agency Contact.

(1) Each agency, as defined in Subsection 63A-9-101(a),(b) and (c), shall appoint and designate, in writing, a main contact person from within the agency to act as a liaison between the Division of Fleet Operations and the agency.

R27-3-3. Agency Authorization of Drivers.

(1) Agencies authorized to enter information into DFO's fleet information system shall, for each individual to whom the agency has granted the authority to operate a state vehicle, directly enter into DFO's fleet information system, the following information:

(a) Driver's name and date of birth;

(b) Driver license number;

(c) State that issued the driver license;

(d) Each Risk Management-approved driver training program(s) taken;

(e) Date each driver safety program(s) was completed;

(f) The type vehicle that each safety program is geared towards.

(2) Agencies without authorization to enter information into DFO's fleet information system shall provide the information required in paragraph 1 to DFO for entry into DFO's fleet information system.

(3) For the purposes of this rule, any individual whose fleet information system record does not have all the information required in paragraph 1 shall be deemed not to have the authority to drive state vehicles and shall not be allowed to drive either a monthly or a daily lease vehicle.

(4) To operate a state vehicle, individuals whose names have been entered into DFO's fleet information system as authorized drivers shall have:

(a) a valid driver license for the type and class of vehicle being operated;

(b) completed the driver safety course required by DFO and the Division of Risk Management for the type or class of vehicle being operated; and

(c) met the age restrictions imposed by DFO and the Division of Risk Management for the type or class of vehicle being operated.

(5) Agencies shall develop and establish procedures to ensure that any individual listed as an authorized driver is not allowed to operate a state vehicle when the individual:

(a) does not have a valid driver license for the type or class of vehicle being operated; or

(b) has not completed all training and/or safety programs required by either DFO or the Division of Risk Management for the type or class of vehicle being operated; or

(c) does not meet the age restrictions imposed by either DFO or the Division of Risk Management for the type or class of vehicle being operated.

(6) A driver license verification check shall be conducted on a regular basis in order to verify the status of the driver license of each individual whose name appears in the DFO fleet information system as an authorized driver.

(7) In the event that an authorized driver is found not to have a valid driver license, the agency shall be notified, in writing, of the results of the driver license verification check.

(8) Any individual who has been found not to have a valid driver license shall have his or her authority to operate a state vehicle immediately withdrawn.

(9) Any individual who has been found not to have a valid driver license shall not have the authority to operate a state vehicle reinstated until such time as the individual provides proof that his or her driver license is once again valid.

(10) Authorized drivers shall operate a state vehicle in accordance with the restrictions or limitations imposed upon their respective driver license.

(11) Agencies shall comply with the requirements set forth in Risk Management General Rules, R37-1-8 (3) to R37-1-8 (9).

R27-3-4. Authorized and Unauthorized Use of State Vehicles.

(1) State vehicles shall only be used for official state business.

(2) Except in cases where it is customary to travel out of state in order to perform an employee's regular employment duties and responsibilities, the use of a state vehicle outside the State of Utah shall require the approval of the director of the department that employs the individual.

(3) Unless otherwise authorized, the following are examples of the unauthorized use of a state vehicle:

(a) Transporting family, friends, pets, associates or other persons who are not state employees or are not serving the interests of the state.

(b) Transporting hitchhikers.

(c) Transporting acids, explosives, weapons, ammunition, hazardous materials, flammable materials. The transport of the above-referenced items or materials is deemed authorized when it is specifically related to employment duties.

(d) Extending the length of time that the state vehicle is in the operator's possession beyond the time needed to complete the official purposes of the trip.

(e) Operating or being in actual physical control of a state vehicle in violation of Subsection 41-6-44(2), (Driving under the influence of alcohol, drugs or with specified or unsafe blood alcohol concentration),Subsection 53-3-231, (Person under 21 may not operate a vehicle with detectable alcohol in body), or an ordinance that complies with the requirements of Subsection 41-6-43(1), (Local DUI and related ordinances and reckless driving ordinances).

(f) Operating a state vehicle for personal use as defined in R27-1-2(30). Generally, except for approved personal uses set forth in R27-3-5 and when necessary for the performance of employment duties, the use of a state vehicle for activities such as shopping, participating in sporting events, hunting, fishing, or any activity that is not included in the employee's job

description, is not authorized.

(g) Using a state vehicle for personal convenience, such as when a personal vehicle is not operational.

(h) Pursuant to the provisions of R27-7-1 et. seq., the unauthorized use of a state vehicle may result in the suspension or revocation of state driving privileges.

R27-3-5. Personal Use Standards.

(1) Personal use of state vehicles is not allowed without the direct authorization of the Legislature. The following are circumstances where personal use of state vehicles are approved:

(a) Elected and appointed officials that receive a state vehicle as a part of their respective compensation package, and have been granted personal use privileges by state statute.

(b) Sworn law enforcement officers, as defined in Utah Code 53-13-103, whose agencies have received funding from the legislature for personal use of state vehicles.

(c) In an emergency, a state vehicle may be used as necessary to safeguard the life, health or safety of the driver or passenger.

(2) An employee or representative of the state spending at least one night on approved travel to conduct state business, may use a state vehicle in the general vicinity of the overnight lodging for the following approved activities:

(a) Travel to restaurants and stores for meals, breaks and personal needs;

(b) Travel to grooming, medical, fitness or laundry facilities; and

(c) Travel to and from recreational activities, such as to theaters, parks, or to the home of friends or relatives, provided said employee or representative has received approval for such travel from his or her supervisor.

(d) Pursuant to the provisions of R27-7-1 et. seq., the unauthorized personal use of a state vehicle may result in the suspension or revocation of state driving privileges.

R27-3-6. Application for Commute Use.

(1) Each petitioning agency shall submit a completed and agency approved commute form (MP-2) to DFO.

(2) Approval for commute privileges must be obtained from the director of the requesting agency before the commute form is submitted to DFO for tracking and reporting purposes.

(3) Commute use is considered a taxable fringe benefit. All approved commute use drivers will be assessed the IRS daily rate while using a state vehicle for commute use.

(4) For each individual with commute use privileges, the employing agency shall, pursuant to Division of Finance Policy FIACCT 10-01.00, prepare an Employee Reimbursement/Earnings Request Form and enter the amount of the commute fringe benefit into the payroll system on a monthly basis.

R27-3-7. Criteria for Commute Privilege Approval.

(1) Commute privileges are generally considered appropriate under the following circumstances:

(a) 24-hour "On-Call." Where the agency clearly demonstrates that the nature of a potential emergency is such that an increase in response time, if a commute privilege is not authorized, could endanger a human life or cause significant property damage. In the event that emergency response is the sole purpose of the commute privilege, each driver is required to submit a complete list of all call-outs on the monthly DF-61 form, and to send copies to the Division of Fleet Operations. Approval for commute use under this subsection is effective for one (1) year only. A new application for commute use under this subsection must be submitted and approved annually for the commute use privilege to continue.

(b) Virtual office. Where an agency clearly demonstrates that an employee is required to work at home or out of a vehicle, a minimum of 80 percent of the time and the assigned vehicle is required to perform critical duties in a manner that is clearly in the best interest of the state.

(c) When the agency clearly demonstrates that it is more practical for the employee to go directly to an alternate work-site rather than report to a specific office to pick-up a state vehicle.

(d) When a vehicle is provided to appointed or elected government officials who are specifically allowed by law to have an assigned vehicle as part of their compensation package. Individuals using this criterion must cite the appropriate section of the Utah Code on the MP-2 form.

R27-3-8. Enforcement of Commute Use Standards.

(1) Agencies with drivers who have been granted commute privileges shall establish internal policies to enforce the commute use and personal use standards established in this rule. Agencies shall not adopt policies that are less stringent than the standards established in these rules.

(2) Commute use that is unauthorized shall result in the suspension or revocation the commute use privilege. Additional instances of unauthorized commute use may result in the suspension or revocation of the state driving privilege.

R27-3-9. Use Requirements for Monthly Lease Vehicles.

(1) Agencies that have requested, and received monthly lease options on state vehicles shall:

(a) Ensure that only authorized drivers whose names and all other information required by R27-3-3(1) have been entered into DFO's fleet information system, completed all the training and/or safety programs, and met the age restrictions for the type of vehicle being operated, shall operate monthly lease vehicles.

(b) Report the correct odometer reading when refueling the vehicle. In the event that an incorrect odometer reading is reported, agencies shall be assessed a fee whenever the agency fails to correct the mileage within three (3) business days of the agency's receipt of the notification that the incorrect mileage was reported. When circumstances indicate that there was a blatant disregard of the vehicle's actual odometer reading at the time of refueling, a fee shall be assessed to the agency even though the agency corrected the error within three (3) days of the notification.

(c) Return the vehicle in good repair and in clean condition at the completion of the replacement cycle period or when the vehicle has met the applicable mileage criterion for replacement, reassignment or reallocation.

(i) Agencies shall be assessed a detailing fee for vehicles returned that are in need of extensive cleaning.

(ii)Agencies shall pay the insurance deductible associated

with repairs made to a vehicle that is damaged when returned.

(d) Return the vehicle unaltered and in conformance with the manufacturer's specifications.

(e) Pay the applicable insurance deductible in the event that monthly lease vehicle in its possession or control is involved in an accident.

(f) Not place advertising or bumper stickers on state vehicles without prior approval of DFO.

(2) The provisions of Rule R27-4-6 shall govern agencies when requesting a monthly lease.

R27-3-10. Use Requirements for Daily Motor Pool Vehicles.

(1) DFO offers state vehicles for use on a daily basis at an approved daily rental rate. Drivers of a state vehicle offered through the daily pool shall:

(a) Provide DFO with at least 24 hours notice when requesting vehicles such as 15 passenger vans, sports utility vehicles and wheelchair accessible vehicles. Agencies should be aware that while DFO will attempt to accommodate all requests for vehicles, the limited number of vehicles in the daily pool not only requires that reservations be granted on a first come, first served basis, but also places DFO in a position of being unable to guarantee vehicle availability in some cases, even where the requesting driver or agency provides at least 24 hours notice.

(b) Be an authorized driver whose name and all other information required by R27-3-3(1) have been entered into DFO's fleet information system, completed all the training and/or safety programs, and met the age restrictions for the type of vehicle being operated. In the event that any of the information required by R27-3-3(1) has not been entered in DFO's fleet information system, the rental vehicle will not be released.

(c) Read the handouts, provided by DFO, containing information regarding the safe and proper operation of the vehicle being leased.

(d) Verify the condition of, and acknowledge responsibility for the care of, the vehicle prior to rental by filling out the M-98 form provided by daily rental personnel.

(e) Report the correct odometer reading when refueling the vehicle at authorized refueling sites, and when the vehicle is returned. In the event that incorrect odometer reading is reported, agencies shall be assessed a fee whenever the agency fails to correct the mileage within three (3) business days of the agency's receipt of the notification that the incorrect mileage was reported. When circumstances indicate that there was a blatant disregard of the vehicle's actual odometer reading at the time of refueling, a fee shall be assessed to the agency even though the agency corrected the error within three (3) days of the notification.

(f) Return vehicles with at least ¾ tank of fuel left. In the event that the vehicle has less than ¾ of a tank of fuel left, the driver shall, prior to returning the vehicle, refuel the vehicle. Agencies shall be assessed a fee for vehicles that are returned with less than ¾ of a tank of fuel.

(g) Return rental vehicles in good repair and in clean condition.

(i) Agencies shall be assessed a detailing fee for vehicles returned that are in need of extensive cleaning.

(ii) Agencies shall pay the insurance deductible associated with repairs made to a vehicle that is damaged when returned.

(h) Call to extend the reservation in the event that they need to keep rental vehicles longer than scheduled. Agencies shall be assessed a late fee, in addition to applicable daily rental fees, for vehicles that are not returned on time.

(i) Use their best efforts to return rented vehicles during regular office hours. Agencies may be assessed a late fee equal to one day's rental for vehicles that are not returned on time.

(j) Call the daily pool where they made reservations, at least one hour before the scheduled pick-up time, to cancel the reservation. Agencies shall be assessed a fee for any unused reservation that has not been canceled.

(k) Not place advertising or bumpers stickers on state vehicles without prior approval from DFO.

(2) The vehicle shall be inspected upon its return. The agency shall either be held responsible for any damages not acknowledged prior to rental, or any applicable insurance deductibles associated with any repairs to the vehicle.

(3) Agencies are responsible for paying all applicable insurance deductibles whenever a vehicle operated by an authorized driver is involved in an accident.

(4) The DFO shall hold items left in daily rental vehicles for ten days. Items not retrieved within the ten-day period shall be turned over to the Surplus Property Office for sale or disposal.

R27-3-11. Daily Motor Pool Van, Four Wheel Drive, SUV and Wheel Chair Accessible Vehicle Lease Criteria.

(1) The standard state vehicle is a compact sedan, and shall be the vehicle type most commonly used when conducting state business.

(2) Requests for vehicles other than a compact sedan may be honored in instances where the agency and/or driver is able to identify a specific need.

(a) Requests for a sport utility vehicle (SUV) may be granted in the event that State business is being conducted in areas where off-road or underdeveloped road conditions exist. Neither adverse weather conditions nor the fact that state business is being conducted at the Utah State Surplus Property location in Draper, Ut., for the purposes of this section, are considered a specific need.

(b) Requests for a seven passenger van may be granted in the event that the driver is going to be transporting more than three authorized passengers.

(c) Requests for a fifteen (15) passenger van may be granted in the event that the driver is going to be transporting more than six authorized passengers. Under no circumstances shall the number of occupants exceed the maximum number recommended by the Division of Risk Management.

(3) Cargo vans shall be used to transport cargo only. Passengers shall not be allowed in cargo vehicles.

(4) Non-traditional (alternative) fuel shall be the primary fuel used when driving a bi-fuel state vehicle. Drivers shall make every effort to use an alternative fuel.

R27-3-12. Alcohol and Drugs.

(1) No authorized driver shall operate or be in actual physical control of a State vehicle in violation of subsection 41-

6-44(2), any ordinance that complies with the requirements of subsection 41-6-43(1), or subsection 53-3-231.

(2) Any individual on the list of authorized drivers who is convicted of Driving Under the Influence of alcohol or drugs(DUI), Reckless Driving or any felony in which a motor vehicle is used, either on-duty or off-duty, may have his or her state driving privileges withdrawn, suspended or revoked.

(3) No operator of a state vehicle shall transport alcohol or illegal drugs of any type in a State vehicle unless they are:

(a) Sworn peace officers, as defined in Section 53-13-102, in the process of investigating criminal activities;

(b) Employees of the Alcohol Beverage Control Commission conducting business within the guidelines of their daily operations.

(4) Except as provided in paragraph 3, above, any individual who uses a state vehicle for the transportation of alcohol or drugs may have his or her state driving privileges withdrawn, suspended or revoked.

R27-3-13. Violations of Motor Vehicle Laws.

(1) Authorized drivers shall obey all motor vehicle laws while operating a state vehicle.

(2) Any authorized driver who, while operating a state vehicle, receives a citation for violating a motor vehicle law shall immediately report the receipt of the citation to their respective supervisor. Failure to report the receipt of a citation may result in the withdrawal, suspension or revocation of State driving privileges.

(3) Any driver who receives a citation for violating a motor vehicle law while operating a state vehicle shall attend an additional Risk Management-approved mandatory defensive driver training program. The failure to attend the additional mandatory defensive driver training program shall result in the loss of state driving privileges.

(4) Any driver who receives a citation for a violation of motor vehicle laws, shall be personally responsible for paying fines associated with any and all citations. The failure to pay fines associated with citations for the violation of motor vehicle laws may result in the loss of state driving privileges.

R27-3-14. Seat Restraint Use.

(1) All operators and passengers in State vehicles shall wear seat belt restraints while in a moving vehicle.

(2) All children being transported in State vehicles shall be placed in proper safety restraints for their age and size as stated in Subsection 41-6-148(20)(2).

R27-3-15. Driver Training.

(1) Any individual shall, prior to the use of a state vehicle, complete all training required by DFO or the Division of Risk Management, including, but not limited to, the defensive driver training program offered through the Division of Risk Management.

(2) Each agency shall coordinate with the Division of Risk Management, specialty training for vehicles known to possess unique safety concerns, like 15 passenger vans and sport utility vehicles.

(3) Each employee shall have all training certifications required by DFO or the Division of Risk Management, and their respective agency renewed bi-annually.

(4) Agencies shall maintain a list of all employees who have completed the training courses required by DFO, Division of Risk Management and their respective agency.

(5) Employees operating state vehicles must have the correct license required for the vehicle they are operating and any special endorsements required in order to operate specialty vehicles.

R27-3-16. Smoking in State Vehicles.

(1) All multiple-user state vehicles are designated as "nonsmoking". Agencies shall be assessed fees for any damage incurred as a result of smoking in vehicles.

(2) Agencies that allow smoking in exclusive use vehicles shall be responsible for the cost of necessary repairs to, or refurbishment of, any vehicle in which smoking has been permitted to insure that the vehicle is suitable for reassignment, reallocation or sale when the vehicle reaches the applicable replacement criteria.

KEY: state vehicle use
January 23, 2002 **53-13-102**
63A-9-401(1)(c)(viii)

R70. Agriculture and Food, Regulatory Services.
R70-920. Packaging and Labeling of Commodities.
R70-920-1. Authority.

Promulgated under authority of Section 4-9-2.

R70-920-2. Adopted by Reference.

The Uniform Packaging and Labeling Regulation, published in the National Institute of Standards and Technology (NIST) Handbook 130, 2001 edition, is hereby adopted by the department, and incorporated by reference within this rule.

KEY: inspections
July 2, 1997 **4-9-2**
Notice of Continuation October 24, 2001

R70. Agriculture and Food, Regulatory Services.
R70-930. Method of Sale of Commodities.
R70-930-1. Authority.

Promulgated under authority of Section 4-9-2.

R70-930-2. Adopted by Reference.

Except as modified by the department, the Uniform Regulation for the Method of Sale of Commodities as published in the National Institute of Standards and Technology (NIST) Handbook 130, 2001 edition, is hereby adopted by the department, and incorporated by reference within this rule.

R70-930-3. Modifications.

1. Berries and small fruits - if sold by volume, shall have the following capacities:

(a) Metric Capacities - 250 milliliters, 500 milliliters, or 1 liter.

(b) Inch-Pound Capacities - 1/2 dry pint, having a capacity of 16.8 cubic inches and containing not less than six ounces; 1 dry pint, having a capacity of 33.6 cubic inches and containing not less than twelve ounces; 1 dry quart having a capacity of 67.2 cubic inches and containing not less than twenty-four ounces; except that weights used in the sale of red currants shall be 21 ounces for quarts, 10.5 ounces for pints and 5.3 ounces for half pints.

KEY: inspections
July 2, 1997 **4-9-2**
Notice of Continuation October 24, 2001

R70. Agriculture and Food, Regulatory Services.
R70-950. Uniform National Type Evaluation.
R70-950-1. Authority.

A. Promulgated under authority of Section 4-9-2.

B. Application. This rule shall apply to all classes of devices and/or equipment as covered in National Institute of Standards and Technology (N.I.S.T) Handbooks 44, 105-1, 105-2, and 105-3. (The department has a complete set of the publications mentioned, additional copies may be obtained from the U.S. Government Printing Office.)

R70-950-2. Definitions.

A. National Type Evaluation Program.

The term "National Type Evaluation Program" means a program of cooperation between the National Institute of Standards and Technology (N.I.S.T), the National Conference on Weights and Measures, the States, and the private sector for determining, on a uniform basis, conformance of a type with the relevant provisions of National Institute of Standards and Technology (N.I.S.T) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," National Institute of Standards and Technology (N.I.S.T) Handbook 105-1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Weights (N.I.S.T Class F)," National Institute of Standards and Technology (N.I.S.T) Handbook 105-2, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Measuring Flask," or National Institute of Standards and Technology (N.I.S.T) Handbook 105-3, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards."

B. Type Evaluation.

The term "type evaluation" means the testing, examination, and/or evaluation of a type by a Participating Laboratory under the National Type Evaluation Program.

C. Type.

The term "type" means a model or models of a particular measurement system, instrument, element, or a field standard that positively identifies the design. A specific type may vary in its measurement ranges, size, performance, and operating characteristics as specified in the Certificate of Conformance.

D. Participating Laboratory.

The term "Participating Laboratory" means any State Measurement Laboratory that has been certified by the National Institute of Standards and Technology (N.I.S.T), in accordance with its program for the Certification of Capability of State Measurement Laboratories, to conduct a type evaluation under the National Type Evaluation Program.

E. Certificate of Conformance.

The term "Certificate of Conformance" means a document issued by the National Institute of Standards and Technology (N.I.S.T) or National Conference on Weights and Measures (NCWM) based on testing in participating laboratories, said document constituting evidence of conformance of a type with the requirements of National Institute of Standards and Technology (N.I.S.T) Handbooks 44, 105-1, 105-2, and 105-3.

F. Director.

The term "Director" means the Director of Regulatory Services, Utah Department of Agriculture and Food.

R70-950-3. Certificate of Conformance.

The Director may require any weight or measure, or any weighing or measuring instrument or device to be issued a Certificate of Conformance prior to use for commercial or law enforcement purposes.

R70-950-4. Participating Laboratory.

The Director is authorized to operate a Participating Laboratory as part of the National Type Evaluation Program. In this regard, the Director is authorized to charge and collect fees for type evaluation services.

KEY: inspections
1987 4-9-2
Notice of Continuation May 3, 2001

R156. Commerce, Occupational and Professional Licensing.
R156-24a. Physical Therapist Practice Act Rules.
R156-24a-101. Title.

These rules are known as the "Physical Therapist Practice Act Rules".

R156-24a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 24a, as used in Title 58, Chapters 1 and 24a or these rules:

(1) "An accredited school of physical therapy", as used in Subsection 58-24a-109(2)(b), means a college or university:

(a) accredited by CAPTE; or

(b) a foreign education program which is equivalent to a CAPTE accredited program as determined by FSBPT's Foreign Credentialing Commission on Physical Therapy.

(2) "Approved course work evaluation tool", as used in Subsection R156-24a-302a(3), means the FSBPT's September 2000 revised publication entitled "A Course Work Evaluation Tool For Persons Who Received Their Physical Therapy Education Outside the United States", which is hereby adopted and incorporated by reference.

(3) "CAPTE" means Commission on Accreditation in Physical Therapy Education.

(4) "FSBPT" means the Federation of State Licensing Boards of Physical Therapy.

(5) "Joint mobilization", as used in Subsection 58-24a-104(2)(b), means passive and active movements of the joints of a patient, including the spine, to increase the mobility of joint systems; but, does not include specific vertebral adjustment and manipulation of the articulation of the spine by those methods or techniques which are generally recognized as the classic practice of chiropractic.

(6) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 24a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-24a-502.

R156-24a-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 24a.

R156-24a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-24a-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-24a-109(2)(b), the accredited school of physical therapy for a physical therapist shall be accredited by CAPTE at the time of graduation.

(2) In accordance with Subsection 58-24a-102(5), a physical therapist assistant shall complete one of the following CAPTE accredited physical therapy education programs:

(a) an associates, bachelors, or masters program; or

(b) a foreign physical therapy education program approved by the division in collaboration with the board, which program is equivalent to a program set forth in Subsection R156-24a-302a(2)(a).

(3) In accordance with Section 58-1-302, an applicant who has been licensed in a foreign country whose degree was not accredited by CAPTE shall document that his education is equal to a CAPTE accredited degree by submitting to the Division a credential evaluation from the Foreign Credentialing Commission on Physical Therapy which shall use the approved course work evaluation tool. Only educational deficiencies in the humanities, social sciences and liberal arts may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas.

R156-24a-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-24a-109(2)(c), each applicant for licensure as a physical therapist, including endorsement applicants, shall pass the FSBPT's National Physical Therapy Examination with a passing score as established by the FSBPT.

(2) In accordance with Section 58-1-309, each applicant for licensure as a physical therapist, including endorsement applicants, shall pass all questions on the open book, take home Utah Physical Therapy Law and Rule Examination.

(3) An applicant must have completed the education requirements set forth in Subsection R156-24a-302a(1) or (3), or be enrolled in the final semester of a CAPTE accredited program, in order to be eligible to sit for the examination required for Utah licensure as set forth in Subsection R156-24a-302b(1)(a).

R156-24a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 24a is established by rule in Section R156-1-308.

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

R156-24a-502. Unprofessional Conduct.

Unprofessional conduct includes:

(1) violating any provision of the American Physical Therapy Association's Code of Ethics, last amended January 1997, which is hereby adopted and incorporated by reference; and

(2) not providing supervision as set forth in Section R156-24a-503.

R156-24a-503. Physical Therapist Supervisory Authority and Responsibility.

In accordance with Section 58-24a-112, the supervisory responsibilities of a physical therapist include the following:

(1) Adequate supervision requires at a minimum that a supervising physical therapist perform the following activities:

(a) designate or establish channels of written and oral communication;

(b) interpret available information concerning the individual under care;

(c) provide the initial evaluation;

(d) develop a plan of care, including short and long term goals;

(e) select and delegate appropriate tasks of the plan of care;

(f) assess competence of supportive personnel in the delegated tasks;

(g) identify and document precautions, special problems, contraindications, anticipated progress, and plans for reevaluation; and

(h) reevaluate, adjust plan care when necessary, perform final evaluation, and establish a follow-up plan.

(2) Supervision by a physical therapist of a physical therapist assistant shall include the following conditions:

(a) an initial visit shall be made by the physical therapist for evaluation of the patient and establishment of a plan of care; and

(b) supervision shall be on site by the physical therapist every sixth treatment but no longer than every 30 days from the time of the physical therapist's last evaluation or treatment.

(3) Duties delegated by a physical therapist to a physical therapist assistant may include:

(a) providing physical therapy services according to a plan of care established by the licensed physical therapist;

(b) adjusting a specific treatment procedure in accordance with changes in patient status only with prior evaluation and approval by the supervising physical therapist;

(c) responding to inquiries regarding patient status to appropriate parties within the plan of care established by a supervising physical therapist, but not interpreting data beyond the scope of his physical therapist assistant education; and

(d) referring inquires regarding patient prognosis to the supervising physical therapist.

(4) Duties delegated by a physical therapist to a physical therapist aide may include:

(a) engaging in assembly and disassembly, maintenance and transportation, preparation and all other operational activities relevant to equipment and accessories necessary for treatment; and

(b) providing only that type of elementary and direct patient care which the patient and family members could reasonably be expected to learn and perform.

(5) A physical therapist aide may not interpret referrals, perform evaluations or evaluate procedures, initiate or adjust treatment programs, assume responsibility for planning patient treatment care, perform debridement, topical medical application, or joint mobilization.

(6) Each physical therapist assistant and physical therapist aide shall clearly identify himself as a non-licensed person and shall not present or hold himself out in any way as a physical therapist.

R156-24a-601. Animal Physical Therapy.

In accordance with Subsection 58-28-8(12)(b), a physical therapist practicing animal massage must complete at least 100 hours of animal physical therapy training and education. The training shall consist of:

(1) completing 50 hours of on the job training under the supervision of a licensed veterinarian;

(2) completing a quadruped anatomy course; and

(3) completing the remaining hours in continuing education.

KEY: licensing, physical therapy

January 7, 2002 58-24a-101

Notice of Continuation May 12, 1997 58-1-106(1)

58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rules.
R156-55a-101. Title.

These rules shall be known as the "Utah Construction Trades Licensing Act Rules".

R156-55a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as defined or used in these rules:

(1) "Employee", as used in Subsections 58-55-102(10)(a) and 58-55-102(12), means a person providing labor services in the construction trades for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

(2) "Incidental to the performance of his licensed craft or trade" as used in Subsection 58-55-102(32) means work which:

(a) can be safely and competently performed by the specialty contractor;

(b) arises from and is directly related to work performed in the licensed specialty classification; and

(c) is substantially less in scope and magnitude when compared to the work performed or to be performed by the specialty contractor in the licensed specialty classification.

(3) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing structural components.

(4) "Mechanical", as used in Subsections 58-55-102(15) and 58-55-102(25) means the work which may be performed by a S350 HVAC Contractor under Subsection R156-55a-301(3).

(5) "Personal property" means, as it relates to Title 58, Chapter 56, factory built housing and modular construction, a structure which is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.

(6) "Unprofessional conduct" defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(5) in Section R156-55a-501.

R156-55a-103. Authority.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 55.

R156-55a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is practicing a construction trade or specialty contractor classification which is not listed is exempt from licensure in accordance with Subsection 58-55-305(9).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(16).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(15).

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(25).

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than $25,000 in total cost.

R200 - Factory Built Housing Set Up Contractor. Set up or installation of manufactured housing on a temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities from the near proximity, such as a meter, to the manufactured housing unit and construction of foundations of less than four feet six inches in height. Work excluded from this classification includes site preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling and grading around the foundation, construction of foundations of more than four feet six inches in height and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades Instructor. A General Engineering Trades Instructor is a construction trades instructor authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(13).

I102 - General Building Trades Instructor. A General Building Trades Instructor is a construction trades instructor authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(24).

I103 - Electrical Trades Instructor. An Electrical Trades Instructor is a construction trades instructor authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades Instructor. A Plumbing Trades Instructor is a construction trades instructor authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades Instructor. A Mechanical Trades Instructor is a construction trades instructor authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

S200 - General Electrical Contractor. Fabrication, construction, and/or installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus which utilizes electrical

energy.

S201 - Residential Electrical Contractor. Fabrication, construction, and/or installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances and fixtures in any residential unit, normally requiring non-metallic sheathed cable, including multiple units up to and including a four-plex, but excluding any work generally recognized in the industry as commercial or industrial.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline.

S211 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto.

S212 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution system for artificial watering or irrigation.

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work.

S214 - Water Conditioning Equipment Contractor. Fabrication and/or installation of water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises.

S215 - Solar Energy Systems Contractor. Fabrication and/or installation of solar energy systems.

S216 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S217 - Residential Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in residential building, including multiple units up to and including a four-plex by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting and heating purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a residential building out to the main water, sewer or gas pipeline. Excluded is any new construction and service work generally recognized in the industry as commercial or industrial.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal studs, vinyl materials, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry.

S221 - Cabinet and Millwork Installation Contractor. On-site construction and/or installation of milled wood products.

S230 - Metal and Vinyl Siding Contractor. Fabrication, construction, and/or installation of wood, aluminum, steel or vinyl sidings.

S231 - Raingutter Installation Contractor. On-site fabrication and/or installation of raingutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, mirrors, substitutes for glass, glass-holding members, frames, hardware, and other incidental related work.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control or fireproofing, but shall not include mechanical insulation of pipes, ducts or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but, does not include the placement of concrete, finishing of concrete or embedded items such as metal reinforcement bars or mesh.

S262 - Gunnite and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed under pressure.

S263 - Cementatious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing, batching and installation of cementatious coating systems or sealants limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall, Stucco and Plastering Contractor. Fabrication, construction, and/or installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall, stucco or plaster surfaces for suitable painting or finishing. Installation of light-weight metal, non-bearing wall partitions, ceiling grid systems, and ceiling tile or panel systems.

S271 - Plastering and Stucco Contractor. Application to surfaces of coatings made of stucco or plaster, including the preparation of the surface and the provision of a base. Exempted is the plastering of foundations.

S272 - Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall

Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

S274 - Drywall Contractor. Fabrication, construction and installation of drywall, gypsum. wallboard panels and assemblies. Preparation of surfaces for suitable painting or finishing. Installation of lightweight metal, non-bearing wall partitions.

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of any thereof which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion.

S281 - Single Ply and Specialty Coating Contractor. Application of solutions of rubber, latex, or other materials or single-ply material to surfaces to prevent, hold, keep, and stop water, other liquids, derivatives, compounds, and solids from penetrating and passing such materials thereby gaining access to material or space beyond such waterproofing.

S282 - Build-up Roofing Contractor. Application of solutions of rubber, latex, asphalt, pitch, tar, or other materials in conjunction with the application of layers, felt, or other material to a roof or other surface.

S283 - Shingle and Shake Roofing Contractor. Application of shingles and shakes made of wood or any other material.

S284 - Tile Roofing Contractor. Application or installation of tile roofs including under layment material and sealing and reinforcement of weight bearing roof structures for the purpose of supporting the weight of the tile.

S285 - Metal Roofing Contractor. On-site fabrication and/or application of metal roofing materials.

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian and corian type products.

S300 - General Painting Contractor. Preparation of surface and/or the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile, perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor. Grading and preparing land for architectural, horticultural, and the decorative treatment, arrangement, and planting or gardens, lawns, shrubs, vines, bushes, trees, and other decorative vegetation. Construction of pools, tanks, fountains, hot and green houses, retaining walls, patio areas when they are an incidental part of the prime contract, fences, walks, garden lighting of 50 volts or less, and sprinkler systems.

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, gutters, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating and air conditioning systems, and complete ventilating systems.

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system.

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed journeyman plumber. Excluded from this classification are persons engaged

in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. On-site fabrication, construction and installation of swimming pools, spas, and tubs.

S390 - Sewer and Water Pipeline Contractor. Construction of sewer lines, sewage disposal and sewage drain facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, which will include but will not be limited to, asphalt overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt surfaces by milling. Also included is the excavation, grading, compacting and laying of fill or base-related thereto.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, or slurries. Included are the excavation, grading, and backfilling necessary for construction of the system.

S420 - General Fencing and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions. Signs and graphic displays shall include signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or his product, building trim or lighting with neon or decorative fixtures, or any other animated, moving or stationary device used for advertising or identification purposes. Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

S441 - Non Electrical Outdoor Advertising Sign Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state and local governmental jurisdictions. Signs and graphics shall include outdoor advertising signs which do not have electrical lighting or other electrical requirements, and in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures so that alterations, additions, repairs, and new sub-structures may be built.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. The excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter or repair piers, piles, footings and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Wood Flooring Contractor. Installation of wood flooring including prefinished and unfinished material, sanding, staining and finishing of new and existing wood flooring. Underlayments, non-structural subfloors and other incidental related work.

S491 - Laminate Floor Installation Contractor. Installation of floors made up of wood and/or composite wood materials including underlayments, non-structural subfloors and other incidental related work, but does not include the installation of sold wood flooring.

S500 - Sports and Athletic Courts, Running Tracks, and Playground Installation Contractor. Installation of sports and athletic courts including but not limited to tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any combination. Includes nonstructural floor subsurfaces, nonstructural wall surfaces, perimeter walls and perimeter fencing.

R156-55a-302a. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-55-302(1)(c), an applicant for a contractors license shall pass the following examinations as a condition precedent to licensure as a contractor:

(a) the Trade Classification Specific Examination; and

(b) the Utah Contractor Business - Law Examination.

(2) The passing score for each examination is 70%.

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-55-302(1)(e)(ii), the minimum experience requirement for each applicant or applicant's qualifier is established as follows:

(1) An applicant for contractor classification E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building shall have a minimum of four years full-time related experience, two years of which shall be in a supervisory or managerial position under the direct supervision of a licensed E100, B100 or R100 contractor, or have been a licensed contractor under a classification other than an E100, B100 or R100 for a minimum of four years. A person holding a four year degree in Construction Management may have one year supervisory or managerial experience credited towards the experience requirement.

(2) An applicant for contractor classifications S280 General Roofing, S290 General Masonry, S320 Steel Erection, S350 Heating, Ventilating and Air Conditioning, S360

Refrigeration and S370 Fire Suppression Systems shall have a minimum of four years of full-time related experience.

(3) An applicant for contractor classifications not listed in Subsections (1) and (2) above shall have a minimum of two years of full-time related experience.

R156-55a-302c. Qualifications for Licensure Requiring Licensure in a Prerequisite Classification.

(1) Each applicant for licensure as a I103 Electrical Trades Instructor shall also be licensed as either a master electrician or a residential master electrician.

(2) Each applicant for licensure as a I104 Plumbing Trades Instructor shall also be licensed as either a journeyman plumber or a residential journeyman plumber.

(3) Each applicant for licensure as a S217 Residential Plumbing Contractor shall have as the qualifier either a licensed journeyman plumber or a residential journeyman plumber.

R156-55a-302d. Qualifications for Licensure - Proof of Insurance and Registrations.

In accordance with the provisions of Subsection 58-55-302(2)(b), an applicant who is approved for licensure shall submit proof of public liability insurance in coverage amounts of at least $100,000 for each incident and $300,000 in total.

R156-55a-306a. Financial Responsibility - License Bonds and Cash Deposits.

In accordance with Section 58-55-306, the following shall apply:

(1) An applicant may demonstrate financial responsibility by either submitting the questionnaire and financial information or by submitting proof of an aggregate bonding limit in a form acceptable to the division.

(2) Under no circumstances shall the aggregate bonding limit be less than $25,000.

R156-55a-306b. Financial Responsibility - Financial Statements.

(1) All financial statements shall cover a period of time ending no earlier than the last tax year.

(2) Financial statements prepared by an independent certified public accountant (CPA) shall be "audited", "reviewed", or "compiled" financial statements prepared in accordance with generally accepted accounting principles and shall include the CPA's report stating that the statements have been audited, reviewed or compiled.

(3) Division reviewed financial statements shall be submitted in a form acceptable to the division and shall include the following:

(a) the balance sheet;

(b) all schedules;

(c) a complete copy of the applicant's most recently filed federal income tax return;

(d) a copy of the applicant's bank or broker account statements; and

(e) an acceptable credit report for the applicant.

(4) An acceptable credit report is:

(a) dated within 30 days prior to the date the application is received by the division;

(b) free from erasures, alterations, modifications, omissions, or any other form of change which alters the full and complete information provided by the credit reporting agency;

(c) a report from:

(i) Trans Union, Experian, and Equifax national credit reporting agencies; or

(ii) National Association of Credit Managers (NACM); or

(iii) another local credit reporting agency that includes a report for each of the three national credit reporting agencies names in Subsection (i) above.

R156-55a-311. Reorganization of Contractor Business Entity.

A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

R156-55a-312. Inactive License.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee will not engage in the construction trade(s) for which his license was issued while his license is on inactive status except to identify himself as an inactive licensee.

(2) A license on inactive status will not be required to meet the requirements of licensure in Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b).

(3) The requirements for reactivation of an inactive license specified in Subsection R156-1-305(6) shall also include:

(a) documentation that the licensee meets the requirements of Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b); and

(b) documentation that the licensee has taken and passed the business and law examination and the trade examination for the classification for which activation is sought except that the following exceptions shall apply to the reactivation examination requirement:

(i) No qualifying examinations will be required if the licensee applies for reactivation of his license within two years after being placed on inactive status.

(ii) No qualifying examinations will be required if the licensee has been actively and lawfully involved in the construction trades as an employee of another licensed contractor or has been actively and lawfully involved in the construction trades in another state during the time the license was inactive.

(iii) If the licensee applies for reactivation after two years but before four years after being placed on inactive status, the division may waive the qualifying examinations if the licensee presents adequate support that he has maintained the knowledge and skills tested in the business and law examination and the trade examination in the classification for which reactivation of licensure is sought.

(iv) If the licensee applies for reactivation four years or

more after being placed on inactive status, the division may waive the trade examination in the classification for which reactivation of licensure is sought, if the licensee presents adequate support that he has maintained the knowledge and skills tested in the trade examination.

58-55-308(1)
58-55-301(1)
58-55-102(22)

R156-55a-401. Minimum Penalty for Failure to Maintain Insurance.

(1) A minimum penalty is hereby established for the violation of Subsection R156-55a-501(2) as follows:

(a) For a violation the duration of which is less than 90 days, where the licensee at the time a penalty is imposed documents that the required liability and workers compensation insurance have been reacquired, and provided an insurable loss has not occurred while not insured, a minimum of a 30 day suspension of licensure, stayed indefinitely, automatically executable in addition to any other sanction imposed, upon any subsequent violations of Subsection R156-55a-501(2).

(b) For a violation the duration of which is 90 days or longer, or where insurable loss has occurred, where the licensee at the time a penalty is imposed documents that the required insurance have been reacquired, a minimum of 30 days suspension of licensure.

(c) For a violation of any duration, where the licensee at the time a penalty is imposed fails to document that the required insurance have been reacquired, a minimum of indefinite suspension. A license which is placed on indefinite suspension may not be reinstated any earlier than 30 days after the licensee documents the required insurance have been reacquired.

(d) If insurable loss has occurred and licensee has not paid the damages, the license may be suspended indefinitely until such loss is paid by the licensee.

(e) Nothing in this section shall be construed to restrict a presiding officer from imposing more than the minimum penalty for a violation of Subsection R156-55a-501(2). However, absent extraordinary cause, the presiding officer may not impose less than the minimum penalty.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to notify the division with respect to any matter for which notification is required under these rules or Title 58, Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the division and the board as grounds for immediate suspension of the contractors license;

(2) failing to continuously maintain insurance and registration as required by Subsection 58-55-302(2), in coverage amounts and form as implemented by this chapter.

R156-55a-502. Penalty for Unlawful Conduct.

The penalty for violating Subsection 58-55-501(1) while suspended from licensure shall include the maximum fine allowed by Subsection 58-55-503(4)(i).

KEY: contractors, occupational licensing, licensing

December 18, 2000	**58-1-106(1)**
Notice of Continuation January 15, 2002	**58-1-202(1)**
	58-55-101

R156. Commerce, Occupational and Professional Licensing.
R156-55b. Electricians Licensing Rules.
R156-55b-101. Title.

These rules are known as the "Electricians Licensing Rules".

R156-55b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapter 55 or these rules:

(1) "Electrical work" as used in Subsection 58-55-102(11)(a) and in these rules means installation, fabrication or assembly of equipment or systems included in "Premises Wiring" as defined in the edition of the National Electrical Code, as identified in Subsection R156-56-701(1)(b) which is hereby adopted and incorporated by reference. Electrical work includes installation of raceway systems used for any electrical purpose, and installation of field-assembled systems such as ice and snow melting, pipe-tracing, manufactured wiring systems, and the like. Electrical work does not include installation of factory-assembled appliances or machinery that are not part of the premises wiring unless wiring interconnections external to the equipment are required in the field, and does not include cable-type wiring that does not pose a hazard from a shock or fire initiation standpoint as defined in the National Electrical Code. Wiring covered by the National Electrical Code that does not pose a hazard as described above includes Class 2 wiring as defined in Article 725, Power-Limited circuits as defined in Article 760 and wiring methods covered by Chapter 8. Other wiring, including wiring under 50 volts is subject to licensing requirements.

(2) "Minor electrical work incidental to a mechanical or service installation" as used in Subsection 58-55-305(14) means the electrical work involved in installation, replacement or repair of appliances or machinery that utilize electrical power. These installations do not include modification or repair of "Premises Wiring" as defined in the National Electrical Code. Electrical work is minor and incidental only when wiring is extended no more than ten feet in length from an outlet or disconnect provided specifically for the piece of equipment.

(3) "Residential project" as used in Subsection 58-55-302(3)(g)(ii) means electrical work performed in residential dwellings under four stories and will include single family dwellings, apartment complexes, condominium complexes and plated subdivisions.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-55b-501.

(5) "Work commonly done by unskilled labor" as used in Subsection 58-55-102(11)(b)(iii) means work such as digging, sweeping, hammering, carrying, drilling holes, or other tasks that do not directly involve the installation of raceways, conductors, cables, wiring devices, overcurrent devices, or distribution equipment. Tasks such as handling wire on large wire pulls or assisting in moving heavy electrical equipment may utilize unlicensed persons in accordance with Subsections 58-55-102(11)(b)(i) and (ii) when the task is performed in the immediate presence of and supervised by properly licensed persons. Tasks that are normally performed by the skilled labor of other trades, such as operating heavy equipment, driving, forming and pouring concrete, welding and erecting structural steel shall not be considered part of the electrical trade.

R156-55b-103. Authority.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 55.

R156-55b-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is described in Section R156-1-107.

R156-55b-302a. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-55-302(1)(c)(i), the following examinations, each consisting of a theory section, a code section and a practical section, are approved by the division in collaboration with the board:

(a) Utah Electrical Licensing Examination for Master Electricians;

(b) Utah Electrical Licensing Examination for Master Residential Electricians;

(c) Utah Electrical Licensing Examination for Journeyman Electricians; and

(d) Utah Electrical Licensing Examination for Residential Journeyman Electricians.

(2) The minimum passing score for each section of each examination is 70%.

(3) If an applicant passes any one section of the examination and fails any one or more of the other sections, he is only required to retake the section of the examination failed.

(4) Admission to the examination is permitted after the applicant has completed all requirements for licensure set forth in Sections R156-55b-302b and R156-55b-302c.

R156-55b-302b. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-55-302(3)(f)(i), the approved electrical training program for licensure as a residential journeyman electrician consists of:

(a) a curriculum of electrical study approved by the Utah Board of Regents or other curriculum that is deemed substantially equivalent; and

(b) at least two years of work experience as a licensed apprentice consistent with Section R156-55b-302c.

(2) In accordance with Subsection 58-55-302(3)(e)(i), the approved four year planned training program for licensure as a journeyman electrician consists of:

(a) a curriculum of electrical study approved by the Utah Board of Regents or other curriculum that is deemed substantially equivalent; and

(b) at least four years of work experience as a licensed apprentice consistent with Section R156-55b-302c.

(3) In accordance with Subsections 58-55-302(3)(c)(ii) and (iii), an approved course of study for a graduate of an electrical trade school is a curriculum of electrical study approved by the Utah Board of Regents or other curriculum that is deemed substantially equivalent.

(4) It shall be the responsibility of the applicant to provide

adequate documentation to establish equivalency.

(5) In accordance with Subsection 58-55-302(3)(c)(i), an approved college or university shall be accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology or the Canadian Engineering Accrediting Board.

R156-55b-302c. Qualifications for Licensure - Work Experience.

(1) In accordance with Subsections 58-55-302(3)(c), (d), (e) and (f), the practical electrical experience, course of study, practical experience, planned training program, or electrical training program shall include on-the-job work experience in the following categories and approximate percentages:

(a) 50-80% in raceways, boxes and fittings, wire and cable to include conduit, wireways, cableways and other raceways and associated fittings, individual conductors and multiconductor cables, and nonmetallic-sheathed cable;

(b) 10-20% in wire and cable to include individual conductors and multi-conductor cables;

(c) 5-15% in distribution and utilization equipment to include transformers, panel boards, switchboards, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motors, and other distribution and utilizations equipment; and

(d) 5-15% in specialized work to include grounding, wiring of systems for sound, data, communications, alarms, automated systems, generators, batteries, computer equipment, etc.

(2) Each year of work experience shall include at least 2000 hours and may be obtained in one or more years. No more than one year of work experience may be credited for each 12 month period.

(3) No credit will be given for work experience performed illegally.

R156-55b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308.

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

R156-55b-304. Continuing Education.

(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b), there is created a continuing education requirement as a condition for renewal or reinstatement of master, journeyman, residential master, residential journeyman and apprentice electrician licenses issued under Title 58, Chapter 55.

(2) Continuing education shall consist of 16 hours of course work in each preceding two year period of licensure or expiration of licensure.

(3) A minimum of eight hours shall be on the current edition of the National Electrical Code, as identified in Subsection R156-56-701(1)(b).

(4) The licensee is responsible for maintaining competent records of completed qualified continuing education for a period of four years after the close of the two year renewal period to which the records pertain.

(5) The standards for qualified continuing education are as follows:

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

(b) an instructor must either be currently teaching or have taught courses related to the electrical trade within the preceding two years for one of the following:

(i) a trade school, college or university whose electrical program is approved in accordance with Subsections R156-55b-302b(1)(a) and (5);

(ii) a professional association or organization representing licensed electricians whose program objectives relate to the electrical trade;

(iii) the licensing agency of another state;

(iv) a federal or other Utah agency or another state's agency; or

(v) the Division's Building Codes Education program.

(6) Electricians Licensing Board members, acting in their official capacity as a board member, may attend any continuing education course at no charge, at any time, for no credit, to monitor the quality of instruction.

R156-55b-401. Scope of Practice.

In accordance with Subsection 58-55-308(1), the following shall apply:

(1) It shall be the responsibility of the journeyman, residential journeyman, master or residential master electrician who is licensed by the division to insure that the work installed by himself, as well as by any apprentice under his supervision, is properly installed. Proper and safe installations shall be the responsibility of the supervising party or parties.

(2) An apprentice in a planned training program as set forth in Subsection 58-55-302(3)(e)(i) may be supervised as a fourth year apprentice in the fifth and sixth year of apprenticeship; however, in the seventh and succeeding years of apprenticeship, he shall be under immediate supervision as set forth in Subsection 58-55-302(3)(g)(i).

(3) All other apprentices shall be under immediate supervision as set forth in Subsection 58-55-302(3)(g).

(4) For the purposes of Subsections 58-55-102(24), 58-55-501(17) and 58-55-302(3)(g), apprentices and the licensed electricians responsible for their supervision shall be employees of the same contractor, or the employers of the supervising employees shall have a contractual responsibility for the performance of both the supervised and supervising employees. Employees of licensed employee leasing companies who provide workers under a contract with an electrical contractor shall be considered to be the employees of the electrical contractor for the purposes of this rule.

R156-55b-501. Unprofessional Conduct.

"Unprofessional conduct" includes failure of a licensee to carry a copy of their current license at all times when performing electrical work.

KEY: occupational licensing, licensing, contractors, electricians*
April 30, 2001 58-1-106(1)

Notice of Continuation January 7, 2002 **58-1-202(1)**
58-55-308(1)

R156. Commerce, Occupational and Professional Licensing.
R156-55c. Construction Trades Licensing Act Plumber Licensing Rules.
R156-55c-101. Title.

These rules are known as the "Construction Trades Licensing Act Plumber Licensing Rules".

R156-55c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55 or these rules:

(1) "Board" means the Plumbers Licensing Board.

(2) "Plumber" means apprentice plumber, residential apprentice plumber, journeyman plumber, and residential journeyman plumber.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(5), in Subsection R156-55c-501.

R156-55c-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 55.

R156-55c-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-55c-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the application requirements for licensure in Section 58-55-302 are defined, clarified, or established as follows:

(1) an applicant for licensure shall submit an application for license only after having met all requirements for licensure set forth in Section 58-55-302 and these rules; and

(2) the application must be accompanied by all documents or other evidence required demonstrating the applicant is qualified for licensure.

R156-55c-302b. Qualifications for Licensure - Apprenticeship Education.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the apprenticeship education requirements for licensure in Subsection 58-55-302(3)(a) and (b) are defined, clarified, or established as follows:

(1) a journeyman plumber applicant seeking licensure under training and instruction requirements set forth in Subsection R156-55c-302c(1)(a) shall demonstrate successful completion of not less than 576 clock hours of classroom instruction in an apprenticeship program meeting the requirements of Section R156-55c-601; and

(2) a residential journeyman plumber applicant seeking licensure under training and instruction requirements set forth in Subsection R156-55c-302c(2)(a) shall demonstrate successful completion of not less than 432 hours of classroom instruction in an apprenticeship program meeting the requirements of Section R156-55c-601.

R156-55c-302c. Qualification for Licensure - Training and Instruction Requirement.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the training and instruction requirements for licensure in Subsection 58-55-302(3)(a) and (b) are defined, clarified, or established as follows:

(1) A journeyman plumber applicant shall demonstrate successful completion of:

(a) 8,000 hours of training and instruction, in not less than four years, while licensed as an apprentice plumber, completed in an apprenticeship program of training meeting the requirements of Section R156-55c-601, in the following experience areas and approximate number of hours as identified in Table I; or

(b) 16,000 hours of experience, in not less than eight years, as a plumber under the supervision of a journeyman plumber with a minimum number of hours of experience in each of the experience areas required under Subsection (1)(a).

TABLE I
Training and Instruction

Work Process	Approximate Hours
A. Use of hand tools, equipment and pipe machinery	200
B. Installation of piping for waste, soil, sewer vent and leader lines	2,250
C. Installation of hot and cold water for domestic purposes	1,600
D. Installation and setting of plumbing appliances and fixtures	1,600
E. Maintenance and repair of plumbing	800
F. General pipe work including process and industrial hours	800
G. Gas piping or service piping	500
H. Welding as it applies to the trade	100
I. Service and maintenance of gas controls and equipment	200

(2) A residential journeyman plumber applicant shall demonstrate successful completion of:

(a) 6,000 hours of training and instruction, in not less than three years, while licensed as an apprentice plumber or residential apprentice plumber, completed an apprenticeship program of training meeting the requirements of Section R156-55c-601, in the following experience areas and approximate number of hours as identified in Table II; or

(b) 12,000 hours of experience, in not less than six years, in a maintenance or repair trade for which the applicant can document that not less than 75% of the work performed was directly involved in the plumbing trade including as a minimum the number of hours performing work in each of the experience areas required under Subsection (2)(a).

TABLE II
Training and Instruction

Work Process	Approximate Hours
A. Use of hand tools, equipment and	100

	pipe machinery	
B.	Installation of piping for waste, soil, sewer vent and leader lines	1,800
C.	Installation of hot and cold water for domestic purposes	1,400
D.	Installation and setting of plumbing appliances and fixtures	1,200
E.	Maintenance and repair of plumbing	800
F.	Gas piping or service piping	500
G.	Service and maintenance of gas controls and equipment	200

(3) A residential journeyman plumber applying for a journeyman plumbers license must complete 2,000 hours of on the job training in industrial or commercial plumbing while licensed as an apprentice plumber and complete an approved fourth year course of classroom instruction.

R156-55c-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Subsection 58-55-302(1)(c)(i) are defined, clarified, or established as follows:

(1) The examination which must be passed and the minimum score required on each examination for licensure as a journeyman plumber and residential journeyman plumber is the Utah Plumbers Licensing Examination which consists of a written section and practical section with a minimum score of 70% on each section.

(2) Admission to the examinations is permitted after the applicant has completed all requirements for licensure set forth in Sections R156-55c-302b and R156-55c-302c.

(3) An examinee who passes one section of the Utah Plumbers Licensing Examination and fails the other section shall be required to retake and pass only the section failed.

(4) An examinee who fails either or both sections of the Utah Plumbers Licensing Examination two times shall not be permitted to retake the examination until:

(a) the examinee meets with the board and the board outlines a required remedial program of education or experience of up to one year in length which must be completed before the examinee may again take the examination; and

(b) the examinee successfully completes the required remedial program of education or experience.

(c) Upon completion of the required remedial program of education and experience, the examinee shall retake the failed portions of the examination a maximum of two times of the next two examinations offered. Failure to pass both required portions of the examination upon retake shall result in denial of their application for licensure. An applicant continuing to seek licensure must reapply for licensure by filing a new application with the required fee and may do so only after completing additional remedial education and experience as determined by the division and the board.

R156-55c-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 55, is established by rule in Section R156-1-308.

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

R156-55c-307. Licensure by Endorsement.

In accordance with the provisions of Section 58-1-302, the division may issue an individual a license as an apprentice plumber, residential apprentice plumber, journeyman plumber, or residential journeyman plumber by endorsement, in accordance with the following:

(1) An applicant for licensure by endorsement as a journeyman plumber or residential journeyman plumber has the burden to demonstrate that the apprenticeship instruction and training, or experience requirements in lieu of an apprenticeship, and the examination requirements of the state or jurisdiction in which the applicant holds licensure are equal to the requirement of this state or were equal to the requirements of this state at the time the applicant received licensure in the other state.

(2) An applicant for licensure as an apprentice or apprentice residential plumber who has completed part of apprenticeship training and instruction in another jurisdiction has the burden to demonstrate that the apprenticeship program in the other state is equivalent to an approved apprenticeship program in this state as a condition of the applicant being given credit for completion of an apprenticeship program in another state.

R156-55c-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in the plumbing trade as an apprentice plumber when not under the immediate supervision of a journeyman plumber, or a residential apprentice plumber when not under the general supervision of a licensed journeyman plumber or residential journeyman plumber;

(2) engaging in the plumbing trade as an apprentice plumber or as a residential apprentice plumber except in accordance with instructions of the supervising journeyman or residential journeyman plumber;

(3) acting as a journeyman plumber or residential journeyman plumber on residential projects when supervising more than two apprentice plumbers or residential apprentice plumbers, or a combination of them, and one unlicensed assistant;

(4) acting as a journeyman plumber on industrial or commercial projects when supervising more than one apprentice plumber and one unlicensed assistant; and

(5) failure as a licensed plumber to carry a copy of his current plumbers license on his person or in close proximity to his person when performing plumbing work or to display that license upon request of a representative of the division or any law enforcement officer.

R156-55c-601. Qualifications for Approval of Apprenticeship Program.

An apprenticeship program qualifying an applicant for licensure as a journeyman plumber or residential journeyman plumber to meet the education requirements for licensure under

Section R156-55c-302b and the training and instruction requirements for licensure under Section R156-55c-302c shall meet the following:

(1) Formal classroom instruction shall be:

(a) conducted by Local Education Agency (LEA), or by some other entity which demonstrates to the division and board that it conducts classroom instruction equivalent to that of a LEA;

(b) conducted by competent qualified staff and shall include measures of competency and achievement level of each apprentice; and

(c) meet the following minimum required hours of classroom instruction:

(i) apprentice plumber classroom instruction of not less than 576 clock hours; and

(ii) residential apprentice plumber classroom instruction of not less than 432 clock hours.

(2) Training and instruction shall:

(a) be under the immediate supervision of a licensed journeyman plumber for an apprentice plumber or under the immediate supervision of a licensed journeyman plumber or residential journeyman plumber for a residential apprentice plumber;

(b) include measurements of an apprentice's performance of work in all experience areas set forth in Table I for apprentices preparing for a journeyman plumbers license, or measurements of an apprentice's performance of work in all experience areas set forth in Table II for apprentices preparing for a residential journeyman plumbers license; and

(c) meet the following minimum hours of training and instruction:

(i) apprentice plumber training and instruction of not less than 8,000 hours in not less than four years in work areas defined in Table I; and

(ii) residential apprentice plumber training and instruction of not less than 6,000 hours in not less than three years in work areas defined in Table II.

R156-55c-602. Supervision of Apprentices and Unlicensed Assistants.

(1) Apprentice plumbers shall engage in plumbing only in accordance with the following:

(a) while engaging in the trade of plumbing, an apprentice plumber shall be under the immediate supervision of a licensed journeyman plumber;

(b) while engaging in the trade of plumbing, a residential apprentice plumber shall be under the immediate supervision of a licensed journeyman plumber or residential journeyman plumber;

(c) the apprentice shall engage in plumbing in accordance with the instruction of the supervising journeyman plumber; and

(d) an apprentice shall work under a supervising journeyman plumber on commercial or industrial plumbing jobs in a ratio not to exceed one apprentice plumber to one supervising journeyman plumber, and on residential plumbing jobs in a ratio not to exceed two apprentice plumbers to one supervising journeyman plumber.

(2) Residential apprentice plumbers shall engage in plumbing only under a supervising journeyman plumber or residential journeyman plumber on residential plumbing jobs in a ratio not to exceed two residential apprentice plumbers to one supervising journeyman plumber.

(3) A supervising journeyman plumber or residential journeyman plumber may supervise in addition to apprentice plumbers or residential apprentice plumbers in accordance with Subsections (1) and (2), one unlicensed plumbing assistant who is not engaged in the trade of plumbing.

R156-55c-701. Proof of Licensure.

Each apprentice, residential apprentice, residential journeyman and journeyman plumber shall:

(1) carry on his person or in close proximity to his person his current license when he is engaged in the plumbing trade; and

(2) display his license to a representative of the division or any law enforcement officer upon request.

KEY: occupational licensing, licensing, plumbers*, plumbing*

September 4, 2001 58-1-106(1)
Notice of Continuation January 7, 2002 58-1-202(1)
58-55-101

R156. Commerce, Occupational and Professional Licensing.
R156-57. Respiratory Care Practices Act Rules.
R156-57-101. Title.

These rules are known as the "Respiratory Care Practices Act Rules".

R156-57-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 57, as used in Title 58, Chapters 1 and 57, or these rules:

(1) "Supervised" as used in Subsection 58-1-307(1)(b) or "supervising" as used in Subsection 58-57-2(4)(e) means that the licensed respiratory care practitioner is present in the facility and shall be available to see the patient and give immediate consultation with respect to care.

R156-57-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 57.

R156-57-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section 58-1-107.

R156-57-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-57-4(2)(f) and Sections 58-57-5 and 58-1-309, all applicants for licensure shall pass the following examinations:

(1) the National Board for Respiratory Care (NBRC) Certification Examination for Entry Level Respiratory Therapists (CRT); or

(2) the NBRC Registry Examination for Advanced Respiratory Therapists (RRT).

R156-57-302b. Qualifications for Licensure - Education Requirements.

In accordance with Subsection 58-57-4(2)(e) and Section 58-57-5, "a respiratory care practitioner education program that is approved by the board" means a respiratory care educational program accredited by the Committee on Accreditation for Respiratory Care (COARC) as evidenced by NBRC certification as a CRT or RRT.

R156-57-303. Renewal Cycle - Procedures.

In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 57 is established by rule in Section R156-1-308.

KEY: licensing, respiratory care*

May 2, 2000	**58-57-1**
Notice of Continuation January 14, 2002	**58-1-106(1)**
	58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-58. Preneed Funeral Arrangement Act Rules.
R156-58-101. Title.

These rules are the "Preneed Funeral Arrangement Act Rules".

R156-58-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 58, as used in Title 58, Chapters 1 and 48, or these rules:

(1) "Contract" means a guaranteed preneed funeral arrangement contract.

(2) "Contract seller" as set forth in Section 58-58-13 means the licensed preneed funeral arrangement provider.

(3) "Guaranteed product contract" means that the goods or services selected in the contract will be provided at the time of need regardless of the market price at the time of need, and that if goods or services selected in the contract are not used, the amount paid for those goods and services and any unexpended earnings thereupon will be distributed to the preneed contract buyer or the buyer's representative or in their absence, the buyer's heirs and beneficiaries.

(4) "Recipient of goods and services" is synonymous with "beneficiary" as defined in Subsection 58-58-2(2), and is used herein to avoid confusion with various common meanings of the term "beneficiary".

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

R156-58-103. Authority - Purpose.

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

R156-58-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-58-302a. Qualifications for Licensure - Examination Requirements.

(1) Each applicant for licensure as a preneed funeral arrangement sales agent shall pass the Utah Preneed Funeral Arrangement Law and Rules examination.

R156-58-303. Renewal Cycle - Procedures.

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

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

R156-58-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) selling preneed funeral arrangements when the licensee is not associated with or employed by a preneed funeral arrangement provider;

(2) selling a preneed funeral arrangement funded by insurance when the licensee has not obtained approval to do so from the preneed funeral arrangement provider the licensee represents;

(3) selling an insurance policy to fund a preneed funeral arrangement contract naming a preneed funeral arrangement provider as beneficiary, prior to executing the underlying preneed funeral arrangement contract;

(4) selling a preneed funeral arrangement without executing an approved preneed funeral arrangement contract within ten working days following the sale;

(5) failing to report preneed funeral arrangement sales agent association or employment as required by Chapter 58, Title 58 and these rules;

(6) failing to furnish accurate and understandable price information to consumers;

(7) exercising undue influence over a consumer thereby requiring or causing the consumer to purchase goods or services beyond those the consumer desires or needs;

(8) collecting or receiving money from the sale of an insurance policy funding a preneed funeral arrangement contract unless the licensee is collecting or receiving the money as a licensed insurance agent or broker;

(9) violating Section 31A-23-310, containing the fiduciary duties of a trustee with respect to money collected or received as a licensed insurance agent or broker;

(10) receiving payment of life insurance proceeds beyond the provider's insurable interest in the recipient of the goods and services of a preneed contract as set forth in R156-58-616(1);

(11) failing to deposit and trust or verify the deposit and subsequent trust of 100% of money received from the sale of a guaranteed preneed funeral arrangement contract to be funded by money placed in trust, within the time periods specified by Section 58-58-9 and these rules;

(12) failing to ensure that the provider's trust agreement conforms to the requirements of Section 58-58-10, including among other requirements that money is deposited into trust in the name of the recipient of goods and services and the contract number, and that the trust establishes a separate account within the trust for each recipient of goods and services and contract number, separately accounting for each contract with regard to trust earnings and disbursements;

(13) withdrawing money from a trust account in excess of any maximums established by these rules;

(14) converting a preneed funeral arrangement funded by money placed in trust to insurance except as provided by these rules;

(15) failing to provide guaranteed goods and services at time of need in accordance with the terms of a preneed funeral arrangement contract;

(16) retaining life insurance proceeds of a policy purchased to fund funeral arrangements but not accompanied by a preneed funeral arrangement contract, unless the licensee provides an equivalent value of funeral goods and services;

(17) failing to comply with the annual reporting requirements as required by Section 58-58-13 and these rules;

(18) failing to report known violations of governing law or rules by other licensees;

(19) failing to comply with any other provisions of Chapter 58, Title 58, or these rules, not specifically referenced in this section;

(20) failing to comply with applicable state or federal statutes, regulations, or other governing authority;

(21) selling a preneed funeral arrangement contract in a form not approved by the division, or not in compliance with the provisions of Title 58, Chapter 58, or these rules; and

(22) failing to handle, remit or deposit funds received in payment for a preneed funeral arrangement contract by placing the funds in trust or remitting the funds to an insurance carrier as is required by the contract terms and conditions and by all laws regulating the sale of preneed funeral arrangements and insurance and annuity policies.

R156-58-601. Requirement to Operate from a Licensed Funeral Establishment.

A licensed preneed funeral arrangement provider shall conduct business as a licensee only from the facilities of a licensed funeral service establishment which serves to qualify the licensee under the provision of Subsection 58-58-5(1)(c).

R156-58-602. Sale of Funeral Goods or Services Not Delivered Contemporaneous with Sale Considered Preneed Funeral Arrangement Sale.

The sale of funeral goods or services to a buyer by any person who does not deliver such goods or services at the time of the sale or in close proximity to the sale and such later delivery is agreed upon between the buyer and seller either orally or in writing constitutes the sale of a preneed funeral arrangement. Such sale may be engaged in only by persons licensed to engage in preneed funeral arrangement sales. This applies to persons including cemeteries, monument manufacturers and sellers, casket manufacturers and sellers, and vault manufacturers and sellers.

R156-58-603. Termination of Sales Agent - Notification to Division.

A licensed preneed funeral arrangement provider shall notify the division of termination of association of a preneed sales agent with that licensed provider within ten days after termination of association. Notification shall be made on forms provided by the division.

R156-58-604. Affiliation of Licensed Sales Agent with Licensed Provider.

(1) When a licensed sales agent enters association with a licensed provider and such association is not currently registered with the division under the provisions of Subsection 58-58-5(2)(f), or this subsection, the licensed provider shall:

(a) file an notice of association with the division on forms provided by the division within ten days after commencement of association; and

(b) pay a fee established by the department under Section 63-38-3.2.

(2) The licensed provider shall provide the licensed sales agent with a copy of the notice filed with the division.

(3) If a notice of association is not filed by the licensed provider within ten days after association, the sales agent may not represent the licensed provider with respect to any preneed funeral arrangement until such notice is filed.

R156-58-605. Licensure of Persons Selling Preneed Funeral Arrangements to be Funded by Proceeds from Insurance or Annuity Policy.

(1) Any person who sells or represents that they will or intend to sell specific funeral goods or services, represents that goods or services will be provided by a specific funeral establishment, represents that specified amount of money will purchase defined funeral goods or services, or represents that payment for those goods or services to be provided at some future date shall be accomplished through the purchase of a life insurance policy or annuity policy, is engaged in the sale of a preneed funeral arrangement and is required to be licensed as a preneed funeral arrangement provider or sales agent.

(2) Any person who sells or represents that they will or intend to sell an insurance or annuity policy which will provide a certain benefit at time of death, represents that such benefit will be available to pay for funeral arrangements and no reference is made to specific funeral goods or services, to the cost of specific funeral goods or services, or to the services of a specific funeral service establishment, is not engaged in the sale of a preneed funeral arrangement and is not required to be licensed as a preneed funeral arrangement provider or sales agent.

(3) Nothing in this section shall be interpreted to affect or modify any requirement under state law regarding licensure of persons engaged in the sale of insurance or annuity policies.

R156-58-606. Preneed Funeral Arrangement Contracts Funded by Insurance or Annuity Policy.

(1) The beneficiary designation on any insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be a contingent designation using such wording as "as their interests may appear under a funeral arrangement contract" with information identifying the funeral arrangement contract, or other substantially equivalent beneficiary designation language.

(2) Monies received by a licensee in payment for an insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be handled in accordance with the contractual terms and conditions of the policy and the insurance laws applicable to the policy.

R156-58-607. Contract Forms - Division Model - Certification Required by Provider.

(1) To assist applicants for a provider's license and provider licensees meet the requirements of Section 58-58-8, the division shall publish a model guaranteed preneed funeral arrangement contract form which meets the requirements of Section 58-58-8.

(2) In accordance with the provisions of Subsection 58-58-8(1) a provider must submit to the division a copy of every contract form it intends to market and receive approval of each contract form before the contract form may be used in marketing the licensee's preneed funeral arrangement plan under that contract form.

(3) If a proposed contract form is in substantially the same form as the model contract, the applicant or licensee requesting approval of the contract form may accompany the contract form with the provider's certification that the form is substantially the

same as the model contract form. The certification shall contain a listing of each and every deviation of the proposed contract from the model contract.

(4) If a proposed contract form is substantially different from the model contract form, the applicant or licensee requesting approval of the contract form shall obtain an opinion from independent legal counsel representing that the contract form complies with the provisions of Section 58-58-8, and these rules. Such opinion shall be accompanied by an explanation of deviations between the proposed contract from the model contract.

(5) In accordance with the provisions of Subsection 58-58-8(2)(a), easy-to-read type size is hereby defined to be of a type size large enough to accommodate no more than six lines per vertical inch and no more than 15 characters per horizontal inch.

R156-58-608. Contract Notice Regarding Medicaid.

The following notice shall appear in all contracts:

Notice: Under Federal regulations, a Medicaid recipient whose preneed contract is revoked, canceled, or mutually rescinded may become ineligible for Medicaid benefits. Before permitting or causing your preneed agreement to be revoked, canceled or rescinded, you should seek the advice of an attorney or a Medicaid representative.

R156-58-609. Retention of Completed or Terminated Contracts.

Contracts shall be maintained for a period of five years after the contracts have been serviced and obligations of the provider have been completed, or after the contracts have been otherwise terminated. The contracts shall be filed and maintained with a copy of the death certification or burial transit permit with respect to those contracts for which services have been provided, and with sufficient documentation to clearly identify the basis for termination of otherwise terminated.

R156-58-610. Cash Advance Item Prohibited Unless a Guaranteed Product.

A cash advance item as defined in 16 CFR Part 453, Funeral Industry Practices Trade Regulation Rule, of the Federal Trade Commission is prohibited in a preneed funeral arrangement contract unless the item is a guaranteed product permitting the contract to meet the requirements of Subsection 58-58-8(2)(d).

R156-58-611. Use of Funds in Trust Account to Purchase Insurance or Annuity Policy.

A provider may convert a contract funded by monies held in trust with a contract funded by the proceed from an insurance or annuity policy provided:

(1) the buyer consents in writing to the conversion after full disclosure of the consequences of the transaction in writing by the provider;

(2) the buyer's consent is given without coercion, threat, concealment of material fact, undue influence, or other prejudicial influence inconsistent with the buyer's best interest;

(3) the provider uses all monies held in the individual trust account, including interest, as premium for the purchase of the life insurance or annuity policy, unless otherwise directed in writing by the buyer;

(4) the new preneed funeral arrangement contract must be in writing and must provide for goods and services which at least equal to those required of the provider under the original contract, and

(5) the new contract meets all requirements of Title 58, Chapter 58, and these rules.

R156-58-612. Conversion of Trust Accounts Under Prior Law Prohibited.

Conversion of funds held in trust which was established under any law regulating preneed funeral arrangements prior to the adoption of Title 58, Chapter 58, may not be converted to a trust under the provisions of Title 58, Chapter 58, but shall continue to be held in trust under the terms and conditions of the predecessor law.

R156-58-613. Prohibition Against Provider Accepting Payment in a Form Other Than Cash, Cash Equivalents, or Negotiable Instruments.

A provider may accept in payment for a preneed funeral arrangement contract only cash, cash equivalents, or negotiable instruments which are readily convertible to cash.

R156-58-614. Provider Expenditure of Earnings from Trust Account.

(1) In accordance with Subsection 58-58-11(1), earnings of a preneed funeral arrangement trust account shall be available to the provider for expenditure toward reasonable trustee expenses of administering a trust account, not to exceed the lesser of the earnings remaining in the trust account or 1% of the entire trust account, plus any amounts necessary to pay taxes incurred on the entire trust account's earnings.

(2) In accordance with Subsection 58-58-11(2), earnings of an individual account within the trust shall be available to the provider for expenditure toward other authorized reasonable provider expenses incurred against the individual account, not to exceed earnings totaling 30% of the sales amount of the respective preneed funeral arrangement contract.

(3) Remaining earnings of individual accounts within the trust shall, except as provided in Subsection 58-58-11(4)(b), remain in each individual account within the trust to pay by account, the costs of providing the goods and services required under respective preneed funeral arrangement contracts.

(4) In accordance with Subsection 58-58-11(4)(a), the provider shall be paid remaining trust account earnings after furnishing the goods and services required under respective preneed funeral arrangement contracts.

R156-58-615. Maximum Life Insurance Proceeds Payable to Provider.

(1) Preneed life insurance proceeds payable to a provider shall not exceed the provider's insurable interest in the recipient of goods and services which, by definition, shall not exceed the provider's current retail price for the goods and services provided, as determined by the provider's price list in effect at the recipient of goods and service's death.

(2) Excess preneed life insurance proceeds not paid to the provider shall be returned to the owner of the life insurance

policy or his heirs and beneficiaries unless otherwise designated by the owner or his heirs and beneficiaries.

R156-58-616. Reporting Requirements.

(1) In accordance with Section 58-58-13, each provider or contract seller who has discounted the sale of contracts but who has outstanding contracts and each currently licensed provider shall submit an annual report to the division by April 15 of each year. The report shall be submitted on forms available from the division or their equivalent and shall include:

(a) a statement of compliance certifying:

(i) that all payments received from the sale of contracts have been:

(A) placed in the provider's trust account in accordance with Section 58-58-9 and administered in accordance with Sections 58-58-10 through 58-58-12 and these rules; or

(B) submitted to the insurance company whose insurance or annuity policy funds the contract;

(ii) that complete and accurate information concerning the preneed funeral arrangements by the provider or the provider's sales agents was furnished or made available to the independent certified public accountant who prepared the report of agreed upon procedures; and

(iii) that the annual report is complete and accurate;

(b) a report of agreed upon procedures on forms available from the division or their equivalent completed by an independent certified public accountant licensed under Title 58, Chapter 26, which reports upon:

(i) reconciliation of trust account balances to the annual report; and

(ii) reconciliation of insurance in force to the annual report;

(c) an exhibit listing preneed contracts sold prior to April 29, 1991, funded by money, 75% of which is required to be maintained in the name of the contract buyer in the contract seller's trust account as provided in Section 58-58-10, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different, and balance due; the individual trust account number and amount trusted; and the trust earnings, earnings used, and trust balance;

(d) an exhibit listing preneed contracts sold after April 28, 1991, funded by money, 100% of which is required to be maintained in the name of the contract buyer in the provider's trust account as provided in Section 58-58-10, which shall include at a minimum the information required under subsection (c);

(e) an exhibit listing preneed contracts funded by money placed in trust which were serviced, revoked, rescinded, or amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different; the individual trust account number and trust balance at the recipient of goods and service's death; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced;

(f) an exhibit listing preneed contracts sold after April 28, 1991, funded in whole or in part by insurance, which shall include at a minimum: the contract number, date, amount, recipient of goods and services and buyer if different; the insurance company; the policy number, policy holder, and face amount; and

(g) an exhibit listing preneed contracts funded by insurance which were serviced, revoked, rescinded, or otherwise amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services, and buyer if different; the insurance company; the policy number and policy holder; the policy proceeds; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced.

R156-58-617. Maximum Revocation Fee.

(1) If a buyer defaults under a guaranteed preneed funeral arrangement contract, the provider may retain a revocation fee from the trust corpus, not to exceed 25% of the amount received from the sale of the contract and trust earnings thereupon, provided the revocation fee is clearly identified in the contract.

(2) The revocation fee shall not be in an amount which results in the provider receiving proceeds from the trust in excess of that permitted under Subsection R156-58-615(2).

R156-58-618. Conflict with Federal Laws or Rules.

In the event of a conflict between the requirements of federal law or rules, in particular the Federal Trade Commission Rules, and Title 58, Chapter 58, Preneed Funeral Arrangement Act or these rules, federal law or rules shall govern.

KEY: licensing, funeral industries, preneed*

June 3, 1997	**58-58-1**
Notice of Continuation January 14, 2002	**58-1-106(1)**
	58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-60c. Professional Counselor Licensing Act Rules.
R156-60c-101. Title.

These rules are known as the "Professional Counselor Licensing Act Rules".

R156-60c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or these rules:

(1) "Internship" means:

(a) 600 clock hours of supervised counseling experience of which 200 hours must be in the provision of mental health therapy; or

(b) five years of supervised experience engaged in the practice of mental health therapy.

(2) "Practicum" means a supervised counseling experience in an appropriate setting of at least three semester or five quarter hours duration for academic credit.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60c-502.

R156-60c-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 60, Part 4.

R156-60c-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-60c-302a. Qualifications for Licensure - Education Requirements.

(1) The recognized accredited institution of higher education in Subsection 58-60-405(1)(d) is one which is accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education.

(2) The core curriculum in Subsection 58-60-405(1)(d) shall consist of the following courses:

(a) a minimum of two semester or three quarter hours shall be in ethical standards, issues, behavior and decision-making;

(b) a minimum of two semester or three quarter hours shall be in professional roles and functions, trends and history, professional preparation standards and credentialing;

(c) a minimum of two semester or three quarter hours shall be in individual theory;

(d) a minimum of two semester or three quarter hours shall be in group theory;

(e) a minimum of six semester or nine quarter hours shall be in human growth and development. Examples are:

(i) physical, social and psychosocial development;

(ii) personality development;

(iii) learning theory and cognitive development;

(iv) emotional development;

(v) life-span development;

(vi) enhancing wellness;

(vii) human sexuality; and

(viii) career development;

(f) a minimum of three semester or five quarter hours shall be in cultural foundations. Examples are:

(i) human diversity;

(ii) multicultural issues and trends;

(iii) gender issues;

(iv) exceptionality;

(v) disabilities;

(vi) aging; and

(vii) discrimination;

(g) a minimum of six semester or nine quarter hours shall be in the application of individual and group therapy and other therapeutic methods and interventions. Examples are:

(i) building, maintaining and terminating relationships;

(ii) solution-focused and brief therapy;

(iii) crisis intervention;

(iv) prevention of mental illness;

(v) treatment of specific syndromes;

(vi) case conceptualization;

(vii) referral, supportive and follow-up services; and

(viii) lab not to exceed four semester or six quarter hours;

(h) a minimum of two semester or three quarter hours shall be in psychopathology and DSM classification;

(i) a minimum of two semester or three quarter hours shall be in dysfunctional behaviors. Examples are:

(i) addictions;

(ii) substance abuse;

(iii) cognitive dysfunction;

(iv) sexual dysfunction; and

(v) abuse and violence;

(j) a minimum of two semester or three quarter hours shall be in a foundation course in test and measurement theory;

(k) a minimum of two semester or three quarter hours shall be in an advanced course in assessment of mental status;

(l) a minimum of three semester or five quarter hours shall be in research and evaluation. This shall not include a thesis, dissertation, or project, but may include:

(i) statistics;

(ii) research methods, qualitative and quantitative;

(iii) use and interpretation of research data;

(iv) evaluation of client change; and

(v) program evaluation;

(m) a minimum of three semester or five quarter hours of practicum as defined in Subsection R156-60c-102(2);

(n) a minimum of six semester or nine quarter hours of internship as defined in Subsection R156-60c-102(1); and

(o) a minimum of 16 semester or 23 quarter hours of course work in the behavioral sciences. No more than six semester or nine quarter hours of credit for thesis, dissertation or project hours shall be counted toward the required core curriculum hours in this subsection. These hours are required beginning January 1, 1997.

(3) The supplemental course work shall consist of formal graduate level work meeting the requirements of Subsections (1) and (2) in regularly offered and scheduled classes. University based directed reading courses may be approved at the discretion of the board.

(4) Professional counseling course work required in the core curriculum pursuant to Subsection 58-60-405(1)(d) may be

completed after the applicant received their degree; however, pursuant to Subsection 58-60-405(1)(f), the experience required must be obtained after the complete education requirement has been met.

R156-60c-302b. Qualifications for Licensure - Experience Requirements.

(1) The professional counselor and mental health therapy training qualifying an applicant for licensure as a professional counselor under Subsections 58-60-405(1)(e) and (f) shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy under the supervision of a qualified professional counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist; and

(c) be completed under a program of supervision by a mental health therapist meeting the requirements under Sections R156-60c-401 and R156-60c-402.

(4) An applicant for licensure as a professional counselor, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the professional counselor and mental health therapy training requirements under Subsection (3) outside the state may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-405(1)(e) and (f), and Subsections R156-60c-302b(3). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to and in all respects meets the requirements under this Subsection.

R156-60c-302c. Qualifications for Licensure - Examination Requirements.

(1) An applicant for licensure as a professional counselor under Subsection 58-60-405(1)(g) must pass the following examinations:

(a) the Utah Professional Counselor Law, Rules and Ethics Examination;

(b) the National Counseling Examination of the National Board for Certified Counselors; and

(c) the National Clinical Mental Health Counseling Examination of the National Board of Certified Counselors.

R156-60c-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308.

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

R156-60c-304. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 60, Part 4, as a professional counselor and certified professional counselor intern.

(2) During each two year period commencing September 30th of each even numbered year, a professional counselor or certified professional counselor intern shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional practice.

(3) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Qualified professional education under this Section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a mental health therapist professional counselor;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(5) Credit for professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 10 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing professional education courses in the field of mental health therapy professional counseling, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification; and

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a mental health therapist professional counselor.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this Section.

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this Section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-60c-306. License Reinstatement - Requirements.

In addition to the requirements established in Section R156-1-308e, an applicant for reinstatement of his license after

two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) if deemed necessary, meet with the board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a professional counselor and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of professional counselor and mental health therapy training as a professional counselor-temporary;

(3) pass the Utah Professional Counselor Law, Rules and Ethics Examination;

(4) pass the National Counseling Examination of the National Board for Certified Counselors if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a professional counselor;

(5) pass the National Clinical Mental Health Counseling Examination if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a professional counselor; and

(6) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a professional counselor.

R156-60c-401. Requirements to be Qualified as a Professional Counselor Training Supervisor and Mental Health Therapist Training Supervisor.

In accordance with Subsections 58-60-405(1)(e) and (f), in order for an individual to be qualified as a professional counselor training supervisor or mental health therapist trainer, the individual shall have the following qualifications:

(1) be currently licensed in good standing in a profession set forth for a supervisor under Subsection 58-60-405(1)(e) in the state in which the supervised training is being performed; and

(2) have engaged in lawful practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years prior to beginning supervision activities.

R156-60c-402. Duties and Responsibilities of a Supervisor of Professional Counselor and Mental Health Therapy Training.

The duties and responsibilities of a licensee providing supervision to an individual completing supervised professional counselor and mental health therapy training requirements for licensure as a professional counselor are to:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of professional counseling and report violations to the division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised professional counselor and mental health therapy training, including the supervisor's evaluation of the supervisee's competence in the practice of professional counseling and mental health therapy;

(9) supervise not more than three supervisees at any given time unless approved by the board and division; and

(10) assure each supervisee is licensed as a certified professional counselor intern prior to beginning the supervised training of the supervisee as required under Subsection 58-60-405(1)(e) and (f).

R156-60c-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60c-401 and R156-60c-402;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60c-302b(3) and R156-60c-402(7);

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and the client;

(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and that individual;

(11) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failure to cooperate with the Division during an investigation; and

(19) failure to abide by the provision of the American Counseling Association's Ethical Standards, 1995, which is adopted and incorporated by reference.

KEY: licensing, counselors, mental health, professional counselors

January 7, 2002	**58-60-401**
Notice of Continuation April 6, 2000	**58-1-106(1)**
	58-1-202(1)

R251. Corrections, Administration.
R251-111. Government Records Access and Management.
R251-111-1. Authority and Purpose.

(1) This rule is authorized by the Government Records and Management Act (GRAMA), Sections 63-2-204 and 63-2-904.

(2) The purpose of this rule is to provide procedures for access to government records of the Department of Corrections.

R251-111-2. Definitions.

(1) "Director of Records" means the individual whose responsibility is to oversee all GRAMA requests and responses for the Department.

(2) "Department" means the Department of Corrections.

(3) "GRAMA" means Government Records Access and Management Act, Title 63, Chapter 2, Utah Code Annotated.

(4) "Individual" means a human being.

(5) "Person" means any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization.

(6) "Division Primary Records Officer" means the records officer designated by each division director to coordinate and implement GRAMA within their respective divisions.

(7) "Records Manager" is an assistant to the Director of Records for GRAMA purposes.

(8) "Records Officer" means any Department member properly designated to process records requests.

(9) "Requester" means the person making a request for records.

R251-111-3. Standards and Procedures.

The Department shall:

(1) provide the public with access to information relating to the Department's conduct of public business;

(2) provide individuals with access to requested information that the Department has on file about them when required by law;

(3) prevent disclosure of information about an individual that the Department has in its files to persons who do not have the right to receive this information;

(4) protect information about Departmental operations that is protected by law from disclosure; and

(5) provide information to other government entities as allowed by law.

R251-111-4. Requests for Access.

(1) Requests for access to records shall be directed as follows:

(a) All records requests by an inmate or offender under the jurisdiction of the Department shall be directed to:

(i) For all inmates in Utah State Prison Facilities: Institutional Operations Division, Primary Records Officer, Administration Building, P.O. Box 250, Draper, Utah 84020; or

(ii) For all probationers, parolees and early release inmates: Adult Probation and Parole Division, Primary Records Officer, Administration, 14717 S. Minuteman Drive, Draper, Utah 84020.

(b) All records requests by persons to obtain information for a story or report for publication or broadcast to the general public shall be directed to the Public Information Officer, 14717 S. Minuteman Drive, Draper, Utah 84020.

(c) All requests for access to records by persons other than those specified in subparagraphs (i) and (ii) above, shall be directed to the Records Bureau, 14717 S. Minuteman Drive, Draper, Utah 84020.

(2) The time limits dictated by GRAMA Section 63-2-204 for response to requests shall be calculated based on receipt of a valid request at the office specified in this rule.

R251-111-5. Submission Requirements -- Forms.

(1) All records requests from inmates shall be on a form supplied by the Department. Other requests shall be in writing and shall contain name, mailing address, daytime telephone number (if available), and a reasonably specific description of the records requested.

(2) Evidence of the requester's identity may be required. In accordance with Section 63-2-202(6) the Department shall obtain evidence of the requester's identity before releasing a private, controlled, or protected record.

(3) Unless the request is made in writing, contains the information listed in R251-111-5 (1) above and satisfactory identification is presented, when required, the Department shall return the request with instructions regarding proper submission.

R251-111-6. Fees.

(1) Reasonable fees may be charged to cover the Department's actual cost of duplicating a record or compiling a record requested as authorized by GRAMA Section 63-2-203.

(2) Information on fees may be obtained by:

(a) contacting division Primary Records Officers by calling:

(i) Institutional Operations Division - (801) 576-7452.

(ii) Adult Probation and Parole Division - (801) 545-5905.

(b) contacting the Records Bureau by calling (801) 545-5700.

(c) making a personal inquiry at the Records Bureau, 14717 S Minuteman Drive, Draper, Utah 84020.

(3) The Department may require prepayment of fees as per statute if the total amount of the fees exceeds or is expected to exceed $50.00. If the requester has not paid for a previous request, prepayment and payment of any balance not paid for previous requests may be required.

(4) Records requests by inmates at the Utah State Prison must be accompanied by a Money Transfer Form which authorizes a deduction for fees from the inmate's account or a proper request for a waiver of fees.

R251-111-7. Waiver of Fees.

(1) Fees for duplication and compilation of a record may be waived under certain circumstances described in GRAMA, Section 63-2-203(3).

(a) Requests for waiver of a fee may be made in the records request and should be supported with substantial justification.

(b) Inmates requesting a fee waiver because of a claimed indigent status, or other reason, shall state the claim on the request form.

(2) Waiver of fees is permissive and at the discretion of the

Department. For the purpose of records requests under GRAMA, waiver of fees for inmates or offenders under the jurisdiction of the Department will not be granted on the sole basis that the requester has been determined impecunious or indigent for another purpose.

R251-111-8. Appeal.

Any person may appeal access determinations to the Department Executive Director, or his designee, under the procedures of GRAMA, Section 63-2-401.

KEY: criminal records, security measures, government records*

January 28, 2002 63-2-204

Notice of Continuation December 7, 2001 63-2-904

R251. Corrections, Administration.
R251-704. North Gate.
R251-704-1. Authority and Purpose.

A. This rule is authorized by Section 64-13-14, which allows the Department to adopt standards and rules in accordance with its responsibilities.

B. The purpose of this chapter is to provide the Department's policy, procedures and requirements for the North Gate of the South Point Complex of the Prison.

R251-704-2. Definitions.

1. "ID" means identification.
2. "SSD" means Special Services Dormitory.

R251-704-3. Standards and Procedures.

It is the policy of the Department that:

A. access through the North Gate shall be restricted to authorized persons at authorized times to control contraband, prevent the escape of inmates and to otherwise further the legitimate security interests of the USP;

B. regulations shall be enacted to control access through the North Gate, particularly as that access involves persons who are not members of the USP staff;

C. vehicles accessing the North Gate shall be thoroughly searched to prevent the flow of contraband, prevent the possibility of escape and to otherwise further the legitimate security interests of the USP;

D. vehicles wishing to exit the North Gate which are loaded in such a manner which prohibits the North Gate officer from giving it a thorough shake down shall:

1. be accompanied by a corrections officer who witnessed the loading of the vehicle and verifies, by signing the North Gate Vehicle Security Warrant Form, that the security of the vehicle was maintained during loading to prevent escape; and

2. be detained at the North Gate until all inmates are counted.

E. vendor access through the North Gate may be allowed from 0700 to 1500 hours Monday through Friday;

F. deliveries at other than designated times shall require a special clearance signed by the South Point Security Deputy Warden/designee or the Support Services Bureau Director/designee.

G. the garbage truck:

1. should be allowed access to through the North Gate Monday, Wednesday and Friday beginning at approximately 0400; and

2. shall have an enforcement officer escort while inside the secure perimeter;

H. access for contractors and construction workers should be granted between 0700 and 1700 hours, unless an emergency exists that would prevent access;

I. non-prison staff (i.e., contract professional staff including psychologists, vocational rehabilitation personnel, attorneys, legal services providers, etc.), including all volunteers shall not ordinarily be allowed access through the North Gate, but shall be required to use the Oquirrh administration building sallyport for access to the SSD;

J. vendors shall be required to surrender their driver's license to the North Gate officer while inside the compound (any exception shall be cleared through the enforcement shift supervisor);

K. any vendor not having a picture ID shall have a prison escort with him at all times while he is inside the secure perimeter.

L. construction workers and contractors shall provide clearance lists to the North Gate post;

M. persons prior to exiting through the North Gate shall be identified and authorization verified;

N. the North Gate officer shall search all vehicles to ensure that no unauthorized passengers or contraband items are allowed access through the North Gate;

O. vehicle operators and passengers shall not remain in the vehicle during a vehicle search; and

P. civilians are subject to search prior to entry through the North Gate.

KEY: correctional institutions, security measures
September 1, 1997 64-13-14
Notice of Continuation January 23, 2002

R277. Education, Administration.
R277-502. Educator Licensing and Data Retention.
R277-502-1. Definitions.

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

B. "Utah Professional Educator License (license)" means authorization issued by the Board which attests to the fact that the holder has satisfied the requirements for employment in the public school system.

C. "License areas of concentration (license areas)" means specific areas identified by the Board in which an individual has adequate training as determined by the USOE authorizing the person to teach in that area. Completion of a particular preparation program offered by a university/college or of a Board-approved program verifies that qualifications for a license area are satisfied.

D. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.

E. "Renewal" means reissuing or extending the length of a license consistent with R277-501.

F. "Appropriate employment" means full-time experience, in the field for which the license is issued, in a public or accredited private or parochial school.

G. "Special assignment teacher" means a teacher assigned to:

(1) alternative school settings in which the teacher must teach three or more subjects;

(2) teach homebound students with the expectation that several subjects may be covered by the same teacher; or

(3) necessarily existent small or rural schools with limited faculty and enrollment in which teachers may teach three or more core subjects.

H. "Letter of Authorization" means a temporary license or approval issued to a district for an individual who has not completed the requirements for a level 1, 2, or 3 license, such as a student teacher or a person hired to perform professional services on a limited basis when licensed or properly endorsed personnel are not available.

I. "Professional development" means locally or Board-approved education-related training or activities that enhance an educator's background. Professional development points are required for periodic educator license renewal.

J. "State Approved Endorsement Plan (SAEP)" means a plan in place for a licensed educator working to complete the requirements of an endorsement.

R277-502-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-6-104 which gives the Board power to issue licenses, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule specifies the types of license levels and license areas available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah. All licensed educators employed in the Utah public schools shall be licensed consistent with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

R277-502-3. Program Approval.

A. The Board uses the approved program approach to educator preparation and licensing which includes:

(1) the development of educator preparation programs by post-secondary institutions in accordance with established rules and procedures;

(2) the official review and evaluation of each institutional program in accordance with standards adopted by the Board and the subsequent approval of a program if standards are met;

(3) approval of applicants for licensing, whether students in post-secondary institutions, individuals with out-of-state licenses, or individuals in other circumstances, prior to their significant unsupervised access to students.

(4) licensing by the Board of an applicant upon completion of an approved program;

(5) the issuance, by the Board, of an educator license. The initial level 1 license may be converted to a level 2 or level 3 license upon demonstration of competence during employment.

B. The Board, or its designee, shall establish deadlines and uniform forms and procedures for all aspects of licensing.

R277-502-4. Professional Development Requirements/Procedures for Temporary License Holders.

A. Temporary license holders authorized by the Board upon request of a school district shall be responsible for professional development consistent with this rule.

(1) Individuals authorized by the Board shall complete professional development annually.

(a) The proposed credit shall be approved by the supervising principal.

(b) Individuals who do not meet the minimum yearly requirement shall not be approved by the Board for employment in successive years by a school district.

(c) Professional development credit for educators employed under letters of authorization shall be completed by August 15 of each year for which the individual was employed and shall be submitted to the employing school district on a form provided by the USOE.

B. Individuals employed under letters of authorization and working toward a level 1 license or an endorsement may use the same credit or activities for required professional development.

R277-502-5. License Levels, Procedures, and Periods of Validity.

A. An initial license, the level 1 license, is issued to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program.

(1) The recommendation indicates that the individual has satisfactorily completed the programs of study required for the preparation of educators and met licensing standards in the license areas for which the individual is recommended.

(2) The level 1 license is issued for three years.

(3) Employing school districts and educator preparation institutions shall cooperate in making special assistance available for educator level 1 license holders. The resources of both may be used to assist those educators experiencing

significant problems. The institution in closest proximity to the employing school district is the first choice for district involvement; however, the school district is encouraged to make a cooperative arrangement with the institution from which the educator graduated.

B. A level 2 license may be issued by the Board to a level 1 license holder upon the recommendation of the employing school district.

(1) The recommendation shall be made following the completion of three years of successful, professional growth and educator experience and before the level 1 license expires.

(2) A level 2 license shall be issued for five years and shall be valid unless suspended or revoked for cause by the Board.

(3) The level 2 license shall be renewed for successive five year periods consistent with R277-501.

C. A level 3 license may be issued by the Board to a level 2 license holder who has achieved National Board Professional Teaching Standards Certification or who holds a doctorate in the educator's field of practice.

(1) It is valid for seven years unless suspended or revoked for cause by the Board.

(2) The level 3 license shall be renewed for successive seven year periods consistent with R277-501.

D. Licenses expire on June 30 of the year shown on the face of the license and may be renewed any time after January of that year. Responsibility for securing renewal of the license rests upon the holder.

R277-502-6. Professional Educator License Areas and Approved Programs.

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following license areas, a person shall hold a valid license issued by the Board in the respective license areas:

(1) Preschool Special Education;

(2) Early Childhood Education;

(3) Elementary Education;

(4) Secondary Education;

(5) Administrative/Supervisory;

(6) Special Education;

(7) Communication Disorders;

(8) School Counselor, School Psychologist, and School Social Worker; and

(9) Applied Technology Education

B. Licensed educators may be authorized by the Board for employment in the public schools under the following programs:

(1) a license earned through a Board-approved post-secondary educator education program.

(a) The individual seeking a license shall be approved by the post-secondary program personnel following completion of a USOE-approved license area program;

(b) The program shall require university/college students to satisfy the requirements of Section 53A-3-410, criminal background check, prior to having significant unsupervised access to students. This may include review and approval by the Utah Professional Practices Advisory Commission (UPPAC), consistent with its rules and policies, prior to classroom experience.

(2) alternative educator preparation consistent with R277-503.

(3) eminence, consistent with R277-511.

(4) applied technology, consistent with R277-518.

C. Under prepared educators:

(1) If a licensed secondary or middle education educator is assigned in a subject area for which that educator is not endorsed, the employing school district shall request a Letter of Authorization from the Board to continue the educator's assignment.

(2) Educators who are licensed but working out of their endorsement area shall request and prepare a State Approved Endorsement Plan (SAEP) to complete the requirements of an endorsement with a USOE education specialist.

D. Special assignment educators or educators in other similar circumstances shall hold a license with endorsement(s) in one or more core curriculum subjects plus have completed not fewer than six semester hours of state-approved college/university or 100 professional development points in the subject areas in which they are assigned.

E. Special assignment educators not meeting the minimum professional development requirements, shall be placed on an SAEP.

F. Individuals applying for a license with a specific license area shall meet the specific requirements for the designated program.

G. Licenses may be endorsed to indicate qualification in a subject or content area. An endorsement without a current license is not valid for employment purposes.

H. Student teachers and interns shall also hold valid temporary student teacher or intern licenses issued by the Board.

R277-502-7. Professional Educator License Reciprocity.

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A level 1 license may be issued to a graduate of an educator preparation program in another state which was, at the time of the applicant's graduation, approved by that state on the basis of standards contained in Standards for State Approval of Teacher Education, or equivalent standards.

(1) Standards are available in the USOE Licensing Section or on the NCATE website.

(2) The institution conducting the teacher preparation program must be accredited by the National Council for Accreditation of Teacher Education (NCATE) or one of the six major regional accrediting associations.

(3) If the applicant has one or more years of previous educator experience, a level 2 license may be issued upon the recommendation of the employing Utah school district after at least one year, but no more than three years, of educator experience in the state.

R277-502-8. Renewal of Professional Educator Licenses.

A. The level 1 license shall be issued for three years and renewed consistent with R277-501-4.

B. The level 2 or level 3 license may be renewed in five or seven year cycles consistent with R277-501-4 or R277-501-5.

R277-502-9. Computer-Aided Credentials of Teachers in

Utah Schools (CACTUS).

A. CACTUS maintains public and protected and private information on licensed Utah educators.

(1) Public information includes name, educational qualifications, degrees earned, and current assignment (if applicable).

(2) Private or protected information includes such items as home address, date of birth, social security number, and any disciplinary action taken against an individual's license.

B. A CACTUS file is opened on a licensed Utah educator when:

(1) the individual's fingerprint cards are submitted to the USOE, or

(2) the USOE receives an application for a license from an individual seeking licensing in Utah.

C. The data in CACTUS may be changed as follows:

(1) Authorized USOE staff or designated school district staff, if data is demographic;

(2) licensing information including endorsements, license areas, degrees, by USOE staff;

(3) work experience by employing school district for current school year only;

D. Licensed individuals may view personal data if registered with the Utah Education Network (UEN). An individual may not change or add data.

E. Individuals currently employed by public, private or parochial schools under letters of authorization are included in CACTUS. Interns may be included on CACTUS.

F. Designated individuals have access to CACTUS data:

(1) A licensed individual may view his own file;

(2) Designated USOE staff may view or change CACTUS files on a limited basis with specific authorization;

(3) For employment or assignment purposes only, designated district or school staff members may access data on individuals employed by their own districts or data on licensed individuals who are not currently employed by public schools, charter schools, some private and parochial schools and ATCs.

R277-502-10. Professional Educator License Fees.

A. The Board, or its designee, shall establish a fee schedule for the issuance and renewal of licenses and endorsements consistent with 53A-6-105. All endorsements to which the applicant is entitled may be issued or renewed with the same expiration date for one licensing fee. The renewal of endorsements at different times may require the payment of a renewal fee for each endorsement.

B. A fee may be charged any time credit is submitted for license renewal.

C. An endorsement may be added at any time, and unless the license is reprinted, there shall be no charge. If a new license is issued, a fee shall be charged.

KEY: professional competency, educator licensing

January 4, 2002	**Art X Sec 3**
Notice of Continuation September 12, 1997	**53A-6-104**
	53A-1-401(3)

R277. Education, Administration.
R277-717. Math, Engineering, Science Achievement (MESA).
R277-717-1. Definitions.

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

B. "Designated Minority Students" means African American students, Asian students, Native American/Alaskan students, Hispanic/Latino students, or Pacific Islander students.

C. "District or School Plan" means a plan outlined in writing, including budget and evaluation components developed by each school district receiving MESA funding or, if so determined by the district, by each recipient school.

D. "Math, Engineering, Science Achievement (MESA)" program means a course or courses offered during the regular school day or a club held after school that involves identified students and addresses identified district objectives with designated minority and all female students.

E. "MESA Public Education Funding Application Review Committee" means a committee composed of eleven members as follows: Coalition of Minorities Advisory Committee (CMAC) (4), school districts (3), USOE staff (2); higher education members of the Math, Engineering, Science Achievement/Science, Technology, Engineering Program (MESA/STEP) Advisory Board(2).

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

R277-717-2. Authority and Purpose.

A. This rule is authorized Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board, Section 53A-4-202 which assigns to the Board the responsibility for developing standards and administering funds for a program promoting educational excellence, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-121 which appropriates funding for programs for at risk youth.

B. This rule establishes standards and procedures to direct recipient districts or schools to develop plans to encourage the participation of underrepresented minority and all female students who traditionally have participated in math, engineering, and science classes disproportionately to white males.

R277-717-3. Plan Criteria.

A. District or school plans shall identify objectives and activities to address MESA objectives.

B. The objectives of the MESA organization are:

(1) to increase the number of designated minority and all female students who pursue course work in mathematics, engineering, and science areas;

(2) to provide a program that will motivate designated minority and all female students to take better advantage of existing educational opportunities;

(3) to increase graduation rates of designated minority and all female underrepresented students from high school;

(4) to strengthen the self-image of designated minority and all female students relating to their success in mathematics and science courses, and to enable them to become successful role models for other students;

(5) to provide designated minority and all female students the opportunity to relate and associate with successful role models; and

(6) to coordinate the efforts of public schools, colleges and universities, the USOE, industries, professional and community groups, and others in the development and maintenance of academic support programs to increase the participation of designated minority and all female students in the fields of mathematics and science.

C. Courses shall include secondary courses that place designated minority and all female students on a college preparation track for post high school opportunities in mathematics and science.

D. Examples of MESA activities include:

(1) regularly scheduled after-school meetings with advisors to hear guest presenters;

(2) tutoring sessions, particularly in mathematics, and including study aids;

(3) field trips;

(4) hands-on activities designed to introduce students to career possibilities, curriculum options or additional courses of study;

(5) exposure to career opportunities in math, engineering, and science, including teaching in these fields as a potential career;

(6) community service designed to address school interest and attendance issues as well as to introduce designated minority and all female students to math, science, engineering-related businesses/activities and opportunities for high school and the future; and

(7) internships or work experiences in identified areas which may be encouraged by student stipends or academic credit or both.

E. A MESA plan shall include an annual report to the USOE which shall include:

(1) an accounting for funds spent consistent with objectives identified in the plan;

(2) a program narrative; and

(3) specific numbers or examples of increased participation or success in math, science, engineering courses/activities by designated minority and all female students.

R277-717-4. Budget.

A. Budget items shall be tied to objectives.

B. The budget may include payments to compensate schools for school fees directly related to successful participation by designated minority or all female students in identified MESA courses or activities.

C. Districts or schools are encouraged to consider additional course alternatives for identified students including:

(1) ATC classes;

(2) community school classes;

(3) concurrent enrollment;

(4) advanced placement courses.

R277-717-5. Plan Applications.

A. Plan applications shall be submitted annually by school districts.

B. Plan applications shall be submitted to the USOE on forms provided by the USOE and consistent with USOE timelines.

C. State funding may require matching funding from local or federal sources. Applications may require identification of matching funds.

D. The MESA Public Education Funding Application Review Committee shall make recommendations to the Board for approval of program funding.

KEY: minority education, mathematics, engineering, science
January 4, 2002 Art X Sec 3
53A-1-401(3)

R313. Environmental Quality, Radiation Control.
R313-35. Requirements for X-Ray Equipment Used for Non-Medical Applications.
R313-35-1. Purpose and Scope.

(1) R313-35 establishes radiation safety requirements for registrants who use electronic sources of radiation for industrial radiographic applications, analytical applications or other non-medical applications. Registrants engaged in the production of radioactive material are also subject to the requirements of R313-19 and R313-22. The requirements of R313-35 are an addition to, and not a substitution for, the requirements of R313-15, R313-16, R313-18 and R313-70.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3) and 19-3-104(6).

R313-35-2. Definitions.

As used in R313-35:

"Analytical x-ray system" means a group of components utilizing x-rays to determine the elemental composition or to examine the microstructure of materials by either x-ray fluorescence or diffraction analysis.

"Cabinet x-ray system" means an x-ray system with the x-ray tube installed in an enclosure, hereinafter termed "cabinet," which, independent of existing architectural structure except the floor on which it may be placed, is intended to contain at least that portion of a material being irradiated, provide radiation attenuation, and exclude personnel from its interior during generation of x-radiation. Included are all x-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad and bus terminals, and similar facilities. An x-ray tube used within a shielded part of a building, or x-ray equipment which may temporarily or occasionally incorporate portable shielding is not considered a cabinet x-ray system.

"Collimator" means a device used to limit the size, shape and direction of the primary radiation beam.

"Direct reading dosimeter" means an ion-chamber pocket dosimeter or an electronic personal dosimeter.

"External surface" means the outside surfaces of cabinet x-ray systems, including the high-voltage generator, doors, access panels, latches, control knobs, and other permanently mounted hardware and including the plane across an aperture or port.

"Fail-safe characteristics" means design features which cause beam port shutters to close, or otherwise prevent emergence of the primary beam, upon the failure of a safety or warning device.

"Nondestructive testing" means the examination of the macroscopic structure of materials by nondestructive methods utilizing x-ray sources of radiation.

"Non-medical applications" means uses of x-ray systems except those used for providing diagnostic information or therapy on human patients.

"Normal operating procedures" means instructions necessary to accomplish the x-ray procedure being performed. These procedures shall include positioning of the equipment and the object being examined, equipment alignment, routine maintenance by the registrant, and data recording procedures which are related to radiation safety.

"Open-beam configuration" means a mode of operation of an analytical x-ray system in which individuals could accidentally place some part of the body into the primary beam during normal operation if no further safety devices are incorporated.

"Portable package inspection system" means a portable x-ray system designed and used for determining the presence of explosives in a package.

"Primary beam" means ionizing radiation which passes through an aperture of the source housing via a direct path from the x-ray tube located in the radiation source housing.

"Very high radiation area" means an area, accessible to individuals, in which radiation levels could result in individuals receiving an absorbed dose in excess of five Gy (500 rad) in one hour at one meter from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, sievert and rem.

"X-ray system" means an assemblage of components for the controlled production of x-rays. It includes, minimally, an x-ray high-voltage generator, an x-ray control, a tube housing assembly, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

R313-35-20. Personnel Monitoring.

Registrants using x-ray systems in non-medical applications shall meet the requirements of R313-15-502.

R313-35-30. Locking of X-ray Systems Other Than Veterinary X-Ray Systems.

The control panel of x-ray systems located in uncontrolled areas shall be equipped with a locking device that will prevent the unauthorized use of a x-ray system or the accidental production of radiation. Non-cabinet x-ray systems shall be kept locked with the key removed when not in use.

R313-35-40. Storage Precautions.

X-ray systems shall be secured to prevent tampering or removal by unauthorized personnel.

R313-35-50. Training Requirements.

In addition to the requirements of R313-18-12, an individual operating x-ray systems for non-medical applications shall be trained in the operating procedures for the x-ray system and the emergency procedures related to radiation safety for the facility. Records of training shall be made and maintained for three years after the termination date of the individual.

R313-35-60. Surveys.

In addition to the requirements of R313-15-501, radiation surveys of x-ray systems shall be performed:

(1) upon installation of the x-ray system; and

(2) following change to or maintenance of components of an x-ray system which effect the output, collimation, or shielding effectiveness.

R313-35-70. Radiation Survey Instruments.

Survey instruments used in determining compliance with R313-15 and R313-35 shall meet the following requirements:

(1) Instrumentation shall be capable of measuring a range from 0.02 millisieverts (2 millirem) per hour through 0.01 sievert (1 rem) per hour.

(2) Instrumentation shall be calibrated at intervals not to exceed 12 months and after instrument servicing, except for battery changes.

(3) For linear scale instruments, calibration shall be shown at two points located approximately one-third and two-thirds of full-scale on each scale. For logarithmic scale instruments, calibration shall be shown at mid-range of each decade, and at two points of at least one decade. For digital instruments, calibration shall be shown at three points between 0.02 and 10 millisieverts (2 and 1000 millirems) per hour.

(4) An accuracy of plus or minus 20 percent of the calibration source shall be demonstrated for each point checked pursuant to R313-35-70(3).

(5) The registrant shall perform visual and operability checks of survey instruments before use on each day the survey instrument is to be used to ensure that the equipment is in good working condition. If survey instrument problems are found, the equipment shall be removed from service until repaired.

(6) Results of the instrument calibrations showing compliance with R313-35-70(3) and R313-35-70(4) shall be recorded and maintained for a period of three years from the date the record is made.

(7) Records demonstrating compliance with R313-35-70(5) shall be made when a problem is found. The records shall be maintained for a period of three years from the date the record is made.

R313-35-80. Cabinet X-ray Systems.

(1) The requirements as found in 21 CFR 1020.40, 1996 ed., are adopted and incorporated by reference.

(2) Individuals operating cabinet x-ray systems with conveyor belts shall be able to observe the entry port from the operator's position.

R313-35-90. Portable Package Inspection Systems.

Portable package inspection systems shall be registered in accordance with R313-16 and shall be exempt from inspection by representatives of the Executive Secretary.

R313-35-100. Analytical X-Ray Systems Excluding Cabinet X-Ray Systems.

(1) Equipment. Analytical x-ray systems not contained in cabinet x-ray systems shall meet all the following requirements.

(a) A device which prevents the entry of portions of an individual's body into the primary x-ray beam path, or which causes the beam to be shut off upon entry into its path, shall be provided for open-beam configurations.

(i) Pursuant to R313-12-55(1), an application for an exemption from R313-35-100(1)(a) shall contain the following information:

(A) a description of the various safety devices that have been evaluated;

(B) the reason that these devices cannot be used; and

(C) a description of the alternative methods that will be employed to minimize the possibility of an accidental exposure, including procedures to assure that operators and others in the area will be informed of the absence of safety devices.

(ii) applications for exemptions to R313-35-100(1)(a) shall be submitted to the Executive Secretary of the Board.

(b) Open-beam configurations shall be provided with a readily discernible indication of:

(i) the "on" or "off" status of the x-ray tube which shall be located near the radiation source housing if the primary beam is controlled in this manner; or

(ii) the "open" or "closed" status of the shutters which shall be located near ports on the radiation source housing, if the primary beam is controlled in this manner.

(c) Warning devices shall be labeled so that their purpose is easily identified and the devices shall be conspicuous at the beam port. On equipment installed after July 1, 1989, warning devices shall have fail-safe characteristics.

(d) Unused ports on radiation source housings shall be secured in the closed position in a manner which will prevent casual opening. Security requirements will be deemed met if the beam port cannot be opened without the use of tools that are not part of the closure.

(e) Analytical x-ray systems shall be labeled with a readily discernable sign or signs bearing a radiation symbol which meets the requirements of R313-15-901 and the words:

(i) "CAUTION-HIGH INTENSITY X-RAY BEAM," or words having a similar intent, on the x-ray tube housing; and

(ii) "CAUTION RADIATION - THIS EQUIPMENT PRODUCES RADIATION WHEN ENERGIZED," or words having a similar intent, near switches that energize an x-ray tube.

(f) On analytical x-ray systems with open-beam configurations which are installed after July 1, 1989, ports on the radiation source housing shall be equipped with a shutter that cannot be opened unless a collimator or a coupling has been connected to the port.

(g) An easily visible warning light labeled with the words "X-RAY ON," or words having a similar intent, shall be located near switches that energize an x-ray tube and near x-ray ports. They shall be illuminated only when the tube is energized.

(h) On analytical x-ray systems installed after July 1, 1989, warning lights shall have fail-safe characteristics.

(i) X-ray generators shall be supplied with a protective cabinet which limits leakage radiation measured at a distance of five centimeters from its surface so that they are not capable of producing a dose equivalent in excess of 2.5 microsieverts (0.25 millirem) in one hour.

(j) The components of an analytical x-ray system located in an uncontrolled area shall be arranged and include sufficient shielding or access control so that no radiation levels exist in areas surrounding the component group which could result in a dose to an individual present therein in excess of the dose limits given in R313-15-301.

(2) Personnel Requirements.

(a) An individual shall not be permitted to operate or maintain an analytical x-ray system unless the individual has received instruction which satisfies the requirements of R313-18-12(1). The instruction shall include:

(i) identification of radiation hazards associated with the use of the analytical x-ray system;

(ii) the significance of the various radiation warnings and

safety devices incorporated into the analytical x-ray system, or the reasons they have not been installed on certain pieces of equipment and the extra precautions required in these cases;

(iii) proper operating procedures for the analytical x-ray system;

(iv) symptoms of an acute localized exposure; and

(v) proper procedures for reporting an actual or suspected exposure.

(b) Registrants shall maintain records which demonstrate compliance with the requirements of R313-35-100(2)(a) for a period of three years after the termination of the individual.

(c) Normal operating procedures shall be written and available to analytical x-ray system workers. An individual shall not be permitted to operate analytical x-ray systems using procedures other than those specified in the normal operating procedures unless the individual has obtained written approval of the registrant or the registrant's designee.

(d) An individual shall not bypass a safety device unless the individual has obtained the written approval of the registrant or the registrant's designee. Approval shall be for a specified period of time. When a safety device has been bypassed, a readily discernible sign bearing the words "SAFETY DEVICE NOT WORKING," or words having a similar intent, shall be placed on the radiation source housing.

(3) Personnel Monitoring. In addition to the requirements of R313-15-502, finger or wrist dosimetric devices shall be provided to and shall be used by:

(a) analytical x-ray system workers using equipment having an open-beam configuration and not equipped with a safety device; and

(b) personnel maintaining analytical x-ray systems if the maintenance procedures require the presence of a primary x-ray beam when local components in the analytical x-ray system are disassembled or removed.

(4) Posting. Areas or rooms containing analytical x-ray systems not considered to be cabinet x-ray systems shall be conspicuously posted to satisfy the requirements in R313-15-902.

R313-35-110. Veterinary X-Ray Systems.

(1) Equipment. X-ray systems shall meet the following standards to be used for veterinary radiographic examinations.

(a) The leakage radiation from the diagnostic source assembly measured at a distance of one meter shall not exceed 25.8 uC/kg (100 milliroentgens) in one hour when the x-ray tube is operated at its leakage technique factors.

(b) Diaphragms, cones, or a stepless adjustable collimator shall be provided for collimating the useful beam to the area of clinical interest and shall provide the same degree of protection as is required of the diagnostic source housing.

(c) A device shall be provided to terminate the exposure after a preset time or exposure.

(d) A "dead-man type" exposure switch shall be provided, together with an electrical cord of sufficient length, so that the operator may stand out of the useful beam and at least six feet from the animal during x-ray exposures.

(e) For stationary or mobile x-ray systems, a method shall be provided for visually defining the perimeter of the x-ray field. The total misalignment of the edges of the visually defined field with the respective edges of the x-ray field along either the length or width of the visually defined field shall not exceed six percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam.

(f) For portable x-ray systems, a method shall be provided to align the center of the x-ray field with respect to the center of the image receptor to within six percent of the source to image receptor distance, and to indicate the source to image receptor distance to within six percent.

(2) Structural shielding. For stationary x-ray systems, the wall, ceiling, and floor areas shall provide enough shielding to meet the requirements of R313-15-301.

(3) Operating procedures.

(a) Where feasible, the operator shall stand well away from the useful beam and the animal during radiographic exposures.

(b) In applications in which the operator is not located beyond a protective barrier, clothing consisting of a protective apron having a lead equivalent of not less than 0.5 millimeters shall be worn by the operator and other individuals in the room during exposures.

(c) An individual other than the operator shall not be in the x-ray room while exposures are being made unless the individual's assistance is required.

(d) If the animal must be held by an individual, that individual shall be protected with appropriate shielding devices, for example, protective gloves and apron. The individual shall be so positioned that no unshielded part of that individual's body will be struck by the useful beam.

R313-35-120. X-Ray Systems Less than 1 MeV used for Non-Destructive Testing.

(1) Cabinet x-ray systems.

Cabinet x-ray systems shall meet the requirements of R313-35-80.

(2) Fixed Gauges.

(a) Warning Devices. A light, which is clearly visible from all accessible areas around the x-ray system, shall indicate when the x-ray system is operating.

(b) Personnel Monitoring. Notwithstanding R313-15-502(1)(a), individuals conducting x-ray system maintenance requiring the x-ray beam to be on shall be provided with and required to wear personnel monitoring devices.

(3) Industrial and Other X-ray Systems.

(a) Equipment.

(i) The registrant shall perform visual and operability checks of indication lights and warning lights before use on each day the equipment is to be used to ensure that the equipment is in good working condition. If equipment problems are found, the equipment shall be removed from service until repaired.

(ii) Inspection and routine maintenance of x-ray systems, interlocks, indication lights, exposure switches, and cables shall be made at intervals not to exceed six months or before the first use thereafter to ensure the proper functioning of components important to safety. If equipment problems are found, the equipment shall be removed from service until repaired.

(iii) Records demonstrating compliance with R313-35-120(3)(a)(i) shall be made when problems with the equipment

are found. These records shall be maintained for a period of three years.

(iv) Records demonstrating compliance with R313-35-120(3)(a)(ii) shall be made. These records shall be maintained for a period of three years.

(b) Controls. X-ray systems which produce a high radiation area shall be controlled to meet the requirements of R313-15-601.

(c) Personnel Monitoring Requirements.

(i) Registrants shall not permit individuals to conduct x-ray operations unless all of the following conditions are met.

(A) Individuals shall wear a thermoluminescent dosimeter or film badge.

(I) Each film badge or thermoluminescent dosimeter shall be assigned to and worn by only one individual.

(II) Film badges shall be replaced at periods not to exceed one month and thermoluminescent dosimeters shall be replaced at periods not to exceed three months.

(B) Individuals shall wear a direct reading dosimeter if conducting non-destructive testing at a temporary job site or in a room or building not meeting the requirements of R313-15-301.

(I) Pocket dosimeters shall have a range from zero to two millisieverts (200 millirem) and must be recharged at the beginning of each shift.

(II) Direct reading dosimeters shall be read and the exposures recorded at the beginning and end of each shift. Records shall be maintained for three years after the record is made.

(III) Direct reading dosimeters shall be checked at intervals not to exceed 12 months for correct response to radiation and the results shall be recorded. Records shall be maintained for a period three years from the date the record is made. Acceptable dosimeters shall read within plus or minus 20 percent of the true radiation exposure.

(IV) If an individual's ion-chamber pocket dosimeter is found to be off scale or if the individual's electronic personnel dosimeter reads greater than 2 millisieverts (200 millirems), and the possibility of radiation exposure cannot be ruled out as the cause, the individual's film badge or thermoluminescent dosimeter shall be sent for processing within 24 hours. In addition, the individual shall not resume work with sources of radiation until a determination of the individual's radiation exposure has been made.

(d) Controls. In addition to the requirements of R313-15-601, barriers, temporary or otherwise, and pathways leading to high radiation areas shall be identified in accordance with R313-15-902.

(e) Surveillance. During non-destructive testing applications conducted at a temporary job site or in a room or building not meeting the requirements of R313-15-301, the operator shall maintain continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area.

R313-35-130. X-Ray Systems Greater than 1 MeV used for Non-Destructive Testing.

(1) Equipment.

(a) Individuals shall not receive, possess, use, transfer, own, or acquire a particle accelerator unless it is registered pursuant to R313-16-231.

(b) The registrant shall perform visual and operability checks of indication lights and warning lights before use on each day the equipment is to be used to ensure that the equipment is in good working condition. If equipment problems are found, the equipment shall be removed from service until repaired.

(c) Inspection and routine maintenance of x-ray systems, interlocks, indication lights, exposure switches, and cables shall be made at intervals not to exceed three months or before the first use thereafter to ensure the proper functioning of components important to safety. If equipment problems are found, the equipment shall be removed from service until repaired.

(d) Records demonstrating compliance with R313-35-130(1)(b) shall be made when problems with the equipment are found. These records shall be maintained for a period of three years.

(e) Records demonstrating compliance with R313-35-130(1)(c) shall be made. These records shall be maintained for a period of three years.

(f) Maintenance performed on x-ray systems shall be in accordance with the manufacturer's specifications.

(g) Instrumentation, readouts and controls on the particle accelerator control console shall be clearly identified and easily discernible.

(h) A switch on the accelerator control console shall be routinely used to turn the accelerator beam off and on. The safety interlock system shall not be used to turn off the accelerator beam, except in an emergency.

(2) Shielding and Safety Design Requirements.

(a) An individual who has satisfied a criterion listed in R313-16-400, shall be consulted in the design of a particle accelerator's installation and called upon to perform a radiation survey when the accelerator is first capable of producing radiation.

(b) Particle accelerator installations shall be provided with primary or secondary barriers which are sufficient to assure compliance with R313-15-201 and R313-15-301.

(c) Entrances into high radiation areas or very high radiation areas shall be provided with interlocks that shut down the machine under conditions of barrier penetration.

(d) When a radiation safety interlock system has been tripped, it shall only be possible to resume operation of the accelerator by manually resetting controls first at the position where the interlock has been tripped, and then at the main control console.

(e) Safety interlocks shall be on separate electrical circuits which shall allow their operation independently of other safety interlocks.

(f) Safety interlocks shall be fail-safe. This means that they must be designed so that defects or component failures in the interlock system prevent operation of the accelerator.

(g) The registrant may apply to the Executive Secretary for approval of alternate methods for controlling access to high or very high radiation areas. The Executive Secretary may approve the proposed alternatives if the registrant demonstrates that the alternative methods of control will prevent unauthorized entry

into a high or very high radiation area, and the alternative method does not prevent individuals from leaving a high or very high radiation area.

(h) A "scram" button or other emergency power cutoff switch shall be located and easily identifiable in high radiation areas or in very high radiation areas. The cutoff switch shall include a manual reset so that the accelerator cannot be restarted from the accelerator control console without resetting the cutoff switch.

(i) Safety and warning devices, including interlocks, shall be checked for proper operation at intervals not to exceed three months, and after maintenance on the safety and warning devices. Results of these tests shall be maintained for inspection at the accelerator facility for three years.

(j) A copy of the current operating and emergency procedures shall be maintained at the accelerator control panel.

(k) Locations designated as high radiation areas or very high radiation areas and entrances to locations designated as high radiation areas or very high radiation areas shall be equipped with easily observable flashing or rotating warning lights that operate when radiation is being produced.

(l) High radiation areas or very high radiation areas shall have an audible warning device which shall be activated for 15 seconds prior to the possible creation of the high radiation area or the very high radiation area. Warning devices shall be clearly discernible in high radiation areas or in very high radiation areas. The registrant shall instruct personnel in the vicinity of the particle accelerator as to the meaning of this audible warning signal.

(m) Barriers, temporary or otherwise, and pathways leading to high radiation areas or very high radiation areas shall be identified in accordance with R313-15-902.

(3) Personnel Requirements.

(a) Registrants shall not permit individuals to act as particle accelerator operators until the individuals have complied with the following:

(i) been instructed in radiation safety; and

(ii) been instructed pursuant to R313-35-50 and the applicable requirements of R313-15.

(iii) Records demonstrating compliance with R313-35-130(3)(a)(i) and R313-35-130(3)(a)(ii) shall be maintained for a period of three years from the termination date of the individual.

(b) Registrants shall not permit an individual to conduct x-ray operations unless the individual meets the personnel monitoring requirements of R313-35-120(3)(c).

(4) Radiation Monitoring Requirements.

(a) At particle accelerator facilities, there shall be available appropriate portable monitoring equipment which is operable and has been calibrated for the radiations being produced at the facility. On each day the particle accelerator is to be used, the portable monitoring equipment shall be tested for proper operation.

(b) When changes have been made in shielding, operation, equipment, or occupancy of adjacent areas, a radiation protection survey shall be performed and documented by an individual who has satisfied a criterion listed in R313-16-400 or the individual designated as being responsible for radiation safety.

(c) Records of radiation protection surveys, calibrations, and instrumentation tests shall be maintained at the accelerator facility for inspection by representatives of the Board or the Executive Secretary for a period of three years.

R313-35-140. Duties and Authorities of a Radiation Safety Officer.

Facilities operating x-ray systems under R313-35-130 shall appoint a Radiation Safety Officer. The specific duties and authorities of the Radiation Safety Officer include, but are not limited to:

(1) establishing and overseeing all operating, emergency, and ALARA procedures as required by R313-15;

(2) ensuring that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the registrant's program;

(3) overseeing and approving the training program for radiographic personnel, ensuring that appropriate and effective radiation protection practices are taught;

(4) ensuring that required radiation surveys are performed and documented in accordance with the R313-35-130(4);

(5) ensuring that personnel monitoring devices are calibrated and used properly by occupationally exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by R313-15-1203; and

(6) ensuring that operations are conducted safely and to assume control for instituting corrective actions including stopping of operations when necessary.

KEY: industry, x-ray, veterinarians, surveys
August 13, 1999 19-3-104
Notice of Continuation January 2, 2002 19-3-108

R317. Environmental Quality, Water Quality.
R317-6. Ground Water Quality Protection.
R317-6-1. Definitions.

1.1 "Aquifer" means a geologic formation, group of geologic formations or part of a geologic formation that contains sufficiently saturated permeable material to yield usable quantities of water to wells and springs.

1.2 "Background Concentration" means the concentration of a pollutant in ground water upgradient or lateral hydraulically equivalent point from a facility, practice or activity which has not been affected by that facility, practice or activity.

1.3 "Best Available Technology" means the application of design, equipment, work practice, operation standard or combination thereof at a facility to effect the maximum reduction of a pollutant achievable by available processes and methods taking into account energy, public health, environmental and economic impacts and other costs.

1.4 "Best Available Technology Standard" means a performance standard or pollutant concentration achievable through the application of best available technology.

1.5 "Board" means the Utah Water Quality Board.

1.6 "Class TDS Limit" means the upper boundary of the TDS range for an applicable class as specified in Section R317-6-3.

1.7 "Community Drinking Water System" means a public drinking water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

1.8 "Comparable Quality (Source)" means a potential alternative source or sources of water supply which has the same general quality as the ground water source.

1.9 "Comparable Quantity (Source)" means a potential alternative source of water supply capable of reliably supplying water in quantities sufficient to meet the year-round needs of the users served by the ground water source.

1.10 "Compliance Monitoring Point" means a well, seep, spring, or other sampling point used to determine compliance with applicable permit limits.

1.11 "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

1.12 "Conventional Treatment" means normal and usual treatment of water for distribution in public drinking water supply systems including flocculation, sedimentation, filtration, disinfection and storage.

1.13 "Discharge" means the release of a pollutant directly or indirectly into subsurface waters of the state.

1.14 "Existing Facility" means a facility or activity that was in operation or under construction after August 14, 1989 and before February 10, 1990.

1.15 "Economically Infeasible" means, in the context of a public drinking water source, the cost to the typical water user for replacement water would exceed the community's ability to pay.

1.16 "Executive Secretary" means the Executive Secretary of the Utah Water Quality Board.

1.17 "Facility" means any building, structure, processing, handling, or storage facility, equipment or activity; or contiguous group of buildings, structures, or processing, handling or storage facilities, equipment, or activities or combination thereof.

1.18 "Gradient" means the change in total water pressure head per unit of distance.

1.19 "Ground Water" means subsurface water in the zone of saturation including perched ground water.

1.20 "Ground Water Quality Standards" means numerical contaminant concentration levels adopted by the Board in or under R317-6-2 for the protection of the subsurface waters of the State.

1.21 "Infiltration" means the movement of water from the land surface into the pores of rock, soil or sediment.

1.22 "Institutional Constraints" means legal or other restrictions that preclude replacement water delivery and which cannot be alleviated through administrative procedures or market transactions.

1.23 "Lateral Hydraulically Equivalent Point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water at that point has not been affected by the facility.

1.24 "Limit of Detection" means the concentration of a chemical below which it can not be detected using currently accepted sampling and analytical techniques for drinking water as determined by the U.S. Environmental Protection Agency.

1.25 "New Facility" means a facility for which construction or modification is initiated after February 9, 1990.

1.26 "Permit Limit" means a ground water pollutant concentration limitation specified in a Ground Water Discharge Permit and may include protection levels, class TDS limits, ground water quality standards, alternate concentration limits, permit-specific ground water quality standards, or limits stipulated in the application and use of best available technology. For facilities permitted by rule under R317-6-6.2, a permit limit is a ground water pollutant concentration limitation specified in R317-6-6.2.B.

1.27 "Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the federal, state, or local government.

1.28 "Point of Discharge" means the area within outermost location at which effluent or leachate has been stored, applied, disposed of, or discharged; for a diked facility, the outermost edge of the dikes.

1.29 "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, munitions, trash, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into waters of the state.

1.30 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the State, or such discharge of any liquid, gaseous, or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.31 "Protection Level" means the ground water pollutant concentration levels specified in R317-6-4.

1.32 "Substantial Treatment" means treatment of water utilizing specialized treatment methods including ion exchange, reverse osmosis, electrodialysis and other methods needed to upgrade water quality to meet standards for public water systems.

1.33 "Technology Performance Monitoring" means the evaluation of a permitted facility to determine compliance with best available technology standards.

1.34 "Total Dissolved Solids (TDS)" means the quantity of dissolved material in a sample of water which is determined by weighing the solid residue obtained by evaporating a measured volume of a filtered sample to dryness; or for many waters that contain more than 1000 mg/l, the sum of the chemical constituents.

1.35 "Radius of Influence" means the radial distance from the center of a well bore to the point where there is no lowering of the water table or potentiometric surface because of pumping of the well; the edge of the cone of depression.

1.36 "Upgradient" means a point located hydraulically above a facility such that the ground water at that point has not been impacted by discharges from the facility.

1.37 "Vadose Zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

1.38 "Waste" see "Pollutant."

1.39 "Water Table" means the top of the saturated zone of a body of unconfined ground water at which the pressure is equal to that of the atmosphere.

1.40 "Water Table Aquifer" means an aquifer extending downward from the water table to the first confining bed.

1.41 "Waters of the State" means all streams, lakes, ponds, marshes, water courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof; except bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition.

1.42 "Zone of Influence" means the area contained by the outer edge of the drawdown cone of a water well.

R317-6-2. Ground Water Quality Standards.

2.1 The following Ground Water Quality Standards as listed in Table I are adopted for protection of ground water quality.

TABLE 1
GROUND WATER QUALITY STANDARDS

Parameter	Milligrams per liter (mg/l) unless noted otherwise and based on analysis of filtered sample except for Mercury and organic compounds
PHYSICAL CHARACTERISTICS	
Color (units)	15.0
Corrosivity (characteristic)	noncorrosive
Odor (threshold number)	3.0
pH (units)	6.5-8.5
INORGANIC CHEMICALS	
Cyanide (free)	0.2
Fluoride	4.0
Nitrate (as N)	10.0
Nitrite (as N)	1.0
Total Nitrate/Nitrite (as N)	10.0
METALS	
Arsenic	0.05
Barium	2.0
Cadmium	0.005
Chromium	0.1
Copper	1.3
Lead	0.015
Mercury	0.002
Selenium	0.05
Silver	0.1
Zinc	5.0
ORGANIC CHEMICALS	
Pesticides and PCBs	
Alachlor	0.002
Aldicarb	0.003
Aldicarb sulfone	0.002
Aldicarb sulfoxide	0.004
Atrazine	0.003
Carbofuran	0.04
Chlordane	0.002
Dibromochloropropane	0.0002
2, 4-D	0.07
Diquat	0.02
Dichlorophenoxyacetic acid (2, 4-) (2,4D)	0.07
Endothall	0.1
Endrin	0.002
Ethylene Dibromide	0.00005
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Polychlorinated Biphenyls	0.0005
Pentachlorophenol	0.001
Toxaphene	0.003
2, 4, 5-TP (Silvex)	0.05
VOLATILE ORGANIC CHEMICALS	
Benzene	0.005
Carbon tetrachloride	0.005
1, 2 - Dichloroethane	0.005
1, 1 - Dichloroethylene	0.007
1, 1, 1-Trichloroethane	0.200
para - Dichlorobenzene	0.075
o-Dichlorobenzene	0.6
cis-1,2 dichloroethylene	0.07
trans-1,2 dichloroethylene	0.1
1,2 Dichloropropane	0.005
Ethylbenzene	0.7
Monochlorobenzene	0.1
Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1
Trichloroethylene	0.005
Vinyl chloride	0.002
Xylenes (Total)	10
OTHER ORGANIC CHEMICALS	
Trihalomethanes	0.1
RADIONUCLIDES	
The following are the maximum contaminant levels for Radium-226 and Radium-228, and gross alpha particle radioactivity, beta particle radioactivity, and photon radioactivity:	
Combined Radium-226 and Radium-228	5pCi/l
Gross alpha particle activity, including Radium-226 but excluding Radon and Uranium	15pCi/l
Beta particle and photon radioactivity	
The average annual concentration from man-made radionuclides of beta particle and photon radioactivity from man-made radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirem/year.	

Except for the radionuclides listed below, the concentration of man-made radionuclides causing four millirem total body or organ dose equivalents shall be calculated on the basis of a two liter per day drinking water intake using the 168 hour data listed in "Maximum Permissible Body Burden and Maximum Permissible Concentration Exposure", NBS Handbook 69 as amended August 1962, U.S. Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed four millirem/year.

Average annual concentrations assumed to produce a total body or organ dose of four millirem/year:

Radionuclide	Critical Organ	pCi per liter
Tritium	Total Body	20,000
Strontium-90	Bone Marrow	8

2.2 A permit specific ground water quality standard for any pollutant not specified in Table 1 may be established by the Executive Secretary at a level that will protect public health and the environment. This permit limit may be based on U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk based contaminant levels, standards established by other regulatory agencies and other relevant information.

R317-6-3. Ground Water Classes.

3.1 GENERAL

The following ground water classes are established: Class IA - Pristine Ground Water; Class IB - Irreplaceable Ground Water; Class IC - Ecologically Important Ground Water; Class II - Drinking Water Quality Ground Water; Class III - Limited Use Ground Water; Class IV - Saline Ground Water.

3.2 CLASS IA - PRISTINE GROUND WATER

Class IA ground water has the following characteristics:

A. Total dissolved solids of less than 500 mg/l.

B. No contaminant concentrations that exceed the ground water quality standards listed in Table 1.

3.3 CLASS IB - IRREPLACEABLE GROUND WATER

Class IB ground water is a source of water for a community public drinking water system for which no reliable supply of comparable quality and quantity is available because of economic or institutional constraints.

3.4 CLASS IC - ECOLOGICALLY IMPORTANT GROUND WATER

Class IC ground water is a source of ground water discharge important to the continued existence of wildlife habitat.

3.5 CLASS II - DRINKING WATER QUALITY GROUND WATER

Class II ground water has the following characteristics:

A. Total dissolved solids greater than 500 mg/l and less than 3000 mg/l.

B. No contaminant concentrations that exceed ground water quality standards in Table 1.

3.6 CLASS III - LIMITED USE GROUND WATER

Class III ground water has one or both of the following characteristics:

A. Total dissolved solids greater than 3000 mg/l and less than 10,000 mg/l, or;

B. One or more contaminants that exceed the ground water quality standards listed in Table 1.

3.7 CLASS IV - SALINE GROUND WATER

Class IV ground water has total dissolved solids greater than 10,000 mg/l.

R317-6-4. Ground Water Class Protection Levels.

4.1 GENERAL

A. Protection levels are ground water pollutant concentration limits, set by ground water class, for the operation of facilities that discharge or would probably discharge to ground water.

B. For the physical characteristics (color, corrosivity, odor, and pH) and radionuclides listed in Table 1, the values listed are the protection levels for all ground water classes.

4.2 CLASS IA PROTECTION LEVELS

A. Class IA ground water will be protected to the maximum extent feasible from degradation due to facilities that discharge or would probably discharge to ground water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the lesser of 1.1 times the background value or 500 mg/l.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard value, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.1 times the background concentration or 0.1 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.3 CLASS IB PROTECTION LEVELS

A. Class IB ground water will be protected as an irreplaceable source of drinking water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the lesser of 1.1 times the background value or 2000 mg/l.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.1 times the background concentration or 0.1 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.4 CLASS IC PROTECTION LEVELS

Class IC ground water will be protected as a source of water for potentially affected wildlife habitat. Limits on increases of total dissolved solids and organic and inorganic chemical compounds will be determined in order to meet applicable surface water standards.

4.5 CLASS II PROTECTION LEVELS

A. Class II ground water will be protected for use as drinking water or other similar beneficial use with conventional treatment prior to use.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed 1.25 times the background value.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the

pollutant may not exceed the greater of 0.25 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.25 times the background concentration or 0.25 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.6 CLASS III PROTECTION LEVELS

A. Class III ground water will be protected as a potential source of drinking water, after substantial treatment, and as a source of water for industry and agriculture.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed 1.25 times the background concentration level.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.5 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.5 times the background concentration or 0.5 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard. If the background concentration exceeds the ground water quality standard no increase will be allowed.

4.7 CLASS IV PROTECTION LEVELS

Protection levels for Class IV ground water will be established to protect human health and the environment.

R317-6-5. Ground Water Classification for Aquifers.

5.1 GENERAL

A. When sufficient information is available, entire aquifers or parts thereof may be classified by the Board according to the quality of ground water contained therein and commensurate protection levels will be applied.

B. Ground water sources furnishing water to community drinking water systems with ground water meeting Class IA criteria are classified as Class IA.

5.2 CLASSIFICATION AND RECLASSIFICATION PROCEDURE

A. The Board may initiate classification or reclassification.

B. Any person may petition the Board for classification and reclassification.

C. Boundaries for class areas will be delineated so as to enclose distinct ground water classes as nearly as known facts permit. Boundaries will be based on hydrogeologic properties, existing ground water quality and for Class IB and IC, current use. Parts of an aquifer may be classified differently.

D. The petitioner requesting reclassification will provide sufficient information to determine if reclassification is in the best interest of the beneficial users.

E. A petition for classification or reclassification shall include:

1. factual data supporting the proposed classification;

2. a description of the proposed ground waters to be classified or reclassified;

3. potential contamination sources;

4. ground water flow direction;

5. current beneficial uses of the ground water; and

6. location of all water wells in the area to be classified or reclassified.

F. One or more public hearings will be held to receive comment on classification and reclassification proposals.

G. The Board will determine the disposition of all petitions for classification and reclassification, except as provided in R317-6-5.2.H.

H. Ground water proximate to a facility for which an application for a ground water discharge permit has been made may be classified by the Executive Secretary for purposes of making permitting decisions.

R317-6-6. Implementation.

6.1 DUTY TO APPLY FOR A GROUND WATER DISCHARGE PERMIT

A. No person may construct, install, or operate any new facility or modify an existing or new facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, without a ground water discharge permit from the Executive Secretary. A ground water discharge permit application should be submitted at least 180 days before the permit is needed.

B. All persons who constructed, modified, installed, or operated any existing facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to: land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, must have submitted a notification of the nature and location of the discharge to the Executive Secretary before February 10, 1990 and must submit an application for a ground water discharge permit within one year after receipt of written notice from the Executive Secretary that a ground water discharge permit is required.

6.2 GROUND WATER DISCHARGE PERMIT BY RULE

A. Except as provided in R317-6-6.2.C, the following facilities are considered to be permitted by rule and are not required to obtain a discharge permit under R317-6-6.1 or comply with R317-6-6.3 through R317-6-6.7, R317-6-6.9 through R317-6-6.11, R317-6-6.13, R317-6-6.16, R317-6-6.17 and R317-6-6.18:

1. facilities with effluent or leachate which has been demonstrated to the satisfaction of the Executive Secretary to conform and will not deviate from the applicable class TDS limits, ground water quality standards, protection levels or other permit limits and which does not contain any contaminant that may present a threat to human health, the environment or its potential beneficial uses of the ground water. The Executive

Secretary may require samples to be analyzed for the presence of contaminants before the effluent or leachate discharges directly or indirectly into ground water. If the discharge is by seepage through natural or altered natural materials, the Executive Secretary may require samples of the solution be analyzed for the presence of pollutants before or after seepage;

2. water used for watering of lawns, gardens, or shrubs or for irrigation for the revegetation of a disturbed land area except for the direct land application of wastewater;

3. application of agricultural chemicals including fertilizers, herbicides and pesticides including but not limited to, insecticides fungicides, rodenticides and fumigants when used in accordance with current scientifically based manufacturer's recommendations for the crop, soil, and climate and in accordance with state and federal statutes, regulations, permits, and orders adopted to avoid ground water pollution;

4. water used for irrigated agriculture except for the direct land application of wastewater from municipal, industrial or mining facilities;

5. flood control systems including detention basins, catch basins and wetland treatment facilities used for collecting or conveying storm water runoff;

6. natural ground water seeping or flowing into conventional mine workings which re-enters the ground by natural gravity flow prior to pumping or transporting out of the mine and without being used in any mining or metallurgical process;

7. leachate which results entirely from the direct natural infiltration of precipitation through undisturbed materials;

8. wells and facilities regulated under the underground injection control (UIC) program;

9. land application of livestock wastes, within expected crop nitrogen uptake;

10. individual subsurface wastewater disposal systems approved by local health departments or large subsurface wastewater disposal systems approved by the Board;

11. produced water pits, and other oil field waste treatment, storage, and disposal facilities regulated by the Division of Oil, Gas, and Mining in accordance with Section 40-6-5(3)(d) and R649-9, Disposal of Produced Water;

12. reserve pits regulated by the Division of Oil, Gas and Mining in accordance with Section 40-6-5(3)(a) and R649-3-7, Drilling and Operating Practices;

13. storage tanks installed or operated under regulations adopted by the Utah Solid and Hazardous Waste Control Board;

14. coal mining operations or facilities regulated under the Coal Mining and Reclamation Act by the Utah Division of Oil, Gas, and Mining (DOGM). The submission of an application for ground water discharge permit under R317-6-6.2.C may be required only if the Executive Secretary, after consideration of recommendations, if any, by DOGM, determines that the discharge violates applicable ground water quality standards, applicable Class TDS limits, or is interfering with a reasonable foreseeable beneficial use of the ground water. DOGM is not required to establish any administrative or regulatory requirements which are in addition to the rules of DOGM for coal mining operations or facilities to implement these ground water regulations;

15. hazardous waste or solid waste management units managed or undergoing corrective action under R315-1 through R315-14;

16. solid waste landfills permitted under the requirements of R315-303;

17. animal feeding operations, as defined in UAC R317-8-3.5(2) that use liquid waste handling systems, which are not located within Zone 1 (100 feet) for wells in a confined aquifer or Zone 2 (250 day time of travel) for wells and springs in unconfined aquifers, in accordance with the Public Drinking Water Regulations UAC R309-113, and which meet either of the following criteria:

a) operations constructed prior to the effective date of this rule which incorporated liquid waste handling systems and which are either less than 4 million gallons capacity or serve fewer than 1000 animal units, or

b. operations with fewer than the following numbers of confined animals:

i. 1,500 slaughter and feeder cattle,

ii. 1,050 mature dairy cattle, whether milked or dry cows,

iii. 3,750 swine each weighing over 25 kilograms (approximately 55 pounds),

iv. 18,750 swine each weighing 25 kilograms or less (approximately 55 pounds),

v. 750 horses,

vi. 15,000 sheep or lambs,

vii. 82,500 turkeys,

viii. 150,000 laying hens or broilers that use continuous overflow watering but dry handle wastes,

ix. 45,000 hens or broilers,

x. 7,500 ducks, or

xi. 1,500 animal units

18. animal feeding operations, as defined in UAC R317-8-3.5(2), which do not utilize liquid waste handling systems;

19. mining, processing or milling facilities handling less than 10 tons per day of metallic and/or nonmetallic ore and waste rock, not to exceed 2500 tons/year in aggregate unless the processing or milling uses chemical leaching;

20. pipelines and above-ground storage tanks;

21. drilling operations for metallic minerals, nonmetallic minerals, water, hydrocarbons, or geothermal energy sources when done in conformance with applicable regulations of the Utah Division of Oil, Gas, and Mining or the Utah Division of Water Rights;

22. land application of municipal sewage sludge for beneficial use, at or below the agronomic rate and in compliance with the requirements of 40 CFR 503, July 1, 1993 edition;

23. land application of municipal sewage sludge for mine-reclamation at a rate higher than the agronomic rate and in compliance with 40 CFR 503, July 1, 1993 edition;

24. municipal wastewater treatment lagoons receiving no wastewater from a significant industrial discharger as defined in R317-8-8.2(12); and

25. facilities and modifications thereto which the Executive Secretary determines after a review of the application will have a de minimis actual or potential effect on ground water quality.

B. No facility permitted by rule under R317-6-6.2.A may cause ground water to exceed ground water quality standards or the applicable class TDS limits in R317-6-3.1 to R317-6-3.7.

If the background concentration for affected ground water exceeds the ground water quality standard, the facility may not cause an increase over background. This section, R317-6-6.2B. does not apply to facilities undergoing corrective action under R317-6-6.15A.3.

C. The submission of an application for a ground water discharge permit may be required by the Executive Secretary for any discharge permitted by rule under R317-6-6.2 if it is determined that the discharge may be causing or is likely to cause increases above the ground water quality standards or applicable class TDS limits under R317-6-3 or otherwise is interfering or may interfere with probable future beneficial use of the ground water.

6.3 APPLICATION REQUIREMENTS FOR A GROUND WATER DISCHARGE PERMIT

Unless otherwise determined by the Executive Secretary, the application for a permit to discharge wastes or pollutants to ground water shall include the following complete information:

A. The name and address of the applicant and the name and address of the owner of the facility if different than the applicant. A corporate application must be signed by an officer of the corporation. The name and address of the contact, if different than above, and telephone numbers for all listed names shall be included.

B. The legal location of the facility by county, quarter-quarter section, township, and range.

C. The name of the facility and the type of facility, including the expected facility life.

D. A plat map showing all water wells, including the status and use of each well, topography, springs, water bodies, drainages, and man-made structures within a one-mile radius of the discharge. The plat map must also show the location and depth of existing or proposed wells to be used for monitoring ground water quality.

E. Geologic, hydrologic, and agricultural description of the geographic area within a one-mile radius of the point of discharge, including soil types, aquifers, ground water flow direction, ground water quality, aquifer material, and well logs.

F. The type, source, and chemical, physical, radiological, and toxic characteristics of the effluent or leachate to be discharged; the average and maximum daily amount of effluent or leachate discharged (gpd), the discharge rate (gpm), and the expected concentrations of any pollutant (mg/l) in each discharge or combination of discharges. If more than one discharge point is used, information for each point must be given separately.

G. Information which shows that the discharge can be controlled and will not migrate into or adversely affect the quality of any other waters of the state, including the applicable surface water quality standards, that the discharge is compatible with the receiving ground water, and that the discharge will comply with the applicable class TDS limits, ground water quality standards, class protection levels or an alternate concentration limit proposed by the facility.

H. For areas where the ground water has not been classified by the Board, information on the quality of the receiving ground water sufficient to determine the applicable protection levels.

I. The proposed monitoring plan, which includes a description, where appropriate, of the following:

1. ground water monitoring to determine ground water flow direction and gradient, background quality at the site, and the quality of ground water at the compliance monitoring point;

2. installation, use and maintenance of monitoring devices;

3. description of the compliance monitoring area defined by the compliance monitoring points including the dimensions and hydrologic and geologic data used to determine the dimensions;

4. monitoring of the vadose zone;

5. measures to prevent ground water contamination after the cessation of operation, including post-operational monitoring;

6. monitoring well construction and ground water sampling which conform to A Guide to the Selection of Materials for Monitoring Well Construction and Ground Water Sampling, (1983) and RCRA Ground Water Monitoring Technical Enforcement Guidance Manual (1986), unless otherwise specified by the Executive Secretary;

7. description and justification of parameters to be monitored.

J. The plans and specifications relating to construction, modification, and operation of discharge systems.

K. The description of the ground water most likely to be affected by the discharge, including water quality information of the receiving ground water prior to discharge, a description of the aquifer in which the ground water occurs, the depth to the ground water, the saturated thickness, flow direction, porosity, hydraulic conductivity, and flow systems characteristics.

L. The compliance sampling plan which includes, where appropriate, provisions for sampling of effluent and for flow monitoring in order to determine the volume and chemistry of the discharge onto or below the surface of the ground and a plan for sampling compliance monitoring points and appropriate nearby water wells. Sampling and analytical methods proposed in the application must conform with the most appropriate methods specified in the following references unless otherwise specified by the Executive Secretary:

1. Standard Methods for the Examination of Water and Wastewater, eighteenth edition, 1992; Library of Congress catalogue number: ISBN: 0-87553-207-1.

2. E.P.A. Methods, Methods for Chemical Analysis of Water and Wastes, 1983; Stock Number EPA-600/4-79-020.

3. Techniques of Water Resource Investigations of the U.S. Geological Survey, (1982); Book 5, Chapter A3.

4. Monitoring requirements in 40 CFR parts 141 and 142, 1991 ed., Primary Drinking Water Regulations and 40 CFR parts 264 and 270, 1991 ed.

5. National Handbook of Recommended Methods for Water-Data Acquisition, GSA-GS edition; Book 85 AD-2777, U.S. Government Printing Office Stock Number 024-001-03489-1.

6. Manual of Analytical Methods for the Analysis of Pesticide Residues in Humans and Environmental Samples, 1980; Stock Number EPA-600/8-80-038, U.S. Environmental Protection Agency.

M. A description of the flooding potential of the discharge site, including the 100-year flood plain, and any applicable flood protection measures.

N. Contingency plan for regaining and maintaining compliance with the permit limits and for reestablishing best available technology as defined in the permit.

O. Methods and procedures for inspections of the facility operations and for detecting failure of the system.

P. For any existing facility, a corrective action plan or identification of other response measures to be taken to remedy any violation of applicable ground water quality standards, class TDS limits or permit limit established under R317-6-6.4E. which has resulted from discharges occurring prior to issuance of a ground water discharge permit.

Q. Other information required by the Executive Secretary.

6.4 ISSUANCE OF DISCHARGE PERMIT

A. The Executive Secretary may issue a ground water discharge permit for a new facility if the Executive Secretary determines, after reviewing the information provided under R317-6-6.3, that:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards protection levels, and permit limits established under R317-6-6.4E will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant is using best available technology to minimize the discharge of any pollutant; and

4. there is no impairment of present and future beneficial uses of the ground water.

B. The Board may approve an alternate concentration limit for a new facility if:

1. The applicant submits a petition for an alternate concentration limit showing the extent to which the discharge will exceed the applicable class TDS limits, ground water standards or applicable protection levels and demonstrates that:

a. the facility is to be located in an area of Class III ground water;

b. the discharge plan incorporates the use of best available technology;

c. the alternate concentration limit is justified based on substantial overriding social and economic benefits; and,

d. the discharge would pose no threat to human health and the environment.

2. One or more public hearings have been held by the Board in nearby communities to solicit comment.

C. The Executive Secretary may issue a ground water discharge permit for an existing facility provided:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards and protection levels will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant utilizes treatment and discharge minimization technology commensurate with plant process design capability and similar or equivalent to that utilized by facilities that produce similar products or services with similar production process technology; and,

4. there is no current or anticipated impairment of present and future beneficial uses of the ground water.

D. The Board may approve an alternate concentration limit for a pollutant in ground water at an existing facility or facility permitted by rule under R317-6-6.2 if the applicant for a ground water discharge permit shows the extent the discharge exceeds the applicable class TDS limits, ground water quality standards and applicable protection levels that correspond to the otherwise applicable ground water quality standards and demonstrates that:

1. steps are being taken to correct the source of contamination, including a program and timetable for completion;

2. the pollution poses no threat to human health and the environment; and

3. the alternate concentration limit is justified based on overriding social and economic benefits.

E. An alternate concentration limit, once adopted by the Board under R317-6-6.4B or R317-6-6.4D, shall be the pertinent permit limit.

F. A facility permitted under this provision shall meet applicable class TDS limits, ground water quality standards, protection levels and permit limits.

G. The Board may modify a permit for a new facility to reflect standards adopted as part of corrective action.

6.5 NOTICE OF INTENT TO ISSUE A GROUND WATER DISCHARGE PERMIT

The Executive Secretary shall publish a notice of intent to approve in a newspaper in the affected area and shall allow 30 days in which interested persons may comment to the Board. Final action will be taken by the Executive Secretary following the 30-day comment period.

6.6 PERMIT TERM

A. The ground water discharge permit term will run for 5 years from the date of issuance. Permits may be renewed for 5-year periods or extended for a period to be determined by the Executive Secretary but not to exceed 5 years.

B. In the event that new ground water quality standards are adopted by the Board, permits may be reopened to extend the terms of the permit or to include pollutants covered by new standards. The holder of a permit may apply for a variance under the conditions outlined in R317-6-6.4.D.

6.7 GROUND WATER DISCHARGE PERMIT RENEWAL

The permittee for a facility with a ground water discharge permit must apply for a renewal or extension for a ground water discharge permit at least 180 days prior to the expiration of the existing permit. If a permit expires before an application for renewal or extension is acted upon by the Executive Secretary, the permit will continue in effect until it is renewed, extended or denied.

6.8 TERMINATION OF A GROUND WATER DISCHARGE PERMIT BY THE EXECUTIVE SECRETARY

A ground water discharge permit may be terminated or a renewal denied by the Executive Secretary if one of the following applies:

A. noncompliance by the permittee with any condition of the permit where the permittee has failed to take appropriate action in a timely manner to remedy the permit violation;

B. the permittee's failure in the application or during the permit approval process to disclose fully all significant relevant facts at any time;

C. a determination that the permitted facility endangers human health or the environment and can only be regulated to acceptable levels by plan modification or termination; or

D.the permittee requests termination of the permit.

6.9 PERMIT COMPLIANCE MONITORING

A. Ground Water Monitoring

The Executive Secretary may include in a ground water discharge permit requirements for ground water monitoring, and may specify compliance monitoring points where the applicable class TDS limits, ground water quality standards, protection levels or other permit limits are to be met.

The Executive Secretary will determine the location of the compliance monitoring point based upon the hydrology, type of pollutants, and other factors that may affect the ground water quality. The distance to the compliance monitoring points must be as close as practicable to the point of discharge. The compliance monitoring point shall not be beyond the property boundaries of the permitted facility without written agreement of the affected property owners and approval by the Executive Secretary.

B. Performance Monitoring

The Executive Secretary may include in a ground water discharge permit requirements for monitoring performance of best available technology standards.

6.10 BACKGROUND WATER QUALITY DETERMINATION

A. Background water quality contaminant concentrations shall be determined and specified in the ground water discharge permit. The determination of background concentration shall take into account any degradation.

B. Background water quality contaminant concentrations may be determined from existing information or from data collected by the permit applicant. Existing information shall be used, if the permit applicant demonstrates that the quality of the information and its means of collection are adequate to determine background water quality. If existing information is not adequate to determine background water quality, the permit applicant shall submit a plan to determine background water quality to the Executive Secretary for approval prior to data collection. One or more up-gradient, lateral hydraulically equivalent point, or other monitoring wells as approved by the Executive Secretary may be required for each potential discharge site.

C. After a permit has been issued, permittee shall continue to monitor background water quality contaminant concentrations in order to determine natural fluctuations in concentrations. Applicable up-gradient, and on-site ground water monitoring data shall be included in the ground water quality permit monitoring report.

6.11 NOTICE OF COMMENCEMENT AND DISCONTINUANCE OF GROUND WATER DISCHARGE OPERATIONS

A. The permittee shall notify the Division of Water Quality immediately upon commencement of the ground water discharge and submit a written notice within 30 days of the commencement of the discharge.

B. The permittee shall notify the Division of Water Quality of the date and reason for discontinuance of ground water discharge within 30 days.

6.12 SUBMISSION OF DATA

A. Laboratory Analyses

All laboratory analysis of samples collected to determine compliance with these regulations shall be performed in accordance with standard procedures by the Utah Division of Laboratory Services or by a laboratory certified by the Utah Department of Health.

B. Field Analyses

All field analyses to determine compliance with these regulations shall be conducted in accordance with standard procedures specified in R317-6-6.3.L.

C. Periodic Submission of Monitoring Reports

Results obtained pursuant to any monitoring requirements in the discharge permit and the methods used to obtain these results shall be periodically reported to the Executive Secretary according to the schedule specified in the ground water discharge permit.

6.13 REPORTING OF MECHANICAL PROBLEMS OR DISCHARGE SYSTEM FAILURES

The permittee shall notify the Executive Secretary within 24 hours of the discovery of any mechanical or discharge system failures that could affect the chemical characteristics or volume of the discharge. A written statement confirming the oral report shall be submitted to the Executive Secretary within five days of the failure.

6.14 CORRECTION OF ADVERSE EFFECTS REQUIRED

A. If monitoring or testing indicates that the permit conditions may be or are being violated by ground water discharge operations or the facility is otherwise in an out-of-compliance status, the permittee shall promptly make corrections to the system to correct all violations of the discharge permit.

B. The permittee, operator, or owner may be required to take corrective action as described in R317-6-6.15 if a pollutant concentration has exceeded a permit limit.

6.15 CORRECTIVE ACTION

It is the intent of the Board that the provisions of these regulations should be considered when making decisions under any state or federal superfund action; however, the protection levels are not intended to be considered as applicable, relevant or appropriate clean-up standards under such other regulatory programs.

A. Application of R317-6-6.15

1. Generally - R317-6-6.15 shall apply to any person who discharges pollutants into ground water in violation of Section 19-5-107, or who places or causes to be placed any wastes in a location where there is probable cause to believe they will cause pollution of ground water in violation of Section 19-5-107.

2. Corrective Action shall include, except as otherwise provided in R317-6-6.15, preparation of a Contamination Investigation and preparation and implementation of a Corrective Action Plan.

3. The procedural provisions of R-317-6-6.15 shall not apply to any facility where a corrective or remedial action for ground water contamination, that the Executive Secretary determines meets the substantive standards of this rule, has been initiated under any other state or federal program. Corrective or remedial action undertaken under the programs specified in

Table 2 are considered to meet the substantive standards of this rule unless otherwise determined by the Executive Secretary.

TABLE 2

PROGRAM

Leaking Underground Storage Tank, Sections 19-6-401, et seq.

Federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601, et seq.

Hazardous Waste Mitigation Act, Sections 19-6-301 et seq.
Utah Solid and Hazardous Waste Act, Sections 19-6-101 et seq.

B. Notification and Interim Action

1. Notification - A person who spills or discharges any oil or other substance which may cause pollution of ground waters in violation of Section 19-5-107 shall notify the Executive Secretary within 24 hours of the spill or discharge. A written notification shall be submitted to the Executive Secretary within five days after the spill or discharge.

2. Interim Actions - A person is encouraged to take immediate, interim action without following the steps outlined in R317-6-6.15 if such action is required to control a source of pollutants. Interim action is also encouraged if required to protect public safety, public health and welfare and the environment, or to prevent further contamination that would result in costlier clean-up. Such interim actions should include source abatement and control, neutralization, or other actions as appropriate. A person that has taken these actions shall remain subject to R317-6-6.15 after the interim actions are completed unless he demonstrates that:

a. no pollutants have been discharged into ground water in violation of 19-5-107; and

b. no wastes remain in a location where there is probable cause to believe they will cause pollution of ground water in violation of 19-5-107.

C. Contamination Investigation and Corrective Action Plan - General

1. The Executive Secretary may require a person that is subject to R317-6-6.15 to submit for the Executive Secretary's approval a Contamination Investigation and Corrective Action Plan, and may require implementation of an approved Corrective Action Plan. A person subject to this rule who has been notified that the Executive Secretary is exercising his or her authority under R317-6-6.15 to require submission of a Contamination Investigation and Corrective Action Plan, shall, within 30 days of that notification, submit to the Executive Secretary a proposed schedule for those submissions, which may include different deadlines for different elements of the Investigation and Plan. The Executive Secretary may accept, reject, or modify the proposed schedule.

2. The Contamination Investigation or the Corrective Action Plan may, in order to meet the requirements of this Part, incorporate by reference information already provided to the Executive Secretary in the Contingency Plan or other document.

3. The requirements for a Contamination Investigation and a Corrective Action Plan specified in R317-6-6.15.D are comprehensive. The requirements are intended to be applied with flexibility, and persons subject to this rule are encouraged to contact the Executive Secretary's staff to assure its efficient application on a site-specific basis.

4. The Executive Secretary may waive any or all Contamination Investigation and Corrective Action Plan requirements where the person subject to this rule demonstrates that the information that would otherwise be required is not necessary to the Executive Secretary's evaluation of the Contamination Investigation or Corrective Action Plan. Requests for waiver shall be submitted to the Executive Secretary as part of the Contamination Investigation or Corrective Action Plan, or may be submitted in advance of those reports.

D. Contamination Investigation and Corrective Action Plan - Requirements

1. Contamination Investigation - The contamination investigation shall include a characterization of pollution, a characterization of the facility, a data report, and, if the Corrective Action Plan proposes standards under R317-6-6.15.F.2. or Alternate Corrective Action Concentration Limits higher than the ground water quality standards, an endangerment assessment.

a. The characterization of pollution shall include a description of:

(1) The amount, form, concentration, toxicity, environmental fate and transport, and other significant characteristics of substances present, for both ground water contaminants and any contributing surficial contaminants;

(2) The areal and vertical extent of the contaminant concentration, distribution and chemical make-up; and

(3) The extent to which contaminant substances have migrated and are expected to migrate.

b. The characterization of the facility shall include descriptions of:

(1) Contaminant substance mixtures present and media of occurrence;

(2) Hydrogeologic conditions underlying and, upgradient and downgradient of the facility;

(3) Surface waters in the area;

(4) Climatologic and meteorologic conditions in the area of the facility; and

(5) Type, location and description of possible sources of the pollution at the facility;

(6) Groundwater withdrawals, pumpage rates, and usage within a 2-mile radius.

c. The report of data used and data gaps shall include:

(1) Data packages including quality assurance and quality control reports;

(2) A description of the data used in the report; and

(3) A description of any data gaps encountered, how those gaps affect the analysis and any plans to fill those gaps.

d. The endangerment assessment shall include descriptions of any risk evaluation necessary to support a proposal for a standard under R317-6-6.15.F.2 or for an Alternate Corrective Action Concentration Limit.

e. The Contamination Investigation shall include such other information as the Executive Secretary requires.

2. Proposed Corrective Action Plan

The proposed Corrective Action Plan shall include an explanation of the construction and operation of the proposed Corrective Action, addressing the factors to be considered by the Executive Secretary as specified in R317-6-6.15.E. and shall

include such other information as the Executive Secretary requires. It shall also include a proposed schedule for completion.

E. Approval of the Corrective Action Plan

After public notice in a newspaper in the affected area and a 30-day period for opportunity for public review and comment, the Executive Secretary shall issue an order approving, disapproving, or modifying the proposed Corrective Action Plan. The Executive Secretary shall consider the following factors and criteria in making that decision:

1. Completeness and Accuracy of Corrective Action Plan.

The Executive Secretary shall consider the completeness and accuracy of the Corrective Action Plan and of the information upon which it relies.

2. Action Protective of Public Health and the Environment

a. The Corrective Action shall be protective of the public health and the environment.

b. Impacts as a result of any off-site activities shall be considered under this criterion (e.g., the transport and disposition of contaminated materials at an off-site facility).

3. Action Meets Concentration Limits

The Corrective Action shall meet Corrective Action Concentration Limits specified in R317-6-6.15.F, except as provided in R317-6-6.15.G.

4. Action Produces a Permanent Effect

a. The Corrective Action shall produce a permanent effect.

b. If the Corrective Action Plan provides that any potential sources of pollutants are to be controlled in place, any cap or other method of source control shall be designed so that the discharge from the source following corrective action achieves ground water quality standards or, if approved by the Board, alternate corrective action concentration limits (ACACLs). For purposes of this paragraph, sources of pollutants are controlled "in place" even though they are moved within the facility boundaries provided that they are not moved to areas with unaffected ground water.

5. Action May Use Other Additional Measures

The Executive Secretary may consider whether additional measures should be included in the Plan to better assure that the criteria and factors specified in R317-6-6.15.E are met. Such measures may include:

a. Requiring long-term ground water or other monitoring;

b. Providing environmental hazard notices or other security measures;

c. Capping of sources of ground water contamination to avoid infiltration of precipitation;

d. Requiring long-term operation and maintenance of all portions of the Corrective Action; and

e. Periodic review to determine whether the Corrective Action is protective of public health and the environment.

F. Corrective Action Concentration Limits

1. Contaminants with specified levels

Corrective Actions shall achieve ground water quality standards or, where applicable, alternate corrective action concentration limits (ACACLs).

2. Contaminants without specified levels

For contaminants for which no ground water quality standard has been established, the proposed Corrective Action Plan shall include proposed Corrective Action Concentration Limits. These levels shall be approved, disapproved or modified by the Executive Secretary after considering U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk-based contaminant levels or standards established by other regulatory agencies and other relevant information.

G. Alternate Corrective Action Concentration Limits

An Alternate Corrective Action Concentration Limit that is higher or lower than the Corrective Action Concentration Limits specified in R317-6-6.15.F may be required as provided in the following:

1. Higher Alternate Corrective Action Concentration Limits

A person submitting a proposed Corrective Action Plan may request approval by the Board of an Alternate Corrective Action Concentration Limit higher than the Corrective Action Concentration Limit specified in R317-6-6.15.F. The proposed limit shall be protective of human health, and the environment, and shall utilize best available technology. The Corrective Action Plan shall include the following information in support of this request:

a. The potential for release and migration of any contaminant substances or treatment residuals that might remain after Corrective Action in concentrations higher than Corrective Action Concentration Limits;

b. An evaluation of residual risks, in terms of amounts and concentrations of contaminant substances remaining following implementation of the Corrective Action options evaluated, including consideration of the persistence, toxicity, mobility, and propensity to bioaccumulate such contaminants substances and their constituents; and

c. Any other information necessary to determine whether the conditions of R317-6-6.15.G have been met.

2. Lower Alternate Corrective Action Concentration Limits

The Board may require use of an Alternate Corrective Action Concentration Limit that is lower than the Corrective Action Concentration Limit specified in R317-6-6.15.F if necessary to protect human health or the environment. Any person requesting that the Board consider requiring a lower Alternate Corrective Action Concentration Limit shall provide supporting information as described in R317-6-6.15.G.3.

3. Protective of human health and the environment

The Alternate Corrective Action Concentration Limit must be protective of human health and the environment. In making this determination, the Board may consider:

a. Information presented in the Contamination Investigation;

b. Other relevant cleanup or health standards, criteria, or guidance;

c. Relevant and reasonably available scientific information;

d. Any additional information relevant to the protectiveness of a Corrective Action; and

e. The impact of additional proposed measures, such as those described in R317-6-6.15.E.5.

4. Good cause

An Alternate Corrective Action Concentration Limit shall not be granted without good cause.

a. The Board may consider the factors specified in R317-6-6.15.E in determining whether there is good cause.

b. The Board may also consider whether the proposed remedy is cost-effective in determining whether there is good cause. Costs that may be considered include but are not limited to:

(1) Capital costs;

(2) Operation and maintenance costs;

(3) Costs of periodic reviews, where required;

(4) Net present value of capital and operation and maintenance costs;

(5) Potential future remedial action costs; and

(6) Loss of resource value.

5. Conservative

An Alternate Corrective Action Concentration Limit that is higher than the Corrective Action Concentration Limits specified in R317-6-6.15.F must be conservative. The Board may consider the concentration level that can be achieved using best available technology if attainment of the Corrective Action Concentration Limit is not technologically achievable.

6. Relation to background and existing conditions

a. The Board may consider the relationship between the Corrective Action Concentration Limits and background concentration limits in considering whether an Alternate Corrective Action Concentration Limit is appropriate.

b. No Alternate Corrective Action Concentration Limit higher than existing ground water contamination levels or ground water contamination levels projected to result from existing conditions will be granted.

6.16 OUT-OF-COMPLIANCE STATUS

A. Accelerated Monitoring for Probable Out-of-Compliance Status

If the concentration of a pollutant in any compliance monitoring sample exceeds an applicable permit limit, the facility shall:

1. Notify the Executive Secretary in writing within 30 days of receipt of data;

2. Initiate monthly sampling, unless the Executive Secretary determines that other periodic sampling is appropriate, for a period of two months or until the compliance status of the facility can be determined.

B. Violation of Permit Limits

Out-of-compliance status exists when:

1. two consecutive samples from a compliance monitoring point exceed:

a. one or more permit limits; and

b. the mean ground water pollutant concentration for that pollutant by two standard deviations (the standard deviation and mean being calculated using values for the ground water pollutant at that compliance monitoring point); or

2. the concentration value of any pollutant in two or more consecutive samples is statistically significantly higher than the applicable permit limit. The statistical significance shall be determined using the statistical methods described in Statistical Methods for Evaluating Ground Water Monitoring Data from Hazardous Waste Facilities, Vol. 53, No. 196 of the Federal Register, Oct. 11, 1988.

C. Failure to Maintain Best Available Technology Required by Permit

1. Permittee to Provide Information

In the event that the permittee fails to maintain best available technology or otherwise fails to meet best available technology standards as required by the permit, the permittee shall submit to the Executive Secretary a notification and description of the failure according to R317-6-6.13. Notification shall be given orally within 24 hours of the permittee's discovery of the failure of best available technology, and shall be followed up by written notification, including the information necessary to make a determination under R317-6-6.16.C.2, within five days of the permittee's discovery of the failure of best available technology.

2. Executive Secretary

The Executive Secretary shall use the information provided under R317-6-6.16.C.1 and any additional information provided by the permittee to determine whether to initiate a compliance action against the permittee for violation of permit conditions. The Executive Secretary shall not initiate a compliance action if the Executive Secretary determines that the permittee has met the standards for an affirmative defense, as specified in R317-6-6.16.C.3.

3. Affirmative Defense

In the event a compliance action is initiated against the permittee for violation of permit conditions relating to best available technology, the permittee may affirmatively defend against that action by demonstrating the following:

a. The permittee submitted notification according to R317-6-6.13;

b. The failure was not intentional or caused by the permittee's negligence, either in action or in failure to act;

c. The permittee has taken adequate measures to meet permit conditions in a timely manner or has submitted to the Executive Secretary, for the Executive Secretary's approval, an adequate plan and schedule for meeting permit conditions; and

d. The provisions of 19-5-107 have not been violated.

6.17 PROCEDURE WHEN A FACILITY IS OUT-OF-COMPLIANCE

A. If a facility is out of compliance the following is required:

1. The permittee shall notify the Executive Secretary of the out of compliance status within 24 hours after detection of that status, followed by a written notice within 5 days of the detection.

2. The permittee shall initiate monthly sampling, unless the Executive Secretary determines that other periodic sampling is appropriate, until the facility is brought into compliance.

3. The permittee shall prepare and submit within 30 days to the Executive Secretary a plan and time schedule for assessment of the source, extent and potential dispersion of the contamination, and an evaluation of potential remedial action to restore and maintain ground water quality and insure that permit limits will not be exceeded at the compliance monitoring point and best available technology will be reestablished.

4. The Executive Secretary may require immediate implementation of the contingency plan submitted with the original ground water discharge permit in order to regain and maintain compliance with the permit limit standards at the compliance monitoring point or to reestablish best available technology as defined in the permit.

5. Where it is infeasible to re-establish BAT as defined in the permit, the permittee may propose an alternative BAT for approval by the Executive Secretary.

6.18 GROUND WATER DISCHARGE PERMIT TRANSFER

A. The permittee shall give written notice to the Executive Secretary of any transfer of the ground water discharge permit, within 30 days of the transfer.

B. The notice shall include a written agreement between the existing and new permittee establishing a specific date for transfer of permit responsibility, coverage and liability.

6.19 ENFORCEMENT

These rules are subject to enforcement under Section 19-5-115 of the Utah Water Quality Act.

6.20 HEARING AND APPEALS

A. Any person may request a hearing before the Board who:

1. is denied a permit by rule by the Executive Secretary under R317-6-6.2;

2. objects to a discharge limit established by the Executive Secretary;

3. objects to conditions or limitations proposed or established by the Executive Secretary in the ground water discharge permit; or

4. objects to monitoring, sampling, information, or other requests or requirements made by the Executive Secretary;

5. objects to denial by the Executive Secretary of a proposed Corrective Action Plan under R317-6-6.15; or

6. objects to conditions proposed or established by the Executive Secretary in a Corrective Action Plan under R317-6-6.15.

B. Any person who is denied a permit or whose permit is proposed to be terminated or revoked by the Executive Secretary may appeal that decision to the Executive Director of the Department of Environmental Quality pursuant to Section 19-5-112(2).

C. Hearings under R317-6 will be conducted using the Utah Administrative Procedures Act, Title 63, Chapter 46b.

KEY: water quality, ground water
January 22, 2002 19-5
Notice of Continuation December 12, 1997

R386. Health, Epidemiology and Laboratory Services, Epidemiology.
R386-710. Early Warning Reporting.
R386-710-1. Purpose and Authority.

This rule establishes a reporting and review system to identify diseases and injurious exposures that are of uncertain origin, including terrorist attacks. It is authorized by Sections 26-1-30, 26-6-3.

R386-710-2. Definitions.

As used in this rule:

(1) "emergency center" means:

(a) a health care facility licensed under the provisions of Title 26, Chapter 21, Utah Code, that operates an emergency department; or

(b) a clinic that provides emergency or urgent health care to an average of 20 or more persons daily.

(2) "encounter" means an instance of an individual presenting at the emergency center who satisfies the criteria in section R386-710-4.

(3) "diagnostic information" means an emergency center's record of individuals who present for emergency or urgent treatment, including the reason for the visit, chief complaint, presenting diagnosis, and final diagnosis.

R386-710-3. Reporting Encounters.

(1) An emergency center operating within the state shall report the preceding day's encounters to the Department by:

(a) allowing Department representatives or agents to review its diagnostic information to identify encounters; or

(b) reviewing its diagnostic information and reporting all encounters by 9:00 a.m. the following day.

(2) The emergency center may remove all identifying patient information from its report, except information sufficient to allow the emergency center to identify the individual to conduct further investigation pursuant to section R386-710-6.

R386-710-4. Encounter Criteria.

Encounter criteria that require a report are diagnostic information that indicate the presence of one of the following syndromes:

(1) respiratory infection with fever;

(2) bloody diarrhea;

(3) gastroenteritis (diarrhea or vomiting) without blood;

(4) febrile illness with rash;

(5) meningitis, encephalitis, or unexplained acute encephalopathy or delirium;

(6) suspected acute viral hepatitis;

(7) illicit drug-related episode;

(8) sepsis or unexplained shock;

(9) unexplained death with history of fever;

(10) botulism-like syndrome;

(11) lymphadenitis with fever; and

(12) other criteria that the Department has reasonably determined to be indicative of disease outbreaks or injurious exposures of uncertain origin.

R386-710-5. Report Contents.

The emergency center's report shall include the following information for each encounter:

(1) facility name;

(2) patient identifier that allows linkage with patient record for follow-up investigation if needed;

(3) date of visit;

(4) time of visit;

(5) patient's age

(6) patient's sex

(7) patient's zip code for patient's residence;

(8) syndrome that was detected;

(9) diagnostic information and, if transmitted electronically, diagnostic codes assigned to the visit; and

(10) whether the patient was admitted to hospital.

R386-710-6. Epidemiological Review.

For each encounter, an emergency center shall allow a Department representative or agent to review the emergency center's medical record on the patient to assess whether the patient's illness may indicate a public health threat.

R386-710-7. Penalties.

Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed $2,500 upon an administrative finding of a first violation and up to $5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed $5,000 or a class B misdemeanor for the first violation and or a class A misdemeanor for any subsequent similar violation within two years.

KEY: disease reporting
January 15, 2002 **26-1-30**
26-6-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-2A. Inpatient Hospital Services.
R414-2A-100. Authority and Purpose.

(1) This rule defines the scope of inpatient hospital benefits available for the care and treatment of Medicaid clients who meet the level of care criteria for admission to an acute-care general hospital for treatment of disorders other than mental disease.

(2) Inpatient hospital services are required under Section 1901 et seq. and Section 1905(a)(1) of the Social Security Act, and by 42 CFR 440.10 (October 1, 1991, edition).

(3) This rule is authorized by Sections 26-1-5, 26-1-15, and 26-18-6, and by Subsections 26-18-3(2) and 26-18-5(3) and (4) and by 42 CFR 447.15 and 447.50, Oct. 1, 2000 ed.

R414-2A-300. Program Access Requirements.

(1) Each hospital providing inpatient services must have a utilization review plan, as described in 42 CFR 482.30 (October 1, 1991, edition), which is incorporated by reference.

(2) The attending physician or other practitioner of the healing arts must sign a physician attestation statement that meets the requirements of 42 CFR 412.46 (October 1, 1991, edition), which is incorporated by reference.

(3) The attending physician must certify and recertify the need for inpatient care as described in 42 CFR 441.152 and 456.60 (October 1, 1991, edition), which are incorporated by reference.

(4) All hospital admissions are subject to review by the department for appropriateness and medical necessity as detailed in R414-2A.

(5) For purposes of reimbursement, the day of admission is counted as a full day; the day of discharge is not counted.

(6) When a patient receives SNF-level, ICF-level, or other sub-acute care in an acute-care hospital or in a hospital with swing-bed approval, payment shall be made at the SNF or ICF rate.

(7) Inpatient hospital psychiatric services are covered Medicaid services for clients who live in the counties identified in Table 1 only when such services are coordinated through the contractor identified for the specified county:

TABLE 1

I.	Counties:	Salt Lake County Summit County
	Contractor:	Salt Lake Valley Mental Health, Salt Lake City, Utah
II.	Counties:	Carbon County Emery County Grand County
	Contractor:	Four Corners Community Mental Health Center, Price, Utah
III.	Counties:	Beaver County Garfield County Kane County Iron County Washington County
	Contractor:	Southwest Utah Mental Health Center, St. George, Utah

R414-2A-400. Services.

(1) Inpatient hospital services encompass all medically necessary and therapeutic Medicaid services and supplies that are ordered by a physician or other practitioner of the healing arts and are appropriate for the adequate diagnosis and treatment of a patient's illness. These services include nursing, therapy services, use of hospital facilities, the technical portion of clinical laboratory and radiology services, and medical social services. These services shall be furnished by the hospital.

(2) Drugs and biologicals, approved by the federal Food and Drug Administration and appropriate for inpatient care, are covered Medicaid services based on individual need and a physician's written order.

(3) Supplies, appliances, and equipment required for the care and treatment of a client during an inpatient stay are covered Medicaid services based on individual need and a physician's written order.

(4) Inpatient hospital intensive physical rehabilitation services are covered Medicaid services, as specified in R414-2B.

(5) Organ transplantation services are covered Medicaid services, as specified in R414-10A.

(6) Inpatient hospital psychiatric services are covered Medicaid services only when the severity of a patient's illness and the intensity of service required are such that these services cannot be provided in an alternative setting.

(7) Cosmetic, reconstructive, or plastic surgery is limited to:

(a) correction of a congenital anomaly;

(b) restoration of body form following an accidental injury; or

(c) revision of severe disfiguring and extensive scars resulting from neoplastic surgery.

(8) Inpatient hospital care for treatment of alcoholism or drug dependency is limited to medical treatment of symptoms associated with drug or alcohol detoxification.

(9) Abortion procedures are limited to those certified as medically necessary, approved by division consultants, and determined to meet the requirements of Section 26-18-4 and 42 CFR 441.203 (October 1, 1991, edition), which is incorporated by reference.

(10) Sterilization and hysterectomy procedures are limited to those that meet the requirements of 42 CFR 441, Subpart F (October 1, 1991, edition), which is incorporated by reference.

R414-2A-500. Limitations.

(1) Treatment of syndromes or disorders for which no specific therapies have been identified except for therapies that border on behavior modification or experimental or unproven practices, or for which medical necessity, appropriate utilization, and cost effectiveness cannot be assured, are not covered Medicaid services. The treatments are:

(a) treatment of sleep apnea, or sleep studies, or both;

(b) pain clinic services;

(c) treatment of eating disorders.

(2) Miscellaneous supplies, dressings, durable medical equipment, and drugs are not covered take-home supplies.

(3) Cosmetic, reconstructive, and plastic surgery procedures other than those specified in R414-2A-400(7), including all related services, supplies, and any institutional costs, are not covered Medicaid services.

(4) An inpatient admission for 24 hours or more solely for observation or diagnostic evaluation is not a covered Medicaid

service.

(5) Nonphysician psychosocial counseling services are not covered Medicaid services.

(6) An off-unit pass is limited to an inpatient rehabilitation or psychiatric admission pursuant to a written order by the attending physician, planned by the physician or interdisciplinary team through established goals and objectives, and adequately documented and evaluated in the progress notes of the patient's chart as supporting the patient's plan of care.

(7) A therapeutic leave of absence is limited to inpatient rehabilitation admissions pursuant to a written order by the attending physician, planned by the physician or interdisciplinary team through established goals and objectives, and adequately documented and evaluated in the progress notes of the patient's chart as supporting the patient's plan of care.

(8) Except as provided in subsections (c) through (e), a Medicaid client must pay a co-insurance payment for inpatient services.

(a) The Medicaid client out-of-pocket expense is limited to $220 per calendar year for inpatient hospital services.

(b) The Department shall deduct $220 from the reimbursement paid to the provider that provides the initial inpatient service.

(c) Medicaid clients in the following categories are exempt from co-insurance requirements

(1) children;

(2) pregnant women;

(3) institutionalized individuals; and

(4) individuals whose total gross income, before exclusions or deductions, is below the Temporary Assistance to Needy Families standard payment allowance.

(d) Emergency services are exempt from the co-insurance payment requirements.

(e) Inpatient services for family planning purposes are exempt from the co-insurance requirements.

R414-2A-600. Prior Authorization.

(3) All services related to organ transplantations require prior authorization.

(4) All inpatient psychiatric and rehabilitation services require prior authorization.

KEY: medicaid

February 1, 2002	**26-1-5**
Notice of Continuation December 2, 1997	**26-1-15**
	26-18-3(2)
	26-18-5(3)
	26-18-5(4)
	26-18-6

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-304. Income and Budgeting.
R414-304-1. Definitions.

The definitions in R414-1 and R414-301 apply to this rule. In addition:

(1) "Allocation for a spouse" means an amount of income that is the difference between the SSI federal benefit rate for a couple minus the federal benefit rate for an individual.

(2) "Basic maintenance standard (BMS)" means the income level for eligibility based on the number of family members who are counted in the medical assistance unit.

(3) "Benefit month" means a month in which an individual is eligible for Medicaid.

(4) "Federal poverty guidelines" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for means tested federal programs.

(5) Household size" means the number of family members, including the client, who are counted based on the criteria of the particular program to decide what level of income to use to determine eligibility.

(6) "Poverty-related program" means a medical assistance program that uses a percentage of the federal poverty guideline for the household size involved to determine eligibility

R414-304-2. A, B and D Medicaid and A, B and D Institutional Medicaid Unearned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, 416.1163 through 416.1166, and Appendix to Subpart K of 416, 1998 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) and 1612(b)(22) of the Compilation of the Social Security Laws in effect January 1, 1999 which are incorporated by reference. The Department shall not count as income any payments that are prohibited under other federal laws rom being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(a) "Deeming" or "deemed" means a process of counting income from a spouse of an aged, blind, or disabled person or from a parent of a blind or disabled child to decide what amount of income after certain allowable deductions, if any, must be considered income to an aged, blind, or disabled person or child.

(b) "Eligible spouse" means the member of a married couple who is either aged, blind, or disabled.

(c) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(d) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount shall not exceed 1/3 of the SSI payment plus $20.

(3) Only the portion of a VA check to which the client is legally entitled is countable income. VA payments for aid and attendance do not count as income. The portion of a VA payment which is made because of unusual medical expenses is not countable income. Other VA income based on need is countable income, but is not subject to the $20 general income disregard.

(4) The value of special circumstance items is not countable income if the items are paid for by donors.

(5) For A, B and D Medicaid two-thirds of child support received a month is countable unearned income. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind.

(6) For A, B and D Institutional Medicaid court-ordered child support payments must be paid to the Office of Recovery Services (ORS) when the child resides out-of-home in a Medicaid 24-hour care facility. If the child has no income or insufficient income to provide for a personal needs allowance, ORS will allow the parent to retain up to the amount of the personal needs allowance to send to the child for personal needs. All other child support payments received by the child or guardian that are not subject to collection by ORS shall count as unearned to the child.

(7) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

(8) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(9) SSA reimbursements of Medicare premiums are not countable income.

(10) Reimbursements of a portion of Medicare premiums made by the state Medicaid agency to an individual eligible for QI-Group 2 coverage are not countable income.

(11) Payments under a contract, retroactive payments from SSI and SSA reimbursements of Medicare premiums are not considered lump sum payments.

(12) Educational loans, grants, and scholarships guaranteed by the U.S. Department of Education are not countable income if the recipient is an undergraduate. Income from service learning programs is not countable income if the recipient is an undergraduate. Deductions are allowed from countable educational income if receipt of the income depends on school attendance and if the client pays the expense. Allowable deductions include:

(a) tuition;

(b) fees;

(c) books;

(d) equipment;

(e) special clothing needed for classes;

(f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount;

(g) child care necessary for school attendance.

(13) Except for an individual eligible for the Medicaid Work Incentive Program, the following provisions apply to non-institutional medical assistance:

(a) For A, B, or D Medicaid, the income of a spouse shall not be considered in determining Medicaid eligibility of a person who receives SSI. SSI recipients who meet all other Medicaid eligibility factors shall be eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind, or disabled person has more income after deductions than the allocation for a spouse, that income shall be deemed to be income to the aged, blind, or disabled spouse to determine eligibility.

(c) The Department shall determine household size and whose income counts for A or D Medicaid as described below.

(i) If only one spouse is aged or disabled:

(A) income of the ineligible spouse shall be deemed to be income to the eligible spouse when it exceeds the allocation for a spouse. The combined income shall then be compared to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the ineligible spouse's income shall not be counted and the ineligible spouse shall not be included in the household size or the BMS. Only the eligible spouse's income shall be compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged or disabled, the income of both spouses is combined and compared to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount, and one spouse receives SSI, only the income of the non-SSI spouse, after allowable deductions, shall be compared to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds the federal poverty guideline, then the income of both spouses, after allowable deductions, shall be compared to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, income of the non-covered spouse shall be deemed to the covered spouse when it exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, then only the covered spouse's income shall be counted. In both cases, the countable income shall be compared to the two-person poverty guideline. If it exceeds the limit, then income shall be compared to the BMS.

(I) If the non-covered spouse has deemable income, the countable income shall be compared to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have deemable income, then only the covered spouse's income shall be compared to a one-person BMS to calculate the spenddown.

(iii) If an aged or disabled person has a spouse who is blind, then income of the blind spouse shall be deemed to the aged or disabled person when this income exceeds the allocation for a spouse to determine eligibility for the poverty-related Aged or Disabled Medicaid programs. If the deemed income of the blind spouse does not exceed the allocation for a spouse, none of the blind spouse's income shall be counted. In either case, countable income shall be compared to the poverty guideline for a two-person household to determine eligibility for the aged or disabled spouse.

(A) If the countable income does not exceed the two-person poverty guideline, then the aged or disabled spouse shall be eligible under the poverty-related Aged or Disabled Medicaid program.

(B) If the countable income exceeds the two-person poverty guideline, then eligibility under the spenddown program shall be determined as described in (ii)(A) if the blind spouse receives SSI or as in (ii)(B)or (ii)(C)(I) or (II) if the blind spouse does not receive SSI.

(d) The Department shall determine household size and whose income counts for B Medicaid as described below.

(i) If the spouse of a blind client is aged, blind, or disabled and does not receive SSI, income of both spouses shall be combined and, after allowable deductions, compared to the BMS for a two-person household to calculate the spenddown.

(A) If only one spouse will be covered, or the aged or disabled spouse is eligible under the A or D poverty-related program, income of the non-covered spouse shall be deemed when it exceeds the allocation for a spouse. The total countable income shall then be compared to the BMS for a two-person household to calculate the spenddown.

(B) If the non-covered spouse's income does not exceed the allocation for a spouse, then only the covered spouse's income shall be counted and compared to the BMS for a one-person household.

(C) If the spouse of a blind client receives SSI, then only the income of the blind spouse shall be compared to the BMS for one.

(ii) If the spouse is not aged, blind, or disabled, income shall be deemed to the blind spouse when it exceeds the allocation for a spouse, and, after allowable deductions, the combined income shall be compared to the BMS for two. If the ineligible spouse's income does not exceed the allocation for a spouse, only the blind spouse's income, after allowable deductions, shall be compared to the BMS for one person to calculate the spenddown.

(e) The Department shall determine household size and whose income counts for QMB, SLMB, and QI assistance as described below.

(i) If both spouses receive Part A Medicare and both want coverage, income shall be combined and compared to the applicable percentage of the poverty guideline for a two-person household. SSI income shall not be counted.

(ii) If one spouse receives Part A Medicare, and the other spouse is aged, blind, or disabled, does not receive Part A Medicare, or does not want coverage, then income of the ineligible spouse shall be deemed to the eligible spouse when it exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse shall be counted. In both cases, the countable income shall be compared to the applicable percentage of the federal poverty guideline for a two-person household.

(f) If any parent in the home receives SSI, the income of neither parent shall be considered to determine a child's eligibility for B or D Medicaid.

(g) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(14) For institutional Medicaid, the Department shall only count the client in the household size and only count the client's income to determine contribution to cost of care.

(15) Interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No. 105-285 effective October 27, 1998 shall not count as income.

R414-304-3. Medicaid Work Incentive Program Unearned Income Provisions.

(1) The Department adopts 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, and Appendix to Subpart K of 416, 1998 ed., which are incorporated by reference. The Department adopts Pub. L. No. 105-33 (4735) enacted August 5, 1997, Pub. L. No. 104-193, Section 103 effective August 22, 1996, and Pub. L. No. 105-285, Section 404-416 effective October 27, 1998 which are incorporated by reference. The Department adopts Pub. L. No. 104-204 (1805)(c) and (d) enacted September 26, 1996 and 105-306 (7)(a) and (c) enacted October 28, 1998 which is incorporated by reference.

(2) The Department shall allow the provisions found in R414-304-2 (3) through (12) and (14).

(3) The income from an ineligible spouse or parent shall be determined by the total of the earned and unearned income using the appropriate exclusions in 416.1161, except that court ordered support payments would not be allowed.

(4) For the Medicaid Work Incentive Program, the income of a spouse or parent shall not be considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other Medicaid Work Incentive Program eligibility factors shall be eligible without paying a Medicaid buy-in premium.

(5) The Department shall determine household size and whose income counts for the Medicaid Work Incentive Program as described below:

(a) If the Medicaid Work Incentive Program individual is an adult and is not living with a spouse, count only the income of the individual. After allowable deductions, the net income shall be compared to 250% of the federal poverty guideline for one person.

(b) If the Medicaid Work Incentive Program individual is living with a spouse, combine their income before allowing any deductions. Include in the household size the spouse and any children under age 18. Also include in the household size any children who are 18, 19, or 20 and are full-time students. Compare the net income of the Medicaid Work Incentive Program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the Medicaid Work Incentive Program individual is a child living with a parent, combine the income of the Medicaid Work Incentive Program individual and the parents before allowing any deductions. Include in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students. Compare the net income of the Medicaid Work Incentive Program individual and their parents to 250% of the federal poverty guideline for the household size involved.

(6) Interest accrued on an Individual Development Account as defined in Sections 404-416 Of Pub. L. No. 105-285 effective October 27, 1998 shall not count as income.

R414-304-4. Family Medicaid and Institutional Family Medicaid Unearned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed., and 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(v), 233.20(a)(3)(xxi), 233.20 (4)(ii), and 233.51, 1998 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) of the Compilation of the Social Security Laws in effect January 11, 1999, which is incorporated by reference. The Department shall not count as income any payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(a) A "a bona fide loan" is a loan that has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment.

(b) "Unearned income" means cash received for which the individual performs no service.

(c) "Quarter" means any three month period that includes January through March, April through June, July through September or October through December.

(3) Bona fide loans are not countable income.

(4) Support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services is not countable income.

(5) The value of food stamp assistance is not countable income.

(6) SSI and State Supplemental Payments are income for children receiving Child, Family, Newborn, or Newborn Plus Medicaid.

(7) $30 is deducted from rental income if that income is consistent with community standards. Additional deductions are allowed if the client can prove greater expenses. The following expenses in excess of $30 may be allowed:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property. This includes utility costs.

(c) only the interest can be deducted on a loan or mortgage made for upkeep or repair;

(d) if meals are provided to a boarder, the value of a one-person food stamp allotment.

(8) Cash gifts that do not exceed $30 a quarter per person in the assistance unit are not countable income. A cash gift may be divided equally among all members of the assistance unit.

(9) Deferred income is countable income when it is received by the client if receipt can be reasonably anticipated.

(10) The value of special circumstance items is not countable income if the items are paid for by donors.

(11) Home energy assistance is not countable income.

(12) All money received from an insurance settlement for destroyed exempt property is counted unless the income is used to purchase replacement property. If income received exceeds the money needed to replace the property, the difference is countable income.

(13) SSA reimbursements of Medicare premiums are not countable income.

(14) Payments from trust funds are countable income if the payments are not available on demand.

(15) FEP, Working Toward Employment Program payments, and Refugee Cash Assistance are not countable income.

(16) Only the portion of a Veteran's Administration check to which the client is legally entitled is countable income.

(17) When the entitlement amount of a check differs from the payment amount, the entitlement amount is countable income unless the deduction is involuntary.

(18) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. Clients who dispute ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to them. Funds that are successfully disputed are not countable income.

(19) The income of an alien's sponsor is not countable income.

(20) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

(21) Interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No.105-285 effective October 27, 1998 shall not count as income.

R414-304-5. A, B and D Medicaid and A, B and D Institutional Medicaid Earned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed., and 20 CFR 416.1110 through 416.1112, 1999 ed., which are incorporated by reference. The department adopts Subsection 1612(b)(4)(A) and (B) of the Compilation of the Social Security Laws, in effect January 1, 1999, which is incorporated by reference.

(2) The Department shall allow SSI recipients, who have a plan for achieving self support approved by the Social Security Administration, to set aside income that allows them to purchase work-related equipment or meet self support goals. This income shall be excluded and may include earned and unearned income.

(3) Expenses relating to the fulfillment of a plan to achieve self-support shall not be allowed as deductions from income.

(4) For A, B and D Medicaid, earned income used to compute a needs-based grant is not countable.

(5) For A, B and D Institutional Medicaid, $125 shall be deducted from earned income before contribution towards cost of care is determined.

(6) For A, B and D Institutional Medicaid impairment-related work expenses shall be allowed as an earned income deduction.

(7) Capital gains shall be included in the gross income from self-employment.

(8) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(9) No deductions shall be allowed for the following business expenses:

(a) transportation to and from work;

(b) payments on the principal for business resources;

(c) net losses from previous tax years;

(d) taxes;

(e) money set aside for retirement;

(f) work-related personal expenses;

(g) depreciation.

(10) Net losses of self-employment from the current tax year may be deducted from other earned income.

(11) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any A, B, or D category programs that use a percentage of the federal poverty guideline as an eligibility income limit.

R414-304-6. Family Medicaid and Family Institutional Medicaid Earned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(BA), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), 1999 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(b) "Part-time student" means a person who is enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours a day, whichever is less.

(c) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that will lead to gainful employment.

(d) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(e) "Aid to Families with Dependent Children" (AFDC) means a state plan for aid that was in effect on June 16, 1996.

(f) "1931 Family Medicaid" means a medical assistance program that uses the AFDC eligibility criteria in effect on June 16, 1996 along with any subsequent amendments in the State Plan, except that 1931 Family Medicaid eligibility for recipients of TANF cash assistance follows the eligibility criteria of the Family Employment Program.

(g) "Temporary Assistance to Needy Families" (TANF) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Family Employment Program (FEP).

(3) The income of a dependent child is not countable income if the child is:

(a) in school or training full-time;

(b) in school or training part-time, if employed less than 100 hours a month;

(c) in JTPA.

(4) For Family Medicaid the 30 and 1/3 deduction is allowed if the wage earner has received a TANF financial payment or 1931 Family Medicaid in one of the four previous months and this disregard has not been exhausted.

(5) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(6) Items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(7) For Family Medicaid, the Department shall deduct child care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to $200.00 per child under age 2 and $175.00 per child age 2 and older may be deducted. A maximum of up to $160.00 per child under age 2 and $140.00 per child age 2 and older a month may be deducted from the earned income of clients working less than 100 hours in a calendar month.

(8) For Family Institutional Medicaid, the Department shall deduct child care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to $160 a month per child may be deducted. A maximum of up to $130 a month shall be deducted from the earned income of clients working less than 100 hours in a calendar month.

(9) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any family Medicaid programs that use a percentage of the federal poverty guideline as an eligibility income limit, and for determining eligibility for 1931 Family Medicaid.

(10) Under 1931 Family Medicaid, for households that pass the 185% gross income test, if net income does not exceed the applicable BMS, the household shall be eligible for 1931 Family Medicaid. No health insurance premiums or medical bills shall be deducted from gross income to determine net income for 1931 Family Medicaid.

(11) For Family Medicaid recipients who otherwise meet 1931 Family Medicaid criteria, who lose eligibility because of earned income that does not exceed 185% of the federal poverty guideline, the state shall disregard earned income of the specified relative for six months to determine eligibility for 1931 Family Medicaid. Before the end of the sixth month, the state shall conduct a review of the household's earned income. If the earned income exceeds 185% of the federal poverty guideline, the household will be eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

After the first six months of disregarding earned income, if the average monthly earned income of the household does not exceed 185% of the federal poverty guideline for a household of the same size, the state shall continue to disregard earned income for an additional six months to determine eligibility for 1931 Family Medicaid. In the twelfth month of receiving such income disregard, if the household continues to have earned income, the household will be eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

R414-304-7. A, B and D Medicaid and Family Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.831, 1998 ed., which is incorporated by reference.

(2) The Department shall allow health insurance premiums providing coverage for anyone in the family or the BMS as deductions in the month of payment. The entire payment shall be allowed as a deduction and will not be prorated. The Department shall not allow health insurance premiums as a deduction for determining eligibility for the poverty-related medical assistance programs or 1931 Family Medicaid.

(3) Medicare premiums shall not be allowed as deductions if the state reimburses the client.

(4) Medical expenses shall be allowed as deductions only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, client's spouse, parent of an unemancipated client or unemancipated sibling of an unemancipated client, a deceased spouse or a deceased dependent child.

(b) The medical bill shall not be paid by Medicaid or a third party.

(c) The medical bill remains unpaid or was paid during the month of application or at anytime in the three months immediately preceding the month of application. The date the medical service was provided on an unpaid expense does not matter.

(5) A medical expense shall not be allowed as a deduction more than once.

(6) A medical expense allowed as a deduction must be for a medically necessary service. The Department of Health shall be responsible for deciding if services are not medically necessary.

(7) The Department shall not allow as a medical expense, co-payments required under the State Medicaid Plan that are owed or paid by the client to receive Medicaid-covered services.

(8) To determine countable income for the 100% poverty-related Aged and Disabled Medicaid programs, the Department shall deduct $8 from the individual's income, or from the combined income of the individual and the individual's spouse before making other allowable deductions.

(9) For poverty-related medical assistance, an individual or household shall be ineligible if countable income exceeds the applicable income limit. Medical costs are not allowable deductions for determining eligibility for poverty-related medical assistance programs. No spenddown shall be allowed to meet the income limit for poverty-related medical assistance programs.

(10) As a condition of eligibility, clients must certify on

Form 1049B that medical expenses in the benefit month are expected to exceed the spenddown amount. The client must do this when spenddown starts, at each review, and when the client chooses a different spenddown option. If medical expenses are less than or equal to the spenddown, the client shall not be eligible for that month. The client may elect to use allowable medical expenses the client still owes from previous months to reduce the spenddown so that expected medical expenses for the benefit month exceed the remaining spenddown owed.

(11) Pre-paid medical expenses shall not be allowed as deductions.

(12) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(13) Clients may choose to meet their spenddown obligation by incurring medical expenses or by paying a corresponding amount to the Department.

(14) For A, B and D Medicaid institutional costs shall be allowed as deductions if the services are medically necessary. The Department of Health shall be responsible for deciding if services for institutional care are not medically necessary.

(15) No one shall be required to pay a spenddown of less than $1.

(16) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in an HMO. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

R414-304-8. Medicaid Work Incentive Program Income Deductions.

(1) The Department shall allow the provisions found in R414-304 (1) through (3) and (14).

(2) The Department shall allow the following deductions from income in determining net income that is compared to 250% of the federal poverty guideline:

(a) $20 from unearned income. If there is less than $20 in unearned income, deduct the balance of the $20 from earned income;

(b) $65 plus one have the remainder of earned income.

(3) For the Medicaid Work Incentive Program, an individual or household shall be ineligible if countable income exceeds the applicable income limit. Health insurance premiums and medical costs are not allowed as deductions from income before comparing countable income to the applicable limit.

(4) Health insurance premiums paid by the Medicaid Work Incentive Program individual to purchase health insurance for themselves or other family members in the household shall be allowed as a deduction from income before determining the buy-in premium.

(5) An eligible individual may meet the buy-in premium with cash.

R414-304-9. A, B, and D Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.725 and 435.726, 1998 ed., which are incorporated by reference. The Department adopts Subsection 1902(r)(1) and 1924 of the Compilation of the Social Security Laws, in effect January 1, 1999, which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse who lives with the spouse.

(b) "Dependent" means earning less than $2,000 a year, not being claimed as a dependent by any other individual, and receiving more than half of one's annual support from the client or the client's spouse.

(3) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the Department shall allow health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. Health insurance premiums shall be allowed as a deduction in the month due. The payment shall not be pro-rated.

(b) The Department shall allow the portion of a combined premium, attributable to the institutionalized or waiver-eligible client, as a deduction if the combined premium includes a spouse or dependent family member and is paid from the funds of the institutionalized or waiver eligible client.

(4) Medicare premiums shall not be allowed as deductions if the state pays the premium or reimburses the client.

(5) Medical expenses shall be allowed as deductions only if the expenses meet all of the following conditions:

(a) the medical service was received by the client;

(b) the unpaid medical bill shall not be paid by Medicaid or a third party;

(c) the paid medical bill can be allowed only in the month paid. No portion of any paid bill can be allowed after the month of payment.

(6) A medical expense shall not be allowed as a deduction more than once.

(7) A medical expense allowed as a deduction must be for a medically necessary service. The Department of Health shall be responsible for deciding if services are not medically necessary.

(8) Pre-paid medical expenses shall not be allowed as deductions.

(9) The Department shall not allow as a medical expense, co-payments required under the State Medicaid Plan that are owed or paid by a client to receive Medicaid-covered services.

(10) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(11) Institutionalized clients are to contribute all countable income remaining after allowable deductions to the institution as their contribution to the cost of their care.

(12) The personal needs allowance shall be equal to $45.

(13) Except for an individual eligible for the Personal Assistance Waiver, an individual receiving assistance under the terms of a Home and Community-Based Services Waiver shall

be eligible to receive a deduction for a non-institutionalized, non-waiver-eligible spouse and dependent family member as if that individual were institutionalized.

(14) Income received by the spouse or dependent family member shall be counted in calculating the deduction if that type of income is countable to determine Medicaid eligibility. No income disregards shall be allowed. Certain needs-based income and state supplemental payments shall not be counted in calculating the deduction. Tribal income shall be counted.

(15) If the income of a spouse or dependent family member is not reported, no deduction shall be allowed for the spouse or dependent family member.

(16) A client shall not be eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(17) To determine a deduction for a community spouse, the standard utility allowance for households with heating costs shall be equal to $150. For households without heating costs, actual utility costs shall be used. The maximum allowance for a telephone bill is $20. Clients shall not be required to verify utility costs more than once in a certification period.

(18) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in an HMO. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

R414-304-10. Budgeting.

(1) The Department adopts 42 CFR 435.601 and 435.640, 1998 ed., which are incorporated by reference. The Department adopts 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, 1998 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(b) "Prospective eligibility" means that eligibility is determined each month for the immediately following month based on a best estimate of income.

(c) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(d) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(e) "Income anticipating" means using current facts regarding rate of pay and number of working hours to anticipate future monthly income.

(f) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(g) "Factoring" means that a monthly amount shall be determined to take into account the months of pay where an individual receives a fifth paycheck when paid weekly or a third paycheck when paid every other week. Weekly income shall be factored by multiplying the weekly amount by 4.3 to obtain a monthly amount. Income paid every other week shall be factored by 2.15 to obtain a monthly amount.

(h) "Reportable income changes" are those that cause income to change by more than $25. All income changes must be reported for an institutionalized individual.

(3) The Department shall do prospective budgeting on a monthly basis.

(4) A best estimate of income based on the best available information shall be an accurate reflection of client income in that month.

(5) The Department shall use the best estimate of income to be received or made available to the client in a month to determine eligibility and spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) The Department shall count income in the following manner:

(a) For QMB, SLMB, QI, Medicaid Work Incentive Program, and A, B, D, and Institutional Medicaid income shall be counted as it is received. Income that is received weekly or every other week shall not be factored.

(b) For Family Medicaid programs, income that is received weekly or every other week shall be factored.

(8) Lump sums are income in the month received. Any amount of a lump sum remaining after the end of the month of receipt is a resource. Lump sum payments can be earned or unearned income.

(9) Income paid out under a contract shall be prorated to determine the countable income for each month. Only the prorated amount shall be used to determine spenddown or eligibility for a month. If the income will be received in fewer months than the contract covers, the income shall be prorated over the period of the contract. If received in more months than the contract covers, the income shall be prorated over the period of time in which the money will be received.

(10) To determine the average monthly income for farm and self-employment income, the Department shall determine the annual income earned during one or more past years, or other applicable time period, and factor in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income shall be adjusted during the year when information about changes or expected changes is received by the Department.

(11) Student income received other than monthly shall be prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar

months classes are in session.

(12) Income from Indian trust accounts not exempt by federal law shall be prorated to determine the monthly countable income when the income varies from month to month, or it is received less often than monthly. This is done by dividing the total amount by the number of months it covers.

(13) Eligibility for retroactive assistance shall be based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method shall be used for retroactive benefit months, except when the income was not being received during, and was not intended to cover, the retroactive months.

R414-304-11. Income Standards.

(1) The Department adopts Sections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f) and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 1999, which are incorporated by reference.

(2) The Aged and Disabled poverty-related Medicaid income standard shall be calculated as 100% of the federal non-farm poverty guideline. If an Aged or Disabled person's income exceeds this amount the current Medicaid Income Standards (BMS) shall apply unless the disabled individual or a disabled aged individual has earned income. In this case follow the income standards for the Medicaid Work Incentive Program.

(3) The income standard for the Medicaid Work Incentive Program shall be equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount the current Medicaid Income Standards (BMS) shall apply. The Department shall charge a premium equal to 20% of the countable income of the Medicaid Work Incentive Program eligible individual, or the eligible individual and eligible spouse, when this income exceeds 100% of the federal poverty guideline for the number of eligible individuals. When the eligible individual is a minor child, the Department shall charge a premium equal to 20% of the child's countable income when this income exceeds 100% of the federal poverty guideline for a one person household.

(4) The income limit for pregnant women, and children under one year of age, shall be equal to 133% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) shall apply.

(5) The current Medicaid income standards (BMS) are as follows:

TABLE

Household Size	Medicaid Income Standard (BMS)
1	382
2	468
3	583
4	683
5	777
6	857
7	897
8	938
9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

R414-304-12. A, B and D Medicaid, QMB, SLMB, and QI Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 1998 ed., which are incorporated by reference. The Department adopts Subsections 1902(l)(1), (2), and (3), 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 1999, which are incorporated by reference.

(2) The following individuals shall be counted in the BMS for A, B and D Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for A, B, or D Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemable income above the allocation for a spouse.

(3) The following individuals shall be counted in the household size for A or D poverty-related Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemable income above the allocation for a spouse.

(4) The following individuals shall be counted in the household size for a QMB, SLMB, or QI case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemable income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemable income above the allocation for a spouse.

(5) The following individuals shall be counted in the household size for the Medicaid Work Incentive Program:

(a) the client;

(b) a spouse living in the same home;

(c) parents living with a minor child;

(d) children under age 18

(e) children age 18, 19, or 20 if they are in school full-time,

(6) Eligibility for A, B and D Medicaid and the spenddown, if any; A and D poverty-related Medicaid; and QMB, SLMB, and QI programs shall be based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on R414-304–2.

(7) Eligibility for the Medicaid Work Incentive Program shall be based on income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client.

(8) If a person is "included" in the BMS, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance.

(9) If a person is "included" in the household size, it means that family member shall be counted as part of the household to determine what income limit applies, regardless of whether that family member's income will be counted or whether that family member will receive medical assistance.

R414-304-13. Family Medicaid Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), 1998 ed., which are incorporated by reference.

(2) Except for determinations under 1931 Family Medicaid, any unemancipated minor child may be excluded from the Medicaid coverage group at the request of the specified relative responsible for the children. An excluded child shall be considered an ineligible child and shall not be counted as part of the household size for deciding what income limit will be applicable to the family. Income and resources of an excluded child shall not be considered when determining eligibility or spenddown.

(3) The Department shall not use a grandparent's income to determine eligibility or spenddown for a minor child, and the grandparent shall not be counted in the household size. A cash contribution from the grandparents received by the minor child or parent of the minor child is countable income.

(4) Except for determinations under 1931 Family Medicaid, if anyone in the household is pregnant, the unborn child shall be included in the household size. If a medical authority confirms that the pregnant woman will have more than one child, all of the unborn children shall be included in the household size.

(5) If a child is voluntarily placed in foster care and is in the custody of a state agency, the parents shall be included in the household size.

(6) Parents who have relinquished their parental rights shall not be included in the household size.

(7) If a court order places a child in the custody of the state, and the child is temporarily placed in an institution, the parents shall not be included in the household size.

(8) If a person is "included" in the household size, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS level or, in the case of poverty-related programs, which poverty guideline level will apply to determine eligibility for the client or family.

R414-304-14. A, B and D Institutional and Waiver Medicaid and Family Institutional Medicaid Filing Unit.

(1) For A, B, and D institutional, and home and community-based waiver Medicaid, the Department shall not use income of the client's parents or the client's spouse to determine eligibility and spenddown.

(2) For Family institutional, and home and community-based waiver Medicaid programs, the Department adopts 45 CFR 206.10(a)(1)(vii), 1998 ed., which is incorporated by reference.

(3) The Department shall base eligibility and spenddown on the income of the client and the sponsor of an alien who is subject to deeming according to the rules described in 20 CFR 416.1166a, 1998 ed., which is incorporated by reference.

KEY: financial disclosure, income, budgeting
January 14, 2002 26-18-1
Notice of Continuation February 6, 1998

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-50. Residential Certificate Child Care Standards.
R430-50-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-50-2. Purpose.

This rule establishes standards to protect the health and safety of children who receive services from a residential certificate child care provider.

R430-50-3. Definition.

(1) "Residential certificate child care" means child care provided in the home of a provider for five to eight children, having a regularly scheduled, ongoing enrollment, for direct or indirect compensation.

(2) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.

R430-50-4. Voluntary Certificate.

A provider of child care for less than five children in the providers home may request a residential certificate.

R430-50-5. Owner Qualifications.

(1) To be eligible for an initial residential certificate the owner must:

(a) be at least 18 years of age;

(b) have a current course completion in basic first-aid and Cardiac Pulmonary Resuscitation (CPR). First-aid and CPR certification refers to courses given by the American Red Cross, the Utah Emergency Medical Training Council, or other courses that the licensee can demonstrate to the Department to be equivalent; and

(c) meet at least one of the following:

(i) have a high school diploma or G.E.D.;

(ii) be an approved federal food program provider as of July 1, 1998; or

(iii) if (i) or (ii) cannot reasonably be met by the owner and an undue hardship is created, the owner may request a variance from the Department.

(2) The owner shall complete a minimum of five hours of Department approved training within 90 days of initial certificate issuance. Documentation of training shall be maintained at the home of the owner. Training will be Department-approved if it includes:

(a) reporting requirements for witnessing or suspicion of abuse, neglect and exploitation;

(b) proper hand washing and sanitation techniques;

(c) recognizing early signs of illness and determining if there is a need to exclude a sick child from the home;

(d) accident prevention and safety principles;

(e) positive guidance for the management of children;

(f) child development;

(g) age appropriate activities for children; and

(h) If child care is provided to children under the age of two, the training must also include:

(i) Preventing Shaken Baby Syndrome;

(ii) Coping with crying babies; and

(iii) Preventing Sudden Infant Death Syndrome.

(3) The owner shall ensure that each care giver who has direct contact with or access to children successfully completes the required five hours of department approved training before starting assigned duties.

R430-50-6. Care Giver to Child Ratios.

(1) The owner may not care for more than eight children including the owner's own children under age four. The owner also may not care for more than two children under age two, including the owner's own children under age two.

(2) The owner or substitute care giver shall be physically present on-site and provide care and supervision of children at all times, both indoors and outdoors. This includes:

(a) awareness of and responsibility for the ongoing activity of each child and being near enough to intervene if needed; and

(b) frequent in person observations of children sleeping in cribs and play pens.

(3) The owner may permit a child to participate in supervised out of home activities without the care giver if:

(a) the care giver has prior written permission from the child=s parent or guardian for the child=s participation; and

(b) the licensee has clearly assigned the responsibility for the child=s whereabouts and supervision throughout the period of care

(4) The owner may make arrangements for a substitute who is at least 18 years old and who is capable of providing care and supervision of children and handling emergencies in the absence of the care giver.

R430-50-7. Child Discipline.

(1) The owner shall inform all care givers, parents or guardians and children of expected conduct by setting clear and understandable rules.

(2) Disciplinary measures shall be implemented so as to encourage the child's self-control to reduce the risk of injury and any adverse health effects to self or others. Positive discipline measures include but are not limited to:

(a) positive behavioral rewards;

(b) other forms of positive guidance;

(c) redirection; or

(d) time out.

(3) Discipline measures shall not include any of the following:

(a) corporal punishment, including hitting, shaking, biting, pinching, or spanking;

(b) restraining a child's movement by binding or tying;

(c) using abusive, demeaning or profane language;

(d) withdrawal of food or bathroom opportunities; or

(e) confining a child in a locked closet, room, or similar area; or

(f) forcing or withdrawing food, rest, or bathroom opportunities.

R430-50-8. Records.

(1) The owner shall obtain from the parent or legal guardian an admission agreement, which identifies the following:

(a) child's full name and nickname;

(b) parent or guardian's name, address and day time phone

number;

(c) name, address and phone number of at least one additional person to be notified in the event of an emergency if the parent or guardian cannot be located;

(d) name, address and phone number of the child's primary source of emergency health and dental care;

(e) description of any food sensitivities, allergies or special food needs; and

(f) immunization record.

(2) The owner shall obtain, in advance, from the parent or legal guardian the names, addresses and phone numbers of persons authorized to take the child from the residence.

(3) The owner shall maintain documentation that all individuals in the home comply with R430-6, Background Clearance.

R430-50-9. Child Health and Medications.

(1) The owner shall inform the parents or guardians of all injuries and incidents that occur during the child's stay at the home.

(a) The owner shall immediately notify the parents or guardians if medical treatment is required.

(b) For any emergency that requires a response by emergency medical treatment providers, fatality, or hospitalization of a child in care, the owner shall:

(i) notify the Department within 24 hours of occurrence, either by phone or facsimile; and

(ii) submit to the Department within five business days of occurrence a written injury and accident report.

(2) If an owner chooses to administer medications, then the oral over-the counter and all prescription medications must be in the original or pharmacy container, have the original label, include the child's name, have child proof caps, and have written instructions for administration.

(a) The parent or guardian shall provide written permission for the administration of all medications.

(b) The owner shall report any adverse reaction to a medication or error in administration to the parent or legal guardian immediately upon recognizing the error or reaction.

(c) The owner shall ensure that all medications are secured from access to children. If medications are required to be refrigerated, then they shall be stored in spill-proof packaging.

(d) The owner will return all unused and out-of-date medications to the parent or guardian.

(3) The owner may not admit or provide care to a child without proof of current immunizations, or evidence of conditional enrollment, or evidence of a personal, medical or religious exemption. Conditional enrollment means that the child has received at least one dose of each required vaccine prior to enrollment and be on a schedule for subsequent immunizations.

(4) The owner shall inform parents of communicable illnesses or parasites on the day of discovery.

(5) The owner shall ensure that the use and accessibility to illegal substances or sexually explicit materials are prohibited by any person anywhere on the premises during the hours of operation when children are in care.

R430-50-10. Fire, Safety, and Sanitation.

(1) The owner shall have a disaster plan in case of fire, flood, earthquake, blizzard, power failure or other disasters that could create structural damage to the facility or pose a health hazard. The owner shall also have an emergency plan in the case of a missing child, death or serious injury to a child, which includes the name of a substitute care giver in the event the owner must leave the residence for any reason.

(a) A first aid kit shall be available in the home.

(b) The owner shall maintain an operating telephone in the home, unless there is a utility failure.

(c) The owner shall post the names and telephone numbers of the emergency medical personnel, fire department, police, and poison control by the telephone.

(2) The owner shall maintain fire extinguishers and smoke detectors in good operating condition on each floor occupied by children. Two exits, leading to an open space at ground level, shall be present to permit the orderly evacuation of children. If the basement is used to provide child care, at least one exit shall be present leading to an open space at ground level.

(3) Each home shall have an outdoor play space which is safe, free from hazards, located away from traffic or water hazards, and is available on the premises or is easily and safely accessible to the home. If a fence is required to protect children from any traffic or water hazards then the fence shall be at least four feet high. If local ordinances conflict, the owner may request a variance from the Department. Any gaps within the fence and the bottom edges of the fence shall not be more than three and one-half inches above the ground.

(4) If children are diapered at the home, then diapering shall occur in an area separate from food storage, food preparation, and eating area. A smooth nonabsorbent diaper changing surface and a sanitary container for soiled and wet diapers shall be available.

(5) Care givers and children shall wash their hands after using the toilet, before and after eating and before and after food preparation.

(6) Equipment and furniture must be durable, in good repair, structurally sound, and stable. Indoor and outdoor play spaces, toys and equipment shall be maintained in a safe manner to prevent injury to children.

(7) Dangerous items, such as sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.

(8) Electrical outlets accessible to children four years of age and younger shall be protected or capped with safety devices.

(9) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(10) There shall be adequate housekeeping to maintain a clean and sanitary home, to control, and eliminate the presence of insects, rodents, and other vermin on the premises.

(11) The owner shall ensure that there are no firearms or other weapons accessible to children during times children are on the premises. Firearms and other weapons shall be stored separately from ammunition and all shall be in a locked cabinet or area.

(12) If the owner has pets at the home:

(a) the animals shall be clean and in good health;

(b) the animals shall have current vaccination records

available for all diseases transmissible to humans;

(c) the animals shall have no history of dangerous or aggressive behavior;

(d) the children shall not clean nor assist with the cleaning of animals, animal cages, pens or equipment;

(e) the animal cages and equipment shall not be cleaned in food preparation or food storage areas; and

(f) Children shall not be permitted to handle reptiles, including turtles and lizards.

R430-50-11. Transportation.

Only the owner may transport children in non-public vehicles. Children must be transported in the following manner:

(1) The vehicle is licensed, registered and inspected.

(2) The owner has a current Utah driver's license.

(3) The vehicle and owner are insured.

(4) The vehicle is equipped with individual, size appropriate safety restraints.

R430-50-12. Food Service.

(1) A meal or snack shall be served to the children at least every three hours. Infants shall be fed on demand or according to parent directions.

(2) The food preparation area shall be clean and sanitary.

(3) All care givers who prepare or serve food and snacks must have a current food handlers permit.

R430-50-13. Penalty.

The Department may impose civil monetary penalties in accordance with Title 63, Chapters 46b, Administrative Procedures Act and Section 26-39-108, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of a child, the department may impose a civil money penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a child, the department may impose a civil money penalty of $1,050 to $5,000 per day.

KEY: child care facilities
January 14, 2002 26-39

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-60. Hourly Child Care Center.
R430-60-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-60-2. Purpose.

The purpose of this rule is to establish standards for the operation and maintenance of hourly care child care centers. It establishes minimum requirements for the health and safety of children in licensed programs. Hourly programs which would permit children to access the entire facility or area if the children are attended by parents, are exempt from the requirement to obtain a license.

R430-60-3. Definitions.

"Direct Supervision" means that the care giver can see and hear the children under age six, and is near enough to intervene when needed. Care givers must be able to hear school-age children and be near enough to intervene.

R430-60-4. License Required.

A person must obtain an hourly child care center license if he:

(1) provides child care not in a personal residence;

(2) provides care for five or more children for less than 24 hours a day, but not on a regular schedule; and

(3) receives direct or indirect compensation.

R430-60-5. Administration and Organization.

(1) The licensee of the program shall exercise supervision over the affairs of the program and assure:

(a) compliance with federal, state, and local laws and for the overall organization, management, operation and control of the facility;

(b) establishment and implementation of policies and procedures for the health and safety of children in the center; and

(c) appointment of a qualified director who shall assume full responsibility for the day-to-day operation and management of the facility.

(2) The director of the hourly care program shall have the following qualifications:

(a) be at least 21 years of age;

(b) have knowledge of applicable laws and rules;

(c) except for directors of a program licensed before June 1, 1998, the director must have a high school diploma or GED equivalent; and:

(i) a bachelor's or associate's degree in Early Childhood Education or Child Development; or

(ii) a bachelor's degree in a related field with documented four courses of higher education completed in child development; or

(iii) a national or state certification such as Certified Childcare Professional, National Administrator Credential, Child Development Associate (CDA); or

(iv) two years experience in child care, elementary education, or a related field.

(3) The director shall ensure that adequate direct supervision is maintained whenever the program is operating. The care giver-to-child ratios established in R430-60-9 are minimum requirements only. The director shall ensure that policies exist to adjust these ratios when the age and number of children require additional care givers to maintain adequate levels of supervision and care.

R430-60-6. Personnel.

(1) The director shall ensure that each care giver and volunteer who has direct contact with or access to children are oriented to the licensed program and successfully completes the required orientation training before starting assigned duties. The completion of the orientation must be documented in the individual's personnel record. The orientation training must include:

(a) procedures for maintaining health and safety, and handling emergencies and accidents;

(b) specific job responsibilities;

(c) child discipline procedures of R430-60-8;

(d) reporting requirements for witnessing or suspicion of abuse, neglect and exploitation; and

(e) releasing children to authorized individuals.

(2) All care givers employed to meet the minimum care giver to child ratios who provide services shall be at least 18 years of age or have completed high school or a GED. In addition to the required staff ratios, an individual who is 16 years old, if he works under the direct supervision of a competent care giver who has completed the minimum of 10 hours in-service training ,may provide childcare services.

(3) There shall be at least one care giver on duty in the center during business hours who has a current course completion in basic child and infant first-aid and Cardiac Pulmonary Resuscitation (CPR), and training in the Heimlich maneuver for treatment of an obstructed airway. First-aid and CPR refers to courses given by the American Red Cross, the Utah Emergency Medical Training Council, or other courses that the licensee can demonstrate to the Department to be equivalent;

(4) All care givers shall receive a minimum of 10 hours of documented in-service training annually. At least five hours of in-service training shall be in person from a person not affiliated with the license holder. The training shall include the following:

(a) accident prevention and safety principles;

(b) positive guidance for the management of children;

(c) child development; and

(d) age appropriate activities for children.

(5) If childcare is provided to children under the age of two, the following in-service topics are required:

(a) Preventing Shaken Baby Syndrome;

(b) Coping with crying babies; and

(c) Preventing Sudden Infant Death Syndrome.

(6) The licensee shall ensure that all care givers complete in-service training, and a record of the fact is made in the care giver's personnel record. The record must include the date training was completed, the topics covered, and trainer's name and organizational affiliation.

(7) The director shall ensure that all care givers are screened for tuberculosis using the Mantoux tuberculin skin test

method within two weeks of assuming care giver responsibilities. Tuberculin skin testing does not need to be repeated during the employment period unless the employee develops signs and symptoms of the disease, as determined by a health care professional.

(a) All care givers with a skin test that indicate potential exposure to tuberculosis shall receive a medical evaluation for tuberculosis disease.

(b) All care givers who have documentation of previous positive reaction to the Mantoux tuberculin skin test shall present documentation of completion of therapy for tuberculosis infection or evidence of a negative chest radiograph within the past 12 months.

(c) Repeated chest radiographs are not required unless the care giver develops signs and symptoms of tuberculosis disease, as determined by a health care professional.

R430-60-7. Records.

(1) The licensee shall ensure that the parent or legal guardian completes an admission agreement, which identifies the following:

(a) child's full name and nickname;

(b) parent's name and emergency numbers, if the parent will not be on-site;

(c) attestation statement and health evaluation identifying:

(i) allergies and food sensitivities; and

(ii) medical conditions, including a certification that all immunizations are current; and

(d) name of the child's physician.

(2) The facility shall maintain staff records to include:

(a) Background screening records; and

(b) In-service training records.

R430-60-8. Child Discipline.

(1) The licensee shall inform all care givers, parents or guardians and children of expected conduct by setting clear and understandable rules.

(2) Disciplinary measures shall be implemented so as to encourage the child's self-control to reduce risk of injury and any adverse health effects to self or others. Positive discipline measures include but are not limited to:

(a) positive behavioral rewards;

(b) other forms of positive guidance;

(c) redirection; or

(d) time out.

(3) Discipline measures shall not include any of the following:

(a) corporal punishment, including hitting, shaking, biting, pinching, or spanking;

(b) restraining a child's movement by binding or tying;

(c) use of abusive, demeaning or profane language;

(d) forcing or withdrawing food, rest or bathroom opportunities; or

(e) confining a child in a locked closet, room, or similar area.

R430-60-9. Care Giver to Child Ratios.

(1) The licensee must maintain minimum care giver to child ratios as provided in Table 1.

TABLE 1
Minimum Care giver to Child Ratios

Care giver	Children	Limits for Mixed Ages
1	12	No children under age 2
1	8	3 children under age 2
1	6	4 children under age 2

(2) Regardless of the number of other children and the minimum ratios in Table 1, if only two care givers are present, the facility may not care for more than four children under the age of two.

(3) For no more than 20 minutes, the minimum ratios in Table 1 may not exceed one care giver to 16 children if none of the children are younger than 24 months old, to allow for an additional care giver to arrive at the program.

(4) An hourly program that exceeds the ratio in Table 1, must be able to document having care givers, who, as a condition of their employment, are on call to come to the program as needed and arrive at the program within 20 minutes after receiving notification to report.

(5) Whenever the total number of children present to be cared for at a hourly program is more than 20, children younger than 24 months must be cared for in an area that is physically separated from older children. All children 24 months old and older may be cared for in the same group in the same area.

(6) A child of an employee or owner age four or older will not be counted for determining care giver to child ratios.

R430-60-10. Medications.

(1) If an hourly child care provider chooses to administer medications to a child then a trained, designated care giver shall administer medications.

(2) Training for the administration of medications shall include the following:

(a) Oral over-the counter and prescription medications must be in the original or pharmacy container;

(b) have the original label;

(c) include the child's name;

(d) have child proof caps; and

(e) have instructions for administration.

(3) The parent or guardian must complete a medication release form for each child receiving medications at the facility that contains:

(a) the name of the medication;

(b) the dosage;

(c) the route of administration;

(d) the times and dates to be administered;

(e) the illness or condition being treated; and

(f) the parent or guardian signature.

(4) Medication records shall be maintained that include:

(a) the times, dates, and dosages of the medications given;

(b) the signature or initials of the care giver who administered the medication; and

(c) documentation of any errors in administration or adverse reactions.

(5) The director or designee shall report any adverse reaction to a medication or error in administration to the parent or legal guardian immediately upon recognizing the error or reaction.

(6) Medications shall be secured from access to children.

(7) Medications stored in refrigerators shall be in spill-proof packaging and shall be kept in a covered, leakproof storage container.

(8) Unused medications shall be returned to the parent or guardian. Out-of-date medications shall be promptly discarded or returned to the parent or guardian to be destroyed.

R430-60-11. Parent Notification and Child Security.

(1) The director shall establish a procedure for care givers to check who has written authorization to pick up children. Only parents or persons with written authorization from parents shall be allowed to take any child from the facility, except that verbal authorization may be used in emergency situations. The director shall ensure a sign in and sign out document for the past three months is maintained for Department review.

(2) The director shall ensure that the parents or guardians are informed of all injuries and incidents that occur during the child's stay at the program. A written report shall be provided to the parents, and notification shall occur at the time that the injury or incident occurs if medical treatment is required. At the time of admission, the director shall obtain a signed permission form from the parent or legal guardian for emergency medical treatment.

(3) For any emergency that requires a response by emergency medical treatment providers, fatality, or hospitalization of a child in care, the licensee shall:

(a) notify the Department within 24 hours of occurrence, either by phone or facsimile; and

(b) submit to the Department within five business days of occurrence a written injury and accident report.

(4) The director shall develop a policy to address how long a child may cry before the parent is contacted.

R430-60-12. Activities.

(1) The licensee shall have an array of activities and sufficient supplies at the center, which are appropriate for the age and development of the children accepted for care.

(2) There shall be a minimum of 35 square feet per child of indoor play area for each child in care under age 14.

(3) If an outdoor play area is available, the area shall have at least 40 square feet for each child using the play area at any given time for each child in care under age 14.

(4) Outdoor play areas shall be fenced or have a natural barrier that provides protection from unsafe areas. Fences shall be at least four feet high. If local ordinances conflict, the director may request a variance from the Department. Any gaps within the fence shall not be greater that three and one-half inches. The bottom edges of fence shall not be more than three and one-half inches above the ground.

R430-60-13. Fire, Sanitation, and Safety.

(1) The licensee shall have a written emergency and disaster plan in case of fire, flood, earthquake, blizzard, power failure or other disasters that could create structural damage to the facility or pose a health hazard. The director shall hold simulated fire drills monthly and semi-annual disaster drills. The director shall document all drills, including date, participants, and problems encountered.

(a) The director shall post evacuation routes which indicate the location of fire alarm boxes and fire extinguishers in prominent locations throughout the center. Each center shall have approved fire extinguishers and be inspected by the local fire authority annually.

(b) The licensee shall ensure that the telephone service is in working order, unless there is a utility failure, and inform the Department of the current phone number.

(c) The names and telephone numbers of the emergency medical personnel, fire department, police, poison control and license holder shall be posted by the telephone.

(2) A person may not smoke or use tobacco in any child care facility during the period of time a child is present in the facility. All lighters and matches shall be inaccessible to children.

(3) The director of the facility shall establish written policies and monitor the care givers to ensure that the use and accessibility to tobacco, alcohol, illegal substances or sexually explicit materials are prohibited by any person anywhere on the premises during the hours of operation when children are in care.

(4) The toilet rooms of the hourly program must be cleaned and disinfected daily.

(5) If the program accepts a child in a diaper, then the diaper shall be changed only in a designated diaper changing area. The designated area shall:

(a) have diaper changing procedures posted;

(b) be separate from food storage, food preparation, and eating areas.

(c) have a hand sink equipped with soap, hot and cold running water within three feet of the diaper-changing surface; and

(d) have a smooth nonabsorbent diaper changing surface, railing and a sanitary container for soiled and wet diapers.

(6) Care givers shall change a child's clothing when it is soiled with fecal material or urine and place the clothing into a leakproof container to be sent home with the parent or legal guardian. Clothing soiled with feces or urine shall not be rinsed at the facility.

(7) Hand washing policies shall be followed to assure protection from contamination and the spread of microorganisms. Hand washing procedures shall be posted at all hand washing sinks.

(a) Care givers shall wash and scrub their hands for 20 seconds with soap and warm running water at times specified in policy.

(b) Care givers shall teach children proper hand washing techniques and oversee hand washing whenever possible.

(c) Care givers and children shall wash their hands after using the toilet, before and after eating and before and after food preparation.

(8) The licensee shall provide the following supplies and make them accessible to children: toilet paper, liquid hand soap, facial tissues, and single use paper towels or warm air hand dryers.

(9) The director shall keep and maintain a first aid kit and a portable blood and bodily fluid clean-up kit. All care givers shall know the location of and how to use the kits.

(10) Equipment and furniture must be durable, in good repair, structurally sound, and stable following assembly and

installation.

(a) Equipment must be free of sharp edges, dangerous protrusions, openings where a child's extremities could be pinched or crushed, and openings or angles that could trap part of a child's body.

(b) Tables, chairs, and other furniture must be appropriate to the age and size of children who use them. High chairs must have safety straps.

(c) Toys and equipment that are likely to be mouthed by infants and toddlers must be made of a material that can be disinfected. These must be cleaned and disinfected when mouthed or soiled and at least daily.

(d) Sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.

(e) Electrical outlets accessible to children four years of age and younger shall be protected or capped with safety devices.

(f) All pieces of outdoor playground equipment shall be surrounded by a resilient surface of loose cushioning, at least nine inches in depth, or mats manufactured for such use, consistent with the guidelines of the Consumer Product Safety Commission and the standards of the American Society for Testing and Materials. All indoor playground equipment, for example slides and climbers, shall be surrounded by cushioning materials, such as mats, in a six foot fall zone. Indoor play equipment shall not exceed three feet at the highest point.

(g) The areas used by children must be free from debris, loose flaking, peeling, or chipped paint, loose wallpaper, or crumbling plaster, litter, and holes in the walls, floors and ceilings. Rugs must have a non-skid backing or be firmly fastened to the floor and be free from tears, curled, or frayed edges, and hazardous wrinkles.

(h) Infant walkers with wheels are not permitted in hourly childcare programs.

(11) Hot water accessible to children shall not exceed the scalding standard of 120 degrees Fahrenheit.

(12) The licensee shall take effective and safe measures to prevent, control, and eliminate the presence of insects, rodents, and other vermin on the premises.

(13) There shall be adequate housekeeping services to maintain a clean and sanitary environment.

(14) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow and other hazards.

(15) The center shall maintain air temperatures between 72 degrees Fahrenheit and 85 degrees Fahrenheit as measured 30 inches above the floor. Infant care areas shall maintain temperatures of at least 70 degrees Fahrenheit at floor level.

(16) If sleeping equipment or mats are provided for rest time, all mats and sleeping equipment shall be cleaned and sanitized weekly, and prior to use by another child.

(17) There shall be at least one toilet and lavatory for each 15 children. Care givers shall directly supervise children when using bathrooms that are available to the general public.

R430-60-14. Animals.

(1) If the facility permits animals in the facility:

(a) the animals shall be clean and in good health;

(b) the animals shall be confined in enclosures, hand held, under leash control, or under voice control;

(c) the animals shall have current vaccination records available at the facility for all diseases transmissible to humans;

(d) the animals shall have no history of dangerous or aggressive behavior; and

(e) the animals shall be excluded from food preparation, storage or dining areas.

(2) Children shall not assist with the cleaning of animals, animal cages, pens or animal equipment.

(3) The director shall inform the parent or legal guardian of any known allergic or immune suppressed child of the types of animals kept at the facility.

(4) Children shall not be permitted to handle reptiles, including turtles and lizards.

R430-60-15. Food Service.

(1) If food service is provided, the center's food service shall comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100, and with the local health department food service regulations.

(2) If the local health department completes an inspection, the most recent inspection report shall be maintained at the center for review by the Department.

(3) All food served in the center by care givers for the children in care shall be from an approved source as provided in R392-100.

(a) Food brought in by parents for service to other children must be from an approved source or commercially prepared;

(b) Food brought in by parents for individual child use must be labeled with the child's name.

(4) All care givers who prepare or serve food and snacks must have a food handler's permit.

(5) Children's food shall be served on plates, napkins or other sanitary holders, which includes a high chair tray. Multiple use sanitary holders shall be washed, rinsed, and sanitized with a sanitizer approved in R392-100 for food contact surfaces prior to each use. Food shall not be placed on a bare table or other eating surface.

(6) If a food service is provided, care givers shall serve meals and snacks according to the center policy, but at least once every three hours.

(7) Children and infants shall be served special diets, formula, breast milk, or food supplements in accordance with the written instructions from a parent or legal guardian.

(8) Baby food must be refrigerated after opening, marked with the date and time and discarded if not consumed within 24 hours.

(9) Infant formula and breast milk shall be discarded after feeding or within two hours of initiating a feeding.

(10) If an infant is unable to sit upright and hold his own bottle, a care giver shall hold the infant during bottle feeding.

R430-60-16. Penalty.

The Department may impose civil monetary penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act and Section 26-39-108, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of a child, the department may impose a civil money penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a child, the department may impose a civil money penalty of $1,050 to $5,000 per day.

KEY: child care facilities
January 14, 2002 26-39

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-90. Licensed Family Child Care.
R430-90-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-90-2. Purpose.

The purpose of this rule is to establish standards for the operation and maintenance of licensed family child care providers who care for one to 16 children in their home. It establishes minimum requirements for the health and safety of children in licensed programs.

R430-90-3. Definitions.

(1) "Conditional enrollment" means that a child is admitted to a child care program and has received at least one dose of each required vaccine prior to enrollment and maintains a schedule for subsequent required vaccinations.

(2) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.

(3) "Related children" means children whose child care is provided by their parents, legal guardians, grandparents, brothers, sisters, uncles or aunts.

(4) "Infant" means a child younger than 13 months of age.

(5) "Toddler" means a child 13 months and older, but less than 25 months of age.

R430-90-4. License Required.

(1) A person who provides child care in a home for nine to 16 children unrelated to the licensee for less than 24 hours a day, with a regularly scheduled, on-going enrollment, for direct or in-direct compensation must be licensed as a family group child care program.

(2) A person who provides child care in a home for less than nine unrelated children for less than 24 hours per day, having a regularly scheduled, ongoing enrollment, for direct or indirect compensation may be licensed as a family child care program.

R430-90-5. Licensee Qualifications and Duties.

(1) The licensee of the child care program must:

(a) be at least 18 years of age; or

(b) have a high school diploma or G.E.D.; and

(c) have knowledge of and comply with applicable laws and rules.

(2) The licensee shall establish and implement policies and procedures for the health and safety of children in the home.

(3) The care giver shall be physically present on-site and provide care and supervision of children at all times, both indoors and outdoors. This includes:

(a) awareness of and responsibility for the ongoing activity of each child and being near enough to intervene if needed; and

(b) frequent in person observation of children sleeping in cribs and play pens.

(4) The licensee may permit a child to participate in supervised out of the home activities without the care giver if:

(a) the care giver has prior written permission from the child's parent for the child's participation; and

(b) the licensee has clearly assigned the responsibility for the child's whereabouts and supervision throughout the period of care.

(5) The licensee may make arrangements for a substitute who is at least 18 years old and who is capable of providing care and supervision of children and handling emergencies in the absence of the care giver.

R430-90-6. Care Giver Qualifications.

(1) The licensee shall ensure that each care giver or volunteer who has direct contact with or access to children is oriented to the licensed program and successfully completes the required orientation training before starting assigned duties. The licensee shall document in a care giver's personnel record the date of completion of orientation training. The orientation training must include:

(a) procedures for maintaining health and safety and handling emergencies and accidents;

(b) specific job responsibilities;

(c) child discipline procedures of R430-90-7;

(d) reporting requirements if the care giver witnesses or suspects child abuse, neglect or exploitation; and

(e) procedures for releasing children to authorized individuals.

(2) All care givers who provide services shall be at least 18 years of age or have completed high school or a G.E.D.

(3) There shall be at least one care giver at the home during business hours who has a current course completion in basic child and infant first-aid and Cardiac Pulmonary Resuscitation (CPR), and training in the Heimlich Maneuver for treatment of an obstructed airway.

(a) First-aid and CPR refers to courses given by the American Red Cross, the Utah Emergency Medical Training Council, or other courses that the licensee of the program can demonstrate to the Department to be equivalent.

(b) Documentation of the completed First-Aid and CPR training must be in the care giver's personnel record.

(4) The licensee must ensure that an annual documented in-service training plan is developed and carried out. The plan shall be pertinent to the ages of the children in the program and must address the following areas:

(a) proper hand washing and sanitation techniques;

(b) principles of good nutrition;

(c) proper procedures in administration and storage of medications;

(d) recognizing early signs of illness, communicable diseases and determining if there is a need to exclude a child from the program;

(e) accident prevention and safety principles;

(f) positive guidance for the management of children;

(g) child development; and

(h) age appropriate activities.

(5) If child care is provided to children under age two, the following in-service topics are also required:

(a) Preventing Shaken Baby Syndrome;

(b) Coping with crying babies; and

(c) Preventing Sudden Infant Death Syndrome.

(6) The licensee shall ensure that they and all care givers complete a minimum of 20 hours of annual in-service training. At least ten hours of in-service training shall be person-to-

person instruction.

(7) The licensee shall document successful completion of in-service training and maintain a record for themselves and each care giver which includes:

(a) the date training was completed;

(b) the topics covered; and

(c) the trainer's name and organizational affiliation.

(8) Each care giver upon employment and each licensee shall have an initial health evaluation within the past six months and complete tuberculosis testing using the Mantoux tuberculin skin test method within two weeks of assuming care giver responsibilities. Tuberculin skin testing does not need to be repeated during the employment period unless the employee develops signs and symptoms of the disease, as determined by a health care professional.

(a) All care givers with skin tests that indicate potential exposure to tuberculosis shall receive a medical evaluation for tuberculosis disease.

(b) All care givers who have documentation of previous positive reaction to the Mantoux tuberculin skin test shall present documentation of completion of therapy for tuberculosis infection or evidence of a negative chest radiograph within the past 12 months.

(c) Repeated chest radiographs are not required unless the care giver develops signs and symptoms of tuberculosis disease, as determined by a health care professional.

R430-90-7. Child Discipline.

(1) The licensee shall inform all care givers, parents or guardians and children of expected conduct by setting clear and understandable rules.

(2) Disciplinary measures shall be implemented so as to encourage the child's self-control to reduce risk of injury and any adverse health effects to self or others. Positive discipline measures include but are not limited to:

(a) rewards for positive behavior;

(b) other forms of positive guidance;

(c) redirection; or

(d) time out.

(3) Discipline measures shall not include any of the following:

(a) corporal punishment, including hitting, shaking, biting, pinching, or spanking;

(b) restraint of a child's movement by binding or tying;

(c) use of abusive, demeaning or profane language;

(d) force or withdrawing food, rest or bathroom opportunities; or

(e) confining a child in a locked closet, room, or similar area.

R430-90-8. Records.

(1) The licensee shall obtain from the parent or legal guardian an admission agreement, which identifies the following:

(a) child's full name and nickname;

(b) parent or guardian's name, address and phone number;

(c) name, address and phone number of additional persons to be notified in the event of an emergency when the parent or guardian cannot be located;

(d) name, address and phone number of the child's primary source of emergency health and dental care.

(2) The licensee shall ensure that children's records are organized and maintained to include the following:

(a) immunization record (Utah School Immunization Record -USIR) according to R396-100;

(b) child's health history required in R430-90-10(4) and any updates;

(c) injury, accident and incident reports; and

(d) medication administration records required in R430-90-10(6)(d).

(3) The licensee of the program shall maintain care giver records to include:

(a) background screening records;

(b) initial health evaluations and TB testing;

(c) food handler's permits;

(d) first-aid and CPR course completion; and

(e) in-service training records.

(4) The licensee shall ensure a record or log is maintained to document each enrolled child's attendance.

R430-90-9. Care Giver to Child Ratios.

The minimum ratio of care givers to children permitted in licensed small family and family group child care are set forth in tables 1 and 2.

TABLE 1
Family Minimum Care Giver to Child Ratios

Care giver	Children	Limits for Mixed Ages(a)
1	8	No more than two children under age 2
1	6	No more than three children under age 2

(a) The mixed ages include the care giver's children under age 4.

TABLE 2
Family Group Minimum Care giver to Child Ratios

Care Giver	Children	Limits for Ages	Group Size(b)(c)
1	12	All Children School-age	16
2	9-16	Mixed ages, only four under age 2	20

(b) There shall be at least two care givers in the licensed family group program at all times when there are nine or more children present, counting the care givers' own children, grand children, nieces, nephews, wards, step-children, under age 12, or when more than two infants are present.

(c) The care giver's own children, grand children, nieces, nephews, wards, step-children are included in the maximum group size if they are under the age of 12.

R430-90-10. Child Health and Medications.

(1) The licensee may not care for a child without proof of immunization, or evidence of conditional enrollment, or evidence of personal, medical or religious exemption. Each child shall have immunizations as required by the Utah School Immunization Law, R396-100.

(2) The licensee shall observe each child daily for signs of illness.

(a) The licensee shall notify the parent or legal guardian

immediately when illness is observed or suspected.

(b) The licensee must keep ill children separate from other children.

(3) If a communicable illness or parasite is discovered, the owner shall notify the parent or legal guardian of all enrolled children on the day of discovery. Notification shall protect the confidentiality of care givers and children.

(4) The parent or legal guardian shall provide a child health history upon admission which identifies:

(a) known food sensitivities and allergies;

(b) chronic illnesses, disabilities or medical conditions;

(c) instructions for routine care; and

(d) instructions for emergency care.

(5) The parent or legal guardian shall annually review and update the child's health history with the licensee.

(6) If the licensee chooses to administer prescribed or oral over-the-counter medications then:

(a) Medications may be administered to children only by a designated care giver who does the following:

(i) check the label and confirm the name of the child,

(ii) read the directions regarding measured doses, frequency, expiration date, and other administration guidelines, and

(iii) properly document administration of medication records according to subsection (d).

(b) Oral over-the-counter and all prescription medications must be in the original or pharmacy container, have the original label, include the child's name, have child proof caps, and have written instructions for administration.

(c) The parent or legal guardian must complete a medication release form for each child receiving medications that contains:

(i) the name of the medication,

(ii) the dosage,

(iii) the route of administration,

(iv) the times and dates to be administered,

(v) the illness or condition being treated, and

(vi) the parent's or legal guardian's signature.

(d) The care giver who administers a child's medication shall maintain a medication record that includes:

(i) the time, date, and dosage of the medication given;

(ii) the signature or initials of the care giver who administered the medication; and

(iii) documentation of any errors in administration or adverse reactions.

(e) The licensee shall report any adverse reaction to a medication or error in administration to the parent or legal guardian immediately upon recognizing the error or reaction.

(f) Medications shall be secured from access to children.

(g) Medications stored in refrigerators shall be in spill-proof packaging and shall be kept in a covered, leakproof storage container.

(h) The licensee shall return all unused or out-of-date prescription and oral over-the-counter medications to the parent or legal guardian.

R430-90-11. Parent Notification and Child Security.

(1) The licensee shall establish a procedure for care givers to check who has written authorization to pick up children. Only the parents, legal guardian, or persons with written authorization from a parent or legal guardian shall be allowed to take any child from the home, except that verbal authorization may be used in emergency situations.

(2) The home of the licensee shall be accessible and open to parents or legal guardians during the hours of operation.

(3) The licensee shall establish a procedure for ensuring that all children's attendance is accounted for, which shall include requiring a sign-in and out procedure.

(4) The licensee shall establish written policies and monitor care givers, visitors, and residents of the home to ensure that the use and accessibility of tobacco, alcohol, illegal substances or sexually explicit materials are prohibited by any person anywhere on the premises during the hours of operation when children are under care.

(5) In the case of a serious injury to a child which requires immediate hospital treatment, the licensee shall contact the parents or legal guardians after emergency personnel have been contacted.

(6) For any emergency that requires a response by emergency medical treatment providers, fatality, or hospitalization of a child in care, the licensee shall:

(a) notify the Department within 24 hours of occurrence, either by phone or facsimile; and

(b) submit to the Department within five business days of occurrence a written injury and accident report.

R430-90-12. Activities.

(1) The licensee shall develop a daily activity plan that is designed for the age and development of the children accepted for care and ensure that there are sufficient supplies on hand.

(2) There shall be a minimum of 35 square feet of indoor play area per child for each child in care under age 14. Toilet rooms, closets, hallways, and alcoves may not be included in calculating indoor play space. Play space does not include areas in the care giver home which are not included in the child care area.

(3) Outdoor play areas shall have at least 40 square feet per child for each child in care under age 14. The total outdoor play area shall accommodate at least 40 percent of the licensed capacity at one time.

(a) Outdoor play areas shall be fenced or have a natural barrier that provides protection from unsafe areas. Fences shall be at least four feet high. If local ordinances conflict with this requirement, the licensee may request a variance from the Department. Any gaps within the fence shall not be greater than three and one-half inches. The bottom edges of the fence shall not be more than three and one-half inches above the ground.

(b) Outdoor play areas shall have a shaded area to protect children from excessive sun and heat. Drinking water shall be continuously accessible to children in the outdoor play area.

(4) If off-site activities are provided, parent or legal guardian permission is required for children to participate. Care givers shall take with them emergency phone numbers for each child attending the activity.

(5) If swimming activities are planned, care givers shall accompany children at pool side and lifeguards and pool personnel are not counted in care giver ratios.

(6) If care is provided to infants, a care giver shall provide

physical and verbal stimulation every 30 minutes to each infant during waking hours, including the opportunity for physical activity. Physical activity may not confine an awake child to a single device, such as infant equipment which restricts active movements for more than 30 minutes.

R430-90-13. Transportation.

(1) The licensee shall maintain documentation that any vehicle used for transporting children has a current vehicle registration, insurance for child care transportation, safety inspection and shall maintain the vehicle in a clean and safe manner.

(2) Each vehicle shall:

(a) have a first-aid kit and body fluid clean-up kit;

(b) be equipped with individual, size-appropriate safety restraints such as car seats or seat belts which are described in the federal motor vehicle safety standards contained in the Code of Federal Regulations, title 49, section 571.213, for each child that are appropriate to the vehicle type and are installed and used in the manner prescribed by the manufacturer;

(c) be enclosed; and

(d) be locked during transport.

(3) Smoking in vehicles is prohibited at all times that children are in the vehicle.

(4) Any vehicle used for transporting children shall be driven by an adult who holds a current state driver's license that authorizes the driver to operate the type of vehicle driven.

(5) The driver shall ensure that no child is unattended in the vehicle. The driver shall remove the keys whenever the driver is not in the driver's seat.

R430-90-14. Infection Control.

(1) All care givers shall comply with the universal blood and bodily fluid precautions according to the OSHA Bodily Fluid Blood-Borne Pathogen Standard.

(a) The licensee shall keep and maintain a portable blood and bodily fluid clean-up kit.

(b) All care givers shall know the location of the kit and how to use it.

(c) All care givers shall wear new disposable latex gloves or an approved equivalent listed in OSHA part 1910.1030 for first-aid procedures involving blood or clean-up of blood containing bodily fluids.

(2) If children are admitted for care who require diapers, the following applies:

(a) Care givers shall change a child's diaper on a clean, smooth, washable, non-absorbent diapering surface and sanitize the surface after each use.

(b) The diapering area shall not be located in a food preparation area.

(c) Care givers shall place soiled diapers in a container that is lined and has a tight fitting lid or take the diapers directly to an outside covered receptacle. Care givers shall clean and disinfect the inside diaper containers daily.

(3) If a child's clothing is soiled by fecal material or urine, a care giver shall change the clothing promptly and place the clothing in a leakproof container to be sent home with the parent or legal guardian.

(4) If personal hygiene items for children are maintained at the home such as combs or toothbrushes, they shall not be shared between children and shall be labeled and stored separately.

(5) The licensee shall clean and sanitize indoor activity equipment and toys weekly or more often as necessary.

(a) Stuffed animals shall be machine washable.

(b) If four or more infants are present for care, the licensee shall clean and sanitize the indoor equipment and toys used by the infants during the day.

(6) Care givers shall assure protection from contamination and the spread of microorganisms by implementing good hand washing practices. Care givers shall teach children proper hand washing techniques and oversee hand washing whenever possible. Care givers and children shall wash their hands after using the toilet, before and after eating, and before and after food preparation.

(7) Single-use paper towels or individually labeled cloth towels shall be used for drying hands. If cloth towels are used, the care giver shall wash the towels daily.

R430-90-15. Safety.

(1) Indoor and outdoor play spaces, toys and equipment shall be maintained in a safe manner to prevent injury to children.

(2) Infants and toddlers shall not have access to toys smaller than 1-1/4 inches in total diameter or length. Toys and equipment used by children must comply with the guidelines of the Consumer Product Safety Commission.

(3) High chairs shall have safety straps or devices to prevent children from falling out.

(4) There shall be no firearms or other weapons accessible to children. Firearms and other weapons shall be stored separately from ammunition and all shall be in a locked cabinet or area during times when children are on the premises. The licensee shall inform the parents and guardians that there are firearms on the premises.

(5) Electrical outlets accessible to children four years of age and younger shall be protected or capped with safety devices.

(6) Toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials shall be stored away from children in a locked or protected area. All toxic or hazardous chemicals shall be in the original container, or labeled in the container.

(7) Fireplaces, open-face heaters, and wood burning stoves shall be inaccessible to children when in use. Portable space heaters are not permitted when children are on the premises.

(8) Outdoor play equipment shall be located over soft material or grass.

(9) All water hazards such as a swimming pool, stationary wading pool, ditches, and fish ponds shall be fenced to prevent access by children.

(10) Sharp objects, medicines, plastic bags, poisonous plants, lighters and matches must be stored out of reach and inaccessible to children.

(11) Hot water accessible to children shall not exceed the scalding standard of 120 degrees Fahrenheit.

(12) Strings and cords long enough to encircle a child's neck, such as those found on pull toys, window blinds, or

drapery cords, shall be inaccessible to children under five years of age.

(13) Any structure built prior to 1978 which has peeling, flaking, chalking, or failing paint on the interior or exterior shall be tested for lead-based paint. If paint lead levels are equal to or exceed 0.06% by weight, the structure must be remodeled by encapsulation or enclosure when possible or by complete removal of lead-based paint by trained individuals.

(14) Infant walkers with wheels are not permitted.

(15) The licensee shall provide separate sleep equipment for each infant designed for infant use, such as a crib, bassinet, porta-crib, or play pen. Infants shall be placed on their backs for sleeping.

R430-90-16. Fire, Emergency, and Disaster.

(1) The licensee shall have a written emergency and disaster plan in case of fire, flood, earthquake, blizzard, power failure, or other disasters that could create structural damage to the home or pose a health hazard. The plan shall include the procedure to transport and evacuate children to another location and the procedures to turn off gas, electricity and water.

(2) The licensee shall have an emergency plan in the case of a missing child or death or serious injury to a child, which includes the name of a substitute care giver in the event the owner must leave the residence for any reason.

(3) The licensee shall hold simulated fire drills quarterly and an annual disaster drill. The licensee shall document the date of drills, participants, and the problems encountered.

(4) Each home shall have fire extinguishers and smoke detectors in good operating condition on each floor occupied by children. Two exits leading to an open space at ground level, shall be present to permit the orderly evacuation of children. If the basement is used to provide child care, at least one exit at ground level shall be present leading to an open space.

(5) The licensee shall ensure that the telephone service is in working order, unless there is a utility failure, and inform the Department of the current phone number. The names and telephone numbers of the emergency medical personnel, fire department, police, and poison control shall be posted by the telephone.

(6) The licensee shall maintain a first-aid kit at the residence.

R430-90-17. Housekeeping and Maintenance.

(1) The licensee shall take effective and safe measures to prevent, control, and eliminate the presence of insects, rodents, and other vermin on the premises.

(2) There shall be adequate housekeeping services to maintain a clean, odor free, and sanitary environment.

(3) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.

(4) The licensee shall maintain the home at air temperatures between 72 degrees Fahrenheit and 85 degrees Fahrenheit as measured 30 inches above the floor. Infant care areas shall maintain temperatures of at least 70 degrees Fahrenheit at floor level.

(5) If sleeping equipment or mats for sleeping are provided, all mats and sleeping equipment shall be cleaned and sanitized weekly, and prior to use by another child.

(6) The home shall be maintained to ensure that the equipment, fixtures, and furnishings are safe and in good repair.

(7) Sand boxes and outdoor play areas shall be kept free of animal excrement and harmful objects.

R430-90-18. Animals.

(1) If the licensee permits animals at the home:

(a) the animals shall be clean and in good health;

(b) the animals shall have current vaccination records available at the program for all diseases transmissible to humans; and

(c) the animals shall have no history of dangerous or aggressive behavior.

(2) Children shall not assist with the cleaning of animals, animal cages, pens or animal equipment. Animal cages and equipment shall not be cleaned in food preparation or food storage areas.

(3) The licensee of the program shall inform the parent or legal guardian of the types of animals kept at the home.

(4) Children shall not handle reptiles, including turtles and lizards.

R430-90-19. Food Service.

(1) If the local health department completes an inspection, the inspection report shall be maintained at the home for review by the Department.

(2) Food prepared by the care givers for the children in care shall be from an approved source as provided in R392-100.

(a) Food brought in by parents or legal guardians to serve to other children must be from an approved source or commercially prepared;

(b) Food brought in by parents or legal guardians for individual child use must be labeled.

(c) Baby food must be refrigerated after opening, marked with the date and time of opening and discarded if not consumed within 24 hours of opening;

(d) Infant formula and breast milk shall be discarded after feeding or within two hours of initiating a feeding.

(3) All care givers who prepare or serve food and snacks must have a current food handler's permit.

(4) Children's food shall be served on plates, napkins or other sanitary holders, which include a high chair tray. Multiple-use sanitary holders shall be washed, rinsed, and sanitized with a sanitizer approved in R392-100 for food contact surfaces prior to each use. Food shall not be placed on a bare table or other eating surface.

(5) Meals and snacks shall be served at least once every three hours, or according to the menu.

(a) The current week's menu shall be posted for review by parents or guardians and all substitutions shall be noted on the menu and retained for one week. If substitutions are made, the menu must meet the requirement of the United States Department of Agriculture (USDA) Child Care Food Program guidelines;

(b) Menus can be obtained from the Department or shall be Department-approved, independently approved and signed by a registered dietitian, or approved through the United States Department of Agriculture Child and Adult Care Food Program;

and

(c) A different menu shall be planned for each day of the week and menus may be cycled.

(6) Children and infants shall be served special diets, formula, breast milk, or food supplements in accordance with the written instructions from a parent or legal guardian.

(7) If an infant is unable to sit upright and hold his own bottle, a care giver shall hold the infant during bottle feeding.

R430-90-20. Penalty.

The Department may impose civil monetary penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act and Section 26-39-108, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of a child, the department may impose a civil money penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a child, the department may impose a civil money penalty of $1,050 to $5,000 per day.

KEY: child care facilities
January 14, 2002 26-39

R432. Health, Health Systems Improvement, Licensing.
R432-35. Background Screening.
R432-35-1. Authority.

The Utah Code, Section 26-21-9.5, requires that a Bureau of Criminal Identification screening, referred to as BCI, and a child or disabled or elderly adult management information system screening be conducted on each person who provides direct care to a patient for the following covered health care facilities:

(1) Home health care agencies;
(2) Hospice agencies;
(3) Nursing Care facilities;
(4) Assisted Living facilities;
(5) Small Health Care facilities; and
(6) End Stage Renal Disease Facilities.

R432-35-2. Purpose.

The purpose of this rule is to define the circumstances under which a person who has been convicted of or charged with a criminal offense or who has a substantiated report of child abuse or neglect or disabled or elder abuse or neglect, may provide direct care to a patient in a covered health care facility, taking into account the nature of the criminal offense and its relation to patient care.

R432-35-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 21. In addition:

(1) "Covered Individual" means all proposed employees who provide direct patient care in a covered health care facility, including volunteers, existing employees, persons contracted to perform direct care and, for residential settings, all individuals residing in the home where an assisted living or small health care program is to be licensed, who are 18 years old and over.

(2) "Department" means the Utah Department of Health.

(3) "Substantiated" means a Department of Human Service finding, at the completion of an investigation by the Department of Human Services, that there is a reasonable basis to conclude that one or more of the following types of abuse or neglect has occurred:

(a) physical abuse;
(b) sexual abuse;
(c) sexual exploitation;
(d) abandonment;
(e) medical neglect resulting in death, disability, or serious illness;
(f) chronic or severe neglect; or
(g) financial exploitation.

(4) "Unsupervised Contact" means contact with residents or patients that provides the unsupervised person opportunity and probability for personal communication or touch or for access to personal funds and property when not under the direct supervision of a health care provider or employee.

(5) "Volunteer" means an individual who is not directly compensated for providing care, including family members of patients or residents enrolled in the program, whose duties assigned by a health care provider or employee include unsupervised contact in a health care facility on a regularly scheduled basis of one or more times per month.

R432-35-4. Bureau of Criminal Identification.

(1) The Utah Code, Section 26-21-9.5, requires that a BCI be conducted on covered individuals requesting to be licensed, to renew a license, or to be employed or volunteer in a covered health care facility.

(a) The health care facility shall submit applicant information within ten days of initially hiring an individual, include fees and releases to the Department to allow the Department to perform a criminal background screening.

(b) If the BCI indicates that the covered individual has a criminal record that indicates there is a conviction for a felony or misdemeanor the Department shall review the criminal convictions to determine whether to approve the covered individual for licensing or employment.

(e) If a covered individual applicant has not had residency in Utah for the last five years, the covered individual shall submit fingerprints for an FBI national criminal history record check.

(2) The Department shall review any criminal convictions, consistent with R432-35, to determine if action should be taken to protect the health and safety of patients and residents receiving health care services in the covered health care facility.

(3) If the Department takes an action adverse to any covered individual, based upon the criminal background screening, the Department shall send a Notice of Agency Action to the health care provider and the covered individual explaining the action and the right of appeal.

R432-35-5. Exclusion from Direct Patient Care Due to Criminal Convictions or Pending Charges.

(1) As required by Utah Code Ann. Subsection 26-21-9.5(6), if a covered individual has been convicted or a felony or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide direct patient care or volunteer. If such a covered individual resides in a home where health care is provided, the Department may revoke an existing license or and refuse to permit health care services in the home until the Department is reasonably convinced that the covered individual no longer resides in the home or that the individual will not have unsupervised contact with any child or disabled or elderly adult in care at the home.

(2) As allowed by Utah Code Ann. Subsection 26-21-9.5(6), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing direct patient care:

(a) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(b) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(c) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code;

(d) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for 76-9-301.8, Bestiality; 76-9-702, Lewdness; and 76-9-702.5, Lewdness Involving Child; and

(e) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals,

Utah Criminal Code, except for 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; 76-10-1301 to 1314, Prostitution; and 76-10-2301, Contributing to the Delinquency of a Minor.

(3) The Executive Director may exclude, on a case-by-case basis, other misdemeanors not covered under paragraph (2) of this section if the misdemeanor did not involve violence against a child or a family member or unauthorized sexual conduct with a child or disabled adult. The following factors will be used in deciding under what circumstance, if any, the covered individual will be allowed to provide direct patient care or to volunteer in a covered health care facility:

(a) Types and number of offenses;

(b) Passage of time since the offense was committed; offenses more than five years old do not bar approval or a license, certificate or employment;

(c) Circumstances surrounding the commission of the offense;

(d) Intervening circumstances since the commission of the offense; and

(e) Relationship of the facts under subsections (a) through (d) of this section to the individual's suitability to work with children and disabled and elderly adults.

(4) The Department shall rely on the criminal background screening and search of court records as conclusive evidence of the conviction and the Department may revoke or deny a license and employment based on that evidence.

(5) If the Department denies a covered individual a license or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the covered individual may challenge the information as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All covered health care facilities must report all felony and misdemeanor arrests, charges or convictions of covered individuals to the Department within 48 hours of discovery.

R432-35-6. Child, Elder, and Disabled Adult Abuse Management Information System.

(1) Pursuant to Utah Code 26-21-9.5(3) the Department shall screen all covered individuals for a history of substantiated abuse or neglect, from the management information system maintained by the Utah Department of Human Services (DHS) for children and disabled or elder adults.

(2) If a covered individual appears on the management information system, the Department shall review the date of the substantiated finding, type of substantiation, written documentation, and the legal status of the covered individual.

(3) If the Department determines there exists credible evidence that the covered individual poses a threat to the safety and health of children or disabled or elder adults being served in a covered health care facility, the Department shall not grant or renew a license, or employment.

(4) If the Department denies or revokes a license or employment based upon the child or disabled or elder adult abuse management information system, the Department shall send a Notice of Agency Action to the licensee and the covered individual.

(5) If the covered individual disagrees with the record of substantiation of abuse, he must pursue an appeal with the DHS. If the covered individual agrees with the substantiated finding of abuse that was the basis of the Department's denial or revocation, but disagrees with the Department's denial or revocation, the covered individual may request a hearing with the Department.

(a) Upon request, the Department may permit the covered individual to be employed under supervision until a decision is reached and if the applicant can demonstrate that the work arrangement does not pose a threat to the safety and health of children or disabled or elder adults being served in the licensed health care facility.

(b) If a covered individual appeals the record of substantiation, the Department may hold the license or employment denial in abeyance until DHS renders a decision,.

(6) If the DHS determines a covered individual has a substantiated finding of abuse, or neglect after the Department issues a license, or grants employment, the licensee and covered individual has five working days to notify the Department. Failure to notify the Department may result in revocation of the license.

R432-35-7. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R432-5(2), the Department may act to protect the health and safety of patients and residents in covered health care facilities that the individual may have contact with. The Department may revoke or suspend any license or employment if necessary to protect the health and safety of patients and residents in care.

(2) Upon request, the Department may permit the covered individual to be employed under supervision until the felony or misdemeanor charge is resolved, if the facility can demonstrate that the individual can work without posing a threat to the safety and health of the resident or patient being served in the licensed health care facility.

(3) If the Department denies or revokes a license, or restricts employment based upon the arrest or felony or misdemeanor charge, the Department shall send a Notice of Agency Action to the licensee and the covered individual notifying them that they may request a hearing with the Department.

(4) The Department may hold the license or employment denial in abeyance until the arrest or felony or misdemeanor charge is resolved.

R432-35-8. Penalties.

The department may impose civil monetary penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of an individual resident, the department may impose a civil penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a resident, the department may impose a civil penalty of $1,050 to $5,000 per day.

KEY: health care facilities
January 14, 2002 26-21-9.5

R432. Health, Health Systems Improvement, Licensing.
R432-500. Freestanding Ambulatory Surgical Center Rules.
R432-500-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-500-2. Purpose.

The purpose of this rule is to establish standards for the operation of a freestanding surgical facility which provides surgical services to patients not requiring hospitalization.

R432-500-3. Time for Compliance.

All facilities governed by this rule shall be in full compliance at the time of licensure.

R432-500-4. Definitions.

(1) See common definitions R432-1-3.

(2) Special definitions.

(a) "Anesthesia service" includes services for all patients who:

(i) receive general, spinal, or other major regional anesthesia, or

(ii) undergo surgery or other procedures when receiving either or both of the following:

(A) general, spinal, or other regional anesthesia;

(B) intravenous, intramuscular, or inhalation sedation or analgesia that may result in the loss of the patient's protective reflexes.

(b) "Continual" means repeated regularly and frequently in steady rapid succession.

(c) "Continuous" means prolonged without any interruption at any time.

(d) "Monitored Anesthesia Care" includes intraoperative monitoring by a qualified anesthetist of the patient's vital physiological signs, in anticipation of the need for administration of general anesthesia or of the development of adverse physiological patient reaction to the surgical procedure. Monitored anesthesia care also includes performing a preanesthetic examination, evaluating, planning, and administering anesthesia services required, and providing indicated postoperative anesthesia services.

(e) "Qualified Anesthetist" means an anesthesiologist, another qualified physician, oral surgeon, or certified registered nurse anesthetist, who:

(i) is licensed to provide anesthesia services in accordance with Utah laws for occupational and professional licensing,

(ii) is a member of the staff of the ambulatory surgical center,

(iii) has been determined by the facility to be competent,

(iv) has been granted privileges to provide anesthesia services to patients in the facility; and

(v) if the qualified anesthetist is a qualified physician or oral surgeon, has documented training that includes the equivalent of 40 days preceptorship with an anesthesiologist and is able to perform at least the following:

(A) safely render the patient insensible to pain during the performance of surgical, and other pain producing clinical procedures;

(B) monitor and sustain life support functions during the administration of anesthesia, including induction and intubation procedures; and

(C) provide pre-anesthesia and post-anesthesia management of the patient.

(f) "Extended Recovery Services" means patient care after the initial post surgery recovery period.

(g) "Initial Post Surgery Recovery Period" means patient care no longer than six hours beyond the completion of surgery.

(h) "Licensed Professional" means a qualified physician or oral surgeon who is involved in the preoperative assessment of the patient and has ensured that a qualified anesthetist is providing anesthesia services.

(i) "upon the request of" means a patient specific order of a licensed professional working within the scope of his license.

R432-500-5. Licensure.

(1) License Required. See R432-2.

(2) Exempt facilities shall meet the provisions of Section 26-21-7. Physician based surgical centers shall request an exemption to this rule in order to apply for Medicaid/Medicare certification.

R432-500-6. General Construction Rules.

(1) See R432-13. Ambulatory Surgical Center Construction Rule.

R432-500-7. Administration and Organization.

(1) Direction.

(a) Each facility shall be operated by a licensee.

(b) If the licensee is other than a single individual, there shall be an organized functioning governing authority to assure accountability.

(c) The governing authority shall meet at least quarterly and keep written minutes of its meetings.

(2) Responsibilities.

(a) The licensee shall have the overall responsibility and authority for the organization.

(b) Responsibilities shall include at least the following:

(i) Comply with all applicable federal, state and local laws, rules and requirements;

(ii) Adopt and institute bylaws, operating room protocols, policies and procedures relative to the operation of the facility;

(iii) Appoint, in writing, a qualified administrator (the licensee, administrator, or medical director may be the same person) to be responsible for the implementation of facility bylaws, policies and procedures, and for the overall management of the facility;

(iv) Appoint, in writing, a qualified medical director to advise and be accountable to the licensee for the quality of patient care;

(v) Ensure that patients requiring hospitalization are not admitted to the facility;

(vi) Appoint members of the medical staff and delineate their clinical privileges.

R432-500-8. Administrator.

(1) Direction.

(a) Each facility shall designate in writing an administrator who shall have freedom from other responsibilities to be on the premises of the facility a sufficient number of hours in the

business day to manage the facility and to respond to appropriate requests by the Department.

(b) The administrator shall designate a person, in writing, to act as administrator in his absence.

(i) This person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being and shall be available at the facility.

(ii) It is not the intent to permit a de facto administrator to supplant or replace the designated facility administrator.

(c) The administrator shall be the direct representative of the board in the management of the facility and shall be responsible to the board for the performance of his duties.

(2) Qualifications.

The administrator and his designee shall be 21 years or older and shall be experienced in administration and supervision of personnel and shall be knowledgeable about the practice of medicine to interpret and be conversant in surgery protocols.

(3) Duties and Responsibilities.

(a) The administrator's responsibilities shall be written in a job description and shall be available for Department review.

(b) Responsibilities shall include:

(i) Compliance with all applicable federal, state and local laws, and facility bylaws;

(ii) Develop, evaluate, update, and implement facility policies and procedures annually;

(iii) Maintain an adequate number of qualified and competent staff to meet the needs of patients;

(iv) Develop clear and complete job descriptions for each position;

(v) Notify appropriate authorities when a reportable disease is diagnosed;

(vi) Review all incident and accident reports and take appropriate action;

(vii) Establish a quality assurance committee that will respond to the quality and appropriateness of services and respond to the recommendations made by the committee;

(viii) Secure through contracts the necessary services not provided directly by the facility;

(ix) Receive and respond to the licensure inspection report by the Department.

R432-500-9. Medical Director.

(1) Direction.

(a) The licensee of the surgical facility shall retain, by formal agreement, a qualified physician to serve as medical director.

(b) The medical director shall have freedom from other responsibilities to assume professional, organizational, and administrative responsibility.

(c) The medical director shall be accountable to the governing authority for the quality of services rendered.

(2) Qualifications.

The physician designated as the medical director shall have at least the following qualifications:

(a) Be currently licensed to practice medicine in Utah;

(b) Have training and expertise in those branches of surgery and anesthesia services offered to provide supervision at the facility.

(3) Responsibilities.

(a) The medical director shall have overall responsibility for surgery and anesthesia services delivered in the facility.

(b) Applicable laws relating to use of anesthesia, professional licensure acts and facility protocols shall govern both medical staff and employee performance.

(c) The medical director shall be responsible for at least:

(i) Review and update facility protocols;

(ii) Periodically conduct reappraisals of medical staff privileges and revise those privileges as appropriate;

(iii) Recommend to the governing authority, names of qualified health care practitioners to perform approved procedures, and to recommend facility privileges to be granted;

(iv) Establish and maintain a quality assurance mechanism to review identified problems and take appropriate action;

(v) Coordinate, direct and evaluate all clinical operations of the facility;

(vi) Evaluate and recommend the type and amount of equipment needed in the facility;

(vii) Assure that a qualified physician available when patients are in the facility;

(viii) Ensure physician documentation is recorded immediately and reflects an accurate description of care given;

(ix) Assure that planned surgical procedures are within the scope of privileges granted to the physicians.

R432-500-10. Director of Nursing Services.

(1) Direction.

Each facility shall employ and designate in writing a registered nurse who will be responsible for the supervision and direction of the nursing staff and the operating room suite.

(2) Qualifications.

The director of nursing shall be a registered nurse who is qualified by training or education to supervise nursing services.

(3) Responsibilities.

(a) The director of nursing, in consultation with the medical director shall plan and direct the delivery of nursing care.

(b) The director of nursing shall be responsible for at least:

(i) Maintain qualified health care personnel that are available and used as needed under the supervision of a registered nurse;

(ii) Assure a licensed nurse is on duty when patients are in the facility;

(iii) Maintain the operating room register;

(iv) Review and update nursing care policies and procedures;

(v) Ensure that nursing documentation is recorded immediately and reflects an accurate description of care given;

(vi) Maintain policies and procedures for pre-operative and post-operative care;

(vii) Ensure post-operative instructions are in writing and are reviewed with the patient or other responsible person following surgery;

(viii) Supervise all non-physician direct patient care services, as defined in facility policy;

(ix) Review identified problems with the medical director through quality assurance mechanisms and take appropriate action;

(x) Ensure patient care policies including admission and

discharge policies are reviewed annually. Patient care policies shall be developed and revised by a group representing all professionals involved in patient care.

R432-500-11. Staff and Personnel.

(1) Health Surveillance.

(a) The facility shall establish a policy and procedure for the health screening of all personnel which shall protect the health an safety of personnel and patients. Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-704. Communicable Disease rules.

(b) The facility shall prohibit employees with a communicable disease or open skin lesions, or weeping dermatitis, from direct contact with patients, patient care items, if direct contact may result in the transmission of the infection or the disease.

(c) This health screening shall be performed within the first two weeks of employment and as defined in facility protocols.

(d) Skin testing shall be done within two weeks of beginning employment. Employee skin testing by the Mantoux method and follow-up for tuberculosis shall be done in accordance with R386-702-5., Special Measures for the Control of Tuberculosis.

(i) Skin testing shall be conducted on each employee annually and after suspect exposure to a person with active tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

(f) The facility shall be in compliance with the Occupational Safety and Health Administrations Bloodborne Pathogen Standard.

(2) In-service Training and Orientation.

(a) There shall be planned and documented in-service training programs for all personnel.

(b) The frequency and content of training programs shall be defined in facility policy.

(c) The training program shall include a review of all facility policies and procedures.

(d) All personnel shall have access and knowledge of the facility's policy and procedure manuals.

R432-500-12. Contracts and Agreements.

(1) Contracts.

(a) The licensee shall secure and update contracts for services not provided directly by the facility.

(b) Contracts shall include a statement that the contractor will conform to the standards required by these rules.

(2) Transfer Agreements.

(a) The licensee shall maintain hospital admitting privileges for all staff or a written transfer agreement with one or more full-service licensed hospitals located within an overall travel time of 15 minutes or less from the facility.

(b) The transfer agreement shall include provisions for:

(i) Transfer of information needed for proper care and treatment of the patient transferred;

(ii) Security and accountability of the personal effects of the patient being transferred.

R432-500-13. Quality Assurance.

(1) The administrator and the medical director, shall establish a quality assurance program and a quality assurance committee to review facility operations, protocols, policies and procedures, incident reports, medication usage, infection control, patient care, and safety.

(2) General Provisions Quality Assurance Committee.

(a) The committee shall include a representative from the facility administration, the medical director, the director of nursing, and may also include other representatives, as appropriate.

(b) The committee shall meet at least quarterly and keep written minutes available for Department review.

(c) The committee shall report findings and concerns to the medical director, administrator, and governing authority as applicable.

R432-500-14. Emergency and Disaster.

Each facility has the responsibility to assure the safety and well-being of patients in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(1) General Provisions.

(a) The administrator shall be in charge of facility operations during any significant emergency. If not on the premises, the administrator should make every effort to get to the facility to relieve the administrator designee to take charge during an emergency.

(b) The licensee and the administrator shall be responsible for the development of a written emergency and disaster plan, coordinated with state and local emergency or disaster authorities.

(c) The plan shall be made available to all staff to assure prompt and efficient implementation (see R432-500-14(2)).

(d) The administrator and the licensee shall review and update the plan at least annually.

(e) The names and telephone numbers of facility staff, emergency medical personnel, and emergency service systems shall be conveniently posted.

(2) Emergency and Disaster Plan and Drills.

The facility shall have an internal and external emergency or disaster plan including the following:

(a) Evacuation of occupants to a safe place, as specified;

(b) Delivery of emergency care and services to facility occupants when staff is reduced by an emergency;

(c) The receiving of patients to the facility from another location, including housing, staffing, medication handling, and record maintenance and protection;

(d) The person or persons with decision-making authority for fiscal, medical, and personnel management;

(e) An inventory of available personnel, equipment, supplies and instructions and how to acquire additional assistance;

(f) Staff assignment for specific tasks during an

emergency;

(g) Names and telephone numbers of on-call physicians and staff at each telephone;

(h) Documentation of emergency events;

(i) Emergency or Disaster drills, other than fire drills shall be held at least biannually, at least one per shift, with a record of time and date maintained. Actual evacuation of patients during a drill is optional;

(j) Notification of the Department if the facility is evacuated.

(3) Fire Emergencies.

The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) An evacuation plan shall identify:

(i) evacuation routes,

(ii) location of fire alarm boxes and fire extinguishers, and

(iii) emergency telephone numbers including the local fire department.

(b) The evacuation plan shall be posted at several locations throughout the facility.

(c) The emergency plan shall include fire containment procedures and how to use the facility alarm systems, extinguishers, and signals.

(d) Fire drills shall be held at least quarterly on each shift and documentation of the drill shall include a record of the time and date. Actual evacuation of patients during a drill is optional.

(4) Smoking Policies.

Smoking policies shall comply with Title 26, Chapter 38 the, "Utah Indoor Clean Air Act", and Section 31-4.4 of the 1991 Life Safety Code.

R432-500-15. Patients' Rights.

(1) Written policies regarding the patient rights shall be made available.

(2) The policies and procedures shall ensure that each patient admitted to the facility shall be treated as an individual with dignity and respect and have the following rights:

(a) To be fully informed, prior to or at the time of admission and during stay, of the patient rights and of all facility rules that pertain to the patient;

(b) To be fully informed prior to admission of the treatment to be received, potential complications, and outcome;

(c) To refuse treatment and to be informed of the medical consequences of such refusal;

(d) To be informed, prior to or at the time of admission and during stay, of services available in the facility and of any expected charges for which the patient may be liable;

(e) To participate in decisions involved in their health care;

(f) To refuse to participate in experimental research;

(g) To be assured confidential treatment of personal and medical records and to approve or refuse release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(h) To be treated with consideration, respect, and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-500-16. Patient Care Services.

(1) Each patient shall be under the care of a member of the medical staff or under contract.

(2) Medical Staff Bylaws shall establish the credentialing process and shall include the delineation of professional staff privileges.

(3) Responsibilities.

(a) The attending member of the medical staff including any non-physician specialist shall be responsible for the quality of patient care delivered and the supervision of patients admitted to the facility.

(b) All facility staff members and those under contract by the facility shall comply with current laws, facility protocols and current standards as interpreted by the medical director.

R432-500-17. Extended Recovery Services.

(1) Extended recovery care services provided by a Freestanding Ambulatory Surgical Center shall not exceed 24 hours. The facility shall provide services to no more than three patients, anywhere within the facility, between the hours of 10:00 p.m. and 6:00 a.m.

(2) Extended recovery care services shall be integrated with other departments and services of the facility.

(3) Extended recovery care services shall have policies and procedures that describe the nature and extent of the extended recovery services provided, which are consistent with ambulatory surgery and anesthesia services.

(4) A minimum of two health care workers, one of which shall be a registered nurse with Advanced Cardiac Life Support certification (ACLS), shall be on duty when patients are in the extended recovery care unit.

(5) In addition to the items required in a patient's medical record under section R432-500-22, the physician shall document the following:

(a) the reason(s) or need for a patient's admission to the extended recovery service, and

(b) dietary orders to meet the nutritional needs of the patient.

(6) The facility shall obtain a Food Service Establishment Permit, if required by the local health department.

(a) Inspection reports by the local health department shall be maintained at the facility for review by the Department.

(b) All personnel who prepare or serve food shall observe personal hygiene and sanitation practices which protect food from contamination.

R432-500-18. Nursing Services.

(1) Direction.

Each facility shall provide nursing services commensurate with the needs of the patients served.

(2) Organization.

All non-medical patient services shall be under the general direction of the director of nursing, except as exempted by facility policy.

(3) Responsibilities.

(a) Nursing service personnel shall be responsible to plan and deliver nursing care, and assist with treatments and

procedures.

(b) All nursing personnel shall maintain a current Utah license.

(4) Equipment.

(a) The facility shall provide equipment in good working order to meet the needs of patients.

(b) The type and amount of equipment shall be indicated in facility policy and approved by the medical director.

(c) The following equipment shall be available to the operating suite:

(i) Emergency call system;

(ii) Cardiac Monitor;

(iii) Ventilation support system;

(iv) Defibrillator;

(v) Suction equipment;

(vi) Equipment for Cardiopulmonary Resuscitation and Airway Management;

(vii) Portable Oxygen; and

(viii) Emergency Cart.

R432-500-19. Pharmacy Service.

Pharmacy space and equipment required depends upon the type of drug distribution system used, number of patients served, and extent of shared or purchased services.

(1) Direction.

(a) There shall be a pharmacy supply under the direction of a pharmacist.

(b) If the facility does not have a staff pharmacist, it shall retain a consultant pharmacist by written contract.

(c) There shall be written policies and procedures to govern the acquisition, storage, and disposal of medications.

(d) The medical director and facility pharmacist shall approve these policies.

(e) The quality and appropriateness of medication usage shall be monitored by the Quality Assurance Committee.

(2) Pharmacy Supply.

(a) Provision will be made to supply necessary drugs and biologicals in a prompt and timely manner.

(b) A current pharmacy reference manual shall be available to all staff.

(3) Storage.

(a) All medications, solutions, and prescription items shall be kept secure and separate from non-medicine items in a conveniently located storage area.

(b) An accessible emergency drug supply shall be maintained in the facility if the facility does not have a pharmacy.

(i) The emergency drug supply shall be approved by the medical director and the facility pharmacist.

(ii) Contents of the emergency drug supply shall be listed on the outside of the container. An inventory of the contents shall be documented by nursing staff after each use and at least weekly.

(iii) Used items shall be replaced within 48 hours.

(c) Medications stored at room temperature shall be maintained within 59 - 80 degrees F. (15 to 30 degrees C.). Refrigerated medications shall be maintained within 36 - 46 degrees F. (2 to 8 degrees C.).

(d) Medications and other items that require refrigeration shall be stored securely and separately from food items.

(4) Controlled Drugs.

(a) Drugs shall be accessible only to licensed nursing, pharmacy, and medical personnel as designated by facility policy. Schedule II drugs shall be kept under double-lock and separate from other medication.

(b) Separate records of drug use shall be maintained on each Schedule II drug.

(i) Records shall be accurate and complete including patient name; drug name; strength; administration documentation; and name, title, and signature of person administering the drug.

(ii) The record shall be reconciled at least daily and retained for at least one year.

(iii) If medications are supplied as part of a unit-dose medication system, separate records are not required.

(c) Records of Schedule III and IV Drugs shall be maintained in such a manner that the receipt and disposition of the drugs can be readily traced.

(5) Disposal of Drugs.

(a) All discontinued and outdated drugs, including those listed in Schedules II, III or IV of the "Federal Comprehensive Drug Abuse Prevention and Control Act of 1970," shall be destroyed promptly by the facility. The destruction shall be witnessed and documented by two licensed members of the facility staff, preferably a physician and a registered nurse designated by the facility.

(b) The name of the patient, the name and strength of the drug, the prescription number, the amount destroyed, the method of destruction, the date of destruction and the signatures of the witnesses shall be recorded in a separate log kept for this purpose. The log shall be retained for at least three years.

(6) Administration.

(a) A single dose or pre-packaged medications may be sent with the patient upon discharge, when ordered by the discharging physician.

(b) Use of multiple dose medications shall be released in compliance with Utah pharmacy law.

(c) All medications used shall be documented in the patient's medical record.

R432-500-20. Anesthesiology Services.

(1) There shall be facilities and equipment for the administration of anesthesia services commensurate with the clinical and surgical procedures planned for the facility.

(2) The medical staff shall appoint a medical director of anesthesia services who shall meet the following requirements:

(a) be licensed to practice medicine in Utah;

(b) have training and expertise in anesthesia services offered to ensure adequate supervision of patient care.

(3) The medical director of anesthesia services shall implement, coordinate, and ensure the quality of anesthesia services provided in the facility including the implementation of written policies and protocols approved by the medical staff which clearly define the responsibilities and privileges of qualified anesthetists.

(4) Only qualified anesthetists shall provide anesthesia care.

(5) During the surgical procedure, a qualified anesthetist

shall be responsible for the following:

(a) monitor, by continuous presence in the operating room (except for short periods of time for personal safety, such as radiation exposure), a patient who is undergoing a surgical procedure and who is receiving general anesthetics, regional anesthetics, or monitored anesthesia care;

(b) continually evaluate a patient's oxygenation, ventilation, and circulation, and have means available to measure temperature during administration of all anesthetics.

(6) The non-physician qualified anesthetists shall provide patient specific anesthesia services upon the request of a licensed professional, as defined in R432-500-2(e). The licensed professional shall be involved in each patient's preoperative assessment and shall ensure that the non-physician anesthetist is providing anesthesia services in a manner that specifically addresses the needs of each individual patient.

(7) The patient and operating surgeon shall be informed prior to surgery of who will be administering anesthesia.

(8) When the operating team consists entirely of non-physicians, a physician shall be immediately available in the facility to respond to medical emergencies.

(9) Policies and Procedures.

(a) Written anesthesia service policies shall include the following:

(i) Anesthesia care policies and procedures for preanesthesia evaluation, intraoperative care including documenting a time-based record of events, and postanesthesia care;

(ii) A qualified anesthetist, shall conduct a preanesthesia evaluation, and document the evaluation in the patient's medical record prior to inducing anesthesia;

(iii) The preanesthesia evaluation shall include the following information:

(A) planned anesthesia choice;

(B) assessment of anesthesia risk;

(C) anticipated surgical procedure;

(D) current medications and previous untoward drug experiences;

(E) prior anesthetic experiences;

(F) any unusual potential anesthetic problems.

(b) A qualified anesthetist shall remain with the patient until the patient's status is stable. The qualified anesthetist or the anesthetist's qualified designee shall remain with the patient until the patient's protective reflexes have returned to normal, and it is determined safe as defined in facility policy.

(c) The medical director of anesthesia services shall define the mechanism for the release of patients from postanesthesia care. Each patient who is admitted to an ambulatory surgical facility, and who receives other than unsupplemented local anesthesia, shall be discharged in the company of a responsible adult.

(10) Medicaid certified facilities shall comply with the 42 CFR 415.110 and 42 CFR 416.42 (December 30, 1999) which is incorporated by reference.

(11) The use of flammable anesthetic agents for anesthesia or for the pre-operative preparation of the surgical field is prohibited.

(12) The anesthetic equipment shall be inspected and tested by the person administering anesthesia before use in accordance with the facility policy.

R432-500-21. Laboratory and Radiology Services.

(1) General Requirements.

(a) The facility shall make provisions, as appropriate, for laboratory, radiology and associated services according to facility policy.

(b) Services shall be provided with an order from a physician or a person licensed to prescribe such services. The order for laboratory and radiology services and the test results shall be included in the patient's medical record.

(c) If services are provided by contract, a CLIA certified, State- approved laboratory shall perform such services. Reports or results shall be reported promptly to the attending physician and documented in the patient's medical record.

(2) Facility Laboratory Services.

If the facility provides CLIA certified or state approved laboratory service, these services shall comply with R432-100-22.

(3) Facility Radiology Services.

If the facility provides its own radiology services, these services shall comply with R432-100-21.

R432-500-22. Medical Records.

(1) Direction.

Medical records shall be complete, accurately documented, and systematically organized to facilitate storage and retrieval for staff use. There shall be written policies and procedures to accomplish these purposes.

(2) Medical Record Organization.

(a) A permanent individual medical record shall be maintained for each patient admitted.

(b) All entries shall be permanent (typed or handwritten legibly in ink) and capable of being photocopied. Stamps are not acceptable unless a co-signature is present. Entries must be authenticated including date, name or identified initials, and title of the person making the entry.

(c) Records shall be kept current and shall conform to good medical and professional practice based on the service provided to the patient. Automated Record Systems may be utilized provided the medical record content maintained meets the requirements as defined within these rules.

(d) All records of discharged patients shall be completed and filed within a time frame established by facility policy. The physician has the responsibility to complete the medical record.

(3) Medical Record Content.

Each patient's medical record shall include the following:

(a) An admission record (face sheet) that includes the name, address, and telephone number of the patient, physician and responsible person and the patient's age and date of admission;

(b) A current physical examination and history, including allergies and abnormal drug reactions;

(c) Informed consent signed by the patient or, if applicable, the patient's representative;

(d) Complete findings and techniques of the operation;

(e) Signed and dated physician orders for drugs and treatments;

(f) Signed and dated nurse's notes regarding care of the

patient. Nursing notes shall include vital signs, medications, treatments and other pertinent information;

(g) Discharge summary which contains a brief narrative of conditions and diagnoses of the patient's final disposition, to include instructions given to the patient and responsible person;

(h) The pathologist's report of human tissue removed during the surgical procedure, if any;

(i) Reports of laboratory and x-ray procedures performed, consultations and any other pre-operative diagnostic studies;

(j) Pre-anesthesia evaluation.

(4) Retention and Storage.

(a) Medical records shall be retained for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches age 18 or the age of majority plus an additional three years.

(b) All patient records shall be retained by the new owners upon change of ownership.

(c) Provision shall be made for filing, safe storage, security, and easy accessibility of medical records.

(5) Release of Information.

(a) Medical record information shall be confidential.

(i) There shall be written procedures for the use and removal of medical records and the release of patient information.

(ii) Information may be disclosed only to authorized persons in accordance with federal and state laws, and facility policy.

(iii) Requests for information identifying the patient (including photographs) shall require written consent by the patient.

(b) Authorized representatives of the Department may review records to determine compliance with licensure rules and standards.

R432-500-23. Housekeeping Services.

(1) Organization.

There shall be housekeeping services to maintain a clean, sanitary, and healthful environment. If the facility contracts for housekeeping services with an outside agency, there shall be a signed, dated agreement that details all services provided. The housekeeping service shall meet all the requirements of this section.

(2) Policies and Procedures.

Written housekeeping policies and procedures shall be developed and implemented by the facility, and reviewed and updated annually.

(3) Personnel.

A sufficient number of housekeeping staff shall be employed to maintain both the exterior and interior of the facility in a safe, clean, orderly manner.

(4) Equipment and Supplies.

(a) Housekeeping equipment shall be suitable for institutional use and properly maintained.

(b) Cleaning solutions for floors shall be prepared according to manufacturer's instructions and be checked periodically to insure proper germicidal concentrations are maintained.

(c) There shall be sufficient numbers of noncombustible trash containers. Lids shall be provided where appropriate.

(d) Storage areas containing cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials, shall be safeguarded. Toilet rooms shall not be used for storage.

(e) Throw or scatter rugs shall not be used in the main traffic areas of the facility or in exitways.

R432-500-24. Laundry Services.

(1) Direction.

(a) Each facility shall have provisions for storage and processing of clean and soiled linen as required for patient care.

(i) Processing may be done within the facility, in a separate building (on or off site), or in a commercial or shared laundry.

(ii) If the facility contracts for laundry service, there shall be a signed, dated agreement that details all services provided.

(iii) The laundry service shall meet all requirements of this section.

(b) If the facility processes laundry on the premises, a qualified person shall be employed to direct the facility's laundry service. The person shall have experience or training in the following:

(i) Proper use of the chemicals in the laundry;

(ii) Proper laundry procedures;

(iii) Proper use of laundry equipment;

(iv) Appropriate facility policy and procedures;

(v) Appropriate federal regulations, state rules, and local laws.

(2) Physical Plant.

(a) If laundry is processed by a commercial laundry which is not part of the facility, the facility must provide at least the following:

(i) A separate room, vented to the outside, for holding and sorting soiled linen until ready for transport;

(ii) A central, clean linen storage area in addition to the linen storage provided in each unit. The central storage capacity shall be sufficient for the facility's operation;

(iii) A separate storage area to maintain clean and soiled linen carts out of traffic areas;

(iv) Handwashing facilities shall be provided in each area where unbagged soiled linen is handled.

(b) If laundry is processed by the facility (within or in a separate building), provision shall be made for the following:

(i) Receiving, holding and sorting room for control and distribution of soiled linen. Soiled linen chutes may empty into this room;

(ii) A laundry room with washing machines adequate for the quantity and type of laundry to be processed;

(iii) A laundry room with dryers adequate for the quantity and type of laundry to be processed;

(iv) A clean storage room with space and shelving adequate to store one half of all laundry being processed;

(v) Convenient access to employee lockers and lounge;

(vi) Storage for laundry supplies;

(vii) Storage area to park clean and soiled linen carts out of traffic;

(viii) Traffic pattern through laundry area shall be:

(A) From building corridor to receiving and sorting/soiled linen room;

(B) From sorting soiled linen room to wash room;

(C) From wash room to dry room. The dry room shall be separated from the wash room by a wall with a door;

(D) From dry room to clean storage or building corridor (covered and protected);

(E) Air flow shall be positive in direction; from clean to soiled, to exterior.

(3) Policies and Procedures.

Each facility shall develop and implement policies and procedures relevant to operation of the laundry. These policies and procedures shall be reviewed and updated annually, and shall address the following:

(a) Methods to handle, store, transport and process clean, soiled, contaminated, and wet linens;

(b) Water temperature to wash laundry that is at least 150 degrees F (66 degrees C) unless the laundry equipment manufacturer recommends other temperatures. An automatic chemical sterilizing system may be used in lieu of 150 degrees F water with Department approval;

(c) Collection and transportation of soiled linen to the laundry in closed, leak-proof laundry bags or covered impermeable containers. Separate linen carts labeled "SOILED" or "CLEAN LINEN" shall be constructed of washable material and shall be laundered or suitably cleaned to maintain sanitation;

(d) The training of laundry personnel in proper procedures for laundry infection control;

(e) Provision for adequate laundry equipment (washers, dryers, linen carts, transport carts) to maintain clean laundry for the facility;

(f) Maintenance of laundry equipment in proper working condition;

(g) Provision for a lavatory with hot and cold running water, soap and sanitary towels within the laundry area.

(4) Clean Linen.

(a) Clean linen shall be stored, handled, and transported in a manner to prevent contamination. Clean linen shall be stored in clean closets, rooms, or alcoves used only for that purpose.

(b) Clean linen must be covered if stored in alcoves or transported through the facility. Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.

(c) Linens shall be maintained in good repair. A supply of clean linen and other supplies shall be provided and available to staff to meet the needs of patients.

(5) Soiled Linen.

(a) Soiled linen shall be handled, stored and processed to prevent the spread of infections. Soiled linen shall be sorted by methods to protect from contamination, and as specified in facility policy.

(b) Soiled linen shall be stored and transported in a closed container which prevents airborne contamination of corridors and areas occupied by patients, and precludes cross contamination of clean linens. Laundry chutes shall be maintained in a clean sanitary condition.

R432-500-25. Maintenance, Physical Environment, and Safety.

Surgical centers shall provide a safe and sanitary environment. All ambulatory surgical facilities shall comply with this Section.

(1) Direction.

(a) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance, or if the facility contracts for maintenance services, there shall be a signed, dated agreement that specifies agreement to comply with all requirements of this section.

(b) The facility shall develop and implement a written maintenance program (including preventive maintenance) to ensure continued equipment function and sanitary practices throughout the facility.

(2) Policies and Procedures.

(a) Each facility shall develop and implement maintenance, safety, and sanitation policies and procedures that shall be reviewed and updated annually.

(b) When maintenance is performed by an equipment-service company, the company shall certify that work performed, is in accordance with acceptable standards. This certification shall be retained by the facility for review.

(c) A pest control program shall be developed to ensure the facility is free from vermin and rodents which shall be conducted in the facility buildings and grounds by a licensed pest control contractor or an employee trained in pest control procedures. All openings to the outside of the facility shall prevent the entrance of insects and vermin.

(d) Architectural and engineering drawing, specification books, and maintenance literature concerning the design and construction of built-in systems should be available for use by maintenance and safety personnel.

(e) Instructional information, cautions, specifications, and operational data on all facility equipment shall be available for reference by all concerned departments.

(f) Systems-disconnects location information shall be readily available.

(g) Documentation shall be maintained for Department review of the pest control program and other maintenance activity.

R432-500-26. General Maintenance.

(1) Equipment used in the facility shall be approved by Underwriter's Laboratory and meet all applicable Utah Occupational Safety and Health Act requirements in effect at the time of purchase.

(2) Draperies, carpets, and furniture shall be maintained clean and in good repair.

(3) Electrical systems including appliances, cords, equipment, call systems, switches, and grounding systems shall be maintained to assure safe functioning.

(4) Heating and cooling systems shall be inspected and documented annually to assure safe operation. Written records of maintenance on high intensity (90%) filters and humidifiers shall be kept.

(a) Heating equipment shall be capable to maintain 80 degrees F.

(b) Cooling equipment shall be capable to maintain 74 degrees F.

(5) Electric circuits shall be tested annually to show that phase, voltage, amperage, grounding and load balancing are as required.

(6) Grounding systems in operating rooms shall be tested monthly and documented.

(7) Medical gas systems shall be inspected quarterly.

(8) Steam systems driving autoclaves and other sterilization equipment shall be tested regularly to assure proper operating temperatures, volumes, and pressures. Gauges shall be tested annually.

(9) All switch-over devices, relays, breakers, outlets, and receptacles in the emergency system shall be tested quarterly.

(10) Air supplies, main burners and stack afterburners shall be inspected annually.

(11) All new equipment shall be tested prior to use.

(12) All patient care equipment shall be tested as specified in facility policy but at least according to manufacturer's specifications.

(13) All other electric and electronic equipment shall be tested at least annually.

(14) All testing and inspections of systems and equipment shall be done by qualified persons.

(15) Records shall be maintained of all inspections and testing.

(16) Maintenance work performed shall be documented. All required records including maintenance, safety inspections, and drill schedules shall be retained for two years or from the date of the last major inspection.

(17) All buildings, fixtures, equipment, spaces, and sanitation systems shall be maintained in operable condition.

(18) Any chemical of a poisonous nature shall be properly labeled and shall not be stored with patient care items.

R432-500-27. Air Filters.

All air filters installed in heating, air conditioning, and ventilation systems, shall be inspected and filters replaced as needed to maintain the systems in operating condition.

R432-500-28. Emergency Electric Service.

(1) The facility shall make provision for an emergency generator to provide power to critical areas essential for patient safety in the event of an interruption in normal electrical power service.

(2) There shall be provision for emergency exit lighting in accordance with NFPA 101.

(3) Flash lights shall be available for emergency use by staff.

(4) Testing Emergency Power Systems.

(a) All emergency electrical power systems shall be maintained in operating condition and tested as follows:

(i) The emergency power generator shall be tested weekly and run under load for a period of 30 minutes monthly.

(ii) Transfer switches and battery operated equipment shall be tested at approximately 14-day intervals.

(b) A written record of inspection, performance, test period, and repair of the emergency generator shall be maintained on the premises for review.

R432-500-29. Storage and Disposal of Garbage, Refuse, and Waste.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

R432-500-30. Provisions for Gas Usage.

(1) Flammable anesthetic agents or chemicals may not be used unless the building is properly constructed for its use in accordance with NFPA guidelines.

(a) Compressed gases and flammable liquids shall be stored safely. All compressed gas cylinders in storage shall be capped and secured. Oxidizing agents may not be stored with flammables.

(b) Oxygen and flammable agents shall be stored away from combustibles. Liquid flammable agents shall be stored in metal cabinets with no more than ten gallons of any one flammable liquid or 60 gallons total of flammable liquids stored per cabinet. Warning signs shall be posted when compressed gases or flammable liquids are used.

(2) Equipment shall be available to extinguish liquid oxygen and enriched gases. Employees shall be trained in the proper use of equipment and containment of combustions.

(3) When using oxygen, provision shall be made for at least the following:

(a) Safe handling and storage;

(b) Facility personnel shall not transfer gas from one cylinder to another;

(c) Piped oxygen system shall be tested in accordance with The NFPA 56F and 56K and a written report shall be filed as follows:

(i) Upon completion of initial installation;

(ii) Whenever changes are made to the system;

(iii) Whenever the integrity of the system has been breached;

(iv) There shall be a scavenging system for evacuation of anesthetic waste gas.

R432-500-31. Lighting.

(1) Sodium and mercury vapor lights shall not be used inside the facility, but may be used as a source of exterior lighting.

(2) All accessible storeroom, stairway, ramp, exit and entrance areas shall be illuminated by at least of 20 foot-candles of light at floor level.

(3) All corridors shall be illuminated with a minimum of 20 foot-candles of light at floor level.

(4) Other areas shall be provided with the following minimum foot candles of light at working surfaces:

(a) Operating rooms : 50 Foot-candles

(b) Medication preparation areas : 50 foot-candles

(c) Charting areas : 50 foot-candles

(d) Reading areas : 50 foot-candles

(e) Laundry areas : 30 foot-candles

(f) Toilet, bath, and shower rooms : 30 foot-candles

(g) Nutritional area : 30 foot-candles.

R432-500-32. Water Supply.

(1) Plumbing and drainage facilities shall be maintained in compliance with Utah Plumbing Code.

(2) Backflow prevention devices shall be maintained in

operating condition and tested when required by the Utah Plumbing Code and Utah Public Drinking Water Regulations.

(3) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by staff and patrons. The facility shall maintain hot water delivered to patient care areas at temperatures between 105 and 115 degrees F. Temperatures shall be regularly tested and a record maintained as part of the preventive maintenance program.

(4) There shall be grab bars at each bathroom facility used by patients.

(5) Water sterilizers, exchangers, distilleries, deionizers and filters shall be functional and shall provide the quality of water intended in each application.

R432-500-33. Sanitation Facilities.

(1) Handwashing and toilet facilities shall be adequate in number and convenient for use by employees and patrons. Facilities shall be kept clean, in good repair and adequately ventilated.

(2) An adequate supply of hand cleansing soap and a supply of sanitary towels or approved hand drying appliance shall be available for use. Common towels are prohibited.

(3) Adequate and conveniently located toilet facilities shall be provided for employees and patrons. Toilet facilities shall be kept clean, in good repair, and free of objectionable odors. They shall be adequately ventilated.

(4) All toilet and bathroom doors used by patients and opening inward into the bath or toilet room shall also allow the door to be removed from the outside of the bath or toilet room.

(5) Other Safety and Sanitation Provisions.

(a) Trash chutes, laundry chutes, and dumb waiters shall be safe and sanitary. Trash and laundry chutes, elevators, dumb waiters, message tubes, and other such systems shall not pump contaminated air into clean areas.

(b) The use of exposed element portable heaters is prohibited.

(c) If virulent agents are tested in the facility, a shielded exhaust hood or other equivalent protective device(s) shall be provided.

(d) Building, grounds, walkways, and parking shall be free of hazards and in good repair. Parking and walkways shall be clear of snow and ice. A clear unobstructed path shall be maintained from all emergency exits to a public way.

(e) Floors shall be maintained so they are in good repair. Floors in labs, toilet rooms, baths, kitchens, and isolation rooms shall be of ceramic tile, roll-type vinyls, or seamless bonded flooring which is resilient, non-absorbent, impervious, and easily cleaned.

(f) Traffic in all patient care areas shall be monitored. Only authorized individuals shall have access to sterile areas.

R432-500-34. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

January 14, 2002 26-21-5
Notice of Continuation December 15, 1997 26-21-16

R477. Human Resource Management, Administration.
R477-9. Employee Conduct.
R477-9-1. Standards of Conduct.

Employees shall comply with the standards of conduct established in these rules and the policies and rules established by their agency management.

(1) Employees shall apply themselves to and shall fulfill their assigned duties during the full time for which they are compensated.

(a) Employees shall --

(i) Comply with the standards established in their individual performance plans;

(ii) Maintain an acceptable level of performance and conduct on all other verbal and written job expectations;

(iii) Report conditions and circumstances, including controlled substances or alcohol impairment, that may prevent them from performing their job effectively and safely.

(iv) Inform their supervisor of any unclear instructions or procedures.

(2) Employees shall make prudent and frugal use of state funds, equipment, buildings, and supplies.

(3) Employees who report for duty or attempt to perform the duties of their positions while under the influence of alcohol or nonprescribed controlled substances, shall be subject to corrective actions or discipline in accordance with R477-10-2, R477-11 and R477-14.

(a) The agency may decline to defend and indemnify employees found violating this rule, in accordance with 63-30-36 section (c)(ii) of the Utah Governmental Immunity Act.

(4) Employees shall not drive a state vehicle, or any other vehicle, on state time while under the influence of alcohol or controlled substances.

(a) Employees who violate this rule shall be subject to corrective action or discipline pursuant to R477-10-2, R477-11 and R477-14.

(b) The agency may decline to defend or indemnify employees who violate this rule, according to section 63-30-36(3)(c)(i) of the Utah Governmental Immunity Act.

R477-9-2. Outside Employment.

(1) State employment shall be the principal vocation for full-time employees governed by these rules. An employee may engage in outside employment under the following conditions:

(a) Outside employment must not interfere with an employees' efficient performance in his state position.

(b) Outside employment must not conflict with the interests of the agency or the State of Utah.

(c) Outside employment must not give reasons for criticism or suspicion of conflicting interests or duties.

(d) Employees shall notify agency management in writing if the outside employment has the potential or appears to conflict with Title 67, Chapter 16 Employee Ethics Act.

(e) Agency management may deny employees permission to engage in outside employment or to receive payment if they determine the outside activity causes a real or potential conflict of interest.

(i) Employees may grieve this decision.

(ii) Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action if the secondary employment is found to be a conflict of interest.

R477-9-3. Conflict of Interest.

(1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:

(a) Outside activities must not interfere with our employees' efficient performance in his state position.

(b) Outside activities must not conflict with the interests of the agency or the State of Utah.

(c) Outside activities must not give reasons for criticism or suspicion of conflicting interests or duties.

(2) An employee shall not use his state position or any influence, power, authority or confidential information he receives in that position, or state time, equipment, property, or supplies for private gain.

(3) An employee shall not receive outside compensation for performing state duties, except for the following:

(a) Awards for meritorious public contribution.

(b) Honoraria or expenses paid for papers, speeches, or appearances on an employee's own time with the approval of agency management, which are not compensated by the state or prohibited by rule.

(c) Usual social amenities, ceremonial gifts, or non-substantial advertising gifts.

(4) An employee shall declare a potential conflict of interest when he is required to do or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the employee from making decisions or taking actions that may cause a conflict of interest.

R477-9-4. Political Activity.

State career service employees may voluntarily participate in political activity according to the provisions in this rule or other federal laws. The following rules apply to career service employees in all salary ranges and positions.

(1) Any state career service employee elected to any partisan or full-time non-partisan political office shall be granted a leave of absence without pay while being monetarily compensated for service in political office. Employees shall not receive annual leave while serving in a political office.

(2) During work time, no career service employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of employment. However, state employees may voluntarily contribute to any party or any candidate.

(3) Decisions regarding employment, promotion, demotion or dismissal or any other human resource actions shall not be based on partisan political activity.

(4) Regardless of other provisions in these rules, no member of the Utah State Highway Patrol may use official authority or influence to interfere with an election or to affect election results. No person may induce or attempt to induce any member of the Utah State Highway Patrol to participate in any prohibited activity.

(5) This rule shall not apply to employees who are restricted or prevented from engaging in political activity through the provisions of the federal Hatch Act. To determine whether an employee shall adhere to the federal Hatch Act,

employees may contact DHRM or the employing agency's Human Resource office for guidelines.

(6) Violations of law governing political activity shall be reported in writing to the Executive Director. The Executive Director, DHRM, shall investigate the validity of any allegation and assess the extent to which any activity was knowingly and willfully conducted in violation of law.

R477-9-5. Employee Indebtedness to the State.

(1) Employees indebted to the state because of an action or performance in their official duties may have a portion of their pay that exceeds the minimum federal wage withheld. Overtime pay shall not be withheld.

(a) The following three conditions must be met before withholding of pay may occur:

(i) The debt must be a legitimately owed amount which can be validated through physical documentation or other evidence.

(ii) The employee must know about and, in most cases, acknowledge the debt. As much as possible, the employee should provide written authorization to withhold the pay.

(iii) Employees must be notified of this rule which allows the state to withhold pay.

(b) Employees terminating from state service will have pay withheld from the last paycheck.

(c) Employees going on leave without pay for more than two pay periods may have pay withheld from their last paycheck.

(d) The state may withhold an employee's pay to satisfy the following specific obligations:

(i) Travel advances where travel and reimbursement for the travel has already occurred;

(ii) State credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the credit card company by the employee;

(iii) Evidence that the employee negligently caused loss or damage of state property;

(iv) Payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;

(v) Misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes reparation for employee theft of state property or use of state property for personal financial gain or benefit;

(vi) Overpayment of pay determined by evidence that an employee did not work the hours for which they received pay or was not eligible for the benefits received and paid for by the state.

(e) Excessive reimbursement of funds from flexible reimbursement accounts.

(f) Other obligations that satisfy the requirements of R477-9-4.(1) above.

(2) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.

R477-9-6. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with R477-2-2(1).

KEY: conflict of interest, government ethics, Hatch Act, personnel management
January 4, 2002 67-19-6
Notice of Continuation July 1, 1997

R512. Human Services, Child and Family Services.
R512-43. Adoption Assistance.
R512-43-1. Definitions.

(1) Definitions of adoption assistance, child with a special need, monthly subsidy, nonrecurring adoption expenses, state medical assistance, and supplemental adoption assistance are as stated in Section 62A-4a-802.

(2) Initiation of adoption proceedings means the earlier of (a) the date an Adoption Agreement is signed with the Division of Child and Family Services for placement of a child in the home, or (b) the date an adoption petition is filed.

(3) Child in public foster care for the purpose of adoption assistance means a judicially removed child whose placement that results in adoption was immediately preceded by protective, temporary, or legal custody with a State IV-E agency, or a child who was placed with a State IV-E agency through a Voluntary Placement Agreement, or the child of a minor parent in foster care.

(4) State IV-E agency means Human Services,Child and Family Services or other public agency or tribal organization with whom a Title IV-E agreement is in effect for foster care maintenance payments.

(5) AFDC means the AFDC program that was in effect on July 16, 1996.

(6) Child with a previous IV-E agreement means a child who was Title IV-E eligible in a previous adoption with a fully executed adoption assistance agreement originating in any state, and the previous adoption was legally dissolved or ended due to the death of the adoptive parents.

R512-43-2. Purpose and Authority.

(1) The purpose of Adoption Assistance is to assist an adoptive family to establish and maintain a permanent adoptive placement for a qualifying child who meets the definition of a child with a special need and who qualifies under state and federal law.

(2) Adoption assistance is intended to provide permanency for a child in public foster care or receiving SSI by providing financial and medical assistance on the child's behalf to the family who adopts the child.

(3) Title 62A, Chapter 4a, Part 8 authorizes state adoption assistance and supplemental adoption assistance and Section 473, Social Security Act, authorizes federal adoption assistance. Section 473, Social Security Act, and 45 CFR 1356.40 (1995) and 45 CFR 1356.41 (1995) are incorporated by reference.

R512-43-3. General Requirements for Adoption Assistance.

(1) Qualification for adoption assistance is based upon the child meeting qualifying factors, not the adoptive family.

(2) Qualifying factors for adoption assistance include:

(a) The State has determined that the child cannot or should not be returned home;

(b) The State can document that reasonable efforts were made to place the child for adoption without providing adoption assistance. An exception applies if the child has significant emotional ties with the adoptive family and it is not in the child's best interest to consider a different adoptive placement.

(c) The State determines the child meets the definition of a child with a special need.

(i) A child under age five in public foster care meets the special need definition of "a child with a physical, emotional or mental disability" when the child is at risk to develop such a condition due to specific factors identified in the child's or birth parents' health and social histories.

(3) A child must be a U.S. citizen or qualified alien to receive adoption assistance.

(4) An application for adoption assistance is submitted to the regional adoption subsidy committee on a form provided by the Division.

(5) Application for adoption assistance, approval, and completion of the adoption assistance agreement, including signatures of an adoptive parent and a representative from the Division, are to be completed prior to finalization of the adoption.

(6) Adoptive parents may request adoption assistance after an adoption is finalized by requesting a fair hearing through the Office of Administrative Hearings. Adoption assistance may only be granted after finalization when the conditions stated in R512-43-11-2(a) are met.

(7) Adoption assistance usually begins after finalization of an adoption. However, adoption assistance may be initiated at the time of placement if the child is legally free for adoption, the adoptive home is approved, adoption proceedings are initiated, an adoption assistance agreement is fully executed prior to placement, and foster care maintenance payments are not being provided for the child.

(8) An adoption assistance agreement shall be approved and have all required signatures before any payments may be made to an adoptive family or before state medical assistance may be initiated.

(9) A qualified child shall continue to be eligible to receive adoption assistance until a child reaches age 18 unless causes for termination apply as stated in R512-43-11. Assistance may be extended until a child reaches age 21 when the regional adoption subsidy committee has determined that the child has a mental or physical disability that warrants continuing assistance.

(a) An extension of adoption assistance beyond age 18 is warranted if the child meets the criteria for services in the Department of Human Services, Division of Services for People with Disabilities.

(10) The Division is responsible for notifying a prospective adoptive family of the availability of adoption assistance when the family adopts a qualified child in public foster care.

R512-43-4. Reimbursement of Non-Recurring Adoption Expenses.

(1) A parent who adopts a child meeting all of the qualifying factors for adoption assistance listed in R512-43-3(2) may be reimbursed for non-recurring adoption expenses on behalf of the child.

(2) A parent may be reimbursed up to $2,000 per child for allowable non-recurring expenses directly related to the legal adoption of a child with a special need. Reimbursement shall be limited to costs approved by the regional adoption subsidy committee.

(3) Expenses may include reasonable and necessary

adoption fees, court costs, adoption-related attorney fees, adoption home study, health and psychological examinations of adoptive parents, supervision of the placement prior to adoption, and transportation and reasonable costs of lodging and food for the child and/or adoptive parents during the placement or adoption process.

(4) Adoptive parents are responsible to provide necessary receipts for reimbursement.

(5) Only costs that are incurred in accordance with State and Federal law and that have not been reimbursed from other sources or funds may be included.

(6) Non-recurring adoption expenses are reimbursable through Title IVE Adoption Assistance. The child does not have to be determined Title IVE eligible for the parents to receive this reimbursement.

R512-43-5. Monthly Subsidy.

(1) A child qualifies for a monthly subsidy when the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for Supplemental Security Income (SSI), or meets the definition of a child with a previous IV-E agreement.

(i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(2) Determination of Level and Amount of Subsidy.

(a) The amount of monthly subsidy to be paid for a child is based on the child's present and long-term treatment and care needs and available resources, including the family's ability to meet the needs of the child. A combination of the parents' resources and subsidy should cover the ordinary and special needs expenses of the child projected over an extended period of time.

(b) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and caseworker.

(c) The amount of the monthly subsidy may not exceed the payment that would be made if the child was placed in a foster family home at the point in time when the agreement is being initiated or revised.

(d) The amount of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet those needs changes. The family or the caseworker may initiate a change in the amount of subsidy at any time when needs or resources change.

(e) Approval for the amount of the monthly subsidy is subject to the approval of the regional adoption subsidy committee. If the requested amount is not granted, the adoptive parent has a right to appeal as stated in R512-43-11.

(f) The rates specified below shall be used to determine the level of need of the child and the amount of monthly subsidy appropriate for the need. The descriptions of need are not exhaustive, but serve as examples. The regional adoption committee may approve amounts above those described for each level when determined appropriate.

(g) The amount shall be determined by the needs of the child and based upon the relevant foster care payment that would be paid at the point in time at which the agreement amount is being initiated or revised. Title IVE funds shall be limited to the maximum foster care rate that would be paid on behalf of the child if in state custody and placed in a foster family home. Additional state funds may be granted when warranted by exceptional circumstances, not to exceed the amount the state would pay on behalf of the child if in custody.

(h) Rates.

(i) Level I. Up to 33% of the basic foster care rate. Child with minimal specialized needs such as child needing identified orthodontia work; infant without numerous placements and no identifiable physical, mental, or emotional disabilities.

(ii) Level II. From 34% to 66% of the basic foster care rate. Child with moderate specialized needs such as child requiring outpatient therapy; child having special needs due to past emotional and social trauma; child expected to be mainstreamed after placement adjustments.

(iii) Level III. From 67% to the maximum basic foster care rate. Child with multiple, moderate specialized needs such as child having a cluster of mild or moderate disabilities; child who can be mainstreamed with additional educational programs and therapy; sibling groups; child requiring speech therapy and specialized preschool; child requiring enrichment programs to compensate for social and emotional delays.

(iv) Level IV. From 67% to 85% of the specialized payment rate for foster care. Child with serious specialized needs such as child with prior residential placements; learning disabilities; DSM IV diagnoses such as attention deficit hyperactivity disorder, posttraumatic stress disorder, dysthymic, oppositional, attachment disorder; child with identified physical disabilities, learning problems including low IQ; child receiving specialized payment for foster care.

(v) Level V. From 86% of the specialized payment rate to the maximum payment rate for care in a foster home. Child with severe specialized needs such as child with severe physical disability; child with prior hospitalization for psychiatric diagnosis; prior adoption disruption, or dissolution of adoptive placement.

(3) Funding Sources and Eligibility for Monthly Subsidy.

(a) The two funding sources for the monthly subsidy are Title IVE adoption assistance and state adoption assistance funds. The child's eligibility determines which funding source is used for payment.

(b) Title IVE Adoption Assistance shall be considered first for the monthly subsidy. To receive Title IVE Adoption Assistance, a child with special needs shall meet at least one of the following Federal requirements:

(i) A child is determined eligible for SSI by the Social Security Administration prior to the initiation of adoption proceedings.

(ii) The removal home for the child in public foster care received, or would have been eligible to receive, AFDC prior to removal, and the child was removed from the home as a result of a judicial determination that remaining in the home would be contrary to the child's welfare. In addition, the child meets AFDC requirements in the month adoption proceedings are initiated.

(iii) The child was voluntarily placed for foster care with the state and:

(A) was or would have been AFDC eligible at the time of

removal if application had been made,

(B) the child lived with a specified relative within the six months prior to the voluntary placement,

(C) Title IVE foster care maintenance payments were made on behalf of the child, and

(D) The child continues to meet AFDC requirements in the month adoption proceedings are initiated.

(iv) The child's needs were met through foster care maintenance payments made to and for the child's minor parents as provided by Subsection 475(4)(B) of the Social Security Act.

(v) The child meets the definition of a child with a previous IV-E agreement.

(c) State Adoption Assistance funds may be used for the monthly subsidy if the qualified child is not eligible for Title IVE adoption assistance.

(5) Use of the monthly subsidy.

The monthly subsidy may be used according to the parents' discretion. Some examples of the uses of the monthly subsidy payment are medical, dental, or mental health services not paid for by the state medical assistance or family insurance, special equipment for physically or mentally challenged children, respite, day care, therapeutic equipment, minor renovation of the home to meet special needs of the child, damage and repairs, speech therapy, tutoring, specialized preschool based on needs of the child, private school, exceptional basic needs such as special food, clothing, and/or shelter, visitations with biological relatives, cultural and heritage activities and information.

R512-43-6. State Medical Assistance.

(1) A child qualifies for state medical assistance as a component of adoption assistance when all of the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for Supplemental Security Income (SSI), or meets the definition of a child with a previous IV-E agreement.

(i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(c) The child meets state medical assistance citizenship requirements.

(2) A qualified child may receive state medical assistance through an adoption assistance agreement without also receiving a monthly subsidy payment.

R512-43-7. Supplemental Adoption Assistance.

(1) A child meeting all qualifying criteria for a monthly subsidy and for whom an adoption assistance agreement for a monthly subsidy or state medical assistance is in effect may qualify for supplemental adoption assistance.

(2) Supplemental adoption assistance may only be used for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

(3) Supplemental adoption assistance is not an entitlement, and will be granted only when justified by unique needs of the child and when all other resources for which a child is eligible have been exhausted.

(4) Supplemental adoption assistance requests up to $3,000 will be considered and are subject to the approval of the regional adoption subsidy committee.

(5) Supplemental adoption assistance requests exceeding $3,000 shall be considered by the appropriate regional advisory committee established under Subsection 62A-4a-805(2).

(6) Recommendations from the advisory committee are subject to the approval of the regional director or designee.

(7) Any obligation made or expense incurred by a family prior to approval shall not be reimbursed with supplemental adoption assistance funds unless approval is granted by the regional director.

(8) A request for an amendment or extension of an existing supplemental adoption assistance agreement will be reviewed by the same committee that reviewed the initial request. If the total amount of multiple requests in a year exceeds $3,000, the request shall be submitted to the appropriate regional advisory council established under Subsection 62A-4a-805(2)

(9) Supplemental adoption assistance is subject to the availability of state funds appropriated for adoption assistance.

R512-43-8. Regional Adoption Subsidy Committee.

(1) Each region shall establish at least one regional adoption subsidy committee.

(2) The regional adoption subsidy committee shall be comprised of at least three members, and a minimum of three members must be present for making decisions regarding adoption assistance. Decisions shall be made by consensus.

(3) Members of the committee may include the following:

(a) Chairperson;

(b) Clinical consultant or casework supervisor;

(c) Regional budget officer or fiscal representative;

(d) Allied agency representative from agencies such as a community mental health center, private adoption agency, or other agencies within the department;

(e) Regional administrator or other staff with relevant responsibilities;

(f) Adoptive or foster parent.

(4) Responsibilities of the regional adoption assistance committee include:

(a) Verification that a child qualifies for adoption assistance,

(b) Approval for reimbursement of allowable, reasonable non-recurring costs,

(c) Approval of level of need and amount of monthly subsidy for initial requests, changes, and renewals,

(d) Approval of supplemental adoption assistance up to $3,000,

(e) Extension of adoption assistance up to age 21 for a qualifying child,

(f) Renewal of adoption assistance, and

(g) Documentation of committee decisions.

R512-43-9. Renewal and Review of Adoption Assistance.

The adoption assistance agreement for a monthly subsidy or state medical assistance shall be renewed at least once every three years and reviewed periodically by regional staff. An agreement for supplemental adoption assistance exceeding $3,000 shall be reviewed according to a time frame determined

on a case by case basis by the appropriate regional advisory committee established under Subsection 62A-4a-805(2).

R512-43-10. Termination of Adoption Assistance.

(1) An adoption assistance agreement for a monthly subsidy or state medical assistance shall be terminated if any of the following occur:

(a) The terms of the adoption assistance agreement are concluded.

(b) The adoptive parents request termination.

(c) The child reaches age 18, unless approval has been given by the adoption subsidy committee to continue until age 21 due to mental or physical disability.

(d) The child dies.

(e) The adoptive parents die.

(f) The adoptive parents' legal responsibility for the child ceases.

(g) The state determines that the child is no longer receiving financial support from the adoptive parents.

(h) The child enters the military.

(i) The child marries.

(j) The adoptive parents fail to respond to a renewal request.

(2) Termination of state medical assistance is subject to the policies of the Division of Health Care Financing.

(3) Supplemental adoption assistance shall terminate when an adoption assistance agreement for a monthly subsidy or state medical assistance is terminated, the terms of the agreement are concluded, the authorizing committee determines that the services funded with supplemental funds are no longer effective or appropriate based upon an independent review by a qualified provider, or if lack of availability of state funding prevents continuation. Written notice as described in R512-43-10(4) shall be provided at least 30 days before funding is discontinued due to lack of availability of state funding appropriated for adoption assistance or due to determination that services are no longer effective or appropriate.

(4) Adoption assistance shall not be terminated for an adoptive parent's failure to respond to a renewal request for the agreement unless the Division has given the adoptive parents adequate notice of the potential termination. Adequate notice means that a letter shall be sent to the adoptive parents notifying them of the need to renew the adoption assistance agreement, specifying a date by which the adoptive parents shall respond. If the adoptive parents do not respond to the original request, the Division shall send a certified letter to the family explaining the importance of renewing the adoption assistance agreement and the potential consequences of failing to renew the agreement. If the certified letter is returned unclaimed, additional efforts shall be pursued to locate the family such as a phone call or home visit before the assistance may be terminated. If the certified letter is returned unknown, the adoption assistance may be terminated.

R512-43-11. Fair Hearings.

(1) Fair Hearing Request.

A written request for a fair hearing may be submitted to the Department of Human Services if:

(a) The adoption assistance application is denied;

(b) The adoption assistance application is not acted upon with reasonable promptness;

(c) Adoption assistance or supplemental adoption assistance is reduced, terminated, or changed without the concurrence of the adoptive parents;

(d) The amount of adoption assistance or supplemental adoption assistance approved was less than the amount requested by adoptive parents;

(e) Adoption assistance was not requested prior to finalization of the adoption and one of the criteria in R512-43-11(2)(a) applies.

(2) Post Finalization Request Fair Hearing.

(a) The fair hearing officer may approve appropriate state or federal adoption assistance for post finalization requests if one of the following is met:

(i) Relevant facts regarding the child, the biological family, or child's background were known but not presented to adoptive parents prior to finalization.

(ii) A denial of assistance was based upon a means test of the adoptive family.

(iii) An erroneous state determination was utilized to find a child ineligible for assistance.

(iv) The state or adoption agency failed to advise adoptive parents of the availability of assistance.

(b) The adoptive parents bear the burden of documenting that the child meets the definition of a child with a special need and that one of the criteria in R512-43-11(2)(a) applies. The state may provide corroborating facts to the family or the fair hearing officer.

R512-43-13. Interstate Adoption Assistance.

(1) The Division is responsible to determine if a child in Utah public foster care qualifies for adoption assistance when the child is placed in an adoptive home in another State. If the child qualifies, the Division provides adoption assistance regardless of the State of residence of the adoptive family and child.

(2) If a child with a previous IV-E adoption assistance agreement enters public foster care because the adoption was dissolved or ended due to the result of the death of the parents, the State in which the child is taken into custody in public foster care is responsible to provide adoption assistance in a subsequent adoption.

(3) If a child with a previous IV-E adoption assistance agreement does not enter public foster care when the adoption dissolved or ended due to the death of the parents, the new adoptive parent is responsible to apply for adoption assistance in the new adoptive parent's State of residence.

(4) A parent desiring to adopt an out of State child who is not in public foster care but is receiving SSI applies for adoption assistance in the parent's State of residence.

KEY: adoption, child welfare, foster care
January 11, 2002 62A-4a-106
Notice of Continuation April 30, 1997 62A-4a-801 through 807

R527. Human Services, Recovery Services.
R527-5. Release of Information.
R527-5-1. Statutory Authority.

The Office of Recovery Services' case information has been classified in accordance with Title 63, Chapter 2, the Government Records Access and Management Act (GRAMA).

R527-5-2. Definitions.

1. "LCS" means Location and Collection System, a national database maintained and controlled by the Federal Office of Child Support Enforcement (OCSE) within the Department of Health and Human Services (HHS), Administration for Children and Families (ACF). It contains several subsystems including "FPLS" (Federal Parent Locator Service), "NDNH" (National Directory of New Hires), and the Tax Refund/Administrative Offset program which has been expanded from the former Federal Tax Offset Program.

2. Terms used in this rule, other than LCS and FPLS, are defined either explicitly in section 63-2-103 or implicitly in the text of subsection 63-2-201(3)(b).

3. "Restricted", as used in subsection 63-2-201(3)(b), refers to records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds. "Restricted" is not considered a GRAMA classification and restricted information is not subject to the procedures for access and disclosure outlined in GRAMA.

R527-5-3. Request for Release of Information.

1. Written requests for information governed by GRAMA shall be submitted in accordance with section 63-2-204 to the appropriate ORS office that maintains the record:

A. OFFICE OF RECOVERY SERVICES
ATTN: GRAMA
P.O. BOX 45011
515 East 100 South
Salt Lake City, Utah 84145-0011.

B. OFFICE OF RECOVERY SERVICES
ATTN: MSG UNIT/GRAMA
523 Heritage Blvd., Suite 1
Layton, Utah 84041

C. OFFICE OF RECOVERY SERVICES
ATTN: MSG UNIT/GRAMA
2540 Washington Blvd.
Ogden, Utah 84401.

D. OFFICE OF RECOVERY SERVICES
ATTN: MSG UNIT/GRAMA
150 East Center St.
Provo, Utah 84606.

E. OFFICE OF RECOVERY SERVICES
ATTN: MSG UNIT/GRAMA
1088 South Highway 89
Richfield, Utah 84701.

F. OFFICE OF RECOVERY SERVICES
ATTN: MSG UNIT/GRAMA
168 North 100 East
St. George, Utah 84770.

2. Written requests for expedited release of information in accordance with section 63-2-204 shall be submitted to:

A. OFFICE OF RECOVERY SERVICES
ATTN: GRAMA
515 East 100 South
P.O. Box 45011
Salt Lake City, Ut. 84145-0011

R527-5-4. Appeal of Denial of Request for Release of Information.

A request to appeal the denial to access a record governed by GRAMA shall be submitted in accordance with Section 63-2-401 to:

1. the Director of the Office of Recovery Services for records maintained by Financial Services, Management Services, or ORSIS;

2. the Regional Director of the Bureau of Investigations and Collections (BIC) in charge of the BIC team that maintains the record;

3. the Regional Director of Child Support Services (CSS) in charge of the CSS team that maintains the record;

4. the Regional Director of the Bureau of Collections for Children in Care (CIC) in charge of the CIC team that maintains the record; or,

5. the Regional Director of the Bureau of Medicaid Collections (BMC) in charge of the BMC team that maintains the record.

R527-5-5. Public Information.

1. In accordance with Utah Code Section 63-2-201 et.seq., information that is not classified as private, controlled, protected or restricted is public information.

2. In accordance with Utah Code Section 63-2-306, a record may be classified or reclassified after the record has been requested.

R527-5-6. Private Information.

1. Private records include the following:

a. information obtained from the Department of Workforce Services;

b. records concerning an individual's eligibility for unemployment insurance benefits;

c. any information, including the social security number, about a IV-D applicant for or recipient of child support services or a recipient of IV-A, Medicaid and Food Stamps assistance.

d. any information, including the social security number, about the children of a IV-D applicant for or recipient of child support services or a recipient of IV-A, Medicaid and Food Stamps assistance;

e. the income of the obligee and the obligor;

f. any information accessed about the obligor or obligee from a state automated database including:

(i.) records concerning occupational and professional licenses;

(ii.) ownership and control of business entities; and

(iii.) records received from the state new hire registry;

g. records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation or similar medical data; and,

h. information about state employees, former employees and applicants, except as provided for in 63-2-302.

2. Private records may be disclosed when:

a. disclosure is required by other statutes;

b. disclosure is for purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with Utah's child support enforcement plan and all other programs administered by the Office of Recovery Services;

c. the applicant or recipient has agreed in writing to the release of social security numbers;

d. an obligor's attorney or the obligor acting pro se needs the obligee's address in order to serve legal process as the result of a judicial action to establish or modify an order or judgment for bona fide child support, spousal support, medical support, or child care. This information may not be disclosed if the obligee has requested that case information be safeguarded;

e. income information is needed to establish a support order or review a support order for possible modification. This information may only be released to the court or administrative Presiding Officer, the other party or the other party's authorized representative.

f. the obligor's social security number is needed by certain governmental entities, including law enforcement agencies and certain state agencies and:

(i.) the requesting entity enforces, litigates or investigates civil, criminal or administrative law and the record is necessary to a proceeding or investigation; or

(ii.) the requesting entity is one that collects information for pre-sentence, probationary or parole purposes.

g. A governmental agency provides written assurance that the record is necessary to the governmental entity's duties and functions and will be used for a purpose similar to the purposes for which ORS collected or obtained the information and that the record use produces a public benefit outweighing the individual privacy right protecting the record.

h. The name of the obligor's employer may be released to the obligee if the information is necessary for the obligee to file a health insurance claim;

i. the obligor's address may be released to the obligee in locate only cases in which the obligee has not applied for child support enforcement, but has only applied for locate services as described in R527-069; or

j. the obligor needs to be served with legal process as the result of a judicial action that has been initiated by the obligee pro se or obligee's attorney to establish or modify an order or judgment for bona fide child support, spousal support, medical support, or child care. This information may not be disclosed if the obligor has requested that case information be safeguarded.

3. Upon request and in accordance with the requirements of Utah Code Section 63-2-202(1), a private record shall be disclosed to:

a. the subject of the record;

b. the parent or legal guardian of an unemancipated minor who is the subject of the record;

c. the legal guardian of a legally incapacitated individual who is the subject of the record;

d. any other individual who:

(i.) has a documented power of attorney from the subject of the record;

(ii.) submits a notarized release from the subject of the record or his legal representative dated no more than 90 days before the date the request is made;

(iii.) any person to whom the record must be provided pursuant to court order; or

(iv.) the Department of Human Services, Child Protective Services when abuse or neglect of a child is suspected.

R527-5-7. Controlled Information.

1. A record is controlled if it meets the requirements of Utah Code Section 63-2-303.

2. In accordance with Utah Code Section 63-2-202, and for purposes of this rule, a governmental entity shall disclose a controlled record to:

a. a physician, psychologist, certified social worker, insurance provider or agent, or a government public health agency upon submission of a release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information; and

b. any person to whom the record must be disclosed pursuant to court order.

R527-5-8. Protected Information.

1. A record is protected if it meets the requirements of Utah Code Section 63-2-304.

2. In accordance with Utah Code Section 63-2-202, and for purposes of this rule, a governmental entity shall upon request disclose a protected record to:

a. the person who submitted the record;

b. any other individual who:

(i.) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii.) who submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made; or

c. any person to whom the record must be provided pursuant to a court order.

R527-5-9. Restricted Information.

1. Information received from the LCS shall be considered restricted in all ORS cases and may be used to locate individuals for the purpose of establishing paternity or securing financial and medical child support, or in cases involving parental kidnapping or child custody and visitation determinations, and for no other purpose. If the information has been safeguarded, it may not be used except as required by court order.

a. To pursue access to FPLS information for the purpose of establishing or enforcing a child custody or visitation order, a parent or legal guardian must:

i. petition a court with proper jurisdiction to submit a request to the Office of Recovery Services (ORS) to access the LCS on behalf of the parent or legal guardian; and,

ii. serve a copy of the petition upon the Office of the Attorney General, Child and Family Support Division.

If the court subsequently determines the request to be appropriate, it should identify both parties' names and social security numbers (if known), the children's names, and send the request to the Utah IV-D Director, ORS, Attn: FPLS Request, P.O. Box 45011, Salt Lake City, Utah 84145-0011.

2. Information received from the Internal Revenue Service (IRS) shall be considered restricted and may be used to establish, modify or enforce a child support obligation, and to locate individuals owing child support, but for no other purpose.

3. Information received from data matches with financial institutions describing the parent's finances, assets or liabilities shall be considered restricted and may only be used to establish, modify or enforce a child support obligation. If the information has been safeguarded, it may not be used except as required by court order.

4. Information received from the Utah State Tax Commission (USTC) concerning a taxpayer shall be considered restricted and may only be used if the taxpayer has become obligated to ORS. ORS may provide the information to any other state child support agency involved in enforcing the obligation.

R527-5-10. Fees.

1. ORS will provide requested records without a charge unless:

a. The request is for records which require compiling and reporting in another format. A fee of $25 per hour may be charged, or $50 per hour if the request requires programmer/analyst assistance;

b. The request is for an entire policy manual. The charge for a policy manual is $75. As provided for in Utah Code Section 63-2-203, a courtesy copy will be provided at no charge to community advocacy groups/agencies.

c. The request is a repeat request by the same requester for information already provided within the last three months.

2. When fees are charged, the fee will be $.25 per side of sheet, plus any applicable actual postage costs.

R527-5-11. Request to Amend a Record.

Written requests to contest the accuracy or completeness of a public, private, or protected record shall be submitted in accordance with 63-2-603 to the appropriate ORS office that maintains the record as listed in R527-5-3(1).

R527-5-12. Reconsideration of Denial to Amend a Record.

Reconsideration of a denial to a request to amend a public, private, or protected record shall be requested in accordance with section 63-46b-13, the Utah Adminstrative Procedures Act.

KEY: child support, confidentiality*, privacy law

January 2, 2002	**59-10-545(2)**
Notice of Continuation January 16, 2002	**62A-11-107**
	62A-11-304.4(4)
	62A-11-304.5
	63-2
	45 CFR 303.15
	45 CFR 303.70

R527. Human Services, Recovery Services.
R527-34. Non-IV-A Services.
R527-34-1. Non-IV-A Services.

1. The Office of Recovery Services/Child Support Services (ORS/CSS) will provide the following services to recipients of child support services:

a. Attempt to locate the obligor;

b. Attempt to collect the current child support amount;

c. Attempt to collect past-due child support which is owed on behalf of a child, regardless of whether the child is a minor;

d. Attempt to enforce court-ordered spousal support if the minor child of the parties resides with the obligee and ORS/CSS is enforcing the child support order; ORS/CSS will only continue to collect spousal support after the child has emancipated if income withholding is already in effect;

e. Attempt to collect child care expenses if the past-due amount has been reduced to a sum-certain judgment;

f. Attempt to collect ongoing child care expenses if all of the following criteria are met:

i. the obligor or the obligee made a specific request for ORS/CSS to collect ongoing child care;

ii. the child care obligation is included as a specific monthly dollar amount in a court order along with a child support obligation; and,

iii. neither parent is disputing the monthly child care amount;

g. Attempt to collect medical support if the amount is specified as a monthly amount due in the order or has been reduced to a sum-certain judgment;

h. Attempt to enforce medical insurance if either parent has been ordered to maintain insurance;

i. Attempt to establish paternity;

j. Review the support order for possible adjustment of the support amount, in compliance with R527-231.

2. ORS/CSS adopts the federal regulations as published in 45 CFR 302.33, October 1, 1998, ed., which are incorporated by reference. 45 CFR 302.33 provides options which ORS/CSS may elect to implement. ORS/CSS elected to implement the following options:

a. ORS/CSS has elected to charge no application fee to applicants for child support enforcement services.

b. ORS/CSS has elected to recover costs from the individual receiving child support enforcement services. The costs which will be recovered are listed in R527-35-1.

c. ORS/CSS has elected not to recover from the non-custodial parent the costs listed in R527-35-1 which are paid by the individual receiving child support services.

KEY: child support
March 24, 2000 62A-11-107
Notice of Continuation January 24, 2002

R527. Human Services, Recovery Services.
R527-35. Non-AFDC Fee Schedule.
R527-35-1. Non-AFDC Fee Schedule.

Pursuant to 45 CFR 302.33 the Office of Recovery Services may charge an applicant or recipient of child support services who is not receiving AFDC or Medicaid, one or more fees for specific services. These fees are itemized below:

The following fee, which has been established by the federal government:

1. the full IRS enforcement fee of $122.50.

The following fees, which have been established by the Office:

1. a Parent Locator Service fee of $20;

2. the cost of genetic testing if the alleged father is excluded;

3. a fee of $3.50 per payment processed, not to exceed $7 per month;

4. a fee of $25 or the amount of the offset whichever is less, to be paid at the time the obligor's federal tax refund is intercepted to offset a Non-AFDC support arrearage.

KEY: child support
February 6, 1996 62A-11-107
Notice of Continuation January 24, 2002

R527. Human Services, Recovery Services.
R527-201. Medical Support Services.
R527-201-1. Federal Requirements.

The Office of Recovery Services/Child Support Services, (ORS/CSS), adopts the federal regulations as published in 45 CFR 303.30 and 303.31 (2000), and in 65 FR 82165 and 82166 (45 CFR 303.32), which are hereby incorporated by reference.

R527-201-2. Definition.

1. The National Medical Support Notice (NMSN) is the federally approved form that ORS/CSS shall use, when appropriate, to notify an employer to enroll dependent children in an employment-related group health insurance plan in accordance with a child support order.

R527-201-3. Limitation of Services.

ORS/CSS shall not:

1. pursue establishment of specific amounts for ongoing medical support,

2. initiate an action to obtain a judgment for uninsured medical expenses, or

3. collect and disburse premium payments to insurance companies.

R527-201-4. Medical Support Services in Non-IV-A Cases.

Medical Support Services shall be provided in conjunction with child support services to applicants who are not receiving Medicaid unless the applicant notifies ORS/CSS that the children are already covered under a health insurance plan and provides ORS/CSS with the insurance information.

R527-201-5. Conditions Under Which Non-IV-A Medicaid Recipients May Decline Support Services.

ORS/CSS shall provide child and spousal support services; however, a Non-IV-A Medicaid recipient may decline child and spousal support services if paternity is not an issue and there is an order for the non-custodial parent to provide medical support.

R527-201-6. Securing a Medical Support Provision in the Support Order.

1. Notice to potentially obligated parents: The notice to potentially obligated parents shall include a provision that an administrative or judicial proceeding will occur to determine whether either parent should be ordered to purchase and maintain appropriate medical insurance for the children. This notification shall be provided when either of the following conditions is met:

a. the state initiates an action to establish a final support order or to adjust an existing child support order; or

b. the state joins a divorce or modification action initiated by either the custodial or the non-custodial parent.

2. If a judicial support order does not include a medical support provision, ORS/CSS shall commence judicial action to modify the order to include a medical support provision.

R527-201-7. Reasonable Cost of Insurance Premiums.

Employment-related or other group coverage that does not exceed 5% of the obligated parent's monthly gross income is generally considered reasonable in cost. However, an employer may not withhold more than the lesser of the amount allowed under the Consumer Credit Protection Act, the amount allowed by the state of the employee's principal place of employment, or the amount allowed for health insurance premiums by the child support order. If the combined child support and medical support obligations exceed the allowable deduction amount, the employer shall withhold according to the law, if any, of the state of the employee's principal place of employment requiring prioritization between child support and medical support. If the employee's principal place of employment is in Utah, the employer shall deduct current child support before deducting amounts for health insurance coverage. If the amount necessary to cover the health insurance premiums cannot be deducted due to prioritization or limitations on withholding, the employer shall notify ORS/CSS.

R527-201-8. Credit for Premium Payments and Effect of Changes to the Premium Amount Subsequent to the Order.

1. If the order or underlying worksheet gives credit of a specific amount for the children's portion of the premium and the amount of the premium decreases, ORS/CSS may reduce the amount of the credit without seeking a modification of the order.

2. If the order or underlying worksheet does not mention a specific credit for insurance premiums, ORS/CSS shall give credit for the child(ren)'s portion of the insurance premium when the insurance coverage is verified.

3. When a support order does not include a medical insurance provision, and a parent voluntarily enrolls the child(ren) in an insurance plan:

a. in Non-IV-A cases, if the parents agree to share equally the cost of the insurance, ORS/CSS shall give credit or offset the other parent's share of the expense. If the parents disagree, the order must be modified to include an insurance provision before the credit or the offset shall be given.

b. in IV-A cases, ORS/CSS shall give credit for 50% of the child(ren)'s portion of the insurance premium.

4. ORS/CSS shall notify both parents in writing whenever the credit is changed.

R527-201-9. Establishing Costs for Pregnancy and Confinement.

1. When establishing a judgment for medical costs for pregnancy and confinement in IV-A and Non-IV-A Medicaid paternity and separation cases, ORS/CSS shall research the exact pregnancy and confinement costs which have accumulated to date.

2. When establishing a judgment for medical costs for pregnancy and confinement in Non-IV-A Non-Medicaid Cases, ORS/CSS shall consult with the mother to determine the amount of the uninsured pregnancy and confinement expenses.

3. When establishing any judgment for medical costs for pregnancy and confinement, one half of the uninsured pregnancy and confinement costs shall be charged to the non-custodial parent.

R527-201-10. Enforcement of Obligation to Maintain Medical and Dental Insurance.

1. In Non-IV-A cases and in IV-A Medicaid cases,

appropriate steps shall be taken to ensure compliance with orders which require the obligated parent to maintain insurance. Obligated parents shall demonstrate compliance by providing ORS/CSS with policy numbers and the insurance provider name for the dependent children for whom the medical support is ordered.

2. In Non-IV-A cases and in IV-A Medicaid cases, if an obligated parent has been ordered to maintain employer-based medical insurance and insurance is available at a reasonable cost according to R527-201-7 through an employment-related group health plan, ORS/CSS shall use the NMSN to transfer notice of the insurance provision to the obligated parent's employer unless ORS/CSS is notified pursuant to Section 62A-11-326.1 that the children are already enrolled in an insurance plan in accordance with the order.

3. When appropriate, ORS/CSS shall send the NMSN to the obligated parent's employer within two business days after the name of the obligated parent has been entered into the registry of the State Directory of New Hires, matched with ORS/CSS records, and reported to ORS/CSS in accordance with Subsection 35A-7-105(2).

4. The employer shall transfer the NMSN to the appropriate group health plan for which the children are eligible within twenty business days of the date of the NMSN if all of the following criteria are met:

a. the obligated parent is still employed by the employer;

b. the employer maintains or contributes to plans providing dependent or family health coverage;

c. the obligated parent is eligible for the coverage available through the employer; and

d. state or federal withholding limitations, prioritization, or both, do not prevent withholding the amount required to obtain coverage.

5. If more than one coverage option is available under a group insurance plan and the obligated parent is not already enrolled, ORS/CSS in consultation with the custodial parent may select the least expensive option if the option complies with the child support order and benefits the children. The insurer shall enroll the children in the plan's default option or least expensive option in accordance with Subsection 62A-11-326.2(1)(b) unless another option is specified by ORS/CSS.

6. The employer shall determine if the necessary employee contributions for the insurance coverage are available. If the amounts necessary are available, the employer shall begin withholding when appropriate and remit directly to the plan.

7. In accordance with Subsections 62A-11-326.1(2) and (3), the obligated parent may contest withholding insurance premiums based on a mistake of fact. The employer shall continue withholding under the NMSN until notified by ORS/CSS to terminate withholding insurance premiums.

8. If a parent successfully contests the action to enroll the children in a group health plan based on a mistake of fact, ORS/CSS shall notify the employer to discontinue enrollment and withholding insurance premiums for the children.

9. In accordance with Subsection 62A-11-406(9), the employer shall promptly notify ORS/CSS when the obligated parent's employment is terminated.

10. ORS/CSS shall promptly notify the employer when a current order for medical support is no longer in effect for which ORS/CSS is responsible.

R527-201-11. Obligated Parent Receiving Medicaid.

1. If an obligated parent is receiving Medicaid or was receiving Medicaid at the time the medical debt was incurred, ORS/CSS shall not enforce payment of the medical debt regardless of medical support provisions in the order.

2. In an unestablished paternity case, if the father's income was taken into consideration when determining the household's eligibility for Medicaid, ORS/CSS shall not enforce payment of medical expenses regardless of the medical support provisions in the order, but shall enforce the health insurance provision.

KEY: child support, health insurance, medicaid

September 17, 2001	**63-46b-1 et seq.**
Notice of Continuation January 30, 2002	**62A-11-326.1**
	62A-11-326.2
	62A-11-326.3
	62A-11-406(9)
	78-45-7.15
	35A-7-105(2)

R590. Insurance, Administration.
R590-126. Individual and Franchise Disability Insurance, Minimum Standards.
R590-126-1. Authority.

This rule is issued by the Insurance Commissioner pursuant to Subsection 31A-2-201(3)(a) authorizing rules to implement the Insurance Code and

Section 31A-22-605 requiring the commissioner to adopt rules to establish minimum standards for disclosure in the sale of, and benefits to be provided by, Individual and Franchise Disability Insurance.

R590-126-2. Purpose and Scope.

A. Purpose. The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages of insurance policies in order to facilitate public understanding and comparison and to prohibit provisions which may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of such insurance.

B. Scope. This rule shall apply to all individual and franchise disability insurance policies, including health maintenance organization contracts, and subscriber contracts of hospital, medical and dental service corporations. Individual conversion policies shall be subject to this rule except where Section 31A-22-701, et. seq., U.C.A., requires otherwise. A policy or certificate characterized as "group insurance," but marketed to individuals, shall be subject to this rule. The rule shall apply only to coverage issued after the effective date of the rule.

R590-126-3. Definitions.

A. In addition to the definitions of Sections 31A-1-301 and 31A-22-605(2), U.C.A., the following definitions shall apply for the purposes of this rule:

1. "Accident" or "Accidental Injury."

a. The definition of these terms may not be more restrictive than the following: "Injury or injuries, for which benefits are provided, means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause and occurs while insurance coverage is in force."

b. The definition shall employ "result" language and may not include the phrase "Accidental Means," or words which establish an accidental means test, or use words such as "external, violent, visible wounds" or similar words of description or characterization.

c. Unless otherwise prohibited by law, the definition may exclude injuries for which benefits are paid under worker's compensation, an employer's liability or similar law, or a motor vehicle no-fault plan.

2. "Adult Day Care" shall mean a licensed group program designed to meet the needs of functionally impaired adults for a period of fewer than 24 hours per day. Such care may be provided by persons without nursing skills or qualification.

3. "Certificate of Completion" shall mean a document issued by the Utah Board of Education to a person who completes an approved course of study not leading to a diploma, or to one who passes a challenge for that same course of study, or to one whose out-of-state credentials and certificate are acceptable to the Board.

4. "Cold-lead advertising" shall mean making use, directly or indirectly, of any method of marketing which fails to disclose, in a conspicuous manner, that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

5. "Complications of pregnancy" shall mean diseases or conditions the diagnoses of which are distinct from pregnancy but are adversely affected or caused by pregnancy and not associated with a normal pregnancy.

a. "Complications of Pregnancy" include acute nephritis, nephrosis, cardiac decompensation, ectopic pregnancy which is terminated, a spontaneous termination of pregnancy when a viable birth is not possible, puerperal infection, eclampsia and toxemia.

b. This definition does not include false labor, occasional spotting, doctor-prescribed rest during the period of pregnancy, morning sickness, and conditions of comparable severity associated with management of a difficult pregnancy.

6. "Cosmetic Surgery" or "Reconstructive Surgery" shall mean any surgical procedure performed primarily to improve physical appearance.

a. This definition does not include surgery which is necessary:

i. To correct damage caused by injury or sickness;

ii. For reconstructive treatment following medically necessary surgery;

iii. To provide or restore normal bodily function; or

iv. To correct a congenital disorder that has resulted in a functional defect.

b. This provision does not require coverage for preexisting conditions otherwise excluded.

7. "Custodial Care" shall mean a Plan of Care which does not provide treatment for sickness or injury, but is only for the purpose of meeting personal needs and maintaining physical condition when there is no prospect of effecting remission or restoration of the patient to a condition in which care would not be required. Such care may be provided by persons without nursing skills or qualifications. If a Nursing Care Facility is only providing custodial or residential care, the level of care may be so characterized.

8. "Elimination Period" or "Waiting Period" shall mean the specified number of consecutive days at the start of each period of disability for which no benefits are payable.

9. "Experimental Treatment" is defined as medical treatment, services, supplies, medications, drugs, or other methods of therapy or medical practices which are not accepted as a valid course of treatment by your state's medical association, the U.S. Food and Drug Administration, the American Medical Association, or the Surgeon General.

10. "Health Care Expenses" shall mean expenses of health maintenance organizations associated with the delivery of health care services which are analogous to incurred losses of insurers. Such expenses may not include:

a. Home office and overhead costs;

b. Advertising costs;

c. Commissions and other acquisition costs;

d. Taxes;

e. Capital costs;

f. Administrative costs;

g. Claims processing costs.

11. "High-pressure tactics" shall mean employing any method of marketing which induces or attempts to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or excessive pressure.

12. "Home Health Agency" shall mean a public agency or private organization, or subdivision of a health care facility, duly licensed and operating within the scope of such license.

13. "Home Health Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows performance of health care and other related services under the supervision of a Registered Nurse from the Home Health Agency, or performance of simple procedures as an extension of physical, speech, or occupational therapy under the supervision of licensed therapists.

14. "Home Health Care" shall mean services provided by a Home Health Agency.

15. "Homemaker" shall mean a person who cares for the environment in the home through performance of duties such as housekeeping, meal planning and preparation, laundry, shopping and errands.

16. "Homemaker/Home Health Aide" shall mean a person who has obtained a Certificate of Completion, as required by law, which allows performance of both Homemaker and Home Health Aide services, and who provides health care and other related services under the supervision of a Registered Nurse from the Home Health Agency or under the supervision of licensed therapists.

17. "Hospice" shall mean a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, or supportive care and treatment.

18. "Hospital" shall mean a facility duly licensed and operating within the scope of such license. This definition may not preclude the requirement of medical necessity of hospital confinement or other treatment.

19. "Intermediate Nursing Care" shall mean nursing services provided by, or under the supervision of, a Registered Nurse (R.N.). Such a Plan of Care shall be for the purpose of treating the condition for which confinement is required.

20. "Medically Necessary" shall mean treatment or services which are necessary and appropriate for the diagnosis or treatment of an illness or injury based on generally accepted current medical practice.

21. "Medicare" shall be defined in any hospital, surgical or medical expense policy which relates its coverage to eligibility for Medicare or Medicare benefits. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Laws 89-97, and Amendments Thereto, Popularly Known as the Health Insurance for the Aged Act, as Enacted by the Eighty-Ninth Congress of the United States of America," or words of similar import.

22. "Medicare Supplement Policy" shall mean an individual, franchise, or group policy of disability insurance which is advertised, marketed, or primarily designed as a supplement to reimbursements under Medicare for hospital, medical, or surgical expenses of persons eligible for Medicare.

23. "Mental or Nervous Disorders" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

24. "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as Registered Nurse (R.N.), or Licensed Practical Nurse (L.P.N.). If the words "Nurse" or "Registered Nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualifies under such terminology in accordance with applicable statutes or administrative rules.

25. "Nurse, Licensed Practical" shall mean a person who is registered and licensed to practice as a Practical Nurse.

26. "Nurse, Registered" shall mean any person who is registered and licensed to practice as a Registered Nurse.

27. "Nursing Care" shall mean assistance provided for the health care needs of sick or disabled individuals, by or under the direction of licensed nursing personnel.

28. "Nursing Care Facility," or "Nursing Home," shall mean a facility duly licensed and operating within the scope of such license.

29. "One Period of Confinement" shall mean consecutive days of in-hospital service received as an inpatient, or successive confinements when discharge from and readmission to the hospital occurs within a period of time of not more than 90 days or three times the maximum number of days of in-hospital coverage provided by the policy up to a maximum of 180 days.

30. "Partial Disability" shall be defined in relation to the individual's inability to perform one or more but not all of the "major," "important," or "essential" duties of employment or occupation or may be related to a "percentage" of time worked or to a "specified number of hours" or to "compensation." Where a policy provides total disability benefits and partial disability benefits, only one elimination period may be required.

31. "Personal Care" shall mean assistance, under a Plan of Care by a Home Health Agency, provided to persons in activities of daily living.

32. "Personal Care Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows that person to assist in the activities of daily living and emergency first aid, and who must be supervised by a Registered Nurse from the Home Health Agency.

33. "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician." The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws as required by Section 31A-22-618, U.C.A.

34. "Plan of Care" shall mean a written plan based on assessment data or physician orders that identifies the patient's needs, who will provide needed services and how often, treatment goals, and anticipated outcomes.

35. "Preexisting Condition" may not be defined to be more restrictive than the following:

a. Specified Disease Insurance. "Preexisting condition" shall mean a condition which first manifested itself within six months prior to the effective date of coverage or which was diagnosed by a physician at any time prior to the effective date of coverage.

b. Other Health Coverage. "Preexisting condition" shall mean the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care or treatment within a five-year period preceding the effective date of the coverage of the insured person or a condition for which medical advice or treatment was recommended by a physician or received from a physician within a five-year period preceding the effective date of the coverage of the insured person.

36. "Probationary Period" shall mean the period of time following the date of issuance or effective date of the policy before coverage begins for all or certain conditions.

37. "Residential Health Care Facility" shall mean a publicly or privately operated and maintained facility providing personal care to residents who require protected living arrangements.

38. "Residual Disability" shall be defined in relation to the individual's reduction in earnings and may be related either to the inability to perform some part of the "major," "important," or "essential duties" of employment or occupation, or to the inability to perform all usual business duties for as long as is usually required. A policy which provides for residual disability benefits may require a qualification period, during which the insured shall be continuously totally disabled before residual disability benefits are payable. The qualification period for residual benefits may be longer than the elimination period for total disability. In lieu of the term "residual disability," the insurer may use "proportionate disability" or other term of similar import which in the opinion of the commissioner adequately and fairly describes the benefit.

39. "Respite Care" shall mean provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual insured, by taking over the tasks of that person for a limited period of time. The insured may receive care in the home, or other appropriate community location, or in an appropriate institutional setting.

40. "Sickness."

a. The definition of this term may not be more restrictive than the following: "Sickness means sickness or disease of an insured person which manifests itself after the effective date of insurance and while the insurance is in force."

b. A definition of sickness may provide for a probationary period which may not exceed 30 days from the effective date of the coverage of the insured person.

c. The definition may be further modified to exclude sickness or disease for which benefits are paid under any worker's compensation, occupational disease, employer's liability or similar law.

41. "Skilled Nursing Care" shall mean nursing services provided by, or under the supervision of, a Registered Nurse (R.N.). Such a Plan of Care shall be for the purpose of treating the condition for which the confinement is required and not for the purpose of providing Intermediate or Custodial Care.

42. "Therapist" may be defined as a professionally trained or duly licensed or registered person, such as a physical therapist, occupational therapist, or speech therapist, who is skilled in applying treatment techniques and procedures under the general direction of a physician.

43. "Total Disability:"

a. A general definition of total disability may not be more restrictive than one requiring that the individual who is totally disabled not be engaged in any employment or occupation for which he is or becomes qualified by reason of education, training or experience; and not, in fact, engaged in any employment or occupation for wage or profit.

b. Total disability may be defined in relation to the inability of the person to perform duties but may not be based solely upon an individual's inability to:

i. Perform "any occupation whatsoever," "any occupational duty," or "any and every duty of his occupation," or

ii. Engage in any training or rehabilitation program.

c. An insurer may specify the requirement of the complete inability of the person to perform all of the substantial and material duties of his regular occupation or words of similar import.

d. An insurer may require care by a physician other than the insured or a member of the insured's immediate family.

44. "Twisting" shall mean knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or attempting to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out another policy of insurance.

45. "Usual and Customary" shall mean the reasonable, usual and customary charges for services and supplies in the community where such services and supplies were provided.

46. "Waiting Period" shall mean "Elimination Period."

R590-126-4. General Requirements.

A. Policy Definitions. No policy subject to this rule may contain definitions respecting the matters defined in Section R590-126-3 unless such definitions comply with the requirements of that section.

B. Rights of Spouse. The following provisions apply to policies which provide coverage to a spouse of the insured:

1. Termination of Spouse Limited. A policy may not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than for nonpayment of premium.

2. Spouse as Insured. A policy shall provide that in the event of the insured's death the spouse of the insured shall become the insured.

3. Age Determination. The age of the younger spouse shall be used as the basis for meeting the age and durational requirements of the noncancellation or renewal provisions of the policy. However, this requirement may not prevent termination of coverage of the older spouse upon attainment of the stated age limit, e.g., age 65, so long as the policy may be continued in force as to the younger spouse to the age or for the durational period as specified in said definition.

C. Renewability.

1. Disclosure. The terms "noncancellable," "guaranteed renewable," "noncancellable and guaranteed renewable," "conditionally renewable," "collectively renewable," or "optionally renewable" may not be used without further explanatory language in accordance with the disclosure requirements of Subsection R590-126-6(B).

2. Disability Income - Effect of Employment Upon Right to Renew. Any accident and health or accident-only policy which provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from accident or sickness may provide that the insured has the right to continue the policy at least to age 60 if, at age 60, the insured has the right to continue the policy in force at least to age 65 while actively and regularly employed.

3. Cancellation and Renewal.

a. Noncancellable. The terms "noncancellable" or "noncancellable and guaranteed renewable" may be used only in a policy which the insured has the right to continue in force by the timely payment of premiums set forth in the policy at least to age 65 or to eligibility for Medicare, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force.

b. Guaranteed Renewable. Except as provided above, the term "guaranteed renewable" may be used only in a policy which the insured has the right to continue in force by the timely payment of premiums at least to age 65 or to eligibility for Medicare, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force, except that the insurer may make changes in premium rates by classes.

c. Conditionally Renewable. The term "conditionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65 or to eligibility for Medicare, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal for reasons stated in the policy, or may make changes in premium rates by classes.

d. Collectively Renewable. The term "collectively renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65 or to eligibility for Medicare, during which period the insurer has no right to make any unilateral change in any provision of the policy while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal of all policies of the same classification issued in this state, or may make changes in premium rates by classes.

e. Optionally Renewable. The term "optionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65 or to eligibility for Medicare, during which period the insurer has no right to make any unilateral change in any provision of the policy while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal of the policy or may make changes in premium rates by classes.

f. Notice of nonrenewal or premium change. A notice of nonrenewal or change in premium shall be given no fewer than 30 days before the renewal date.

D. Optional insureds. When accidental death and dismemberment coverage is part of the insurance coverage offered under the contract, the insured shall have the option to include all insureds under such coverage and not just the principal insured.

E. Refund of Premium. If a policy contains a status type military service exclusion or a provision which suspends coverage during military service, the policy shall provide, upon receipt of written request, for refund of premiums as applicable to such person on a pro rata basis.

F. Pregnancy Benefit Extension. In the event the insurer cancels or refuses to renew, except for nonpayment of premiums, policies providing pregnancy benefits shall provide for an extension of benefits for a pregnancy, including complications of pregnancy, commencing while the policy is in force and for which benefits would have been payable had the policy remained in force.

G. Post-hospital Admission Requirements. Policies providing convalescent or extended care benefits following hospitalization may not condition such benefits upon admission to the convalescent or extended care facility within a period of fewer than 14 days after discharge from the hospital.

H. Handicapped Dependent Coverage Extension. Family coverage shall continue for any dependent child who is incapable of self-sustaining employment due to mental retardation or physical handicap and is chiefly dependent on the insured for support and maintenance on the date that such child's coverage would otherwise terminate under the policy due to the attainment of a specified age limit for children. The policy may require that within 31 days of such date the company receive due proof of such incapability in order for the insured to elect to continue the policy in force with respect to such child, or that a separate converted policy be issued at the option of the insured or policyholder.

I. Transplant Donor Coverage. Any policy providing coverage for the recipient in a transplant operation shall also provide reimbursement of any medical expenses of a live donor to the extent that benefits remain and are available under the recipient's policy, after benefits for the recipient's own expenses have been paid.

J. Recurrent Disability. A policy may contain a provision relating to recurrent disabilities, but no such provision may specify that a recurrent disability be separated by a period greater than six months.

K. Time Limit for Occurrence of Loss. Accidental death and dismemberment benefits shall be payable if the loss occurs within 180 days from the date of the accident, irrespective of total disability. Disability income benefits, if provided, may not require the loss to commence fewer than 30 days after the date of accident, nor may any policy which the insurer cancels or refuses to renew require that it be in force at the time disability commences if the accident occurred while the policy was in force.

L. Dismemberment Benefits. Specific dismemberment benefits may not be in lieu of other benefits unless the specific benefit equals or exceeds the other benefits.

M. Accident Benefits. Any accident-only policy providing benefits which vary according to the type of accidental cause shall prominently set forth, in both the policy and the outline of coverage, the circumstances under which benefits are payable which are less than the maximum amount payable under the policy.

N. Continuous Total Disability. Termination of a policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

O. Deterioration of Health. A policy may not be cancelled or nonrenewed by an insurer solely on the grounds of deterioration of health.

R590-126-5. Prohibited Policy Provisions.

A. Probationary periods. No policy may contain provisions establishing either a probationary or a waiting period during which coverage is not provided under the policy, except as follows in Subsections (1) and (2).

1. A probationary period of 30 days may apply under the definition of "sickness" contained in Subsection R590-126-3(A)(40) of this rule.

2. A probationary period of up to six months may be applied to the following specified diseases or conditions and losses resulting therefrom:

a. Hernia;

b. Disorder of reproductive organs;

c. Varicose veins;

d. Adenoids;

e. Appendix;

f. Tonsils.

3. The six month exception of Subsection R590-126-5(A)(2) may not be applicable where such specified diseases or conditions are treated on an emergency basis.

4. Accident policies may not contain either probationary or waiting periods.

B. "Dividend" coverage.

1. Cash Payment. No policy or rider for additional coverage may be issued as a dividend unless an equivalent cash payment is offered to the policyholder as an alternative to such dividend policy or rider. No such dividend policy or rider may be issued for an initial term of fewer than six months.

2. Optional Renewal. The initial renewal subsequent to the issuance of any policy or rider as a dividend shall clearly disclose that the policyholder is renewing the coverage that was provided as a dividend for the previous term and that such renewal is optional with the policyholder.

C. Preexisting Conditions. No policy may exclude coverage for a loss due to a preexisting condition for a period greater than 12 months (six months for specified disease policies) following policy issue where the application for such insurance does not seek disclosure of prior illness, disease or physical conditions or prior medical care and treatment and such preexisting condition is not specifically excluded by the terms of the policy.

D. "Return of Premium" or "Cash Value Benefit." A disability policy may contain a "return of premium" or "cash value benefit" so long as the insurer demonstrates that the reserve basis for such policies is adequate.

E. Hospital Indemnity. Policies providing hospital confinement indemnity coverage may not contain provisions excluding coverage because of confinement in a hospital operated by the federal government.

F. Limitations or Exclusions. No policy may limit or exclude coverage by type of illness, accident, treatment or medical condition, except as follows:

1. Preexisting conditions or diseases;

2. Mental or emotional disorders;

3. Alcoholism or drug addiction;

4. Pregnancy, but policies may not exclude complications of pregnancy;

5. Illness, treatment or medical condition arising out of:

a. War or act of war, whether declared or undeclared; participation in a felony, riot or insurrection; service in the armed forces or units auxiliary thereto;

b. Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury;

c. Aviation;

d. Inter-scholastic sports, but only with respect to nonrenewable policies with a term of fewer than six months;

6. Cosmetic surgery, but policies may not exclude:

a. Reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part; or

b. Reconstructive surgery because of congenital disease or anomaly of a covered dependent child which has resulted in a functional defect;

7. Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;

8. Benefits for the following:

a. Treatment provided in a government hospital, but this exclusion may not apply to Hospital Confinement Indemnity Coverage, as defined in Subsection R590-126-7(E);

b. Services performed by a member of the covered person's immediate family;

c. Services for which no charge is normally made in the absence of insurance; or

d. Duplication of benefits paid under:

i. Medicare or other governmental program (except Medicaid); or

ii. Any state or federal worker's compensation, employer's liability or occupational disease law, or any motor vehicle no-fault coverage;

9. Dental care or treatment;

10. Corrective lenses, and examination for the prescription or fitting thereof, but policies may not exclude required lens implants following cataract surgery;

11. Hearing aids, and examination for the prescription or fitting thereof;

12. Rest cures;

13. Custodial care, except for long-term Care policies;

14. Transportation;

15. Routine physical examinations;

16. Territorial limitations outside the United States.

17. Others as may be approved by the commissioner.

G. Waivers.

1. No waiver may be used to exclude, limit, or reduce coverage or benefits unless:

a. Acceptance of the waiver is signed by the insured; or

b. The full text of the waiver, or a notice thereof, is contained on the first page or specification page of the policy.

H. Medicare Compliance. Except as otherwise provided in Subsection R590-126-6(L), the terms "Medicare Supplement," "Supplement to Medicare," "Medigap," and words of similar import may not be used unless the policy is issued in compliance with this rule and rule R590-146.

R590-126-6. Disclosure Requirements.

A. Coverage Description Statement. Each policy subject to this rule shall contain a statement, on the first page or specification page of the policy, which clearly identifies the type(s) of coverage offered.

B. Renewal or Nonrenewal Provisions. Each policy or contract subject to this rule shall include a renewal, continuation, or nonrenewal provision. The language or specifications of such provision shall be consistent with the type of contract issued. Such provision shall be appropriately captioned, shall appear on the first page, or schedule page, of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

C. Rider or Endorsement Acceptance. Except for riders or endorsements by which the insurer effectuates a request made in writing by the policyholder or exercises a specifically reserved right under the policy, all riders or endorsements added to a policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the policyholder. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the increased benefit or coverage is required by law.

D. Premium, Additional. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

E. Benefit Payment Standard. A policy which provides for the payment of benefits based on standards described as "usual and customary," reasonable and customary," or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

F. Preexisting Conditions. If a policy contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

G. Accident-Only Disclosure. All accident-only policies shall contain a prominent statement on the first page of the policy, or attached thereto, in either contrasting color or in boldface type at least equal to the size of type used for policy captions, as follows: "This is an accident-only policy and it does not pay benefits for loss from sickness."

H. Age Limitation. If age is to be used as a determining factor for reducing the maximum aggregate benefits made available in the policy as originally issued, such fact shall be prominently set forth in the outline of coverage and on the schedule page of the policy. However, benefits may not be reduced below levels otherwise required by this rule.

I. Conversion Privilege. If a policy contains a conversion privilege, it shall comply, in substance, with the following:

1. The caption of the provision shall be "Conversion Privilege," or words of similar import;

2. The provision shall indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person by whom the conversion privilege may be exercised.

3. The provision shall specify the benefits to be provided on conversion or may state that the converted coverage will be as provided on a policy form then being used by the insurer for that purpose.

J. Specified-Disease Insurance Buyer's Guide. Insurers, except direct response insurers, shall give any person applying for specified-disease insurance a Buyer's Guide, approved by the commissioner, at the time of application and shall obtain the recipient's written acknowledgment of the guide's delivery. Direct response insurers shall provide the Buyer's Guide upon request but not later than the time the policy is delivered.

K. Specified-Disease Insurance Disclosure. All specified-disease policies shall contain a prominent statement on the first page or schedule page of the policy or attached thereto in either contrasting color or in boldface type at least equal to the size type used for policy captions, a prominent statement as follows: "CAUTION: This is a limited policy. Read it carefully with the outline of coverage and the Buyer's Guide."

L. Notice Regarding Policies or Subscriber Contracts Which Are Not Medicare Supplement Policies. Any policy or subscriber contract, other than a Medicare Supplement policy, a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act, 42 U.S.C. Section 1395, et seq., or a Disability Income policy, which is issued for delivery to a person eligible by reason of age for Medicare, shall notify insureds under the policy or subscriber contract that the policy or subscriber contract is not a Medicare Supplement policy. Such notice shall either be printed on or attached to the first page of the outline of coverage delivered to insureds under the policy or subscriber contract, or if no outline of coverage is delivered, to the first page of the policy, certificate or subscriber contract delivered to insureds. Such notice shall be in no less than 12 point type and shall contain the following language:

"THIS POLICY IS NOT A MEDICARE SUPPLEMENT POLICY OR CONTRACT. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

M. Medicare Supplement Buyer's Guide. Insurers issuing policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis other than incidentally, to persons eligible for Medicare by reason of age, shall provide to the applicant a Medicare Supplement Buyer's Guide, in a form approved by the commissioner and entitled "Guide to Health Insurance For People With Medicare." Delivery of the Buyer's Guide shall be made whether or not the policy qualifies as a "Medicare

Supplement Coverage" according to this rule or Rule R590-146. Except in the case of direct response insurers, delivery of the Buyer's Guide shall be made at the time of application and acknowledgment of receipt or certification of delivery of the Buyer's Guide shall be obtained by the insurer. Direct response insurers shall deliver the Buyer's Guide upon request but not later than at the time the policy is delivered.

N. Emergency Care Limitation. A policy which limits treatment in an emergency room or similar facility shall disclose the existence of the limitation in the outline of coverage and on the schedule page of the policy.

R590-126-7. Disability, Minimum Standards for Benefits.

A. The following minimum standards for benefits are prescribed for the categories of coverage noted in the following subsections R590-126-7(C) through (K). A policy or contract subject to this rule which does not meet the required minimum standards contained herein may not be delivered or issued for delivery in this state.

B. Exception: A nonconforming policy may be issued only:

1. Upon approval by the commissioner as Limited Benefit Health Insurance under Subsection R590-126-7(K), and

2. With an Outline of Coverage which complies with the terms of Subsection R590-126-8(K) of this rule.

C. Basic Hospital Expense Coverage. This is a policy of disability insurance which provides coverage for a period of not fewer than 31 days during any continuous hospital confinement for each person insured under the policy, for expense incurred for necessary treatment and services rendered as a result of accident or sickness for at least the following:

1. Daily hospital room and board in an amount not less than 70% of the usual and customary charges for semiprivate room accommodations;

2. Miscellaneous hospital services for expenses incurred for charges made by the hospital for services and supplies which are customarily rendered by the hospital and provided for use only during any one period of confinement in an amount not less than 70% of the charges incurred or ten times the daily hospital room and board benefits, whichever is less; and

3. Hospital outpatient services consisting of:

a. Hospital services on the day surgery is performed;

b. Hospital services rendered within 72 hours after accidental injury, in an amount not less than $200 per accident;

c. X-ray and laboratory tests to the extent that benefits for such services would have been provided if rendered to an inpatient of the hospital to an extent not less than $200.

4. Benefits provided under (1) and (2) of R590-126-7(C) above, may be provided subject to a combined deductible amount not in excess of $200.

D. Basic Medical-Surgical Expense Coverage. This is a policy of disability insurance which provides coverage for each person insured under the policy for the expenses incurred for the necessary services rendered by a physician for treatment of an injury or sickness for at least the following:

1. Surgical services, of not less than 70% of the usual, reasonable and customary charges.

2. Anesthesia services, consisting of administration of necessary general anesthesia and related procedures in connection with covered surgical service, rendered by a physician other than the physician or his assistant performing the surgical services, in an amount not less than the lesser of:

a. 70% of the reasonable charges; or

b. 15% of the surgical service benefit.

3. In-hospital medical services, consisting of physician services rendered to a person who is a bed patient in a hospital for treatment of sickness or injury other than that for which surgical care is required, in an amount not less than 70% of the reasonable charges for not fewer than 31 days during one period of confinement.

E. Hospital Confinement Indemnity Coverage. This is a policy of disability insurance which provides daily benefits for hospital confinement on an indemnity basis in an amount not less than $30 per day and for a period of not fewer than 31 days during any one period of confinement for each person insured under the policy.

F. Major Medical Expense Coverage. This is a disability insurance policy which provides hospital, medical and surgical expense coverage, to an aggregate maximum of not less than $25,000; copayment by the covered person not to exceed 30% of covered charges or up to five per cent of the aggregate maximum limit under the policy; an annual deductible stated on a per person, per family, or per calendar or policy year basis, or a combination of such bases not to exceed five per cent of the aggregate maximum limit under the policy. Benefits for each covered person shall be at least:

1. Daily hospital room and board expenses in an amount not less than 70% of the semiprivate room rate in the area where the insured resides, for a period of not fewer than 31 days during continuous hospital confinement;

2. Miscellaneous hospital services in an amount not less than 20 times the daily room and board rate;

3. Surgical services in an amount not less than 70% of the usual, reasonable and customary charges;

4. Anesthesia services in an amount not less than 15% of the covered surgical fees;

5. In-hospital medical services, consisting of physician services rendered to a person who is a bed patient in a hospital for treatment of sickness or injury other than that for which surgical care is required.

6. Out-of-hospital care, consisting of physicians' services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, and diagnostic x-ray, laboratory services, radiation therapy, chemotherapy, and hemodialysis ordered by a physician; and

7. Not fewer than three of the following additional benefits, for an aggregate maximum of such covered charges of not less than $2,500:

a. Private duty nursing services;

b. Nursing home care;

c. Physiotherapy;

d. Rental of special medical equipment, as defined by the insurer in the policy;

e. Prosthetic devices, casts, splints, trusses or braces;

f. Treatment for functional nervous disorders, and mental and emotional disorders; or

g. Out-of-hospital prescription drugs and prescription

medications.

G. Disability Income Protection Coverage. This is a policy which provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury or a combination thereof which:

1. Provides that periodic payments which are payable at ages after 62 and reduced solely on the basis of age are at least 50% of amounts payable immediately prior to 62.

2. Contains an elimination period no greater than:

a. In the case of a coverage providing a benefit of one year or less, 90 days;

b. In all other cases, 365 days.

3. Is payable during disability for at least six months, except in the case of a policy covering disability arising out of pregnancy, childbirth or miscarriage in which case the period may be for one month.

4. Does not reduce benefits because of an increase in Social Security or similar benefits during a benefit period.

5. The provisions of this Subsection R590-126-7(G) do not apply to policies providing business buyout coverage.

H. Accident-Only Coverage. This is a policy of accident insurance which provides coverage, singly or in combination, for death, dismemberment, disability, or hospital and medical care caused by accident. Accidental death and double dismemberment amounts under such a policy shall be at least $1,000 and a single dismemberment amount shall be at least $500.

I. Specified Accident and Specified Disease Coverage.

1. "Specified Accident Coverage" is an accident insurance policy which provides coverage for a specifically identified kind of accident (or accidents) for each person insured under the policy for accidental death or accidental death and dismemberment, combined with a benefit amount not less than $1,000 for accidental death, $1,000 for double dismemberment and $500 for single dismemberment.

2. "Specified Disease Coverage" pays benefits for the diagnosis and treatment of a specifically named disease or diseases. Any such policy shall meet the general rules set forth in Subsection R590-126-7(I)(2)(a). The policy shall also meet the minimum standards set forth in the applicable Subsections R590-126-7(I)(2)(b), (c), or (d).

a. General Rules. The following rules apply to specified disease coverage in addition to all other rules imposed by this rule. In cases of conflict with other rules, the following shall govern:

i. Preexisting Conditions. A specified disease policy, regardless of whether the basis of issuance is a detailed application form, a simplified application form, or an enrollment form, may not deny a claim for loss which occurs more than six months after the effective date of coverage due to a preexisting condition. Such policy may not define a preexisting condition more restrictively than a condition which first manifested itself within six months prior to the effective date of coverage or which was diagnosed by a physician at any time prior to the effective date of coverage.

ii. Policy Designation. Policies covering a single specified disease or combination of specified diseases may not be sold or offered for sale other than as specified disease coverage under this section.

iii. Medical Diagnosis. Any policy issued pursuant to this section which conditions payment upon pathological diagnosis of a covered disease, shall also provide that if a pathological diagnosis is medically inappropriate, a clinical diagnosis will be accepted.

iv. Related Conditions. Notwithstanding any other provision of this rule, specified disease policies shall provide benefits to any covered person not only for the specified disease(s) but also for any other condition(s) or disease(s) directly caused or aggravated by the specified disease(s) or the treatment of the specified disease(s).

v. Renewability. Specified disease coverage shall be at least Guaranteed Renewable.

vi. Probationary Period. No policy issued pursuant to Subsection R590-126-7(I) may contain either an elimination or a probationary period greater than 30 days.

vii. Medicaid Disclaimer. Any application for specified disease coverage shall contain a statement above the signature of the applicant that no person to be covered for specified disease is also covered by any Title XIX program, designated as Medicaid or any similar name. Such statement may be combined with any other statement for which the insurer may require the applicant's signature.

viii. Medical Care and Charges. Payments may be conditioned upon a covered person receiving medically necessary care, prescribed by a physician, given in a medically appropriate location, under a medically accepted Plan of Care. Payment may be limited to amounts not in excess of usual and customary charges.

ix. Other Insurance. Benefits for specified disease coverage shall be paid regardless of other coverage.

x. Retroactive Application of Coverage. After the effective date of the coverage, or the conclusion of an applicable waiting period, if any, subject to Subsection R590-126-7(I)(2)(a)(vi), benefits shall begin with the first day of care or confinement, if such care or confinement is for a covered disease, even though the diagnosis is made at some later date.

b. Minimum Expense Incurred Benefits. The following minimum benefit standards apply to specified disease coverage on an expense incurred basis:

i. Policy Limits. A deductible amount not to exceed $250, an aggregate benefit limit of not less than $25,000 and a benefit period of not fewer than three years.

ii. Copayment. Covered services provided on an outpatient basis may be subject to a copayment which may not exceed 20%.

iii. Covered Services. Covered services shall include the following:

(A) Hospital room and board and any other hospital-furnished medical services or supplies;

(B) Treatment by, or under the direction of, a legally qualified physician or surgeon;

(C) Private duty nursing services of a Registered Nurse (R.N.), or Licensed Practical Nurse (L.P.N.);

(D) X-ray, radium, chemotherapy and other therapy procedures used in diagnosis and treatment;

(E) Blood transfusions, and the administration thereof, including expense incurred for blood donors;

(F) Drugs and medicines prescribed by a physician;

(G) Professional ambulance for local service to or from a local hospital;

(H) The rental of any respiratory or other mechanical apparatuses;

(I) Braces, crutches and wheelchairs as are deemed necessary by the attending physician for the treatment of the disease;

(J) Emergency transportation if, in the opinion of the attending physician, it is necessary to transport the insured to another locality for treatment of the disease;

(K) Home Health Care, as defined in Subsection R590-126-3(A)(14), which is provided by, or under the direction of, a Home Health Agency. The Plan of Care shall be prescribed in writing.

(L) Physical, speech, hearing and occupational therapy;

(M) Special equipment including hospital bed, toilette, pulleys, wheelchairs, aspirator, chux, oxygen, surgical dressings, rubber shields, colostomy and eleostomy appliances;

(N) Prosthetic devices including wigs and artificial breasts; and

(O) Nursing Home care for noncustodial services.

c. Minimum Per Diem Benefits. The following minimum benefit standards apply to coverages written on a per diem indemnity basis:

i. Hospital Confinement Benefit. A fixed-sum payment of at least $200 for each day of hospital confinement for at least 365 days, with no deductible amount permitted;

ii. Outpatient Benefit. A fixed-sum payment equal to one half the hospital inpatient benefits for each day of hospital or nonhospital outpatient surgery, radiation therapy and chemotherapy, for at least 365 days of treatment.

iii. Nursing Home/Home Health Care Benefit. Benefits tied to confinement in a Nursing Home or to receipt of Home Health Care are optional; if a policy offers these benefits, they must equal the following:

(A) A fixed-sum payment equal to one-half the hospital inpatient benefit for each day of Skilled Nursing Home confinement for at least 100 days.

(B) A fixed-sum payment equal to one-fourth the hospital inpatient benefit for each day of Home Health Care for at least 180 days.

(C) Notwithstanding any other provision of this rule, any restriction or limitation applied to the benefits in the above Subsections R590-126-7(I)(2)(c)(iii)((A)) and ((B)), whether by definition or otherwise, may not be more restrictive than those under Medicare.

d. Principal Sum Benefits. The following minimum benefit standards apply to principal sum indemnity coverage of any specified disease(s):

i. Benefits shall be payable as a fixed, one-time payment made within 30 days of submission to the insurer of proof of diagnosis of the specified disease(s). Dollar benefits shall be offered for sale only in even increments of $1,000.

ii. Where coverage is advertised or otherwise represented to offer generic coverage of a disease or diseases (e.g., "cancer insurance," "heart disease insurance"), the same dollar amounts shall be payable regardless of the particular subtype of the disease (e.g., lung or bone cancer), with one exception. In the case of clearly identifiable subtypes with significantly lower treatment costs (e.g., skin cancer), lesser amounts may be payable so long as the policy clearly differentiates that subtype and its benefits.

J. Catastrophic Coverage. This is a policy of disability insurance which:

1. provides benefits for medical expenses incurred by the insured to an aggregate maximum of not less than $1,000,000;

2. contains no separate internal dollar limits;

3. may be subject to a policy deductible which does not exceed the greater of .01% of the policy limit or the amount of other disability insurance coverage for the same medical expenses; and

4. contains no percentage participation or coinsurance clause for expenses which exceed the deductible.

K. Limited Benefit Health Insurance Coverage. This is any policy or contract other than a policy or contract covering only a specified disease or diseases which provides benefits that are less than the minimum standards for benefits required under Subsections R590-126-7(C), (D), (E), (F), (G), (H), (I) and (J). Such policies or contracts may be delivered or issued for delivery in this state only if the outline of coverage provided by Subsection R590-126-8(K) of this rule is completed and delivered as required by Subsection R590-126-8(A) of this rule. A policy covering a single specified disease or combination of diseases shall meet the requirements of Subsection R590-126-7(I) and may not be offered for sale as a "Limited Coverage" under this section. This subsection does not apply to policies designed to provide coverage for Long-Term Care, as governed by Rule R590-148, or Medicare Supplement, as governed by R590-146.

R590-126-8. Disability, Outlines of Coverage.

A. Outline of Coverage Requirements.

1. No policy or contract subject to this rule may be delivered or issued for delivery in this state unless an appropriate outline of coverage, as prescribed in Subsections R590-126-8(C) through (L), is completed and delivered to the applicant at the time application is made, with acknowledgement of receipt or certification of delivery provided to the insurer, or is delivered with the policy. In the case of direct response solicitation, the outline of coverage shall be delivered upon request, but no later than the time the policy is delivered.

2. Substitute Outline. If an outline of coverage was delivered at the time of application and the policy or contract is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or contract shall accompany the policy or contract when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

3. Changes in Outline. Appropriate changes in terminology may be made in the outline of coverage in the case of contracts of hospital, medical, or dental service corporations. In any other case where the prescribed outline of coverage is inappropriate for the coverage provided by the policy or contract, an alternate outline of coverage shall be submitted to

the commissioner for prior approval.

4. Outlines of Coverage for Combined Coverages. The outlines of coverage designated in Subsections R590-126-8(A)(4)(a) and (b) herein shall be appropriate for policies offering the combination coverages as listed:

a. Basic Hospital and Medical-Surgical Expense Outline (Outline (L)). The following combination coverages are included:

i. Basic Hospital Expense (Coverage (C)) and Basic Medical-Surgical Expense Coverage (Coverage (D)).

b. Major Medical Expense Outline (Outline (F)). The following combination coverages may be included:

i. Basic Hospital Expense (Coverage (C)) and Major Medical Expense Coverage (Coverage (F)); or

ii. Basic Medical-Surgical Expense (Coverage (D)) and Major Medical Expense Coverage (Coverage (F)); or

iii. Basic Hospital Expense (Coverage (C)), Basic Medical-Surgical Expense (Coverage (D)), and Major Medical Expense Coverage (Coverage (F)).

B. Outlines of Coverage Required; Sample Provisions. Insurance transacted under the provisions of this rule shall be disclosed as provided by this Section. Disclosure of the coverages listed in Subsections R590-126-7(C) through (K) shall include an Outline of Coverage which meets the requirements of the following corresponding Subsections R590-126-8(C) through (K), or an outline for a combination of coverages which meets the requirements of Subsection R590-126-8(A)(4) and either Subsection R590-126-8(F) or (L). These outlines are available from the Utah Insurance Department.

C. Basic Hospital Expense Coverage (Outline of Coverage). An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(C) of this rule. The items included in the outline of coverage shall appear in the sequence prescribed: (Company Name) Basic Hospital Expense Coverage Outline of Coverage

1. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

2. Basic Hospital Expense Coverage. Policies of this category are designed to provide, to persons insured, coverage for hospital expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, and hospital outpatient services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for physician's or surgeon's fees or unlimited hospital expenses.

3. A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:

a. Daily hospital room and board;

b. Miscellaneous hospital services;

c. Hospital outpatient services;

d. Other benefits, if any;

e. The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment provision applicable to the benefits described.

4. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (3) above.

5. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

D. Basic Medical-Surgical Expense Coverage (Outline of Coverage). An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(D) of this rule. The items included in the outline of coverage shall appear in the sequence prescribed:

(Company Name) Basic Medical-Surgical Expense Coverage Outline of Coverage

1. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control your policy. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

2. Basic Medical-Surgical Expense Coverage. Policies of this category are designed to provide, to persons insured, coverage for medical-surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for hospital expenses or unlimited medical-surgical expenses.

3. A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:

a. Surgical services;

b. Anesthesia services;

c. In-hospital medical services;

d. Other benefits, if any;

e. The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment provision applicable to the benefits described.

4. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (3) above.

5. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

E. Hospital Confinement Indemnity Coverage (Outline of Coverage). An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(E) of this rule. The items included in the outline of coverage shall appear in the sequence prescribed:

(Company Name) Hospital Confinement Indemnity Coverage Outline of Coverage

1. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of

your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

2. Hospital Confinement Indemnity Coverage. Policies of this category are designed to provide, to persons insured, coverage in the form of a fixed daily benefit during periods of hospitalization resulting from a covered accident or sickness, subject to any limitations set forth in the policy. Such policies do not provide any benefits other than the fixed daily indemnity for hospital confinement and any additional benefit described below.

3. A brief specific description of the benefits contained in this policy in the following order:

a. Daily benefit payable during hospital confinement;

b. Duration of such benefit described in (a), above.

c. The above description of benefits shall be stated clearly and concisely.

4. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefit, described in (3) above.

5. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

6. Any benefits provided in addition to the daily hospital benefit.

F. Major Medical Expense Coverage (Outline of Coverage). An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(F) of this rule. An outline of coverage which meets these requirements shall also be issued in connection with a policy insuring a combination of the coverages under policies meeting the standards of Subsections R590-126-7(C) and (F), (D) and (F), or (C), (D) and (F), in accordance with the requirements of Subsection R590-126-8(A)(4). The items included in the outline of coverage shall appear in the sequence prescribed:

(Company Name) Major Medical Expense Coverage Outline of Coverage

1. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

2. Major Medical Expense Coverage. Policies of this category are designed to provide, to persons insured, coverage for major hospital, medical, and surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, surgical services, anesthesia services, in-hospital medical services, and out-of-hospital care, subject to any deductibles, copayment provisions, or other limitations which may be set forth in the policy. Basic hospital or basic medical insurance coverage is not provided in this policy. (Note: If basic hospital and/or basic medical insurance coverage is provided, the inappropriate part of the last sentence may be omitted.)

3. A brief specific description of the benefits, including dollar amounts, contained in this policy, in the following order:

a. Daily hospital room and board;

b. Miscellaneous hospital services;

c. Surgical services;

d. Anesthesia services;

e. In-hospital medical services;

f. Out-of-hospital care;

g. Maximum dollar amount for covered charges;

h. Other benefits, if any;

i. The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment provision applicable to the benefits described.

4. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (3) above.

5. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

G. Disability Income Protection Coverage (Outline of Coverage). An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(G) of this rule. The items included in the outline of coverage shall appear in the sequence prescribed:

(Company Name) Disability Income Protection Coverage Outline of Coverage

1. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

2. Disability Income Protection Coverage. Policies of this category are designed to provide, to persons insured, coverage for disabilities resulting from a covered accident or sickness, subject to any limitations set forth in the policy. Coverage is not provided for basic hospital, basic medical surgical, or major medical expenses.

3. A brief specific description of benefits shall be stated clearly and concisely.

4. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (3) above.

5. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

H. Accident Only Coverage (Outline of Coverage). An outline of coverage in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(H) of this rule. The items included in the outline of coverage shall appear in the sequence prescribed:

(Company Name) Accident Only Coverage Outline of Coverage

1. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

2. Accident Only Coverage. Policies of this category are designed to provide, to persons insured, coverage for certain losses resulting from a covered accident ONLY, subject to any limitations contained in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.

3. A brief specific description of the benefits contained in this policy. The description shall be stated clearly and concisely, and shall include a description of any deductible or copayment provision applicable to the benefits described. Proper disclosure of benefits which vary according to accidental cause shall be made in accordance with Subsection R590-126-4(M) of this rule.

4. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (3) above.

5. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

I. Specified Accident or Specified Disease Coverage (Outline of Coverage). An outline of coverage in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(I) of this rule. The coverage shall be identified by the appropriate bracketed title. The items included in the outline of coverage shall appear in the sequence prescribed:

(Company Name) (Specified Accident) (Specified Disease) Coverage Outline of Coverage

1. This policy is designed only as a supplement for a comprehensive health insurance policy and should not be purchased unless you have this underlying coverage. It should not be purchased by persons covered under Medicaid. Read the Buyer's Guide discussion of the possible limits on benefits in this type of policy.

2. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

3. (Specified Accident) (Specified Disease) Coverage. Policies of this category are designed to provide, to persons insured, restricted coverage paying benefits ONLY when certain losses occur as a result of specified accidents or specified diseases. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expense.

4. A brief specific description of the benefits, including dollar amounts, contained in this policy. The description shall be stated clearly and concisely, and shall include a description of any deductible or copayment provisions applicable to the benefits described. Proper disclosure of benefits which vary according to accidental cause shall be made in accordance with Subsection R590-126-4(M) of this rule.

5. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (4) above.

6. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

J. Catastrophic Coverage. An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(J) of this rule. The items included in the outline of coverage shall appear in the sequence prescribed:

(Company Name) Catastrophic Coverage Outline of Coverage

1. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

2. Catastrophic Coverage. Policies of this category are designed to provide, to persons insured, catastrophic coverage for losses resulting from a covered accident or sickness, subject to any limitations set forth in the policy.

3. A brief specific description of benefits shall be stated clearly and concisely.

4. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (3) above.

5. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

K. Limited Benefit Health Coverage (Outline of Coverage). An outline of coverage, in the form prescribed below, shall be issued in connection with policies which do not meet the minimum standards of Section R590-126-7. The items included in the outline of coverage shall appear in the sequence prescribed:

(Company Name) Limited Benefit Health Coverage Outline of Coverage

1. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

2. Limited Benefit Health Coverage. Policies of this category are designed to provide, to persons insured, LIMITED OR SUPPLEMENTAL coverage.

3. A brief specific description of the benefits, including dollar amounts, contained in this policy. The description shall be stated clearly and concisely, and shall include a description of any deductible or copayment provisions applicable to the

benefits described. Proper disclosure of benefits which vary according to accidental cause shall be made in accordance with Subsection R590-126-4(M) of this rule.)

4. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in (3) above.

5. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

L. Basic Hospital and Medical Surgical Expense Coverage (Outline of Coverage). An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsections R590-126-7(C) and (D) of this rule. The items included in the outline of coverage shall appear in the sequence prescribed:

(Company Name) Basic Hospital and Medical-Surgical Expense Coverage Outline of Coverage

1. Read Your Policy Carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

2. Basic Hospital and Medical Surgical Expense Coverage. Policies of this category are designed to provide, to persons insured, coverage for hospital and medical surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, hospital outpatient services, surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for unlimited hospital or medical surgical expenses.

3. A brief specific description of the benefits including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:

a. Daily hospital room and board;

b. Miscellaneous hospital services;

c. Hospital outpatient services;

d. Surgical services;

e. Anesthesia services;

f. In-hospital medical services;

g. Other benefits, if any;

h. The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment provision applicable to the benefits described.

4. A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any manner operate to qualify payment of the benefits described in (3) above.

5. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

R590-126-9. Disability, Requirements for Replacement.

A. Application Information. Application forms shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other disability policy or certificate presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

B. Notice to Existing Insurer. Where replacement is involved, the replacing insurer shall notify by written communication the existing insurer of the proposed replacement. Such existing insurance shall be identified by the name of the insurer, name of insured, and insured's address or contract number. The written communication shall be made within five working days of the date the application is received in the replacing insurer's home or regional office or the date the proposed policy or contract is issued, whichever is sooner.

C. Notice to Applicant.

1. Nondirect Response. Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its agent, shall furnish the applicant, prior to issuance or delivery of the policy or certificate, the notice described in R590-126-9(D) below. One copy of such notice shall be retained by the applicant and an additional copy, signed by the applicant, shall be retained by the insurer.

2. Direct Response. A direct response insurer shall deliver to the applicant, upon issuance of the policy or certificate, the notice described in R590-126-9(E) below.

D. Nondirect Response Notice Form. The notice required by Subsection R590-126-9(C)(1) above for an insurer, other than a direct response insurer, shall be in substantially the following form: "NOTICE TO APPLICANT REGARDING REPLACEMENT OF DISABILITY INSURANCE"

1. According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing insurance and replace it with a policy to be issued by (insert Company Name) Insurance Company. Your new policy provides (insert number of days) within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

a. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

b. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

c. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history.

d. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, re-read it carefully to be certain that all information has been properly recorded.

e. The above "Notice to Applicant" was delivered to me on

... (Date) ...; ... (Signature) 31A-26-301

E. Direct Response Notice Form. The notice required by Subsection R590-126-9(C)(2) above for a direct response insurer shall be in substantially the following form: "NOTICE TO APPLICANT REGARDING REPLACEMENT OF DISABILITY INSURANCE"

1. According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing disability insurance and replace it with the policy delivered herewith issued by (insert Company Name) Insurance Company. Your new policy provides (insert number of days) within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

a. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

b. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

c. (To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insert company name and address) within the time allowed if any information is not correct and complete, or if any past medical history has been left out of the application.

F. Exception. The notices described in this section will not be required in the solicitation of accident only or single premium nonrenewable policies.

R590-126-10. Penalties.

Persons found, after hearing or other acceptable process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308, U.C.A.

R590-126-11. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances may not be affected thereby.

KEY: insurance law

1993	**31A-2-201**
Notice of Continuation February 1, 2002	**31A-2-202**
	31A-21-101
	31A-21-201
	31A-22-605
	31A-23-302
	31A-23-312

R590. Insurance, Administration.
R590-176. Small Employer Open Enrollment Rule.
R590-176-1. Authority and Purpose.

This rule implements the provisions of Title 31A, Chapter 30, The Individual and Small Employer Health Insurance Act. The commissioner's authority to promulgate this rule is provided in Sections 31A-2-201 and 202 and Subsection 31A-30-106(1)(k).

R590-176-2. Definitions.

The definitions in Section 31A-30-103 apply to this rule.

R590-176-3. Applicability and Scope.

This rule has the same applicability and scope as Title 31A, Chapter 30, Utah Code, The Individual and Small Employer Health Insurance Act.

R590-176-4. General Provisions.

A. Any attempt to selectively or unfairly delay, obstruct or otherwise hinder any person from obtaining coverage under Chapter 30 is a violation of Subsection 31A-30-108(1).

B. Open enrollment shall be equally available through all distribution systems, classes of business, and rating criteria categorizations.

C. Open enrollment is available without respect to whether any eligible employee or dependent is classified as uninsurable.

D. The open enrollment residency requirements do not supersede other dependent and child requirements of the Insurance Code.

R590-176-5. Open Enrollment Eligibility if Cap Has Not Been Reached.

A. Offers required by Subsection 31A-30-108(2)(a):

(1) The carrier shall retain a signed statement from each covered small employer that the carrier offered to accept all eligible employees and their dependents at the same level of benefits under the health benefit plan provided to the employer.

(2) For eligible employees not provided coverage due to the residency requirement, the carrier shall offer the small employer the opportunity to enroll eligible employees when the eligible employee or small employer notifies the carrier the residency requirement has been met.

(3)(a) For health benefit plans provided to small employers and in force as of January 1, 1996, the carrier shall offer to accept eligible employees and dependents who:

(i) were denied the opportunity to enroll; or

(ii) are enrollees of the Comprehensive Health Insurance Pool (HIP).

(b) The carrier shall offer to accept all other eligible employees and dependents as of the earliest date upon which a premium may be adjusted following December 31, 1995 but not later than December 31, 1996 unless the carrier has evidence:

(i) the small employer was offered coverage by the carrier for an eligible employee or dependent; and

(ii) the employer or employee chose not to be covered after December 31, 1995.

B. Coverage under Subsection 31A-30-108(2)(b).

A small employer is considered uninsured if it does not have a health benefit plan subject to Chapter 30, or its health benefit plan is with a carrier that has made an election under Subsection 31A-30-107(1)(f).

R590-176-6. Basic Health Care Plan.

A. The carrier must offer the specified plan as defined in Rule R590-175-3.

B. Filing Requirements:

(1) The specified plan must be filed by January 1, 1996.

(2) If the specified plan is already filed with the Department, an information copy must be filed by January 2, 1996.

R590-176-7. Open Enrollment Applications.

A. The carrier shall establish a procedure to determine the order of applications by small employers. The procedure shall group the applications into consistent time periods such as daily, weekly or monthly. The open enrollment cap may not be applied until the end of the time period in which it is met. The carrier may not require that an application be complete in order to qualify as an application for coverage. The carrier shall keep a record of all applications for coverage that includes the time period an application is received by the insurer.

B. Applicants with incomplete applications shall have at least 15 working days, after being notified additional information is required, before an application can be filed as incomplete. A date earlier than the postmarked date of a notice may not be used as the date of notification.

C. The acceptance of an application may not be delayed pending the receipt of statements or records. This does not apply to statements from applicants.

D. All applications shall be treated consistently.

E. Persons eligible for open enrollment under R590-176-5A.(3)(b) may apply for open enrollment effective January 1, 1996. This application includes them in the open enrollment coverage order even though the enrollment date is not required to be immediate. The carrier may include persons accepted under this provision in its uninsurable coverage count if they meet the underwriting criteria.

R590-176-8. Open Enrollment Cap Calculation and Certification.

A. A carrier may not decline open enrollment until the carrier has met its open enrollment cap and submitted a certification to the commissioner. A carrier may limit open enrollment after submitting its certification. The commissioner may require additional open-enrollment after reviewing the certification.

B. An officer of the carrier shall submit a certification that:

(1) lists the UC, CS and CI as defined in Chapter 30;

(2) lists the coverage counts at the time of the certification;

(3) categorizes the UC into new applicants with insured groups and newly covered groups;

(4) identifies the number of HIP participants; and

(5) list the counts separately for groups subject to the 3% counting method.

C. Carriers, whose coverage count exceeds 200% of the coverage count as of the end of the prior year, shall determine the uninsurable percentage using counts as of the end of the most recent calendar quarter.

D. The open enrollment cap of 31A-30-110(1) is 1.0% effective November 15, 1996.

R590-176-9. HIP Enrollment Limit and Certification.

A carrier may declare an individual who participated in HIP prior to December 31, 1995, ineligible for open enrollment if that carrier has reached its HIP count maximum. An officer of the carrier must certify that this limit has been reached and provide the commissioner the numerical values for each element of the formula in Subsection 31A-30-103(16). A carrier may not decline open enrollment using this limit until they have submitted this certification to the commissioner.

R590-176-10. Open Enrollment for New Hires.

A. The cap on acceptance of newly hired eligible employees (and their eligible dependents, if any) in a small employer group with existing coverage, as identified in Section 31A-30-110(1)(c), is eliminated beginning November 15, 1996, and remains eliminated through June 30, 1997. Therefore newly hired eligible employees (and their dependents, if any) making timely and appropriate application for coverage in a small employer group with existing coverage will be accepted.

B. Carriers shall compile a list of all newly hired and declined eligible employees who previously made timely application as above and send notice to the employers of said employees of the opportunity to reapply. Eligible employees who previously made timely application for coverage and who were declined because new hire caps had been met under Section 31A-30-110(1)(c), may make reapplication to the same carrier within 45 days of the effective date of this rule or the notification, whichever is later, and will be underwritten as if the reapplication had been timely made. The carriers shall make such documentation of the notices sent and the results thereof, and make such documentation available to the staff of the Utah Health Policy Commission and the Utah Department of Insurance.

R590-176-11. Solvency Waiver.

A carrier that expects the requirements of Chapter 30 to place the carrier in supervision, insolvency or liquidation shall, within 15 days, submit a report to the commissioner. The report shall detail the financial consequences of Chapter 30 and request the specific waivers or modifications required to prevent supervision, insolvency or liquidation.

R590-176-12. Auditing Standards.

All records regarding open enrollment applications and underwriting determinations shall be retained and organized in a fashion conducive to efficient review and audit.

R590-176-13. Underwriting Criteria.

A. Each carrier shall determine the number of individuals classified as uninsurable at initial enrollment. This determination shall be made in accordance with underwriting standards established by this rule.

B. An individual insured by the HIP is classified as uninsurable.

C. A person may be classified as uninsurable if the person has a condition listed on the Uninsurable Conditions List taking into account the elapsed time, additional criteria and exception criteria. A carrier may not take into account conditions for which coverage is not provided. This includes conditions excluded as a pre-existing condition for which treatment is expected during the exclusion period if the applicant would not be considered uninsurable after the treatment. For example, a pregnancy excluded by a pre-existing condition waiver may not be used to classify a person as uninsurable.

D. A carrier may appeal to have an individual classified as uninsurable if the individual has a combination of conditions that would clearly cause that person to have claims as great as the average of those included on the Uninsurable Conditions List. The commissioner may appoint a designee to review these appeals.

E. Only persons enrolling in a group eligible for open enrollment under 31A-30-108(2)(b) and individuals eligible for open enrollment into a currently insured group under 31A-30-108(2)(a) may be counted as uninsurable. Beginning January 1, 1996 if a carrier accepts a small employer group that is not eligible for open enrollment no eligible employees at enrollment may be counted as uninsurable.

F. For small employers with 25 or more covered employees, all carriers shall calculate the number of uninsurables enrolled in these groups as 3% times the number of new enrollees that are eligible for open enrollment. New hires in a currently insured group are eligible for open enrollment. A carrier may elect to calculate uninsurables under this 3% method for small employers with less than 25 eligible employees if it applies this method to all groups above a certain size.

R590-176-14. Severability.

If a provision of this rule or its application 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
February 24, 1997 31A-30-106
Notice of Continuation February 1, 2002

R590. Insurance, Administration.
R590-181. Yankee Bond Rule.
R590-181-1. Authority.

This rule is adopted pursuant to Section 31A-18-105(13), which allows the commissioner to authorize investments other than those enumerated in Section 31A-18-105.

R590-181-2. Purpose and Scope.

A. The purpose of this rule is to permit insurers to invest, within the limits prescribed by this rule, in bonds which are denominated in U.S. Dollars and which are issued by foreign governments, or by entities backed by foreign governments, or by corporations not domiciled in the United States of America. Such instruments are commonly referred to as "Yankee Bonds."

B. This rule applies to all insurers transacting business in Utah.

R590-181-3. Definitions.

For the purpose of this rule, the following definitions will apply:

A. A "Yankee Bond" is a fixed income bond issued in U.S. Dollar denominations by foreign governments, by entities whose bonds are guaranteed by foreign governments, or by corporations not domiciled in the United States of America.

B. "Investment Quality" means a quality rating of "1" or "2" assigned by the National Association of Insurance Commissioners' Securities Valuation Office ("SVO"). Yankee Bonds which are not SVO rated at the time of purchase by the insurer must be submitted to the SVO for rating within 90 days of purchase. Bonds which are unrated at the time of purchase by the insurer may be temporarily considered to be investment quality if the insurer can demonstrate to the satisfaction of the commissioner that an SVO rating of "1" or "2" is likely. However, this assumption of quality shall only be in effect until rating by the SVO is completed.

C. "Qualified assets" are defined in section 31A-17-201(2).

R590-181-4. Rule.

A. An insurer may invest in Yankee Bonds of investment quality to the extent of 20% of the insurer's qualified assets.

B. Subject to Subsection C, below, for all investments in Yankee Bonds of investment quailty issued by a single entity, its affiliates, and subsidiaries, an insurer is limited to 3% of the insurer's qualified assets.

C. For all investments in Yankee bonds of Investment Quality issued by entities within any single sovereign foreign nation, an insurer is limited to 5% of the insurer's qualified assets if all the bonds are rated "1" by the SVO and limited to 3% of the insurer's qualified assets if any of the bonds are rated "2" by the SVO.

R590-181-5. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, the remainder of the rule and the application of this revision to other persons or circumstances may not be affected.

KEY: insurance
February 24, 1997 31A-18-105
Notice of Continuation February 1, 2002

R590. Insurance, Administration.
R590-208. Uniform Application for Certificates of Authority.
R590-208-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(2), 31A-2-201(3)(a), and 31A-2-202(2) wherein the commissioner is empowered to administer and enforce Title 31A; to make administrative rules to implement the provisions of Title 31A; to prescribe forms for information needed to enforce Title 31A and to implement uniformity between states and other jurisdictions as may apply to the admission and organization of insurance companies in Utah.

R590-208-2. Purpose.

The purpose of this rule is ensure that the commissioner's requirements for domestic, foreign and alien insurer applications to obtain a certificate of authority in Utah shall be consistent with requirements of other states, the information included in the Uniform Certificate of Authority Primary Application, and the Uniform Certificate of Authority Expansion Application of the National Association of Insurance Commissioners.

R590-208-3. Applicability and Scope.

This rule shall apply to all applicants seeking to obtain a certificate of authority for an insurer or an application for an organization permit to organize an insurer under Title 31A, Chapters 5, 7, 8, 9, 10, 11 or 14.

R590-208-4. Uniform Application for Admission as an Insurer.

In order to promote efficiency and uniformity between the Utah Insurance Department, its sister states and other jurisdictions, the commissioner hereby requires the information included in the Uniform Certificate of Authority Primary Application and Uniform Certificate of Authority Expansion Application of the National Association of Insurance Commissioners shall be submitted in accordance with the requirements of Sections 31A-5-204, 31A-7-201, 31A-8-205, 31A-9-205, 31A-10-203, 31A-11-105 and 31A-14-201.

To the extent that the above sections require other information that is not required in these uniform applications, an applicant for a certificate of authority and organization permit shall furnish the additional information as a supplement to the information required in the uniform applications.

R590-208-5. Severability.

If a provision of this rule or its application to any person or circumstance is or for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.

KEY: insurance certificate of authority
January 24, 2002 **31A-2-201**
31A-2-202

R590. Insurance Administration.
R590-211. Underinsured Motorist Insurer Notification.
R590-211-1. Authority.

This rule is promulgated pursuant to the general rulemaking authority vested in the commissioner by Subsection 31A-2-201(3). The authority to set minimum standards by rule for the manner in which notification shall be given between the claimant or a claimant's representative and underinsured motorist insurers is provided in Subsection 31A-22-305(12)(a).

R590-211-2. Purpose.

The purpose of this rule is to provide the manner in which a claimant, or a claimant's representative, shall give notification once liability policy limits have been tendered.

R590-211-3. Scope.

This rule applies to property and casualty insurers transacting business in Utah.

R590-211-4. Rule.

Notification by a claimant or a claimant's representative shall include particulars for proper identification not limited to the following:

(a) name and address of the insured;
(b) policy number;
(c) date of loss;
(d) date of the payment; and
(e) amount of the payment.

Notification shall be sent or delivered to the underinsured carrier by certified mail, return receipt requested, or by facsimile, or by other electronic means which provides verification of delivery to addressee.

R590-211-5. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall 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.

R590-211-6. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the rule's effective date.

KEY: insurance
January 10, 2002 **31A-2-201**
31A-22-305

R590. Insurance, Administration.
R590-212. Requirements for Interest Bearing Accounts Used by Title Insurance Agencies for Trust Fund Deposits.
R590-212-1. 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. Authority to promulgate rules defining the type of accounts to be used for deposited trust funds is provided in Subsection 31A-23-310(2)(b).

R590-212-2. Purpose.

This rule specifies the characteristics of a depository account that may be used by a title insurance agency to deposit trust funds.

R590-212-3. Scope.

This Rule applies to all title insurers, title insurance agencies and title insurance agents and all employees, representatives and any other party working for or on behalf of said entities, whether as a full time or part time employee, or as an independent contractor.

R590-212-4. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301, 31A-23-102 and the following:

(1) "Demand deposit account" refers to a federally insured deposit account from which withdrawals may be made by check and the depositor or a holder of a check drawn on the account has a legal right to immediate payment from the bank upon presentment of the check or other withdrawal request.

(2) "Depositor" refers to a title insurance agency that has deposited, in a qualifying trust account, funds it holds in trust in connection with a real estate transaction.

(3) "Repurchase agreement" is an agreement in which a bank agrees to sell to a depositor a security or other asset at a specified price with a commitment to repurchase the security, or other asset, at a later date for a specified price.

(4) "Sweep account" refers to a demand deposit account subject to an agreement authorizing the bank to withdraw from the account funds exceeding a specified amount and deposit those funds into an interest bearing account, purchase specified securities subject to a repurchase agreement, or purchase shares of a mutual fund, then redeposit those funds into the demand account, when needed, to pay checks presented for payment or other request for withdrawal.

(5) "Trust account" means an account denominated as a trust account in which the depositor is trustee.

R590-212-5. Account Requirements.

(1) Authority to Retain Earnings on Funds Held in Trust. Subsection 31A-23-307(2) permits a title insurance agency to retain earnings on funds held in a qualifying trust account if authorized by the contract between the trustee and the person on whose behalf the funds are held.

(2) Responsibility for Compliance. Each depositor is responsible for determining that the terms and conditions of an account, in which it deposits funds held in trust, comply with the requirements of this rule.

(3) Records Required. Each title insurance agency must retain adequate records of all deposits in a trust account, including those utilizing a sweep feature, to establish individual account balances for all persons whose funds are held in trust.

(4) Qualified Accounts. Funds subject to this rule must be deposited or held in:

(a) a deposit account insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund or any successor federal deposit insurance; or

(b) a sweep account if it meets all of the following qualifications:

(i) funds are initially deposited into a federally insured demand deposit account;

(ii) the bank, in accordance with an agreement with the depositor, withdraws funds exceeding a specific balance in the account to purchase U.S. Government securities on behalf of the depositor that are held in a segregated account in the bank subject to a repurchase agreement with the bank; and

(iii) the bank is obligated and able to repurchase the securities or sell or redeem the shares or interest at any time at par and deposit the funds in the demand deposit account to maintain a minimum balance and pay withdrawals.

(5) Obligation of Depositor for Losses. A depositor may only deposit funds into a sweep account if it agrees to reimburse a trust beneficiary for any decline in value below par of the funds deposited, regardless of the cause of the decline in value.

(6) Disclosure Obligation of Depositor. Any depositor who uses an account described in Subsection R590-212-5.(4)(b) must provide full written disclosure by the depositor to all persons on whose behalf the funds are deposited, explaining the characteristics and risks associated with that type of account.

R590-212-6. Penalties.

Subject to the provisions of the Utah Administrative Procedures Act, violators of this rule shall be subject to forfeitures, suspension or revocation of their insurance license or Certificate of Authority, and any other penalties or measures as are determined by the commissioner in accordance with law.

R590-212-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall 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, title
January 10, 2002 **31A-2-201**
31A-23-310

R602. Labor Commission, Adjudication.
R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.
R602-2-1. Pleadings and Discovery.

A. For the purposes of this rule, "Commission" means the Labor Commission. "Division" means the Division of Adjudication within the Labor Commission. Adjudicative proceedings for workers' compensation and occupational disease claims may be commenced by the injured worker or dependent filing a request for agency action with the Commission. The Administrative Law Judge is afforded discretion in allowing intervention of other parties pursuant to Section 63-46b-9. The Application for Hearing is the request for agency action. All such applications shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications without supporting documentation will not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided.

B. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests on the applicant to initiate the action by filing an Application for Hearing with the Commission.

C. When an Application for Hearing is filed with the Commission, the Commission shall forthwith mail a copy to the employer or to the employer's insurance carrier.

D. The employer or insurance carrier shall have 30 days following the date of the mailing of the application to file a written answer with the Commission, admitting or denying liability for the claim. The answer shall state all affirmative defenses with sufficient accuracy and detail that an applicant may be fully informed of the nature of the defense asserted. All answers shall include a summary and categorization of benefits paid to date on the claim. A copy shall be sent to the applicant or, if there is one, to the applicant's attorney by the defendant.

E. When an employer or insurance carrier fails to file an answer within the 30 days provided above, the Commission may enter a default against such employer or insurance carrier. The Commission may then set the matter for hearing, take evidence bearing on the claim, and enter an Order based on the evidence presented. Such defaults may be set aside by following the procedure outlined in the Utah Rules of Civil Procedure. Said default shall apply to the defendant employer or insurance carrier and may not be construed to deprive the Employers' Reinsurance Fund or the Uninsured Employers' Fund of any appropriate defenses.

F. When the answer denies liability solely on the medical aspects of the case, the applicant, through his/her attorney or agent, and the employer or insurance carrier, with the approval of the Commission or its representative, may enter into a stipulated set of facts, which stipulation, together with the medical documents bearing on the case in the Commission's file, may be used in making the final determination of liability.

G. When deemed appropriate, the Commission or its representatives may have a pre-hearing or post-hearing conference.

H. Upon filing of the Answer, the defendant may commence discovery with appropriate sets of interrogatories. Such discovery should focus on the accident event, witnesses, as well as past and present medical care. The defendant shall also be entitled to appropriately signed medical releases to allow gathering of pertinent medical records. The defendant may also require the applicant to submit to a medical examination by a physician of the defendant's choice. Failure of an applicant to comply with such requests may result in the dismissal of a claim or a delay in the scheduling of a hearing.

I. Commission subpoena forms shall be used in all discovery proceedings and shall be signed, unless good cause is shown for a shorter period, at least one week prior to any scheduled hearing.

J. All medical records shall be filed by the employer or its insurance carrier as a single joint exhibit at least one week before the scheduled hearing. Claimant must cooperate and submit all pertinent medical records contained in his/her file to the employer or its insurance carrier for the joint exhibit submission two weeks in advance of a scheduled hearing. Exhibits are to be placed in an indexed binder arranged by care provider in chronological order. Exhibits shall include all relevant treatment records which tend to prove or disprove a fact in issue. Pages shall be numbered consecutively. Hospital nurses' notes, duplicate materials, and other non-relevant materials may not be included.

K. The Administrative Law Judge shall be notified one week in advance of any proceeding when it is anticipated that more than four witnesses will be called, or where it is anticipated that the hearing of the evidence will require more than two hours.

L. Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63-46b-5 or 63-46b-10.

M. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63-46b-12 and Section 34A-1-303. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. Thereafter, the Administrative Law Judge shall:

1. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary,

2. Amend or modify the prior Order by a Supplemental order, or

3. Refer the entire case for review under Section 34A-2-801.

If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

N. In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, or as may be otherwise modified by the presiding officer.

O. A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63-46b-13. Any petition for judicial

review of final agency action shall be governed by the provisions of Section 63-46b-14.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting medical opinions related to causation of the injury or disease;

2. Conflicting medical reports of permanent physical impairment which vary more than 5% of the whole person,

3. Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days;

4. Conflicting medical opinions related to a claim of permanent total disability, and/or

5. Medical expenses in controversy amounting to more than $10,000.

B. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. The Administrative Law Judge may authorize an injured worker to be examined by another physician for the purpose of obtaining a further medical examination or evaluation pertaining to the medical issues involved, and to obtain a report addressing these medical issues in all cases where:

1. The treating physician has failed or refused to give an impairment rating, and/or

2. A substantial injustice may occur without such further evaluation.

D. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Testimony.

Compensation for medical panel examination, medical testimony, and preparation by medical panel members at hearings shall be $87.50 per half hour and shall be $100 per half hour for the medical panel chair.

R602-2-4. Attorney Fees.

Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants before the Commission in all cases wherein such fees are awarded after January 1, 2002.

A. The concept of a contingency fee is recognized. A retainer in advance of a Commission approved fee is not allowed. Benefits are only deemed generated within the meaning of this rule when they are paid as a result of legal services rendered after an Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the claimant's attorney.

B. By creating this rule, the commission does not intend that an applicant's attorney be paid a fee where the assistance the attorney renders involves only an incidental expenditure of time. For example, no attorney's fee shall be paid when compensation agreements are merely reviewed, simple documents are prepared, or an apparent dispute is quickly resolved as a result of oral or written communication.

C. "Benefits" within the meaning of this rule shall be limited to weekly death or disability compensation and accrued interest thereon paid to or on behalf of an applicant pursuant to the terms of Title 34A, Utah Code Annotated.

D. An attorney's fee deducted from the benefits generated shall be awarded for all legal services rendered through final Commission action with the following constraints:

1. 20% of weekly benefits generated for the first $20,500, plus 15% of the weekly benefits generated in excess of $20,500 but not exceeding $41,000, plus 10% of the weekly benefits generated in excess of $41,000.

2. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

3. Not withstanding the above, in no case shall the maximum fee exceed $10,352.

E. After either successfully prosecuting or defending an appeal following final Commission action, an increased attorney's fee shall be awarded amounting to:

1. 25% of the benefits in dispute before the Utah Court of Appeals, plus the amount awarded in part D of this rule, not to exceed $15,130.

2. 30% of the benefits in dispute before the Supreme Court, plus the amount awarded in part D of this rule, plus the amount awarded in part E.1 of this rule, not to exceed $19,900.

F. An attorney's fee shall be deducted from and paid out of the benefits generated and shall be paid directly to the applicant's attorney upon order of the Commission.

G. If a controversy over an attorney's fee develops, the Commission shall have the discretion, pursuant to Section 34A-1-309, and this rule, to award fees or otherwise resolve the dispute by Order delineating the Commission's findings along with the evidence and reasons supporting the decision.

R602-2-5. Settlement Agreements.

A. Statutory authority:

Section 34A-2-420 requires the Commission to review all agreements for the settlement or commutation of claims for workers' compensation or occupational disease benefits and grants the Commission discretion to approve such agreements. The Commission's authority under Section 34A-2-420 applies to all claims arising under the Utah Workers' Compensation Act or Occupational Disease Act, regardless of the date of accident or occupational disease. This rule sets forth the requirements for Commission approval of such agreements.

B. General Considerations:

Settlement agreements may be appropriate in claims of disputed validity or when the parties' interests are served by

payment of benefits in a manner different than otherwise prescribed by the workers' compensation laws. However, settlement agreements must also fulfill the underlying purposes of the workers' compensation laws. Once approved by the Commission, settlement agreements are permanently binding on the parties. The Commission will not approve any proposed settlement that is manifestly unjust.

C. Procedure:

1. Parties interested in a present or potential workers' compensation claim, whether or not an application for hearing has been filed, may submit their settlement agreement to the Commission for review and approval. The Commission may delegate its authority to review and approve such agreements.

2. Each settlement agreement shall be in writing, executed by each party and such party's attorney, if any, and shall include a proposed order for Commission approval of the agreement.

3. Each settlement agreement shall set forth the nature of the claim being settled and what claims are in dispute, if any.

4. Each settlement agreement shall contain a statement that each party understands that the agreement is permanent, binding and constitutes full and final settlement of any right the claimant may otherwise have to future benefits, including medical benefits. The Commission may establish an approved form for complying with the foregoing disclosure requirement.

5. Attorneys' fees shall be allowed as provided by Rule R602-2-4. Each settlement agreement shall describe the amount to be paid to claimant's counsel as attorney's fees and costs, the manner in which such amounts are computed and the method of payment thereof.

6. The settlement agreement may provide for payment of benefits through insurance contract or by other third parties if the Commission determines a) such payment provisions are secure and b) such payment provisions do not relieve the parties of their underlying liability for payments required by the agreement.

7. Upon receipt of a proposed settlement agreement meeting the requirements of this rule, the Commission shall review such proposed agreement:

a. As needed, the Commission may contact the parties and others to obtain further information about the proposed settlement;

b. If the Commission determines that a proposed settlement agreement conforms with this rule, the Commission shall approve such agreement and notify the parties in writing.

c. If the Commission determines that a proposed settlement agreement does not comply with this rule, the Commission shall notify the parties in writing of its reasons for rejecting the proposed agreement.

d. The Commission shall retain a record of its action on all settlement agreements submitted to it for approval.

KEY: workers' compensation, administrative procedure, hearings, settlement
January 15, 2002 34A-1-301 et seq.
Notice of Continuation November 24, 1997 63-46b-1 et seq.

R608. Labor Commission, Antidiscrimination and Labor, Fair Housing.

R608-1. Utah Fair Housing Rules.

R608-1-1. Authority and Purpose.

Pursuant to Section 57-21-8(2)(a), the Utah Labor Commission adopts this rule to establish the procedures necessary to implement the Utah Fair Housing Act.

R608-1-2. Definitions.

The following definitions are in addition to the definitions set forth in Section 57-21-2 of the Utah Fair Housing Act

A. "Act" means the Utah Fair Housing Act, Chapter 21, Title 57.

B. "Commissioner" means the Commissioner of the Utah Labor Commission.

C. "Complaint" means an allegation of an unlawful housing practice, filed with the Division in compliance with these rules. "Complaint" includes amended or supplemental complaints.

D. "Court" means the district court in the judicial district of the state of Utah in which the asserted unfair housing practice occurred, or if this court is not in session at that time, then any judge of any court.

E. "Unlawful housing practice" means any discriminatory housing practice prohibited by the Act.

R608-1-3. Reliance on State and Federal Precedent.

The Division and Commission will consider relevant State and Federal precedent in interpreting and applying the Act.

R608-1-4. Computation of Time Limits.

A. A Determination, Order, or Notice required by the Act or this rule is deemed issued on the date on the face of the Determination, Order or Notice.

B. A complaint, response, request for reconsideration, or election is considered to be "filed" on the date it is received by the Division or Commission, whether by mail or by personal delivery. Each such document shall be date stamped by Division staff on the date of receipt.

C. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing will be allowed.

R608-1-5. Designation of Proceedings as Informal-Exception.

A. All proceedings pursuant to the Act and this rule are hereby designated as informal adjudicatory proceedings for purposes of the Utah Administrative Procedures Act, Title 63, Chapter 46b, except that proceedings before the Commission's Adjudication Division for de novo review of the Director's Determination and Order are formal proceedings.

B. Court proceedings are subject to the court's rules of procedure.

R608-1-6. Complaints-Filing-Time Limits-Amendment and Withdrawal.

A. Any person aggrieved by an unlawful housing practice may file a complaint with the Division.

1. The complaint must be in the form designated by the Division and verified by the complainant.

2. The complaint shall contain the complainant's concise statement setting forth, to the extent reasonably possible, the following information:

a. The specific basis for complainant's belief that an unlawful housing practice has occurred, with relevant dates, places and the names of any individual participating in the alleged unlawful housing practice;

b. The specific basis for the complainant's belief that the alleged conduct is subject to the Act; and the dates and places of such unlawful housing practices;

c. The specific damages the complainant believes he or she has suffered as a result of the unlawful housing practice.

B. Division staff shall be available during normal business hours to provide reasonable assistance to complainants in completing and filing complaints.

C. Pursuant to Section 57-21-9(1), the complaint must be filed with the Division within 180 days after the alleged unlawful housing practice occurred.

D. The Director shall permit a complaint to be reasonably and fairly amended or supplemented, either by the Division or by the complainant, in order to accomplish the purpose of the Act. Such amendment or supplement may include additional respondents identified in the investigation as persons engaged in the unlawful housing practice on which the complaint is based. Procedures for filing and processing an amended or supplemental complaint shall be the same as for filing an original complaint.

E. With the Director's approval, a complainant may withdraw a complaint at any time by submitting a signed request for withdrawal to the Division.

R608-1-7. Notice Requirements.

A. Within ten days of the filing of a complaint, the Division shall provide notice by registered mail to the complainant, including:

1. The date the complaint was filed with the Division;

2. A copy of the complaint;

3. The time limits applicable to the complaint and investigation process;

4. A statement of the complainant's rights and obligations under the Act;

5. A statement of the complainant's right to commence a private civil action in state or federal court, with a statement of applicable time limits for commencing such action;

6. A statement advising the complainant that retaliation against any person, or individual associated with that person, who is filing, testifying, assisting, or participating in an investigation, conciliation or administrative proceeding, is a discriminatory housing practice prohibited by the Act; and

7. A statement, if applicable, that the terms of any rental agreement remain in effect.

B. Within ten days of the filing of a complaint, the Division shall provide notice by registered mail to the respondent, which notice shall include:

1. Identification of the alleged unlawful housing practice on which the complaint is based;

2. The date the complaint was filed with the Division;

3. A copy of the complaint;

4. A statement of time limits applicable to the complaint and investigation process;

5. A statement of the respondent's rights and obligations under the Act, including respondent's obligation to submit a response to the complaint, as required by R608-1-8.

6. A statement informing the respondent of the complainant's right to commence a private civil action in state or federal court, with a statement of applicable time limits for commencing such action;

7. A statement advising the respondent that retaliation against any person, or individual associated with that person, who is filing a complaint, testifying, assisting, or participating in an investigation, conciliation, or administrative proceeding, is a discriminatory housing practice prohibited by the Act.

R608-1-8. Response to Complaint.

A. A respondent shall file a signed response to the complaint with the Division within 20 days from the date of the notice required by R608-1-7.B.

B. The response must address each allegation contained in the complaint, including any available and relevant data and information regarding respondent's business practices.

C. Division staff shall be available during normal business hours to provide reasonable assistance to respondents in completing and filing responses.

D. Failure to file a response may result in the Division concluding its investigation based on information provided by the complainant and such other information as is reasonably available to the Division. Alternatively, the Commission may use its subpoena powers to compel production of the information required by this rule.

R608-1-9. Investigation-Report.

A. Within 30 days of the filing of a complaint, the Division shall commence proceedings to throughly investigate and, if possible, conciliate the complaint.

B. The Division shall complete its investigation within 100 days after filing of a complaint. If the Division is unable to do, it shall notify the parties in writing of the reason for the delay.

C. The Division may, with reasonable notice to the parties, conduct on-site visits, interviews, and fact-finding conferences, and take such other action as is reasonably necessary to investigate the complaint. Pursuant to Section 57-21-8(2)(c) of the Act, the Commission may issue subpoenas to compel production of necessary evidence. Additionally, a party's unjustified failure to cooperate with the Division's reasonable investigative requests may result in the Division concluding its investigation based on such other information as is available to the Division.

D. The Division shall prepare a final investigative report on each complaint, which shall include:

1. A summary of all contacts with complainants and respondents, including the dates of such contacts;

2. A summary of contacts with witnesses, including the dates of contact; and

3. A summary of pertinent records.

R608-1-10. Determination.

A. On completion of the investigation, the Director shall review the investigative report and determine whether reasonable cause exists to believe that an unlawful housing practice has occurred.

B. If the Director finds no reasonable cause to believe that an unlawful housing practice has occurred, the Director shall issue a determination dismissing the complaint. The complainant may then take such other action as described in R608-1-12.

C. If the Director finds reasonable cause to believe that an unlawful housing practice has occurred, the Director shall take such further action as described in Rule R608-1-13.

R608-1-11. Conciliation.

A. During the period beginning with the filing of the complaint and ending with the Director's determination, the Division shall, to the extent feasible, engage in conciliation to settle the matter or, in accordance with HUD procedures, enter into an enforcement agreement.

1. Conciliation proceedings are confidential pursuant to Section 57-21-9(7)(a).

2. Any conciliation agreement shall be subject to approval by the Director.

3. Any party can enforce the signed and approved conciliation agreement in court proceedings.

B. Nothing in these rules prevents complainants and respondents from settling a complaint through their own efforts. However, the Division will not dismiss the complaint until the parties' settlement agreement has been submitted to, and approved by, the Director.

R608-1-12. Order of Dismissal-Reconsideration-Right to Private Civil Action.

A. If the Director finds no reasonable cause to believe that an unlawful housing practice has occurred, or is about to occur, the Director shall issue a Determination and Order dismissing the Complaint.

B. The complainant may ask the Director to reconsider such order of dismissal by complying with the requirements of Section 63-46b-13 of the Utah Administrative Procedures Act.

C. The Director shall issue a decision either granting or denying the request for reconsideration.

1. If the Director grants reconsideration, the Director shall reopen the investigation, amend the Director's prior Determination and Order, or take such other necessary action.

2. If the Director denies reconsideration, the Director's Determination and Order is not subject to any additional agency or judicial review. However, the complainant may commence a private civil action pursuant to Section 57-21-12(1).

R608-1-13. Order Finding Unlawful Housing Practice-

Appeal-Choice of Forum.

A. If the Director concludes that an unlawful housing practice has occurred, the Division shall informally attempt to eliminate or correct the unlawful housing practice by conducting a conciliation conference pursuant to R608-1-11.

B. If conciliation is unsuccessful, the Director shall issue a determination ordering appropriate relief as authorized by Section 57-21-11. The Director's determination shall be made public unless the Director determines that the matter involves a privacy interest entitled to protection by law, or that disclosure is not required to further the purposes of the Act.

C. A respondent disagreeing with the Director's determination may obtain de novo review by filing a written request for review with the Director within 30 days from the date the Director's determination.

1. If no timely request for de novo review is filed, the Director's determination is the Commission's final order and not subject to additional agency or judicial review.

2. If a timely request for de novo review is filed, the Director shall:

a. Notify the parties of such request for review by regular mail at their last known address of record; and

b. Inform the parties that the review proceeding will be conducted by the Commission's Adjudication Division unless any party elects to have such review conducted in court.

3. Any election for court review must be received by the Director within 20 days of the date of mailing of the Director's notice.

R608-1-14. Representation of Complainants.

A. If a respondent has requested de novo review of the Director's Determination, the Commission shall consider whether the Determination is supported by substantial evidence.

B. If the Commission concludes the Determination is supported by substantial evidence, the Commission shall provide legal representation to support the Determination in the de novo review proceeding.

C. If the Commission concludes the Determination is not supported by substantial evidence, the Commission shall not provide legal representation to support the Determination in the de novo review proceeding.

D. The Commission shall notify the parties of its conclusion regarding the existence or nonexistence of substantial evidence to support the Director's Determination within twenty days from the date the respondent files a request for de novo review.

E. The Commission's conclusion regarding the existence or nonexistence of substantial evidence to support the Director's Determination is not subject to further agency or judicial review.

R608-1-15. Procedures For De novo Review.

A. If, in accordance with the provisions of these rules, a de novo review proceeding is to be conducted by the Commission's Adjudication Division, the following standards apply:

1. The Division shall refer the matter to the Adjudication Division, which shall designate an Administrative Law Judge to serve as presiding officer;

2. The proceeding shall be conducted as a formal agency adjudicative proceeding pursuant to the relevant provisions of the Utah Administrative Procedures Act, Chapter 46b, Title 63;

3. Within 30 days from referral, the Administrative Law Judge shall schedule an evidentiary hearing to be held within 120 days of the referral, unless it is impracticable to do so;

4. Any aggrieved party may intervene in the action;

5. The Commission shall make final administrative disposition of the complaint within one year after the complaint is filed unless it is impracticable to do so. If the agency is unable to make a final administrative disposition within one year, the Commission shall notify the parties in writing of the reason for the delay.

B. If, in accordance with the provisions of these rules, a de novo review proceeding is to be conducted in court, the following standards apply:

1. If, pursuant to Rule R608-1-14, the Commission has concluded the Director's Determination is supported by substantial evidence, the Commission shall commence a court action to support the Determination. Such action shall be commenced within 30 days from the date of the election for court review.

2. If, pursuant to Rule R608-1-14, the Commission has concluded the Determination is not supported by substantial evidence, the Commission shall not commence a court action to support the Determination. In such case, the complainant may commence a civil action in a court of competent jurisdiction as provided by the Act.

R608-1-16. Declaratory Orders.

A. Purpose. As required by Section 63-46b-21, this rule provides the procedures for submission, review, and disposition of petitions for agency Declaratory Orders on the applicability of statutes, rules, and orders governing or issued by the agency.

B. Petition Form and Filing.

1. The petition shall be addressed and delivered to the Director who shall mark the petition with the date of receipt.

2. The petition shall:

a. be clearly designated as a request for an agency Declaratory Order;

b. clearly identify the statute, rule, or order to be reviewed;

c. describe in detail the situation or circumstances in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone number where the petitioner can be contacted during normal business hours;

f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

C. Review.

1. the agency shall not review a petition for a Declaratory Order that is:

a. not within the jurisdiction and competency of the agency;

b. trivial, irrelevant, or immaterial; or

c. otherwise excluded by state or federal law.

2. The Director shall promptly review and consider the petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; or

c. take any action consistent with law that the agency deems necessary to provide adequate review and due consideration of the petition.

3. The Director may issue a Declaratory Order pursuant to Section 63-46b-21(6).

D. Administrative Review.

1. Administrative review of the Director's Declaratory Order shall be conducted pursuant to Section 63-46b-13.

KEY: housing, fair housing, discrimination, time
December 2, 1999 57-21-1 et seq.
Notice of Continuation January 10, 2002 63-46b-1 et seq.

R610. Labor Commission, Antidiscrimination and Labor, Labor.

R610-1. Minimum Wage, Clarify Tip Credit, and Enforcement.

R610-1-1. Authority.

This rule is enacted under authority of Section 34-40-105.

R610-1-2. Definitions.

The following definitions are in addition to the statutory definitions specified in Section 34-40-102.

A. "Division" means the Division of Antidiscrimination and Labor within the Labor Commission and includes the personnel within the Division responsible for enforcement.

B. "Hours employed" includes all time during which an employee is required to be working, to be on the employer's premises ready to work, to be on duty, to be at a prescribed work place, to attend a meeting or training, and for time utilized during established rest or break periods excluding meal periods of 30 minutes or more where the employee is relieved of all responsibilities.

R610-1-3. Coverage.

A. All employers employing workers in the state of Utah, except those exempted by Section 34-40-104, shall pay the established minimum hourly wages of $4.75 for all hours employed effective October 1, 1996, and of $5.15 for all hours employed effective September 1, 1997.

B. As per Sections 34-23-301 and 34-40-103, a minor employee shall be paid at least $4.25 per hour for the first 90 days of employment with an employer; thereafter, he or she shall be paid at least the established minimum hourly wage.

C. Any employer claiming exemption under Subsection 34-40-104(1)(k), shall provide to the Division a statistical report of the average wage paid within 60 days of the end of the regular operating season. The Division may, upon notice, perform an on-site inspection to verify the report in accordance with Sections 34-40-201 and 34-40-203.

R610-1-4. Tips, Gratuities, and Commissions.

A. An employer may credit the tips received by tipped employees (an example would be waiters and waitresses) against the employer's minimum wage obligation. The tips must be received by the employee, reported to the employer, and must reach a threshold of at least $30.00 per month before credit can be allowed.

B. An employer has a cash wage obligation in meeting the required minimum wage of at least $2.13 per hour. If an employee's tips combined with the employer's cash wage obligation of $2.13 per hour do not equal the minimum hourly wage requirement, the employer must increase its cash wage obligation to make up the difference.

C. All tips or gratuities shall be retained by the employee receiving the tips or gratuities. However, this requirement does not preclude pooling of tips or gratuities to be divided equally between those employees who customarily and regularly receive tips or gratuities.

1. A bona fide tip pooling or sharing arrangement may include employees who customarily and regularly receive tips, such as waiters, bellhops, waitresses, countermen, busboys, and service bartenders.

2. Employees such as dishwashers, chefs, and janitors are not considered tipped employees and may not participate in tip pooling.

D. Every employer intending to exercise the tip or gratuity credit must so inform each affected employee at the time of hire.

E. Where tips are charged on a credit card, and the employer must pay the credit card company a percentage of the bill for its use, the employer may reduce the amount of the credit card tips paid over to the employee by a percentage no greater than that charged by the credit card company.

F. In computing the minimum wage, tips, gratuities, and commissions must be counted in the payroll period in which the tip, gratuity or commission is earned.

G. This section does not apply to tips or commissions as delineated in Section 34-40-104(1)(j).

R610-1-5. Enforcement of Minimum Wage.

A. The Division may enforce compliance with the state minimum wage in the same manner as outlined in R610-3.

B. When more than one employee is affected by noncompliance of minimum wage requirements, the Division shall treat this alleged infraction of noncompliance as a class action.

C. The Division may commence agency action in accordance with Section 63-46b-3 to investigate and determine compliance or noncompliance.

D. If an employer is found in noncompliance with the state minimum wage requirements, that employer shall be subject to penalties under Section 34-40-204.

E. If the employees determine that a civil action to enforce compliance with state minimum wage is necessary, they may bring an action under Section 34-40-205.

R610-1-6. Filing Procedure and Commencement of Agency Action.

For purposes of Section 63-46b-3, commencement of an adjudicative proceeding at the Division to resolve a complaint under minimum wage requirements is accomplished by the complainant filing a complaint form. The complaint form shall act as a request for agency action and the form and accompanying agency cover letter shall together include all information specified in Subsection 63-46b-3(2).

R610-1-7. Investigation and Enforcement.

If, upon investigation, the Division concludes that a violation of Sections 34-40-103, 34-40-104, 34-40-201, or 34-40-203 has occurred it may impose a penalty pursuant to Sections 34-40-202 and 34-40-204.

R610-1-8. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal

holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing shall be allowed.

KEY: wages, minors*, labor, time

September 3, 1997	**34-23-101 et seq.**
Notice of Continuation January 10, 2002	**34-28-1 et seq.**
	34-40-101 et seq.
	63-46b-1 et seq.

R610. Labor Commission, Antidiscrimination and Labor, Labor.
R610-2. Employment of Minors.
R610-2-1. Authority.

This rule is enacted under authority of Section 34-23-104.

R610-2-2. Definitions.

A. "Commission" means the Labor Commission.

B. "Complainant" means any person making a claim, or a representative of a minor alleging a violation.

C. "Complaint" means a properly completed Complaint Form filed with the Division by a complainant or a representative of the complainant.

D. "Defendant" means any person or entity against whom a claim is made.

E. "Director" is the Director of the Division of Antidiscrimination and Labor. Director also means a designee denoted by the Commission to serve in the Director's absence.

F. "Division" means the Division of Antidiscrimination and Labor within the Commission and the personnel within the Division responsible for enforcement.

G. "Employer" includes every person, firm, partnership, association, limited liability company, corporation, receiver, or other officer of any of the above mentioned classes, employing any person in this state or who permits any person to perform work, labor, or services.

H. "Employer's immediate family" includes children, step children, brothers, and sisters living in the home of a sole proprietor or partnership, but may not apply to a corporation.

I. "Hazardous occupation" means any occupation defined as hazardous by the United States Department of Labor under 29 U.S.C. 201 et seq. of the Fair Labor Standards Act.

J. "Hearing Officer" means a presiding officer who is designated by the Commission to commence adjudicative proceedings, process claims and complaints, conduct investigations, hold hearings, assess penalties, issue subpoenas, and enter Orders.

K. "License" means a document issued by the Division to an employer employing minors in door-to-door sales.

L. "Nonprofit group" means a group recognized under Section 501(c) of the Internal Revenue Code as having nonprofit exempt status.

M. "Presiding Officer" includes those defined by Section 63-46b-2(1)(h)(I).

N. Additional definitions may be found in Section 34-23-103.

R610-2-3. Employment of Minors - General.

A. Every employer must allow the opportunity for a meal period of not less than 30 minutes and not later than five hours after the beginning of a minor employee's workday. If, during the meal period, the employee cannot be completely relieved of all duties and permitted to leave the work station or area, the meal period must be paid as time worked.

B. At least a 10 minute paid rest period for each four hours, or fraction thereof, shall be provided for each minor employee; however, no minor employee shall be required to work over three consecutive hours without a 10 minute rest period.

C. In those unusual situations where the specific provisions of subsections A. or B. cannot be met, the Division may decide whether the general intent of the rules has been met to ensure attainment of reasonable safeguards for a minor's health, safety, and education.

R610-2-4. Employment of Minors Engaged in Door-to-Door Sales, License.

A. The following shall apply for minors in the age range of 12 through 15 who work for income by engaging in sales of cookies, candies, magazines, merchandise coupons, and other similar products by door-to-door methods at locations including residential housing areas, shopping centers, and malls:

1. An employer-employee relationship is determined to exist if minors are paid by time, piece, carton, quantity, task, bonus, or any other basis of calculation;

a. employees shall be paid at least the Utah minimum wage in effect at the time the work is performed and shall include all time from the time of pickup to the time the minor is returned to the minor's home, except for that time utilized as a meal period as specified in R610-2-3.A.;

b. minors engaged in door-to-door sales of goods, products, or services are not independent contractors or outside sales personnel for purposes of payment of minimum wage;

2. Minors cannot be transported further than 30 miles from where they reside;

3. Minors so engaged must work in pairs, as a team, on the same or opposite side of the street while selling in residential housing areas;

4. Minors so engaged must be supervised by an adult supervisor for each crew of ten or fewer minors;

5. Minors must be within the sight or sound of the adult supervisor at least once every hour while selling in residential housing areas;

6. Minors must be returned to their respective homes daily after each day's work by 9:30 p.m.;

7. Minors must be allowed an opportunity to use rest room facilities at least once every three hours;

8. Minors must be allowed to partake of food and drink if they work more than three consecutive hours. This benefit cannot be utilized by the employer to coerce minors into making a set number of sales;

9. The driver of the vehicle that transports minor workers must be licensed by the state to transport minors;

10. Businesses must be licensed in accordance with the respective city or county ordinances in which they are employed;

11. Five days prior to conducting business in Utah, every employer employing minors who operates a door-to-door sales business must obtain a license from the Division. A written application for a license shall be filed with the Division and shall include:

a. the company or business name, address, and telephone number;

b. the name, address, and telephone number of the owner, each partner from applicant partnerships, each member of applicant limited liability companies, or the principals, officers, and directors of applicant corporations;

c. the business or occupation engaged in by the owner,

partners, members, principals, officers, and directors for at least two years immediately preceding the filing of the application;

d. the name and address of any supplier of any item to be sold by minors for the door-to-door sales operation;

e. the identity of any out of state affiliation, and the name, address, and telephone number of local contact person;

f. certified results of a criminal history background check by the Utah Bureau of Criminal Identification for the owner, each partner from applicant partnerships, each member of applicant limited liability companies, the principals, officers, and directors of applicant corporations, and of all supervisors and van drivers who have contact with the minor employees; the criminal history background check must be current for the year the license is sought;

g. a recent photograph of the owner, each partner from applicant partnerships, each member of applicant limited liability companies, or the principals, officers, and directors of applicant corporations; and

h. two separate letters of recommendation attesting to the reliability and responsibility of each owner, partner, member, principal, officer, director, supervisor, and van driver. These letters must be written and signed by persons who are residents of the state of Utah and who have known the owner, partner, member, principal, officer, director, supervisor, or van driver at least one year.

12. For each supervisor or van driver hired subsequent to submission of application for license the business operator shall submit to the Division the certified results of a criminal history background check as delineated in Subsection R610-2-4.A.11.f. and letters of recommendation as delineated in Subsection R610-2-4.A.11.h. prior to contact with any minor employee by the supervisor or van driver.

13. Before a license shall be issued pursuant to this rule, the applicant shall deposit with the Commission a bond in the penal sum of $10,000 with two or more sureties. The bond shall be made payable to the Labor Commission and shall be conditioned that the applicant, supervisor, and van driver will comply with the provisions of Title 34, Chapters 23, 28, and 40, and with the provisions of R610-1, R610-2, and R610-3, and shall pay all penalties or damages occasioned by any violation of these provisions in carrying on the business for which the license is issued.

14. The Division may deny or revoke a license when:

a. an applicant, supervisor, or van driver has been adjudged guilty of a violation of any criminal act, other than a minor traffic violation, in any state; or

b. an applicant has been determined by any state or federal agency to be in violation of any labor law within the past five years; or

c. any information provided as a part of the application process is false or misleading; or

d. any applicant fails to complete the licensing process and fails to provide the information requested; or

e. any business operator fails to submit to the Division the name and address of any van driver or supervisor hired along with the results of a criminal history background check as delineated in Subsection R610-2-4.A.11.f. or letters of recommendation as delineated in Subsection R610-2-4.A.11.h. at the time of hiring the van driver or supervisor; or

f. any business operator fails to comply with the provisions of Utah labor law or Labor Rules 610-1, 610-2, or 610-3.

15. Each license issued pursuant to this rule shall expire on December 31 of the year issued.

16. Annually, a completed application for renewal of license form must be completed and submitted to the Division along with all requested documents prior to December 31.

17. A door-to-door sales business shall not publish, print, or otherwise represent that the Commission has approved of any product or service offered by the door-to-door sales business.

B. Any school sponsored group, scout group, or fund raising group selling for the benefit of its organization must provide group members with an identification card, signed by an official of the organization with the organization's official telephone number affixed for verification purposes. Subsections R610-2-4.A.3. through R610-2-4.A.10. shall apply to these groups and the minor participants.

C. Nothing contained in Subsections R610-2-4.A. and R610-2-4.B. shall apply to nonprofit groups where the individual selling for the group is a true volunteer and there is no intention, understanding, expectation, agreement, or representation that the individual selling for the nonprofit group will receive any individual compensation or reimbursement for the sale.

D. Nothing in Subsections R610-2-4.A. and R610-2-4.B. shall prohibit or abridge the right of a minor to deliver, sell, or solicit subscriptions for newspapers or other regularly printed material door-to-door when the minor is a news carrier of the newspaper or other regularly printed material and delivers them to an established readership for consideration.

R610-2-5. Written Authorization.

Minors seeking employment in occupations where authorization is required by the Commission as set forth in Sections 34-23-201 and 34-23-207(4), shall file a written request for authorization. Requests for authorization shall be made in writing and provide the name of the minor, his or her address, telephone number, date of birth, the name and address of the parent or guardian approving of the employment, and specify any related training completed or in progress. The name of the prospective employer, the address and telephone number, the name and title of the employer's representative, the type of business, the specific duties of the minor, and the specific equipment or machinery the minor would be allowed to operate or repair shall also be provided in sufficient detail to allow a decision regarding the request for authorization. The Division shall review all requests for authorization and may issue authorization signed by the Division Director where appropriate, but shall in such cases determine and establish the hours and conditions of labor and employment for such authorization.

R610-2-6. Filing Procedure and Commencement of Agency Action.

For purposes of Section 63-46b-3, commencement of an adjudicative proceeding at the Division to resolve an alleged violation of Utah statutes or rules regarding employment of minors is accomplished by the filing of a complaint or by a notice of agency action filed by the Division at its discretion.

A. The alleged violation shall be filed in writing by the complainant or a representative of the complainant on a form provided by the Division. The complaint form shall act as a request for agency action and the form and accompanying agency cover letter shall together include all information specified in Subsection 63-46b-3(2). The complaint shall include the complainant's name and address, the defendant's name and address, a brief and concise statement of the complaint or allegation, and the complainant's or his representative's notarized signature.

1. Upon receipt of a complaint, the Division shall enter its receipt and assign a complaint number.

2. The Division may telephone the Defendant and attempt to resolve the complaint.

3. When a rapid resolution is not effected, the Division shall mail a copy of the complaint and a blank answer form together with an accompanying agency cover letter.

4. The Defendant shall have ten working days from the date of the letter to submit an answer to such complaint.

5. The Defendant's answer shall be mailed to the Complainant who may submit an answer within ten working days.

6. Upon receiving a third complaint against an employer within a 12 month period, the Division shall invoke the penalty provision pursuant to Section 34-23-402, and notify the Defendant of the penalty at the time of notice under Subsection A.3.

B. The Division may at its discretion bring an agency action to determine any violation of any statute or rule pertaining to employment of minors, or any appropriate penalties, wages, or other enforcement relief. Commencement of an adjudicative proceeding is accomplished by a notice of agency action filed by the Division.

C. An adjudicative proceeding initiated pursuant to Subsection A. or B. is designated as an informal adjudicative proceeding and shall be conducted informally.

D. An informal adjudicative proceeding may be converted to a formal adjudicative proceeding pursuant to Subsection 63-46b-4(3).

R610-2-7. Default.

The presiding officer may enter an order of default against a party pursuant to Section 63-46b-11.

R610-2-8. Investigation.

For the purpose of determining the validity or invalidity of the filed complaint, the Division pursuant to Section 34-23-401, may:

A. Interview and obtain additional statements from either party;

B. Attempt to obtain from the Defendant an answer and statement where the Defendant has failed to submit an answer to the complaint;

C. Examine, copy, inspect, and summarize any relevant records or documents held by the parties or other persons;

D. Obtain written statements of third persons relevant to the complaint;

E. Contact and receive relevant information from other government agencies or officials; or

F. Make any and all relevant inquiries necessary in making a preliminary decision.

R610-2-9. Preliminary Findings.

A. At the conclusion of the investigation or upon the Defendant's failure to respond to the allegations of the complaint, the Division may issue a Preliminary Finding.

B. Preliminary Findings shall set forth the issue or issues of the complaint and state the findings based on the information contained in the file. When:

1. The complaint has been determined to be valid the Preliminary Finding shall contain a brief statement of the reason thereof, the statute(s) or rule(s) violated, and specify the remedy which must be complied with within ten working days from the date of the document.

2. The complaint has been determined to be invalid the Preliminary Finding shall contain a brief statement of the reason thereof and contain notice that the complaint is being dismissed.

C. Preliminary Findings shall be mailed to the parties and any attorney of record.

D. Any party may submit a request for review or request an informal hearing; such request must be made in writing and received by the Division within ten working days of the date of the Preliminary Finding and shall state the reason for the request and include any available evidence to support their position.

E. Failure to request a review or request an informal hearing within the time prescribed in Subsection D precludes any such review or hearing.

R610-2-10. Order To Cease And Desist and Penalty.

A. A hearing officer may issue an Order To Cease And Desist the act of violation and may include an order of penalty based on the Preliminary Finding issued by the Division.

B. An Order To Cease And Desist the act of violation and an Order Of Penalty may be issued following an investigation and bypassing a Preliminary Finding where:

1. The act of violation is of such magnitude as to clearly exceed the standard of reasonable safeguards for a minor's health, safety, and education pursuant to Section 34-23-101.

2. The employer admits the violation has occurred or is occurring.

3. The employer failed to respond to the allegations of the complaint within the time specified or to participate in the investigation, or when the Division deems appropriate.

C. Attorney fees, in addition to the Order To Cease And Desist and a penalty, if any, shall be allowed in accordance with Section 34-28-13.

D. After issuance of the Order To Cease And Desist, the only agency review available is that specified in Section R610-2-12.

R610-2-11. Hearings.

A. Pursuant to Subsection 63-46b-4(1), the Division may resolve the complaint for violation filed pursuant to Subsection R610-2-6.A., or an agency action commenced pursuant to Subsection R610-2-6.B. by holding an informal hearing subject to the provisions of Section 63-46b-5.

B. Where the Division deems appropriate, or upon a timely request of either party, an informal hearing may be

scheduled.

C. Notice of hearing shall be mailed to the parties involved in the complaint advising them of the time, date, and place of the hearing. Notice of hearing shall be mailed to the last known address on the Commission's record and shall constitute proper notice.

D. Any request for continuance or change in the scheduled hearing date or time must be made to the Division at least seven working days prior to the scheduled date and shall state the reason for the request. The hearing officer may grant or deny the request.

E. The hearing officer may at his or her option record any hearing or accept testimony under oath.

F. The parties shall submit all relevant evidence, not previously submitted to the Division, at the hearing.

G. The hearing officer may request additional evidence of either party and set time limits for its submission, prior to the close of the hearing.

H. A signed Order issued by the hearing officer shall be pursuant to Section 63-46b-5, and shall be promptly mailed to each of the parties. Attorney fees in addition to the Order and penalty, if any, may be allowed in all Orders. The Order issued may be:

1. An Order To Cease And Desist any act of violation and may include a penalty pursuant to Section 34-23-401.

2. An Order specifying appropriate penalties, wages or other enforcement relief.

3. An Order For Dismissal terminating proceedings on the complaint or agency action by the Division.

I. After issuance of the hearing officer's Order, the only agency review available is that specified in Section R610-2-12.

R610-2-12. Agency Review.

A. After issuance of an Order To Cease And Desist or of a hearing officer's Order, the only agency review available to any party is a request for reconsideration as specified in Section 63-46b-13.

B. Reconsideration shall be based on the contents of the file. No new evidence will be accepted.

C. The Division Director is the reviewer for the purpose of reviewing all matters where a request for reconsideration was properly filed and shall do so pursuant to Section 63-46b-13(3).

R610-2-13. Judicial Review.

Judicial review of an Order To Cease And Desist or of a hearing officer's Order are pursuant to Section 63-46b-15.

R610-2-14. Declaratory Orders.

As required by Section 63-46b-21, this rule provides the procedure for submission, review, and disposition of petitions for agency Declaratory Orders on the applicability of statutes, rules, and Orders governing or issued by the agency.

A. Petition form and filing.

1. The petition shall be addressed and delivered to the Director, who shall mark the petition with the date of receipt.

2. The petition shall:

a. be clearly designated as a request for an agency Declaratory Order;

b. identify the statute, rule, or Order to be reviewed;

c. describe in detail the situation or circumstance in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone number where the petitioner can be contacted during the regular work days;

f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

B. Reviewability.

1. The agency shall not review a petition for Declaratory Orders that is:

a. not within the jurisdiction and competence of the agency;

b. trivial, irrelevant, or immaterial; or

c. otherwise excluded by state or federal law.

C. Petition review and disposition.

1. The Director shall promptly review and consider the petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; or

c. take any action consistent with the law that the agency deems necessary to provide the petition adequate review and due consideration.

2. The Director may issue an Order pursuant to Subsection 63-46b-21(6).

D. Administrative review of the Declaratory Order is per Section 63-46b-13, only.

R610-2-15. Enforcement.

A. Abstracts and docketing of Orders.

1. An abstract of the final Order shall be docketed by the Commission in the office of the clerk of the district court of any county in the state. Time of receipt of the abstract must be noted thereon and entered in the judgment docket.

2. The docketing of such Order shall constitute a lien against the real property of the defendant situated in the county for a period of eight years.

B. Execution may be issued on the lien within the same time and in the same manner and with the same effect as if the Order were a judgment of the district court.

C. Appeals and judgment enforcement and fees.

1. A copy of each Order or final agency action not complied with after 30 days of its issuance and all notices of appeal of any Order or final agency action may be sent to the office of the appropriate County Attorney, or to counsel employed or appointed by the Commission, to represent the Commission on all appeals and to enforce judgments.

2. Counsel employed or appointed by the Commission or the County Attorney for the county in which the defendant resides or conducts business shall represent the Commission on all appeals and shall enforce judgments.

3. Reasonable attorney's fees and costs on de novo appeals where the Commission prevails and for judgment enforcing procedures shall be awarded the Commission, the appointed counsel, or the county.

R610-2-16. Mailing.

The Division shall send all mailings to the parties and attorneys of record by regular first class mail to the last known address in the Division's records.

R610-2-17. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing shall be allowed.

KEY: wages, minors, labor, time

September 3, 1997	**34-23-101 et seq.**
Notice of Continuation January 10, 2002	**34-28-1 et seq.**
	34-40-101 et seq.
	63-46b-1 et seq.

R610. Labor Commission, Antidiscrimination and Labor, Labor.

R610-3. Filing, Investigation, and Resolution of Wage Claims.

R610-3-1. Authority.

This rule is enacted under the authority of Sections 34-23-104, 34-28-9, 34-28-19 and 34-40-105.

R610-3-2. Definitions.

The following definitions are in addition to the statutory definitions specified in Sections 34-23-103, 34-28-2, and 34-40-102.

A. "Claim" means a properly completed Wage Claim Assignment Form, filed with the Division by a wage claimant.

B. "Claimant" means a person making a claim, as stated in subsection A.

C. "Commission" means the Labor Commission.

D. "Defendant" means a person against whom a claim is made.

E. "Director" is the Director of the Division of Antidiscrimination and Labor. Director also means a designee denoted by the Commission to serve in the Director's absence.

F. "Division" means the Division of Antidiscrimination and Labor within the Labor Commission and the personnel responsible for receiving, investigating and resolving claims.

G. "Hearing Officer" means a presiding officer who is designated by the Commission to commence adjudicative proceedings, process claims and complaints, conduct investigations, hold hearings, assess penalties, issue subpoenas, and enter Orders.

H. "Hours employed" includes all time during which an employee is required to be working, to be on the employer's premises ready to work, to be on duty, to be at a prescribed work place, to attend a meeting or training, and for time utilized during established rest or break periods excluding meal periods of 30 minutes or more where the employee is relieved of all responsibilities.

I. "Mail" or "Mailed" means first class mailing sent to the parties of a wage claim or claim of retaliation, to the last known address on the Commission's record.

J. "Presiding Officer" includes those defended by Section 63-46b-2(1)(h)(i).

R610-3-3. Exceptions.

Public, general agricultural, household domestic, and certain other employments are excepted from the provisions of these rules pursuant to Section 34-28-1.

R610-3-4. Filing Procedure and Commencement of Agency Action.

A. For purposes of Section 63-46b-3, commencement of an adjudicative proceeding at the Division to resolve a claim for wages is accomplished by the wage claimant filing a wage claim assignment form. The wage claim assignment form shall act as a request for agency action and the form and accompanying agency cover letter shall together include all information specified in Section 63-46b-3(2).

B. An employee who is denied full payment of wages due or is affected or aggrieved by a violation of a statutory provision may file a claim with the Division on a form provided by the Division for that purpose.

1. Besides amounts due an employee for labor or services on a time, task, piece, commission, or other reasonable method of calculating the amount, wages also includes the following items, if due under an agreement with the employer or under a policy of the employer:

a. vacation;

b. holiday;

c. sick leave;

d. paid time off; and

e. severance payments and bonuses.

C. The claim shall include the Claimant's name and address, the Defendant's name and address, a brief and concise statement of the claims, complaints, or allegations, the amount of money which is alleged to be due the Claimant and the Claimant's signature notarized before a notary public.

D. Upon receipt of a claim, the Division shall enter its receipt and assign a claim number.

E. The Division may telephone the Defendant and attempt to resolve the claim.

F. When a rapid resolution is not effected, the Division shall mail to the Defendant a copy of the claim and a blank answer form together with an accompanying agency cover letter.

G. The Defendant shall have ten working days from the date of the letter to submit an answer to the claim.

H. Where the Defendant concedes the validity of the claim, the Defendant may pay or otherwise satisfy the claim within ten working days from the date of the letter without being subject to a penalty, under Section 34-28-9(2).

1. As an exception to Subsection H, defendants that are repeat offenders by having more than two wage claims filed against them within a running year, which claims are determined by the Division to be valid and to not have resulted from the same facts or circumstances, shall be subject to a penalty in accordance with Section 34-28-9(2).

I. The Division shall by mail provide a copy of the defendant's answer to the claimant. The claimant shall have ten working days from the date of the letter to submit a rebuttal, if any.

R610-3-5. Investigation.

For the purpose of determining the validity or invalidity of the filed claim, the Division pursuant to Sections 34-28-9 and 34-28-10, may:

A. Interview and obtain additional statements from either party;

B. Attempt to obtain from the Defendant an answer and statement where the Defendant has failed to submit an answer to the claim;

C. Examine, copy, inspect, and summarize relevant records or documents held by the parties or other persons;

D. Obtain written statements of third persons relevant to the claim;

E. Contact and receive relevant information from other government agencies or officials; or

F. Make relevant inquiries necessary in making a preliminary decision.

R610-3-6. Preliminary Findings.

A. At the conclusion of the investigation or upon the Defendant's failure to respond to the allegations of the claim, the Division may issue a Preliminary Finding.

B. Preliminary Findings shall set forth the issue or issues of the claim and state the findings based on the information contained in the wage claim file.

1. If the claim has been determined to be valid the Preliminary Finding shall contain a brief statement of the reason thereof, the statute(s) or rule(s) violated, and specify the remedy which shall be complied with within ten working days from the date of the document.

2. If the claim has been determined to be invalid the Preliminary Finding shall contain a brief statement of the reason thereof and contain notice that the claim is being dismissed.

C. Preliminary Findings shall be mailed to the parties and any attorney of record.

D. A party may submit a request for review or request an informal hearing. This request shall be made in writing and received by the Division within ten working days of the date of the Preliminary Finding and shall state the reason for the request and include any available evidence to support their position.

E. Failure to request a review or request an informal hearing within the time prescribed in Subsection D. precludes a review or hearing.

R610-3-7. Default Order.

A. A hearing officer may issue an Order On Default And Order To Pay based on the Preliminary Finding issued by the Division.

B. An Order On Default And Order To Pay may be issued following an investigation and bypassing a Preliminary Finding if any of the following occur:

1. The Claimant is issued a non-negotiable check in the payment of wages in violation of Section 34-28-3(2).

2. The Defendant admits the validity of the claim.

3. The Defendant failed to respond to the allegations of the claim within the time specified or to participate in the investigation, or when the Division deems appropriate.

C. The penalty provided for by Section 34-28-9(2) may be awarded in addition to the award for wages.

D. After issuance of the Order On Default And Order To Pay, the only agency review available is that specified in R610-3-11.

R610-3-8. Agreements and Settlements.

A. No provision of Title 34, Chapter 28, can be contravened by a mutual agreement between an employee and employer unless the agreement is approved by the Division.

B. Notice of settlement conference shall be mailed to the parties involved in the wage claim advising them of the time, date, and place of the conference. A continuance shall only be granted for good cause, at the option of the hearing officer.

C. In the event of settlement the parties shall sign a settlement agreement stating the terms of the settlement, and shall include:

1. A stipulation that in the event of breach of the agreement the Division may enter an Order enforcing the settlement agreement; and

2. Approval of the settlement agreement by a representative designated by the Division.

R610-3-9. Hearings.

A. Pursuant to Section 63-46b-4(1), the Division may resolve the claim for wages filed pursuant to R610-3-4 by holding an informal hearing subject to the provisions of Section 63-46b-5. This hearing may be converted to a formal hearing pursuant to Section 63-46b-4(3).

B. Where the Division deems appropriate or upon a timely request of either party, an informal hearing may be scheduled.

C. Notice of hearing shall be mailed to the parties involved in the wage claim advising them of the time, date, and place of the hearing and shall specify if the hearing is an informal or a formal proceeding. Notice of hearing shall be mailed and shall constitute proper notice.

D. A continuance shall only be granted for good cause at the option of the hearing officer.

E. The hearing officer may at his or her option record a hearing or accept testimony under oath.

F. The parties shall submit all relevant evidence, not previously submitted to the Division, at the hearing.

G. The hearing officer may request additional evidence of either party and set time limits for its submission, prior to the close of the hearing.

H. A signed Order issued by the hearing officer shall be pursuant to Section 63-46b-5, and shall be promptly mailed to each of the parties. The Order issued may be:

1. An Order awarding payment to the Claimant and may include a penalty pursuant to Section 34-28-9(2), in addition to the wages determined due.

2. An Order For Dismissal terminating proceedings on the wage claim by the Division.

I. After issuance of the hearing officer's Order, the only agency review available is that specified in R610-3-11.

R610-3-10. Attorney Fees.

A. Attorney fees and costs, in addition to the award for wages, shall be allowed in an Order for Payment and in an Order on Default and Order to Pay pursuant to Section 34-28-9(4)(b). Attorney fees shall be allowed in the amount of $300 or one-third of the award, whichever is greater.

B. Reasonable attorney fees may be awarded private counsel pursuant to Section 34-28-13 for representing a claimant before the Commission.

R610-3-11. Agency Review.

A. After issuance of an Order On Default And Order To Pay or of a hearing officer's Order, the only agency review available to a party is a request for reconsideration as specified in Section 63-46b-13.

B. Reconsideration shall be based on the contents of the file. No new evidence shall be accepted.

C. The Division Director is the reviewer for the purpose of reviewing all matters where a request for reconsideration was properly filed and shall do so pursuant to Section 63-46b-13(3).

R610-3-12. Judicial Review.

Judicial review of a wage claim Order is pursuant to

Section 63-46b-15.

R610-3-13. Declaratory Orders.

As required by Section 63-46b-21, this rule provides the procedure for submission, review, and disposition of petitions for agency Declaratory Orders on the applicability of statutes, rules, and Orders governing or issued by the agency.

A. Petition form and filing.

1. The petition shall be addressed and delivered to the Director, who shall mark the petition with the date of receipt.

2. The petition shall:

a. be clearly designated as a request for an agency Declaratory Order;

b. identify the statute, rule, or Order to be reviewed;

c. describe in detail the situation or circumstance in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone number where the petitioner can be contacted during the regular work days;

f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

B. Reviewability.

1. The agency shall not review a petition for Declaratory Orders that is:

a. not within the jurisdiction and competence of the agency;

b. trivial, irrelevant, or immaterial; or

c. otherwise excluded by state or federal law.

C. Petition review and disposition.

1. The Director shall promptly review and consider the petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; or

c. take action consistent with the law that the agency deems necessary to provide the petition adequate review and due consideration.

2. The Director may issue an Order pursuant to Section 63-46b-21(6).

D. Administrative review of the Declaratory Order is per Section 63-46b-13, only.

R610-3-14. Enforcement.

A. Docketing of Order or final agency action as a lien.

1. An abstract of the final Order shall be docketed by the Division in the office of the clerk of the district court of any county in the state. Time of receipt of the abstract shall be noted thereon and entered in the judgment docket pursuant to Section 34-28-9(3)(a), (b), and (c).

2. The docketing of an Order shall constitute a lien against the real property of the defendant situated in the county for a period of eight years.

B. Execution may be issued on the lien within the same time and in the same manner and with the same effect as if the Order were a judgment of the district court.

C. Appeals and judgment enforcement and fees.

1. A copy of each Order or final agency action not complied with after 30 days of its issuance and all notices of appeal of an Order or final agency action may be sent to the office of the appropriate County Attorney, or to counsel employed or appointed by the Commission, to represent the Commission on all appeals and to enforce judgments.

2. Counsel employed or appointed by the Commission or the County Attorney for the county in which the plaintiff or the defendant resides, depending on the district in which the final Order is docketed, shall represent the Commission on all appeals and shall enforce judgments.

3. Reasonable attorney's fees and costs on de novo appeals where the Commission prevails and for judgment enforcing procedures shall be awarded the Commission, the appointed counsel, or the county.

R610-3-15. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing a period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing shall be allowed.

R610-3-16. Retaliation.

A. Section 34-28-19(1) prohibits an employer from retaliating against employees. Claims of unlawful retaliation shall be resolved as follows:

1. An employee aggrieved by an employer's retaliatory action may file a complaint with the Division. The Division shall mail a copy of the complaint to the employer and allow ten working days for the employer to submit a written response to the complaint. Additionally, the Division may attempt to resolve the complaint by informal means.

2. After the time allowed for response and if informal resolution has been unsuccessful, the Division shall determine whether the employer has violated Section 34-28-19 by retaliating against the employee. The Division's determination shall be mailed to each party.

a. If the Division determines that no retaliation has occurred, it shall dismiss the employee's complaint. If the employee disagrees with the Division's determination that no retaliation has occurred, the employee may file a request for hearing with the Division within 15 days, and the Division shall then refer the matter to the Division of Adjudication for a full hearing.

b. If the Division determines retaliation has occurred, it shall require the employer to cease and desist the retaliatory action and to reimburse the employee within 15 days for lost wages and benefits. If, the employer fails to stop its retaliation or fails to reimburse the aggrieved employee, the Division shall

refer the matter to the Division of Adjudication for a full hearing of the retaliation claim.

B. The Division's initial determination pursuant to Section 34-28-19(2) is advisory only and therefore is not subject to the provisions of the Utah Administrative Procedures Act, Sections 63-46b-1 et seq. However, hearings conducted by the Division of Adjudication on issues of retaliation are subject to the Utah Administrative Procedures Act and shall be conducted as formal hearings.

R610-3-17. Bankruptcy.

In the event the defendant files a petition with the U.S. Bankruptcy Court, the Division shall suspend its administrative action until the bankruptcy case is concluded or dismissed.

R610-3-18. Deductions and Offsets.

The following sums shall constitute lawful deductions or offsets from wages due an employee:

A. Sums deducted from wages pursuant to the Internal Revenue Code or other Federal tax provision;

B. Sums deducted from wages pursuant to the Social Security Administration Act and Federal Insurance Contribution Act;

C. Sums deducted from wages pursuant to any Utah city, county, or state tax;

D. Sums deducted from wages as dues, contributions, or other fees to a labor, employee, professional, or other employer-related organization or association; and sums as contributions for an employee's participation or eligibility in a health, welfare, insurance, retirement, or other benefit plan or program, provided that the:

1. Employee has granted written authorization for the deductions; and

2. Deductions shall terminate upon the written revocation of the authorization;

E. Sums deducted from wages as payments, repayments, contributions, deposits, to a credit union, banking, savings, loan, trust or other financial institution, provided that the:

1. Employee has granted written authorization for the deductions; and

2. Deductions shall terminate upon the written revocation of the authorization;

F. Sums deducted from wages as payment for the purchase of goods or services by the employee from the employer, provided that the:

1. Employee has actual or constructive possession of the goods or services purchased; and

2. Employee's purchase is evidenced by the employee's written acknowledgment;

G. Sums deducted from wages for damages suffered by the employer due to the employee's negligence:

1. A potential deduction shall meet the following pre-conditions:

a. negligence and damages arise out of the course of employment;

b. employer has not received payments, compensation, or any form of restitution for the same monetary loss from an insurer, assurer, surety, or guarantor to cover the injuries, losses, or damages;

c. offset is reasonably related to the amount of the damage; and

d. damage is over and above wear and tear reasonably expected in the normal course of business.

2. Methods of determining an employee's negligence and amount of damage are:

a. by a judicial proceeding;

b. by an employer's written and published procedures coupled with an employee's express authorization for the deduction in writing; or

c. by any other provision allowed or required by law pursuant to Section 34-28-3(5).

H. Sums deducted from wages, in the proper amounts, for enforcement of a valid attachment or garnishment shall be honored by the Division;

I. Sums deducted from wages as repayment to the employer by the employee of advances or loans made to the employee by the employer, provided that the:

1. Advance or loan to the employee occurred while the employee was in the employ of the employer; and

2. Employee's receipt of the advance or loan is evidenced by the employee's written acknowledgment;

J. Sums deducted from wages as a result of loss or damage occurring from the criminal conduct of the employee against the property of the employer, provided that:

1. The employee has been adjudged guilty by a judicial proceeding of the specified crime committed against the property of the employer;

2. The crime occurred during the employment relationship or out of the employment relationship; and

3. The property of the employer cannot or has not been reunited with the employer; or

4. The employee willfully and through his own admission did in fact destroy company property. An offset against the earned wages may be allowed at the hearing officer's discretion.

K. Sums deducted from the wages resulting from cash shortages, provided that the:

1. Employee gives written acknowledgment upon beginning employment that he or she shall be responsible for shortages;

2. Employee shall at the beginning of his or her work period be checked in or verified on the register or with the cash amount by the employer in the employee's presence and give written acknowledgment of the verification;

3. Employee at the end of the work period be checked out or verified on the register or with the cash amount by the employer in the employee's presence and give written acknowledgment of the verification; and

4. Employee be the sole and absolute user and have sole access to the register or cash amount from the time checked in under Subsection (2) until the time checked out under Subsection (3);

L. Sums deducted from wages as payment for the purchase of goods, tools, equipment, or other items required for the employment of a person, provided that the:

1. Employee's purchase and receipt of the items is evidenced by a written acknowledgment;

2. Employee has actual or constructive possession of the goods or items; and

3. Employer repurchase the items from the employee at the employee's option upon the termination of employment at a fair and reasonable price;

M. Sums deducted from wages as payment for goods, tools, equipment, or other items furnished and assigned to the employee by the employer, provided that:

1. The item was assigned during the employment of the employee;

2. The employee gave written acknowledgment of the receipt of the item; and

3. The item was not returned to the employer upon termination.

R610-3-19. Timely and Unconditional Payment of Wages.

A. In case of a dispute over wages, the employer shall give written notice to the employee, of the amount of wages which he concedes to be due and shall pay that amount without condition within the time required by statute;

B. Acceptance by the employee of a payment made hereunder shall not constitute a release or waiver as to the balance of a claim for wages;

C. The employer shall not be entitled or permitted to deduct any sums where the employer has failed to make payment of wages within the time period required by statute.

R610-3-20. Check Stubs.

All lawful offsets enumerated in this rule shall be itemized on a statement or a detachable check stub and provided to the employee as required by Section 34-28-3(4).

R610-3-21. Uniforms.

A. Where the wearing of uniforms is a condition of employment, the employer shall furnish the uniforms free of charge.

1. The term "uniform" includes any article of clothing, footwear, or accessory of a distinctive design or color required by an employer to be worn by employees.

2. An article of clothing which is associated with a specific employer by virtue of an emblem (logo) or distinctive color scheme shall be considered a uniform.

B. The employer may request an amount, not to exceed the actual cost of the uniform or $20, whichever is less, as a deposit on each uniform required by the employer. The deposit shall be refunded to the employee at the time uniform is returned.

KEY: wages, minors*, labor, time

December 2, 1999	**34-23-101 et seq.**
Notice of Continuation January 10, 2002	**34-28-1 et seq.**
	34-40-101 et seq.
	63-46b-1 et seq.

R612. Labor Commission, Industrial Accidents.
R612-1. Workers' Compensation Rules - Procedures.
R612-1-1. Definitions.

A. "Commission" means the Labor Commission.

B. "Division" means the Division of Industrial Accidents within the Labor Commission.

C. "Applicant/Plaintiff" means an injured employee or his/her dependent(s) or any person seeking relief or claiming benefits under the Workers' Compensation and/or Occupational Disease and Disability Laws.

D. "Defendant" means an employer, insurance carrier, self-insurer, the Employers' Reinsurance Fund, and/or the Uninsured Employers' Fund.

E. "Administrative Law Judge" means a person duly designated by the Commission to hear and determine disputed or other cases under the provisions of Title 34A, Chapters 2 and 3, and of Title 63, Chapter 46b.

F. "Insurance Carrier" includes all insurance companies writing workers' compensation and occupational disease and disability insurance, the Workers' Compensation Fund, and self-insurers who are granted self-insuring privileges by the Commission. In all cases involving no insurance coverage by the employer, the term "Insurance Carrier" includes the employer.

G. "Medical Panel" means a panel appointed by an Administrative Law Judge pursuant to the standards set forth in Section 34A-2-601, which is responsible to make findings regarding disputed medical aspects of a compensation claim, and may make any additional findings, perform any tests, or make any inquiry as the Administrative Law Judge may require.

H. "Award" means the finding or decision of the Commission or Administrative Law Judge as to the amount of compensation or benefits due any injured employee or the dependent(s) of a deceased employee.

R612-1-2. Authority.

This rule is enacted under the authority of Section 34A-1-104.

R612-1-3. Official Forms.

A. "Employer's First Report of Injury - Form 122" - This form is used for reporting accidents, injuries, or occupational diseases as per Section 34A-2-407. This form must be filed within seven days of the occurrence of the alleged industrial accident or the employer's first knowledge or notification of the same. This form also serves as OSHA Form 101.

B. "Physician's Initial Report of Work Injury or Occupational Disease - Form 123" - This form is used by physicians and chiropractors to report their initial treatment of an injured employee.

C. "Restorative Services Authorization - Form 221" - This form is to be used by any medical provider billing under the restorative services section of the Commission's adopted Resource-Based Relative Value Scale and the Medical Fee Guidelines. The medical provider shall file this form with the insurance carrier or self-insured employer and the division within ten days of the initial evaluation. After the initial filing, an updated Restorative Services Authorization form must be filed for approval or denial at least every six visits until a fixed state of recovery has been reached.

D. "Statement of Insurance Carrier or Self-Insurer with Respect to Payment of Benefits - Form 141" - This form is used for reporting the initial benefits paid to an injured employee. This form must be filed with or mailed to the division on the same date the first payment of compensation is mailed to the employee. A copy of this form must accompany the first payment.

E. "Employee Notification of Denial of Claim - Form 089" - This form is used by insurance carriers or self-insured employers to notify the claimant that his or her claim, in whole or part, is denied and the reason(s) why the claim is being denied. An insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and the division in writing that the claim, in whole or part, is denied.

F. "Insurance Carriers/ Self-Insurer's Notice of Further Investigation of a Workers' Compensation Claim - Form 441" - This form is used by insurance carriers or self-insured employers to notify the claimant and the commission that further investigation is needed and the reasons for further investigation. This form or letter containing similar information is to be filed within 21 days of notification of claim that further investigation is needed.

G. "Statement of Insurance Carrier or Self-Insurer with Respect to Suspension of Benefits - Form 142" - This form is to be used by insurance carriers or self-insured employers to notify an employee of the suspension of weekly compensation benefits. The form must be mailed to the employee and filed with the division five days before the date compensation is suspended. The insurance carrier or self-insured employer must specify the reason for the suspension of beneftis.

H. "Application for Hearing - Form 001" - Used by an applicant for instituting an industrial claim against an insurance carrier, self-insured employer, or uninsured employer. This form, obtainable from the division, must be filed and signed by the injured employee or his/her agent. All blanks must be completed to the best knowledge, belief, or information of the injured employee.

I. "Claim for Dependents' Benefits and/or Burial Benefits - Form 025" - This form is used by the dependent(s) of a deceased employee to seek benefits as a result of a fatal accident or occupational disease occurring in the course of employment.

1. This form must be filed before a hearing or an award is made, and pleadings will not be accepted in lieu thereof. If pleadings are submitted, the attorney so filing will be supplied the form for filing before any proceedings are initiated.

2. The filing of this form by the surviving spouse on behalf of the surviving spouse and the surviving spouse's dependent minor children is sufficient for all dependents.

3. Unless otherwise directed by an Administrative Law Judge, the following information shall be supplied before an Order or an Award is made:

(a) A certified copy of the marriage license and birth certificates of dependent minor children. If such evidence is not readily available, the Administrative Law Judge will determine the adequacy of substitute evidence.

(b) Adoption papers or other decrees of courts of record

establishing legal responsibility for support of dependent children.

(c) If either the deceased employee or surviving spouse has been involved in divorce proceedings, copies of decrees and orders of the court should be supplied.

J. "Insurance Company's and Self-Insurer's Final Report of Injury and Statement of Total Losses - Form 130" - This form is used by insurance carriers and self-insurers to report the total losses occurring in a claim for any benefits. This form must be filed with the division as soon as final settlement is made but in no event more than 30 days from such settlement. This form shall be filed for all losses including medical only, compensation, survivor benefits, or any combination of all so as to provide complete loss information for each claim.

K. "Dependents' Benefit Order - Form 151" - This form is used by the division in all accidental death cases where no issue of liability for the death or establishment of dependency is raised and only one household of dependents is involved. The carrier indicates acceptance of liability by completing the top half of the form and filing it with the division.

L. "Medical Information Authorization - Form 046" - This form is used to release the applicant's medical records to the Commission or the chairman of a medical panel appointed by an Administrative Law Judge.

M. "Application to Change Doctors - Form 102" - This form must be used by the employee pursuant to the provisions of Rule R612-2-9 as contained herein.

N. "Employee's Notification of Intent to Leave Locality or State, and to Change Doctor or Hospital - Form 044" - As per Section 34A-2-604, this form is used by the employee and must be accompanied by the "Attending Physician's Statement - Form 043" before Commission approval can be granted. Otherwise, compensation may not be allowed.

O. "Attending Physician's Statement - Form 043" - This form must be completed by employee and his last attending physician in the state to establish the medical condition of the employee. It must be accompanied by Form 044.

P. "Compensation Agreement - Form 219" - This form is used by the parties to a workers' compensation claim to enter into an agreement as to a permanent partial impairment award, and must be submitted to the Division of Industrial Accidents for approval.

Q. "Application for Lump Sum or Advance Payment - Form 134" - This form is used by an employee to apply for a lump sum or advance payment for a permanent partial impairment award.

R. "Release to Return to Work - Form 110" - This form may be used to meet the requirements of Rule R612-2-3(D), as contained herein.

S. "Request for Copies From Claimant's File - Form 205" - This form is used to request copies from a claimant's file in the Commission with the appropriate authorized release.

T. Reemployment Program Forms

1. "Initial Assessment Report - Form 206" - This form is completed either by the self-insured employer, the workers' compensation insurance provider, or by a rehabilitation agency contracted by the employer/carrier. The report contains claimant demographics and insurance coverage details, and addresses the issue of need for vocational assistance.

2. "Request for Decision of Administrative Review - Form 207" - This form is completed when the employee wishes to contest the information/decision made by the carrier or rehabilitation agency.

3. "U.S.O.R. Rehabilitation Progress Report - Form 208A" - This form shall be requested from the Utah State Office of Rehabilitation at each stage of the reemployment process (eligibility determination, reemployment plan development/implementation and case closure) or at any interruption of the process. An Individualized Written Rehabilitation Program (USOR 5 IWRP) shall also be requested when a plan is developed. All other private rehabilitation providers shall submit a Form 206 for any plan progress, postponement, or interruption in the plan.

4. "Reemployment Plan - Form 209" - This form is used for either an original or amended work plan. The form contains the details and estimated costs in returning the injured worker to the work force.

5. "Reemployment Plan Closure Report - Form 210" - This form is submitted to the division upon completion of the reemployment plan. The closure report shall detail costs by category either by dollar amounts or time expended (only in the categories of evaluation and counseling). The report shall also contain all the details on the return to work.

6. "Application for Certification as a Reemployment Provider - Form 212" - This form is completed by rehabilitation providers who wish to be certified by the division. It contains provider demographics, Utah staff credentials, services/fees, and references.

7. "Administrative Review Determination - Form 213" - This form is used by the division to summarize the outcome of the administrative review.

U. "Medical Records - Copies - Form 302" - This form is used by a claimant to request a free copy of his/her medical records from a medical provider. This form must be signed by a staff member of the division.

V. The division may approve change of any of the above forms upon public notice. Carriers may print these forms or approved versions.

R612-1-4. Discount.

Eight percent shall be used for any discounting or present value calculations. Lump sums ordered by the Commission or for any attorney fees paid in a single up-front amount, or of any other sum being paid earlier than normally paid under a weekly benefit method shall be subject to the 8% discounting. The Commission shall create and make available a precise discount or present value table based on a 365 day year. For those instances where discount calculations are not routinely utilized or where the Commission's precise table is not available, the following table, which is a shortened version of the precise table, may be utilized by interpolating between the stated weeks and the related discount.

TABLE

Unaccrued Weeks	X	Weekly Benefit $	X	Cumulative Discount	=	Discount $
1				.001475		
10				.008076		

20	.015343
30	.022538
40	.029663
50	.036719
60	.043706
70	.050626
80	.057478
90	.064264
100	.070984
110	.077639
120	.084229
130	.090756
140	.097221
150	.103623
160	.109963
170	.116243
180	.122463
190	.128623
200	.134724
210	.140767
220	.146752
230	.152680
240	.158552
250	.164368
260	.170129
270	.175835
280	.181488
290	.187087
300	.192633
312	.199219

R612-1-5. Interest.

A. Interest must be paid on each benefit payment which comprises the award from the date that payment would have been due and payable at the rate of 8% per annum.

B. For the purpose of interest calculation, benefits shall become "due and payable" as follows:

1. Temporary total compensation shall be due and payable within 21 days of the date of the accident.

2. Permanent partial compensation shall be due and payable on the next day following the termination of a temporary total disability. However, where the condition is not fixed for rating purposes, the interest shall commence from the date the permanent partial impairment can be medically determined.

3. Permanent partial or permanent total disability compensation payable by the Employers' Reinsurance Fund or the Uninsured Employers' Fund shall be due and payable as soon as reasonably practical after an order is issued.

R612-1-6. Issuance of Checks.

A. Any entity issuing compensation checks or drafts must make those checks/drafts payable directly to the injured worker and must mail them directly to the last known mailing address of the injured worker, with the following exceptions:

1. If the employer provides full salary to the injured worker in return for the worker's compensation benefits, the check may be mailed to the worker at the place of employment;

2. If the employer coordinates other benefits with the worker's compensation benefits, the check may be mailed to the worker at the place of employment.

B. In no case may the check be made out to the employer.

C. Where attorney fees are involved, a separate check should be issued to the worker's attorney in the amount approved or ordered by the Commission, unless otherwise directed by the Commission. Payment of the worker's attorney by issuing a check payable to the worker and his attorney jointly constitutes a violation of this rule.

R612-1-7. Acceptance/Denial of a Claim.

A. Upon receiving a claim for workers' compensation benefits, the insurance carrier or self-insured employer shall promptly investigate the claim and begin payment of compensation within 21 days from the date of notification of a valid claim or the insurance carrier or self-insured employer shall send the claimant and the division written notice on a division form or letter containing similar information, within 21 days of notification, that further investigation is needed stating the reason(s) for further investigation. Each insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and division in writing that the claim is denied and the reason(s) why the claim is being denied.

B. The payment of compensation shall be considered overdue if not paid within 21 days of a valid claim or within the 45 days of investigation unless denied.

C. Failure to make payment or to deny a claim within the 45 day time period without good cause shall result in a referral of the insurance company to the Insurance Department for appropriate disciplinary action and may be cause for revocation of the self-insurance certification for a self-insured employer. Good cause is defined as:

1. Failure by an employee claiming benefits to sign requested medical releases;

2. Injury or occupational disease did not occur within the scope of employment;

3. Medical information does not support the claim;

4. Claim was not filed within the statute of limitations;

5. Claimant is not an employee of the employer he/she is making a claim against;

6. Claimant has failed to cooperate in the investigation of the claim;

7. A pre-existing condition is the sole cause of the medical problem and not the claimed work-related injury or occupational disease;

8. Tested positive for drugs or alcohol; or

9. Other - a very specific reason must be given.

D. If an insurance carrier or self-insured employer begins payment of benefits on an investigation basis so as to process the claim in a timely fashion, a later denial of benefits based on newly discovered information may be allowed.

R612-1-8. Insurance Carrier/Employer Liability.

A. This rule governs responsibility for payment of workers' compensation benefits for industrial accidents when:

1. The worker's ultimate entitlement to benefits is not in dispute; but

2. There is a dispute between self-insured employers and/or insurers regarding their respective liability for the injured worker's benefits arising out of separate industrial accidents which are compensable under Utah law.

B. In cases meeting the criteria of subsection A, the self-insured employer or insurer providing workers' compensation coverage for the most recent compensable injury shall advance workers' compensation benefits to the injured worker. The benefits advanced shall be limited to medical benefits and temporary total disability compensation. The benefits advanced shall be paid according to the entitlement in effect on the date

of the earliest related injury.

1. The self-insured employer or insurance carrier advancing benefits shall notify the non-advancing party(s) within the time periods as specified in rule R612-1-7, that benefits are to be advanced pursuant to this rule.

2. The self-insured employers or insurers not advancing benefits, upon notification from the advancing party, shall notify the advancing party within 10 working days of any potential defenses or limitations of the non-advancing party(s) liability.

C. The parties are encouraged to settle liabilities pursuant to this rule, however, any party may file a request for agency action with the Commission for determination of liability for the workers' compensation benefits at issue.

D. The medical utilization decisions of the self-insured employer or insurer advancing benefits pursuant to this rule shall be presumed reasonable with respect to the issue of reimbursement.

R612-1-9. Compensation Agreements.

A. An applicant, insurance company, and/or employer may enter into a compensation agreement for the purpose of resolving a worker's compensation claim. Compensation agreements must be approved by the Commission. The compensation agreement must be that contained on Form 019 of the Commission forms and shall include the following information:

1. Signatures of the parties involved;
2. Form 122 - Employer's First Report of Injury;
3. Doctor's report of impairment rating;
4. Form 141 - Payment of Benefits Statement.

B. Failure to provide any of the above documentation and forms may result in the return of the compensation agreement to the carrier or self-insured employer without approval.

R612-1-10. Permanent Total Disability.

A. This rule applies to claims for permanent total disability compensation under the Utah Workers' Compensation Act.

1. Subsection B applies to permanent total disability claims arising from accident or disease prior to May 1, 1995.

2. Subsection C applies to permanent total disability claims arising from accident or disease on or after May 1, 1995.

B. For claims arising from accident or disease on or after July 1, 1988 and prior to May 1, 1995, the Commission is required under Section 34A-2-413, to make a finding of total disability as measured by the substance of the sequential decision-making process of the Social Security Administration under Title 20 of the Code of Federal Regulations, amended April 1, 1993. The use of the term "substance of the sequential decision-making process" is deemed to confer some latitude on the Commission in exercising a degree of discretion in making its findings relative to permanent total disability. The Commission does not interpret the code section to eliminate the requirement that a finding by the Commission in permanent and total disability shall in all cases be tentative and not final until rehabilitation training and/or evaluation has been accomplished.

1. In the event that the Social Security Administration or its designee has made, or is in the process of making, a determination of disability under the foregoing process, the Commission may use this information in lieu of instituting the process on its own behalf.

2. In evaluating industrial claims in which the injured worker has qualified for Social Security disability benefits, the Commission will determine if a significant cause of the disability is the claimant's industrial accident or some other unrelated cause or causes.

3. To make a tentative finding of permanent total disability the Commission incorporates the rules of disability determination in 20 CFR 404.1520, amended April 1, 1993. The sequential decision making process referred to requires a series of questions and evaluations to be made in sequence. In short, these are:

a. Is the claimant engaged in a substantial gainful activity?

b. Does the claimant have a medically severe impairment?

c. Does the severe impairment meet or equal the duration requirement in 20 CFR 404.1509, amended April 1, 1993, and the listed impairments in 20 CFR Subpart P Appendix 1, amended April 1, 1993?

d. Does the impairment prevent the claimant from doing past relevant work?

e. Does the impairment prevent the claimant from doing any other work?

4. After the Commission has made a tentative finding of permanent total disability:

a. In those cases arising after July 1,1994, the Commission shall order initiation of payment of permanent total disability compensation;

b. the Commission shall review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act, as well as any qualified reemployment plan submitted by the employer or its insurance carrier; and

c. unless otherwise stipulated, the Commission shall hold a hearing to consider the possibility of rehabilitation and reemployment of the claimant pending final adjudication of the claim.

5. After a hearing, or waiver of the hearing by the parties, the Commission shall issue an order finding or denying permanent total disability based upon the preponderance of the evidence and with due consideration of the vocational factors in combination with the residual functional capacity which the commission incorporates as published in 20 CFR 404 Subpart P Appendix 2, amended April 1, 1993.

C. For permanent total disability claims arising on or after May 1, 1995, Section 34A-2-413 requires a two-step adjudicative process. First, the Commission must make a preliminary determination whether the applicant is permanently and totally disabled. If so, the Commission will proceed to the second step, in which the Commission will determine whether the applicant can be reemployed or rehabilitated.

1. First Step– Preliminary Determination of Permanent Total Disability: On receipt of an application for permanent total disability compensation, the Adjudication Division will assign an Administrative Law Judge to conduct evidentiary proceedings to determine whether the applicant's circumstances meet each of the elements set forth in Subsections 34A-2-413(1)(b) and (c).

(a) If the ALJ finds the applicant meets each of the elements set forth in Subsections 34A-2-413(1)(b) and (c), the

ALJ will issue a preliminary determination of permanent total disability and shall order the employer or insurance carrier to pay permanent total disability compensation to the applicant pending completion of the second step of the adjudication process. The payment of permanent total disability compensation pursuant to a preliminary determination shall commence as of the date established by the preliminary determination and shall continue until otherwise ordered.

(b) A party dissatisfied with the ALJ's preliminary determination may obtain additional agency review by either the Labor Commissioner or Appeals Board pursuant to Subsection 34A-2-801(3). If a timely motion for review of the ALJ's preliminary determination is filed with either the Labor Commissioner or Appeals Board, no further adjudicative or enforcement proceedings shall take place pending the decision of the Commissioner or Board.

(c) A preliminary determination of permanent total disability by the Labor Commissioner or Appeals Board is a final agency action for purposes of appellate judicial review.

(d) Unless otherwise stayed by the Labor Commissioner, the Appeals Board or an appellate court, an appeal of the Labor Commissioner or Appeals Board's preliminary determination of permanent total disability shall not delay the commencement of "second step" proceedings discussed below or payment of permanent total disability compensation as ordered by the preliminary determination.

(e) The Commissioner or Appeals Board shall grant a request for stay if the requesting party has filed a petition for judicial review and the Commissioner or Appeals Board determine that:

(i) the requesting party has a substantial possibility of prevailing on the merits;

(ii) the requesting party will suffer irreparable injury unless a stay is granted; and

(iii) the stay will not result in irreparable injury to other parties to the proceeding.

2. Second Step–Reemployment and Rehabilitation: Pursuant to Subsection 34A-2-413(6), if the first step of the adjudicatory process results in a preliminary finding of permanent total disability, an additional inquiry must be made into the applicant's ability to be reemployed or rehabilitated, unless the parties waive such additional proceedings.

(a) The ALJ will hold a hearing to consider whether the applicant can be reemployed or rehabilitated.

(i) As part of the hearing, the ALJ will review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act;

(ii) The employer or insurance carrier may submit a reemployment plan meeting the requirements set forth in Subsection 34A-2-413(6)(a)(ii) and Subsections 34A-2-413(6)(d)(i) through (iii).

(b) Pursuant to Subsection 34A-2-413(4)(b) the employer or insurance carrier may not be required to pay disability compensation for any combination of disabilities of any kind in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate.

(i) Any overpayment of disability compensation may be recouped by the employer or insurance carrier by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.

(ii) An advance of disability compensation to provide for the employee's subsistence during the rehabilitation process is subject to the provisions of Subsection 34A-2-413(4)(b), described in subsection 2.(b) above, but can be funded by reasonably offsetting the advance of disability compensation against future liability normally paid after the initial 312 weeks.

(iii) To fund an advance of disability compensation to provide for an employee's subsistence during the rehabilitation process, a portion of the stream of future weekly disability compensation payments may be discounted from the future to the present to accommodate payment. Should this be necessary, the employer or insurance carrier shall be allowed to reasonably offset the amounts paid against future liability payable after the initial 312 weeks. In this process, care should be exercised to reasonably minimize adverse financial impact on the employee.

(iv) In the event the parties cannot agree as to the reasonableness of any proposed offset, the matter may be submitted to an ALJ for determination.

(c) Subsections 34A-2-413(7) and (9) require the applicant to fully cooperate in any evaluation or reemployment plan. Failure to do so shall result in dismissal of the applicant's claim or reduction or elimination of benefit payments including disability compensation and subsistence allowance amounts, consistent with the provisions of Section 34A-2-413(7) and (9).

(d) Subsection 34A-2-413(6) requires the employer or its insurance carrier to diligently pursue any proffered reemployment plan. Failure to do so shall result in a final award of permanent total disability compensation to the applicant.

(e) If, after the conclusion of the foregoing "second step" proceeding, the ALJ concludes that successful rehabilitation is not possible, the ALJ shall enter a final order for continuing payment of permanent total disability compensation. The period for payment of such compensation shall be commence on the date the employee became permanently and totally disabled, as determined by the ALJ.

(f) Alternatively, if after the conclusion of the "second step" proceeding, the ALJ concludes that successful rehabilitation and/or reemployment is possible, the ALJ shall enter a final order to that effect, which order shall contain such direction to the parties as the ALJ shall deem appropriate for successful implementation and continuation of rehabilitation and/or reemployment. As necessary under the particular circumstances of each case, the ALJ's final order shall provide for reasonable offset of payments of any disability compensation that constitute an overpayment under Subsection 34A-2-413(4)(b).

(g) The ALJ's decision is subject to all administrative and judicial review provided by law.

R612-1-11. Burial Expenses.

Pursuant to Section 34A-2-418 if death results from an industrial injury or occupational disease, burial expenses in ordinary cases shall be paid by the employer or insurance carrier up to $7,000. Unusual cases may result in additional payment, either voluntarily by the employer or insurance carrier or through commission order.

KEY: workers' compensation, time, administrative procedure, filing deadlines
January 15, 2002 34A-2-101 et seq.
Notice of Continuation November 24, 1997 34A-3-101 et seq.
34A-1-104 et seq.
63-46b-1 et seq.

R612. Labor Commission, Industrial Accidents.
R612-4. Premium Rates.
R612-4-1. Authority.

This rule is enacted under the authority of Section 34A-1-104 and 59-9-101.

R612-4-2. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.

A. Pursuant to Section 59-9-101(2), the workers' compensation premium rates effective January 1, 2002, as established by the Labor Commission, shall be:

1. 0.25% for the Uninsured Employers' Fund;
2. 9.25% for the Employers' Reinsurance Fund;
3. 0.25% for the workplace safety account.

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Section 59-9-101(2)(a).

KEY: workers' compensation, rates
January 15, 2002 59-9-101(2)
Notice of Continuation February 8, 2001

R612. Labor Commission, Industrial Accidents.
R612-7. Impairment Ratings for Industrial Injuries and Diseases.
R612-7-1. Authority.

This rule is enacted under the authority of Sections 34A-1-104 and 34A-2-412.

R612-7-2. Definition.

The definition of impairment in Section 34A-2-102 applies to this rule.

R612-7-3. Method for Rating.

A. For rating all impairments, which are not expressly listed in Section 34A-2-412, the Commission adopts "Utah's 2002 Impairment Guides" as published by the Commission for all injuries rated on or after January 1, 2002. For those conditions not found in "Utah's 2002 Impairment Guides," the American Medical Association's "Guides to the Evaluation of Permanent Impairment, Fifth Edition" are to be used.

KEY: workers' compensation, impairment ratings
January 15, 2002 34A-1-104
Notice of Continuation July 6, 1998 34A-2-412

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronyum of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "First aid" is any one-time treatment, and any follow-up visit for the purpose of observation of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require the attention of a physician. Such one-time treatment, and follow-up visit for the purpose of observation, is considered first aid even though provided by a physician or trained personnel provided that the records comply with R614-1-7.B. and are readily available to the Administrator or his representatives, by direct contact, telephone, or mail.

S. "Hearing" means a proceeding conducted by the commission.

T. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

U. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

V. "Medical treatment" includes treatment administered by a physician or trained personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or trained personnel.

W. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

X. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

Y. "Publish" means publication in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Z. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

AA. "Recordable occupational injuries and illnesses" means any occupational injuries or illnesses which result in:

1. Fatalities, regardless of the time between the injury and death, or the length of the illness;

2. Lost time cases, other than fatalities, that result in lost time; or

3. Nonfatal cases without lost time which result in transfer to another job or termination of employment, or require medical

treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost time case.

BB. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

CC. "Secretary" means the Secretary of the United States Department of Labor.

DD. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

EE. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

FF. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

GG. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

HH. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2000, edition are incorporated by reference.

2. FR Vol. 65, No. 208, Thursday, October 26, 2000, Pages 64281 to and including 64295, "Consultation Agreements: Changes to Consultation Procedures; Final Rule" is incorporated by reference.

3. FR Vol. 66, No. 12, Thursday, January 18, 2001, Pages 5318 to and including 5325, "Occupational Exposure to Bloodborne Pathogens; Needlesticks and Sharps Injuries; Final Rule" is incorporated by reference.

4. FR Vol. 66, No. 13, Friday, January 19, 2001, Pages 5916 to and including 6135, "Occupational Injury and reporting Requirements; Final Rule" is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2000, edition is incorporated by reference.

2. FR Vol. 66, No. 12, Thursday, January 18, 2001, Pages 5195 to and including 5280, "Safety Standards for Steel Erection; Final Rule" is incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases

and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

2. Each employer shall within 12 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901 or one of the individuals on the following personnel list.

TABLE 1

LABOR COMMISSION
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

BAGLEY, Jay W. (Administrator)
Kaysville, Utah 84037
543-1369

ADAMS, William W. Jr.
Park City, Utah 84060
649-4309

BURNS, Tori L.
Salt Lake City, Utah 84102
364-6673

ANDERSON, Neil A.
Kaysville, Utah 84037
544-2791

KING, Daniel L.
Lake Point, Utah 84074
250-6781

3. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational diseases which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

4. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

5. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational diseases resulting in medical treatment, loss of consciousness, loss of work, restriction of work, or transfer to another job.

6. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor Commission or one of its Compliance Officers.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place

of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the

worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is

needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even

though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such

alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size

or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

B. Exceptions to Recordkeeping and Reporting Requirements.

1. Small Employers. An employer who had no more than ten (10) employees at any time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this part except the following:

a. Obligation to report under R614-1-5.C. concerning fatalities or accidents; and

b. Obligation to maintain a log of occupational injuries and illnesses under R614-1-8.C. and to make reports under R614-1-8.N. upon being notified in writing by the Commission's Statistics Section that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

2. Employers who are engaged in farming operations, having 10 or fewer employees are not subject to the Act, including the provisions of this part.

3. Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89, (except 52-54, 70, 75, 76, 79 and 80.) An employer whose establishment is classified in SIC's 52-89, (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

a. Obligation to report under R614-1-5.C. concerning fatalities or serious injury.

b. Obligation to maintain a log of occupational injuries and illnesses under R614-1-8.K. and L. upon being notified in writing by the federal Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses; and

c. Those employers who engage in activities classified as high risk industries (i.e., a real estate establishment engaged in construction activities) must maintain records on the High Risk portions of their operations.

C. Log and summary of occupational injuries and illness.

1. Each employer shall maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment, except that under the circumstances described in R614-1-8.C.2. an employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment. Each employer shall enter all recordable occupational injury and illness on the log and summary as early as practicable but no later than 6 working days after receiving information that a recordable case has occurred. For this purpose, the federal OSHA Form No. 200 or any private equivalent form may be used. OSHA Form No. 200 or its equivalent shall be completed in the detail provided in the form and instructions contained in OSHA Form No. 200. If an equivalent of OSHA Form No. 200 is used, such as a printout from data-processing equipment, the information shall be as readable and comprehensible to a person not familiar with the data-processing equipment as the OSHA Form No. 200 itself.

2. Any employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment or by means of data-processing equipment, or both, under the following circumstances:

a. There is available at the place where the log and summary is maintained sufficient information to complete the log to a date within 6 working days after receiving information that a recordable case has occurred, as required by R614-1-8.C.

b. At each of the employer's establishments, there is available a copy of the log and summary which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days.

D. Period covered.

Records shall be established on a calendar year basis.

E. Supplementary record.

In addition to the log and summary of occupational injuries and illnesses provided for under R614-1-8.C.1., each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 101. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 101. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 101 shall be used or the necessary information shall be otherwise maintained.

F. Annual Summary.

1. Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the form OSHA Form No. 200 and the following information from that form: calendar year covered, company name, establishment address, certification signature, title, and date. An OSHA Form No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered in the totals line, and the form must be posted.

2. The summary shall be completed by February 1 beginning with calendar year 1979. The summary of 1977 calendar year's occupational injuries and illnesses shall be posted on OSHA form No. 102.

3. Each employer or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the annual summary certifying that the annual summary is true and complete.

4. Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under R614-1-7.B.1. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary

portion of the log and summary during the month of February of the following year to each such employee who receives pay during that month. For multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

a. Failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to Sections 34A-6-302 and 34A-6-307 of the Act.

G. Retention of records.

1. Records provided for in R614-1-8.A.,E., and F. (including OSHA Form No. 200 and its predecessor OSHA Forms No. 100 and No. 102) shall be retained in each establishment for 5 years following the end of the year to which they relate.

2. Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

H. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

I. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

J. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

K. Change of ownership.

Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned or operated such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this Part. These records shall be retained at each establishment to which they relate, for the period or remainder thereof, required under R614-1-8.G.

L. Petitions for record-keeping exceptions.

1. Submission of petition. Any employer who wishes to maintain records in a manner different from that required by this part may submit a petition containing the information specified in R614-1-8.L.3. the Bureau of Labor Statistics of the U.S. Department of Labor.

2. Opportunity for comment. Affected employees or their representatives shall have an opportunity to submit written data, views, or arguments concerning the petition to the Administrator within 10 working days following the receipt of notice under R614-1-8.L.3.e.

3. Contents of petition. A petition filed under R614-1-8.L.1. shall include:

a. The name and address of the applicant;

b. The address of the places or employment involved.

c. Specifications of the reasons for seeking relief;

d. A description of the different record-keeping procedures which are proposed by the applicant;

e. A statement that the applicant has informed his affected employees of the petition by giving a copy thereof to them or to their authorized representative and by posting a statement giving a summary of the petition and by other appropriate means. A statement posted pursuant to this subparagraph shall be posted in each establishment in the same manner that notices are required to be posted under R614-1-7.B. The applicant shall also state that he has informed his affected employees of their rights under R614-1-8.L.2.

f. In the event an employer has more than one establishment he shall submit a list of the locations and the number of establishments in the state.

4. Additional notice, conferences.

a. In addition to the actual notice provided for in R614-1-8.L.3.e., the Administrator may provide such additional notice of the petition as he may deem appropriate.

b. The Administrator may also afford an opportunity to interested parties for informal conference or hearing concerning the petition.

5. Action. After review of the petition, and of any comments submitted in regard thereto, and upon completion of any necessary appropriate investigation concerning the petition, if the Administrator finds that the alternative procedure proposed will not hamper or interfere with the purposes of the Act and will provide equivalent information, he may grant the petition subject to such conditions as he may determine appropriate.

6. Publication. Whenever any relief is granted to an applicant under this Act, notice of such relief, and the reasons therefore, shall be published in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act. The U.S. Department of Labor shall have been consulted and approval given prior to the granting of relief by the Administrator.

7. Revocation. Whenever any relief under this rule is sought to be revoked for any failure to comply with the conditions thereof, and opportunity for informal hearing or conference shall be afforded to the employers and affected employees, or their representatives. Except in cases of willfulness or where public safety or health requires otherwise, before the commencement of any such informal proceeding, the employer shall:

a. Be notified in writing of the facts or conduct which may warrant the action; and

b. Be given an opportunity to demonstrate or achieve compliance.

8. Compliance after submission of a petition or any delay by the Administrator, in acting upon a petition shall not relieve any employer from any obligation to comply with this Part. However, the Administrator shall give notice of the denial of any petition within a reasonable time.

M. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

N. Duties of employers.

1. Upon receipt of an Occupational Injuries and Illnesses Survey Form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions.

2. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of R614-1-8.C., E., and G. with respect to such employees by:

a. Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

b. Having the address and telephone number of the central place available at each work-site; and

c. Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by

the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63, Chapter 46b, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if

the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63, Chapter 46a, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority

to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is

relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the

UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred

to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful

physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety

and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety
January 15, 2002 34A-6

R616. Labor Commission, Safety.
R616-2. Boiler and Pressure Vessel Rules.
R616-2-1. Authority.

This rule is established pursuant to Title 34A, Chapter 7 for the purpose of establishing reasonable safety standards for boilers and pressure vessels to prevent exposure to risks by the public and employees.

R616-2-2. Definitions.

A. "ASME" means the American Society of Mechanical Engineers.

B. "Boiler inspector" means a person who is an employee of:

1. The Division who is authorized to inspect boilers and pressure vessels by having met nationally recognized standards of competency and having received the Commission's certificate of competency; or

2. An insurance company writing boiler and pressure vessel insurance in Utah who is deputized to inspect boilers and pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Safety of the Labor Commission.

E. "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

F. "Nonstandard" means a boiler or pressure vessel that does not bear ASME and National Board stamping and registration.

G. "Owner/user agency" means any business organization operating pressure vessels in this state that has a valid owner/user certificate from the Commission authorizing self-inspection of unfired pressure vessels by its owner/user agents, as regulated by the Commission, and for which a fee has been paid.

H. "Owner/user agent" means an employee of an owner/user agency who is authorized to inspect unfired pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code (2001).

1. Section I Rules for Construction of Power Boilers published July 1, 2001.

2. Section IV Rules for Construction of Heating Boilers published July 1, 2001.

3. Section VIII Rules for Construction of Pressure Vessels published July 1, 2001.

B. Power Piping ASME B31.1 (1998) and the ASME B31.1b-2000 Addenda, issued September 15, 2000.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-1998 and the ASME CSD-1a-1999 addenda, issued March 10, 2000.

D. National Board Inspection Code ANSI/NB-23 (1998); the 1999 NBIC Addendum, published December 31, 1999, and the 2000 Addendum, published January 8, 2001.

E. Standard for the Prevention of Furnace Explosions/Implosions in Single Burner Boilers, NFPA 8501 (1997).

F. Standard for the Prevention of Furnace Explosions/Implosions in Multiple Burner Boilers, NFPA 8502 (1995).

G. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

H. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 (1997); the 1998 Addenda, published December 1998, and Addendum 2, published December 2000.

R616-2-4. Quality Assurance for Boilers, Pressure Vessels and Power Piping.

A. Consistent with the requirements of the Commission and its predecessor agency since May 1, 1978, all boilers and pressure vessels installed on or after May 1, 1978 shall be registered with the National Board and the data plate must include the National Board number.

B. Pursuant to Section 34A-7-102(2), any boiler or pressure vessel of special design must be approved by the Division to ensure it provides a level of safety equivalent to that contemplated by the Boiler and Pressure Vessel Code of the ASME. Any such boiler or pressure vessel must thereafter be identified by a Utah identification number provided by the Division.

C. All steam piping, installed after May 1, 1978, which is external (from the boiler to the first stop valve for a single boiler and the second stop valve in a battery of two or more boilers having manhole openings) shall comply with Section 1 of the ASME Boiler and Pressure Vessel Code or ASME B31.1 Power Piping as applicable.

D. Nonstandard boilers or pressure vessels installed in Utah before July 1, 1999 may be allowed to continue in operation provided the owner can prove the equivalence of its design to the requirements of the ASME Boiler and Pressure Vessel Code. Nonstandard boilers or pressure vessels may not be relocated or moved.

E. Effective July 1, 1999, all boiler and pressure vessel repairs or alterations must be performed by an organization holding a valid Certificate of Authorization to use the "R" stamp from the National Board. Repairs to pressure relief valves shall be performed by an organization holding a valid Certificate of Authorization to use the "VR" stamp from the National Board.

R616-2-5. Code Applicability.

A. The safety codes which are applicable to a given boiler or pressure vessel installation are the latest versions of the codes in effect at the time the installation commenced.

B. If a boiler or pressure vessel is replaced, this is considered a new installation.

C. If a boiler or pressure vessel is relocated to another location or moved in its existing location, this is considered a

new installation.

R616-2-6. Variances to Code Requirements.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner or user, the Division may allow the owner or user a variance pursuant to Section 34A-7-102. Variances must be in writing to be effective, and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their boiler or pressure vessel installation provides safety equivalent to the safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

R616-2-7. Boiler and Pressure Vessel Compliance Manual.

A. The Division shall develop and issue a safety code compliance manual for organizations and personnel involved in the design, installation, operation and maintenance of boilers and pressure vessels in Utah.

B. This compliance manual shall be reviewed annually for accuracy and shall be re-issued on a frequency not to exceed two years.

C. If a conflict exists between the Boiler and Pressure Vessel compliance manual and a safety code adopted in R616-2-3, the code requirements will take precedence.

R616-2-8. Inspection of Boilers and Pressure Vessels.

A. It shall be the responsibility of the Division to make inspections of all boilers or pressure vessels operated within its jurisdiction, when deemed necessary or appropriate.

B. Boiler inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, and into all other matters connected with the safety of persons using each boiler or pressure vessel, and when necessary give directions providing for the safety of persons in or about the same. The owner or user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. In the event an internal inspection of a boiler or pressure vessel is required the owner or user shall, at a minimum, prepare the boiler or pressure vessel by meeting the requirements of 29 CFR Part 1910.146 "Permit Required Confined Spaces" and 29 CFR Part 1910.147 "Control of Hazardous Energy (Lockout/Tagout)".

C. If the Division finds a boiler or pressure vessel complies with the safety codes and rules, the owner or user shall be issued a Certificate of Inspection and Permit to Operate.

D. If the Division finds a boiler or pressure vessel is not being operated in accordance with safety codes and rules, the owner or user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the boiler or pressure vessel into compliance.

E. Pursuant to Sections 34A-1-104, 34A-2-301 and 34A-7-102, if the improvements or changes to the boiler or pressure vessel are not made within a reasonable time, the boiler or pressure vessel is being operated unlawfully.

F. If the owner or user refuses to allow an inspection to be made, the boiler or pressure vessels is being operated unlawfully.

G. If the owner or user refuses to pay the required fee, the boiler or pressure vessel is being operated unlawfully.

H. If the owner or user operates a boiler or pressure vessel unlawfully, the Commission may order the boiler or pressure vessel operation to cease pursuant to Sections 34A-1-104 and 34A-7-103.

I. If, in the judgment of a boiler inspector, the lives or safety of employees or public are or may be endangered should they remain in the danger area, the boiler inspector shall direct that they be immediately withdrawn from the danger area, and the boiler or pressure vessel be removed from service until repairs have been made and the boiler or pressure vessel has been brought into compliance.

J. An owner/user agency may conduct self inspection of its own unfired pressure vessels with its own employees who are owner/user agents under procedures and frequencies established by the Division.

R616-2-9. Fees.

Fees to be charged as required by Section 34A-7-104 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63-38-3(2).

R616-2-10. Notification of Installation, Revision, or Repair.

A. Before any boiler covered by this rule is installed or before major revision or repair, particularly welding, begins on a boiler or pressure vessel, the Division must be advised at least one week in advance of such installation, revision, or repair unless emergency dictates otherwise.

B. It is recommended that a business organization review its plans for purchase and installation, or of revision or repair, of a boiler or pressure vessel well in advance with the Division to ensure meeting code requirements upon finalization.

R616-2-11. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the boiler inspector are informal adjudicative actions commenced by the agency per Section 63-46b-3.

R616-2-12. Presiding Officer.

The boiler inspector is the presiding officer referred to in Section 63-46b-3. If an informal hearing is requested pursuant to R616-2-10, the Commission shall appoint the presiding officer for that hearing.

R616-2-13. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63-46b-3(a) and 63-46b-3(3).

R616-2-14. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-2-13 shall be informal and pursuant to the procedural requirements of Section 63-46b-5 and any agency review of the order issued after the hearing shall be per Section 63-46b-13. An informal hearing may be converted to a formal hearing pursuant to Section 63-46b-4(3).

KEY: boilers*, certification, safety
January 15, 2002 34A-7-101 et seq.
Notice of Continuation January 10, 2002

R616. Labor Commission, Safety.
R616-3. Elevator Rules.
R616-3-1. Authority.

This rule is established pursuant to Section 34A-7-201 for the purpose of the Labor Commission ascertaining, fixing, and enforcing reasonable standards regarding elevators for the protection of life, health, and safety of the general public and employees.

R616-3-2. Definitions.

A. "ANSI" means the American National Standards Institute, Inc.

B. "ASME" means the American Society of Mechanical Engineers.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Safety of the Labor Commission.

E. "Elevator" means a hoisting and lowering mechanism equipped with a car or platform and that moves in guides in a substantially vertical direction.

F. "Escalator" means a stairway, moving walkway, or runway that is power driven, continuous and used to transport one or more individuals.

R616-3-3. Safety Codes for Elevators.

The following safety codes are adopted and incorporated by reference within this rule:

A. ASME A17.1, Safety Code for Elevators and Escalators, 1996 ed., with 1997 Addenda issued December 31, 1996, 1998 Addenda issued February 19, 1998, 1999 Addenda issued June 30, 1999 and 2000 Addenda issued November 30, 2000. This code is issued every three years with annual addenda. New issues and addenda become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation. The latest effective version of A17.1 is the 1996 edition with the 1997 addenda, 1998 addenda, 1999 addenda and 2000 addenda.

B. ASME A17.3 - 1996 Safety Code for Existing Elevators and Escalators with 2000 addenda issued February 29, 2000. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Safety.

C. ASME A90.1-1992, Safety Standard for Belt Manlifts.

D. ANSI A10.4-1990, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

E. 1997 Uniform Building Code Chapters 11 and 30.

F. ICC/ANSI A117.1-1998 Accessible and Usable Buildings and Facilities, sections 407 and 408, approved February 13, 1998.

G. ASME A18.1-1999 Safety Standard For Platform Lifts And Stairway Chairlifts, issued July 26, 1999.

R616-3-4. Inspector Qualification.

A. Any person who performs elevator safety inspections must have a current certification as a Qualified Elevator Inspector from the National Association of Elevator Safety Authorities.

R616-3-5. Modifications and Variances to Codes.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner/user, the Division may allow the owner/user a variance. Variances must be in writing to be effective and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their elevator installation provides safety equivalent to the applicable safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

D. The Commission may, by rule, add or delete from the applicable safety codes for any good and sufficient safety reason.

E. In the event that adopted safety codes are in conflict with one another, the ASME A17.1, Safety Code for Elevators and Escalators will take precedence. The exception to this is for compliance with the accessibility guidelines of Pub. L. No. 101-336 "The Americans with Disability Act of 1990". In this instance, the Uniform Building Code standards adopted in R616-3-3 for accessibility as applied to elevators take precedence over ASME A17.1.

R616-3-6. Exemptions.

A. These rules apply to all elevators in Utah with the following exemptions:

1. Private residence elevators installed inside a single family dwelling. Common elevators which serve multiple private residences are not exempt from these rules.

2. Elevators in buildings owned by the Federal government.

B. Owners of elevators exempted in R616-3-5.A. may request a safety inspection by Division of Safety inspectors. Code non-compliance items will be treated as recommendations by the inspector with the owner having the option as to which, if any, are corrected. Owners requesting these inspections will be invoiced at the special inspection rate. If the owner requests a State of Utah Certificate to Operate for the elevator, all of the recommendations must be completed to the satisfaction of the inspector and the owner will be invoiced the appropriate certificate fee.

R616-3-7. Inspection of Elevators, Permit to Operate, Unlawful Operations.

A. It shall be the responsibility of the Division to make inspections of all elevators when deemed necessary or appropriate.

B. Elevator inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, methods of lighting, and into all other matters connected with the safety of persons using or in close proximity to each elevator, and when necessary give directions providing for the better health and safety of persons in or about the same. The owner/user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary.

C. If the Division finds that an elevator complies with the

applicable safety codes and rules, the owner/user shall be issued a Certificate of Inspection and Permit to Operate.

1. The Certificate of Inspection and Permit to Operate is valid for 24 months.

2. The Certificate of Inspection and Permit to Operate shall be displayed in a conspicuous location near the elevator for the entire validation period. If the certificate is displayed where accessible to the general public, as opposed to being in the elevator machine room, it must be protected under a transparent cover.

D. If the Division finds an elevator is not being operated in accordance with the safety codes and rules, the owner/user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the elevator into compliance.

E. Pursuant to Section 34A-7-204, if the improvements or changes are not made within a reasonable time, by agreement of the division and the owner, the elevator is being operated unlawfully.

F. If the owner/user refuses to allow an inspection to be made, the elevator is being operated unlawfully.

G. If the owner/user refuses to pay the required fee, the elevator is being operated unlawfully.

H. If the owner/user operates an elevator unlawfully, the Commission may order the elevator operation to cease pursuant to Section 34A-1-104.

I. If, in the judgment of an elevator inspector, the lives or safety of employees or public are, or may be, endangered should they remain in the danger area, the elevator inspector shall direct that they be immediately withdrawn from the danger area, and the elevator removed from service until repairs have been made and the elevator has been brought into compliance.

R616-3-8. Inclined Wheelchair Lift Headroom Clearance.

A. Since the incorporated safety standard (ASME A17.1) does not specify the minimum headroom clearance requirements for the installation of an inclined wheelchair lift, the following requirements must be met for inclined wheelchair lifts installed in Utah.

B. Headroom clearance for inclined wheelchair lifts throughout the range of travel shall be not less than 80 inches (2032 mm) as measured vertically from the leading edge of the platform floor.

C. For existing facilities only, in the event that it is not technically or economically feasible to provide other means of access for disabled persons, inclined wheelchair lifts may be installed if all of the following conditions are met:

1. The appropriate building inspection jurisdiction approves the use of an inclined wheelchair lift for the specific application.

2. Headroom clearance throughout the range of travel shall be not less than 60 inches as measured vertically from the leading edge of the platform floor.

3. The passenger restriction sign as required by ASME A17.1 Rule 2001.7e shall be amended as follows: "PHYSICALLY DISABLED PERSONS ONLY. NO FREIGHT. HEADROOM CLEARANCE IS LIMITED. USE ONLY IN THE SITTING POSITION".

R616-3-9. Valves in Hydraulic Elevator Operating Fluid Systems.

A. Due to the potential loss of pressure retaining capability when over torqued, bronze-bodied valves shall not be installed in the hydraulic systems of a hydraulic elevator.

B. This requirement is in effect for all new installations and remodel installations involving the hydraulic system.

C. If a bronze-bodied valve installed on an existing elevator begins to leak, that valve shall be replaced by a steel-bodied valve.

R616-3-10. Hydraulic Elevator Piping.

A. This rule establishes minimum standards for hydraulic fluid piping in hydraulic elevators. The piping specifications referred to in this rule are governed by ASME or ASTM piping specifications (e.g. ASME Specification SA-53 Table X2.4).

B. Hydraulic elevators not incorporating a safety valve may use schedule 40 piping.

C. For newly installed hydraulic elevators that do incorporate a safety valve:

1. Where piping is protected by the safety valve, schedule 40 piping may be used;

2. Where grooved or threaded connections are used in piping that is unprotected by the safety valve, i.e. between the safety valve and the hydraulic jack(s), nominal pipe size (NPS)3 or schedule 80 piping may be used;

3. Where piping is unprotected by the safety valve, but welded or bolted flange connections are used, schedule 40 piping may be used.

R616-3-11. Shunt Trips in Elevator Systems.

A. The means (shunt trip) to automatically disconnect the main line power supply to the elevator discussed in Rule 102.2(c)(3) of A17.1 is not required for hydraulic elevators with a rise of 50 feet or less.

R616-3-12. Hoistway Vents.

A. With regard to hoistway vents, the Division will assure that elevators meet Rule 100.4 of ASME A17.1 and the minimum area of the vent required by the Uniform Building Code. Requirements for the operation of the vent are defined by the local jurisdiction's fire marshall or building inspector.

R616-3-13. Hand Line Control Elevators.

A. Operation of a hand line control elevator is not permitted.

B. Owners of hand line control elevators are required to render the elevator electrically and mechanically incapable of operation.

R616-3-14. Remodeled Elevators.

A. When an elevator is classified as a remodeled (modernized) elevator by the Division, the components of the elevator involved in the modernization must comply with the standards of the latest version of A17.1 and A17.3 in effect at the time the remodeling of the elevator commences.

R616-3-15. Fees.

A. Fees to be charged as provided by Section 34A-1-106

and 63-38-3.2 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63-38-3(2).

B. The fee for the initial certification permit shall be invoiced to and paid by the company or firm installing the elevator.

C. The renewal certification permit shall be invoiced to and paid by the owner/user.

D. Any request for a special inspection shall be invoiced to and paid by the person/company requesting the inspection, at the hourly rate plus mileage and expenses.

R616-3-16. Notification of Installation, Revision or Remodeling.

A. Before any elevator covered by this rule is installed or a major revision or remodeling begins on the elevator, the Division must be advised at least one week in advance of such installation, revision, or remodeling unless emergency dictates otherwise.

R616-3-17. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the elevator inspector are informal adjudicative actions commenced by the agency per Section 63-46b-3.

R616-3-18. Presiding Officer.

The elevator inspector is the presiding officer referred to in Section 63-46b-3. If an informal hearing is requested pursuant to R616-3-18, the Commission shall appoint the presiding officer for that hearing.

R616-3-19. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63-46b-3(a) and 63-46b-3(b).

R616-3-20. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-3-18 shall be informal and pursuant to the procedural requirements of Section 63-46b-5 and any agency review of the order issued after the hearing shall be per Section 63-46b-13. An informal hearing may be converted to a formal hearing pursuant to Subsection 63-46b-4(3).

KEY: elevators*, certification, safety
January 15, 2002 34A-1-101 et seq.
Notice of Continuation January 10, 2002

R638. Natural Resources, Geological Survey.

R638-1. Acceptance and Maintenance of Confidential Information.

R638-1-1. Authority, Purpose, and Scope.

a. Authority: This rule is authorized under Subsection 63-73-6(2) UCA.

b. Purpose: This rule enables the Utah Geological Survey to have access to confidential information which it otherwise could not acquire, or which is beyond the financial capability of the Survey to acquire.

c. Scope: This rule provides: (1) guidelines for determining whether or not to accept confidential information, (2) the types of information that will be maintained as confidential, and (3) the process to be used for accepting and maintaining confidential information.

R638-1-2. Definitions.

a. "Information" as used in this rule refers to data, statistics, reports, samples and other facts, whether analyzed or processed or not, pertaining to the geology of Utah.

b. "Internal Records" are preliminary documents and notes compiled by employees of the Survey or its contractors in the process of geologic investigations.

c. "Confidential Information" as used in this rule refers to geologic information given to the Survey or purchased by the Survey with the stipulation that the information be held confidential.

d. "Board" is the Board of the Utah Geological Survey.

e. "Director" is the Director of the Utah Geological Survey, or State Geologist.

f. "Survey" is the Utah Geological Survey.

g. "Geology" refers to the geology and the mineral occurrences of the State.

h. "Source is the individual, agency, or organization who provides information to the Survey and stipulates that it is confidential information.

R638-1-3. General Provisions.

a. It is the policy of the Survey and the Board that unless otherwise specified herein, this rule shall be interpreted liberally in favor of public disclosure of information maintained by the Survey. Further, all of the Survey's conclusions and recommendations on geological matters will be made available to the public in accordance with this rule.

b. The Director is the custodian of Survey records.

c. The Director will report regularly to the Board concerning the following: the types of information received by the Survey as confidential; the frequency and nature of requests for access/usage of Survey information which has not yet been made public; and determinations including reasons for not accepting information. The Board will hear appeals of decisions made by the Director and may override the Director but no Board action shall in any way jeopardize the level of confidentiality assigned by the source.

d. The Director has the authority to refuse information that has been offered to the Survey if it appears to be not in the best interest of the State or the Survey. Without disclosing the confidentiality of the offered information, the Director may consult with the Governor of the State of Utah in exercising this authority.

e. Information will be maintained according to the source-designated level of Category B or C. The Director will sign all documents pertaining to confidentiality.

f. Information can be declassified only by written direction from the source or at the expiration period for confidentiality agreed upon by the source and the Survey.

g. Unless otherwise directed by the source, access to confidential information by Survey employees must be approved in writing by the Senior Geologist supervising the individual requesting access and by the Director.

h. Requests for information from outside the Survey must be in writing with a description of the records requested. The Survey will have thirty days to respond. If the information requested is determined to be confidential, the Survey must state the reason for the determination. A denial of access to confidential information may be appealed to the Board.

i. For the purpose of obtaining information the Survey deems necessary or desirable from the Federal Government concerning the geology pertaining to the lands of Utah, the Director may establish procedures deemed necessary by the Federal source in order to maintain confidentiality consistent with relevant Federal law.

R638-1-4. Procedures.

a. Geologic information will be categorized as follows:

1. Category A: Information that is public and not maintained as confidential.

(a) Survey publications.

(b) Survey open-file reports.

(c) Samples and core accepted for storage.

(d) Inhouse-generated files and computer information unless otherwise covered in Category B.

2. Category B: Information that is temporarily withheld from the public until made available by open filing or publication of the information.

(a) Predecisional documents leading to a geologic explanation or publication.

(b) Manuscripts received from non-Survey sources.

(c) Geologic information and conclusions drawn by the Survey that have been contracted or legislatively mandated for other state agencies.

(d) Determination for Category B information will be made by the Director based upon:

(1) a likelihood that premature release would result in a competitive advantage or disadvantage to an individual or organization;

(2) a likelihood that premature release would result in misuse or harm the public;

(3) a judgement that premature release would compromise the Survey's ability to analyze data, or complete and make public the conclusions of a project in a timely manner.

(e) Category B information may be open-filed at any time by the Director.

3. Category C: Information that is not to be made available to the public except under terms and conditions agreed upon at the time of its acceptance.

(a) Information given to the Survey by other governmental agencies and classified as confidential by them.

(b) Information given to the Survey by private individuals or organizations and classified as confidential by them.

(c) Information purchased by the Survey with the understanding that it will be maintained as confidential.

b. Geologic information designated confidential will be recorded as received by the Survey at the requested level of confidentiality and maintained in locked files with controlled access.

R638-1-5. Anticipated Impacts Regarding Costs of Compliance.

a. This rule applies to geologic information provided voluntarily by individuals or organizations to the Survey. Therefore, sources of information have no mandated costs in order to comply with these provisions.

b. The Survey will budget sufficient funds from its current budget to accomplish the purposes and objectives of this rule.

KEY: disclosure requirements
1993 63-73-4(5)
Notice of Continuation January 16, 2002

R652. Natural Resources; Forestry, Fire and State Lands.
R652-121. Wildland Fire Suppression Fund.
R652-121-100. Authority.

This rule implements Article XVIII of the Utah Constitution and provides for administration of the Wildland Fire Suppression Fund under the authority of Section 65A-8-6.4.

R652-121-200. Normal Fire Suppression Costs.

1. Under the terms of a cooperative fire protection agreement, the state forester shall file an annual budget for operation of a cooperative district with each participating county. The county shall budget an amount for actual fire suppression costs determined to be normal by the state forester.

2. Normal fire suppression costs are defined as the actual costs identified by annual audits of a participating county's financial records and costs paid by the state in the county's behalf under the terms of Sections 65A-8-6 and 65A-8-6.2. The most recent seven-year record will be used. The highest year and lowest year will be deducted and the remaining five years averaged.

3. The seven years of fire suppression costs will be in constant dollars, which allows for the effect of inflation.

4. The minimum county budget for fire suppression costs shall be $5,000. The effect of inflation will be considered every three years. An amount equal to the accumulated inflation over this period will be added to this base budget for fire suppression. This time period began January 1, 1999.

R652-121-300. Annual Sign Up, Effective Payment Period, Annual Assessment Payments and Capitalization.

1. The annual sign up period will be from November 1 through January 10 of the following year.

2. The effective period for payments out of the Wildland Fire Suppression Fund will be June 1 through October 31 of each year. Should the state forester determine the need to extend the fire season as specified in Section 65A-8-9 due to fire severity, all suppression costs incurred during that extension period will be eligible. A participating county may petition the state forester in writing requesting use of the Wildland Fire Suppression Fund to cover wildland fire suppression costs incurred outside the normal fire season.

3. A participating county shall make its assessment fee and any required equity payment by March 15 of each year.

R652-121-400. Determination of Unincorporated Acreage.

1. The unincorporated acreage to be used in determining a portion of the assessment fee for participation in the Wildland Fire Suppression Fund will be the private acreage provided by the county from its ownership records. The acreage figure will be updated by the county every three years.

2. A county shall report all of the unincorporated private acreage within the county in order to participate in the Wildland Fire Suppression Fund.

R652-121-500. Determination of Property Values.

1. The taxable value of property in the unincorporated area of a county will be the locally assessed value of real property provided by the county to the Utah State Tax Commission, Property Tax Division on an annual basis.

2. Value of real property means:

(a) the value of real estate, including patented mining claims as reported pursuant to Section 59-2-322.

(b) the value of improvements as reported pursuant to section 59-2-322.

3. The county must adhere to Utah State Tax Commission policy for periodic reassessment of property. A county that is found to be in arrears on meeting this requirement will be penalized by increasing the current taxable value of property by 25% in determining the county's assessment fee.

R652-121-600. Determination of Equity Payments.

1. Unless waived by the legislature, an equity payment is required if a county elects to participate in the Wildland Fire Suppression Fund after the initial sign up period or to reestablish participation in the fund after a county's participation was terminated at the county's choice or for revocation by the state forester. The initial sign up period ended on May 31, 1998.

2. The equity payment is based on what the county's annual assessment fee would have been for the previous three years. In no case will the equity payment exceed three years of assessment.

3. If a county elects to join the suppression fund for the first time after May 31, 2000, an equity payment will be required that is equal to the previous three years' assessment fees.

4. If a county elects to withdraw from the fund or participation is revoked by the state forester, the county may request permission in writing to re-establish participation. Upon acceptance, the county must make an equity payment equal to what its assessment fees would have been for each year it was out of the fund, not to exceed three years.

R652-121-700. Definition of Eligible Suppression and Presuppression Costs.

1. After the County's approved fire suppression budget has been depleted, all fire suppression costs that occur during the fire season, as defined in R652-121-300, directly related to the control of wildfires on forest, range and watershed lands within the unincorporated area of a participating county are eligible for coverage by the Wildland Fire Suppression Fund. The costs of resources directly involved in fire suppression efforts that are paid from the county's wildland fire suppression account are eligible. The county must notify the state forester in writing when the county's budget for normal fire suppression costs has been expended. Area managers will verify to the state forester in writing that a county's fire suppression budget has been depleted.

2. A good faith effort must be made by the counties to recover suppression costs for human caused fires. If the county has evidence that indicates a responsible party for a fire and chooses not to proceed, suppression cost for that fire is not eligible for reimbursement from the Wildland Fire Suppression Fund. After consultation between the county and state, the state forester will determine if a good faith effort has been made to recover suppression cost.

3. Wildland Fire suppression costs recovered under

Section 65A-3-4 will be repaid to the Wildland Fire Suppression Fund.

4. Presuppression projects may be funded from the Wildland Fire Suppression Fund when approved in advance by the state forester.

R652-121-900. Clarification of The State's Financial Obligation For Suppression Costs.

If the Wildland Fire Suppression Fund is not adequate to pay all eligible fire suppression costs, prorated expenditure payments will be made to affected counties. The remaining county liability will be shared between the county and state as provided by the current agreement.

R652-121-1000. Agreement For County Participation in Fund.

Pursuant to Section 65A-8-6.2 a county legislative body may enter into a written agreement with the state forester to participate in the Wildland Fire Suppression Fund. The written agreement to authorize a county's participation in the fund may be an addendum to the current cooperative wildland fire agreement between a county and the state forester.

R652-121-1100. Revocation of Participation in Fund.

1. A county's eligibility to participate in the Wildland Fire Suppression Fund may be revoked for failure to:

(a) pay the required assessment or equity fees when due after being notified by the state forester as specified in Subsection R652-121-1100(2).

(b) provide documented unincorporated acreage figures for assessment determination; or

(c) provide total taxable value of unincorporated property as provided annually to the Utah State Tax Commission, Property Tax Division for the assessment determination.

2. The state forester will apprise a county in writing of any deficiency in Subsection R652-121-1100(1) within 30 days following the due date. Deficiencies not remedied within 60 days shall result in revocation of a county's participation in the Wildland Fire Suppression Fund.

R652-121-1200. Definition of Presuppression Activities.

Presuppression activities are those activities related to wildfire prevention, preparedness and mitigation to reduce hazard or risk on eligible lands. Presuppression activities include fuel treatment, fuel breaks, defensible space, codes and ordinances, presuppression plans, wildland fire protection capability, wildland fire suppression training and other practices which reduce hazards or risks in the eligible areas.

R652-121-1300. Application Process For Presuppression Projects.

1. Presuppression project proposals must be submitted to the state forester in writing prior to implementation. The written proposal shall detail:

(a) the location of the project,

(b) the purpose of the project,

(c) the methods of accomplishing the project,

(d) the time line for completion of the project,

(e) the resources needed and their availability,

(f) itemized estimated cost for the project, and

(g) other data required by the state forester.

2. Presuppression project proposals may be submitted by the counties to the state forester from March 1 through April 1 and August 1 through September 1 of each year. The counties will be notified by May 1 or October 1 of the state forester's decision on the proposed projects.

R652-121-1400. Limitation on Presuppression And Fire Management Incentives.

1. The cost of a county's approved presuppression projects shall not exceed 75% of that county's annual assessment fee for the Wildland Fire Suppression Fund.

2. Presuppression projects may be cost shared at a rate between 25% and 75% of the total cost of the project. The cost share rate will be determined by the state forester for each project category on an annual basis. These cost share rates will be communicated to the counties by January 30 of each year

3. Presuppression projects may be proposed for multi-year funded projects. These multi-year funded projects may not exceed three years. Annual cost share payments to a county for a multi-year project may not exceed 75% of that county's annual assessment fee. Project proposals will be developed to reflect annual work plans and payments to complete the project over a specified number of years.

4. The costs that may be reimbursed for presuppression projects may be limited by legislative appropriation. The Division shall not authorize payments for presuppression projects that exceed 75% of the total annual assessment fees paid into the fund by participating counties.

R652-121-1450. Payment for Presuppression Projects.

1. Cost share payment for presuppression projects will be made to the counties when:

(a) the project is completed, inspected and certified by the area manager; and

(b) the county makes a written request for reimbursement with documented costs.

R652-121-1600. State Land Exclusion.

Wildland fire suppression costs on state-owned lands are not eligible to be covered from the Wildland Fire Suppression Fund.

KEY: administrative procedure, wildland fire fund
January 4, 2002 65A-8-6.4

R652. Natural Resources; Forestry, Fire and State Lands.
R652-140. Utah Forest Practices Act.
R652-140-100. Authority and Purpose.

This rule is adopted pursuant to the authority of Subsection 65A-1-4(2), which requires the Division to promulgate rules, and by Section 65A-8a-101 et seq., to clarify the procedure through which operators must register with the Division and notify the Division of the intent to conduct forest practices.

R652-140-200. Exceptions to Forest Practice.

For purposes of Section 65A-8a-101 et seq., and this rule, the term "Forest practice" does not include the control of invasive or exotic species, removal of Pinyon-Juniper woodlands, or cutting trees for posts, poles or firewood.

R652-140-300. Procedures for Registration of Operators.

(1) To register, operators shall complete and submit a printed or electronic version of a registration form provided by the Division, which includes information required under Subsection 65A-8a-103(2).

(2) The registration form shall be submitted to the Division's headquarter office or one of the Division's six administrative area offices. Offices are located in the following areas:

(a) Headquarter Office, 1594 West North Temple, Suite 3520, PO Box 145703, Salt Lake City, UT 84114-5703.

(b) Bear River Area Office, 1780 North Research Parkway, Suite 104, North Logan, UT 84341-1940.

(c) Wasatch Front Area Office, 1594 West North Temple, Suite 3520, PO Box 145703, Salt Lake City, UT 84114-5703.

(d) Central Area Office, 115 East 900 North, Richfield, UT 84701.

(e) Northeastern Area Office, 152 East 100 North, Vernal, UT 84078.

(f) Southwestern Area Office, 585 North Main Street, Cedar City, UT 84720.

(g) Southeastern Area Office, 1165 South Highway 191, Suite 6, Moab, UT 84532.

(3) Upon receipt of the registration form, the Division will acknowledge receipt by providing the operator a registration number and date of expiration and returning a copy of the registration form to the operator.

(4) Registration shall be valid for a period of two years from the date of receipt. At the end of the two-year period, the operator must renew the registration with the Division.

R652-140-400. Procedures for Notification of Intent to Conduct Forest Practices.

(1) At least 30 days prior to the commencement of a forest practice, the operator shall submit written notification of intent to conduct forest practices to the Division as required by Subsection 65A-8a-104(1). The 30 days shall commence on the date of postmark, if mailed, or on the date received if hand delivered or electronically submitted.

(2) Notifications shall be submitted to the Division's headquarter's office or one of the Division's six administrative area offices listed in Subsection R652-140-300(2).

(3) Operators shall submit a written notification on a form provided by the Division, a copy thereof or its electronic version, and include the information required under Subsection 65A-8a-104(2).

(4) Notifications submitted to the Division shall be acknowledged within ten days of receipt by the Division. The acknowledgment shall include information identified in Subsection 65A-8a-104(3).

KEY: registration, notification, forest practices
January 22, 2002 **65A-8a-103**
65A-8a-104

R653. Natural Resources, Water Resources.
R653-2. Financial Assistance from the Board of Water Resources.
R653-2-1. Purpose.

The purpose of this rule is to provide the standards and procedures for providing technical and financial assistance to water users to achieve the highest beneficial use of water resources within the state.

R653-2-2. Description of Funding Program.

(1)(a) The Board of Water Resources (Board) administers three revolving construction funds: the Revolving Construction Fund, the Cities Water Loan Fund, and the Conservation and Development Fund. Funding is available for projects that conserve, protect, or more efficiently use present water supplies, develop new water, or provide flood control. Project facilities may be constructed in another state if project water is to be used within the state of Utah.

(b) The Board will fund projects based on the following prioritization system:

(i) Projects which involve public health problems, safety problems, or emergencies.

(ii) Municipal water projects that are required to meet an existing or impending need.

(iii) Agricultural water projects that provide a significant economic benefit for the local area.

(iv) Projects which will receive a large portion of their funding from other sources.

(v) Projects not included in items 1-4, but which have been authorized by the Board, are funded on a first come first served basis.

(2) The Board will not fund the following types of projects:

(a) Projects that are, in the opinion of the Board, routine or regularly occurring system operation and maintenance.

(b) Domestic water systems where less than 20% of the residents live in the project area year-round.

(c) Projects sponsored by developers.

(3) General guidelines of each of the Board's funding programs are:

(a) Revolving Construction Fund (RCF)

(i) In the RCF, the Board will accept applications from incorporated groups such as mutual irrigation and water companies.

(ii) The RCF advances financial assistance to the following types of projects:

(A) Irrigation projects costing less than $500,000.

(B) Rural culinary projects costing less than $250,000 that involve mutual irrigation and water companies.

(C) Dam Safety Studies

(iii) The staff will recommend repayment terms in the feasibility report it will prepare. Interest will not be charged.

(b) Cities Water Loan Fund (CWLF)

(i) Through the CWLF, the Board may finance the construction of municipal water facilities for political subdivisions of the state such as cities, towns, and districts.

(ii) The staff will recommend repayment terms and interest rates in the feasibility report.

(c) Conservation and Development Fund (CDF)

(i) Through the CDF, the Board may finance the construction of water projects sponsored by incorporated groups, political subdivisions of the state, the federal government, or Indian tribes.

(ii) The staff will recommend repayment terms and interest rates in the feasibility report.

R653-2-3. Application Procedure.

(1) Applicants shall submit a completed application form directly to the member of the Board residing in the river district in which the project is located. If the Board member determines the application meets general Board guidelines, the Board member will sign the application and forward it to the Division for action.

(2) Additional information not specifically requested on the application form should also be furnished when such information would be helpful in appraising the merits of the project.

(3) An application form can be obtained from the Division, a Board member, or the Division's website.

R653-2-4. Project Funding Process.

(1) After the application for assistance has been completed by the sponsor/applicant, signed by the Board member, and forwarded to the Division, a three-step process will be followed to determine those projects which will be funded by the Board.

(2) The three steps of the funding process are:

(a) Approval for Staff Investigation

(i) The Board member considers the proposed project to fall within the Board?s general statutory authority.

(ii) Division staff will prepare a feasibility report covering the general scope of the proposed project but focusing on technical, financial, legal, and environmental aspects, water needs and rights, and water users? support.

(b) Authorization

(i) The feasibility report will be presented to the Board, which will consider the project for authorization on the basis of its merits and overall feasibility and the contribution the project will make to the general economy of the area and the state.

(ii) As part of its decision-making process, the Board considers it important to discuss the merits of the project with the sponsor. Therefore, representatives of the project sponsor must attend the Board meeting when the project is considered for authorization.

(iii) If the project is AUTHORIZED by the Board, a letter outlining the engineering and legal requirements for the project, and other conditions of the financial assistance will be sent to the sponsor. For example, some of the more common conditions of these projects are:

(A) Preparation of a Water Management and Conservation Plan for the sponsor?s service area.

(B) Adoption of an ordinance prohibiting municipal irrigation of landscapes between the hours of 10:00 a.m. and 6:00 p.m.; the Division has prepared a Model Ordinance which is available for the sponsors of municipal projects.

(C) Adoption of a progressive water rate schedule (municipal projects). Division staff will assist sponsors in establishing such schedules to fit local conditions and circumstances.

(c) Committal of Funds

(i) After the sponsor has complied with the Board requirements and conditions, the project will be presented for final review. If the Board finds the project to be in order and ready for construction, and IF FUNDS ARE AVAILABLE, the Board will commit funds and direct its officers to enter into the necessary agreements to secure project financing.

(ii) The project sponsor will not normally be required to attend the Board meeting at which funds are to be committed for the project. If the project scope or cost estimate has changed substantially, the sponsor may be asked to attend the meeting to discuss the changes with the Board.

R653-2-5. Dam Safety Grants and Loans.

(1) After the application for assistance has been completed and signed by the Board member the application will be submitted to the Division for review. The Division staff will review the application for compliance with the Dam Safety Act and requirements, if any, placed on the sponsor by the State Engineer.

(2) A report will be prepared by the Division presenting its findings and recommending the amount of the grant and repayment terms for loans.

(3) Grants will be considered when money is appropriated by the legislature and will be restricted by limitations placed on the funding by the legislature and Board.

(4) The amount of each grant will be based on conditions determined by the legislature on the money appropriated, and/or by analysis of such items as the number of acres irrigated, the number of water users, the size of the reservoir, the use of the waters, and cost of the proposed improvements.

R653-2-6. Financial Arrangements.

(1) Project Cost Sharing

(a) The Board desires to optimize available funding for the overall water development programs of the state and therefore requires sponsors to share in the cost of projects.

(b) The sponsor's financial ability to cost share will be determined in the project investigation. On the basis of the investigation, the Division will recommend to the Board the portion of the project cost to be furnished by the sponsoring organization. The sponsor will generally be expected to provide 15%-25% of the project cost.

(c) If additional funds become available to the sponsor after the project is authorized, and if project costs do not increase, the additional funds will be used to reduce the Board's financial participation.

(2) Alternate Financing

The Board will consider alternative project funding methods such as letters of credit, bond insurance, and various methods of interest buydown, instead of directly funding construction of project features.

(3) Repayment of Financial Assistance

(a) The repayment period will generally be less than 25 years.

(b) The minimum annual cost of water for municipal projects will be 1.17% of the region or project area's annual median adjusted gross income.

(c) When annual payments are to be made with revenues from the sale or use of project water, the Board may allow the sponsor one year's use of the project before the first payment is due.

(4) Security Arrangements

(a) Depending upon the type of organization sponsoring the project and the Board fund involved, financial assistance may be secured either by a purchase agreement or bond issue.

(i) Projects financed through the Revolving Construction Fund must be secured by a purchase agreement.

(ii) Projects financed through the Cities Water Loan Fund or the Conservation and Development Fund will be secured either by a purchase agreement or by the sale of a bond.

(b) If project financing is secured by a purchase agreement, the following conditions apply:

(i) The Board must take title to the project including water rights, easements, deeded land for project facilities, and other assets subject to security interest.

(ii) An opinion from the sponsor's attorney must be submitted stating the sponsor has complied with its articles and bylaws, state law, and the Board's contractual requirements.

(iii) Title to the project shall be returned to the sponsor upon successful completion of the purchase agreement.

(c) If project financing is secured by the sale of a bond, the following conditions apply:

(i) The procedures for bond approval will be substantially the same as required by the Utah Municipal Bond Act.

(ii) If the sponsor desires to issue a non-voted revenue bond, the sponsor will be required to:

(A) Hold a public meeting to describe the project and its need, cost, and effect on water rates.

(B) Give written notice describing the proposed project to all water users in the sponsor's service area. The notice shall include a solicitation of response to the proposed project. A copy of all written responses received by the sponsor shall be forwarded to the Division. If the area Board member determines there is substantial opposition to the project, the Board may require the sponsor to hold a bond election before funds will be made available.

R653-2-7. Project Engineering and Construction.

(1) Engineering

To expedite projects and facilitate the coordination of project development, sponsors are encouraged to select a design engineer prior to making application to the Board.

(2) Staff and Legal Costs

(a) Costs incurred by the Division for investigation, administration, engineering, and construction inspection will be paid to the Board according to the terms set by the Board.

(b) Costs incurred by the Division during project investigation will not become a charge to the sponsor if the project is found infeasible, denied by the Board, or if the sponsor withdraws the application.

(c) Legal fees incurred in the review of a sponsor's bonding documents will be billed directly to the sponsor by the legal firm doing the review for the Board.

(3) Design Standards and Approval

(a) All projects funded by the Board shall be designed according to appropriate technical standards and shall be stamped and signed by a Utah registered professional engineer

responsible for the work.

(b) Prior to soliciting construction bids, plans and specifications must be approved by the Division and all other state and federal agencies which have regulatory or funding involvement in the project.

(4) Project Bidding and Construction

(a) The Board desires that all project construction be awarded to qualified contractors based on competitive bids. The Board may waive this requirement and allow a sponsor to act as its own contractor on small projects. However, in all cases the sponsor must comply with the laws governing its operation as well as the statutory requirements placed on the Board and Division.

(b) The design engineer shall coordinate the project bidding process.

(c) Construction inspection will be performed under the direction of the registered professional engineer having responsible charge of project construction.

R653-2-8. Qualifications to Guidelines.

The foregoing guideline statements are meant as a guide for the Board, staff, and sponsor to provide an orderly and effective procedure for preparing projects for construction. The Board reserves the right to consider each project on its own merits and may consider and authorize a project that does not meet all requirements of the guidelines.

KEY: water funding*
January 16, 2002 **73-10-1**
Notice of Continuation December 23, 1997

R657. Natural Resources, Wildlife Resources.
R657-13. Taking Fish and Crayfish.
R657-13-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate" means the combined total of two or more species of fish or two or more size classes of fish which are covered by a limit distinction.

(b) "Angling" means fishing with a rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, baits, or lures attached to it, and is held in the hands of, or within sight (not to exceed 100 feet) of, the person fishing.

(c)(i) "Artificial fly" means a fly made by the method known as fly tying.

(ii) "Artificial fly" does not mean a weighted jig, lure, spinner, attractor blade, or bait.

(c) "Artificial lure" means a device made of rubber, wood, metal, glass, fiber, feathers, hair, or plastic with a hook or hooks attached. Artificial lures, including artificial flies, do not include fish eggs or other chemically treated or processed natural baits or any natural or human-made food, or any lures that have been treated with a natural or artificial fish attractant or feeding stimulant.

(d) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(e) "Bait" means a digestible substance, including worms, cheese, salmon eggs, marshmallows, or manufactured baits including human-made items that are chemically treated with food stuffs, chemical fish attractants or feeding stimulants.

(f) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(g) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(h) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(i) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(j) "Game fish" means Bonneville cisco; bluegill; bullhead; channel catfish; crappie; green sunfish; largemouth bass; northern pike; Sacramento perch; smallmouth bass; striped bass, trout (rainbow, albino, cutthroat, brown, golden, brook, lake/mackinaw, kokanee salmon, and grayling or any hybrid of the foregoing); tiger muskellunge; walleye; white bass; whitefish; wiper; and yellow perch.

(k) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(l) "Immediately Released" means that the fish should be quickly unhooked and released back into the water where caught. Fish that must be immediately released cannot be held on a stringer, or in a live well or any other container or restraining device.

(m) "Lake" means the standing water level existing at any time within a lake basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the lake.

(n) "Length measurement" means the greatest length between the tip of the head or snout and the tip of the caudal (tail) fin when the fin rays are squeezed together. Measurement is taken in a straight line and not over the curve of the body.

(o) "Motor" means an electric or internal combustion engine.

(p) "Nongame fish" means species of fish not listed as game fish.

(q) "Possession limit" means, for purposes of this rule only, one bag limit, including fish at home, in a cooler, camper, tent, freezer, or any other place of storage.

(r) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(s) "Reservoir" means the standing water level existing at any time within a reservoir basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the reservoir.

(t) "Second pole" means fishing with one additional rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, bait, or lures attached to it and is held in the hands of, or within sight of the person fishing.

(u) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.

(v) "Single hook" means a hook or multiple hooks having a common shank.

(w) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.

(x) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.

(y)(i) "Trout" means species of the family Salmonidae, including rainbow, albino, cutthroat, brown, golden, brook, tiger, lake (mackinaw), splake, kokanee salmon, and grayling or any hybrid of the foregoing.

(ii) "Trout" does not include whitefish or Bonneville cisco.

(z) "Underwater Spearfishing" means, fishing by a person swimming or diving and using a mechanical device held in the hand which uses a rubberband, spring, or pneumatic power to propel a spear to take fish.

R657-13-3. Free Fishing Day.

A license is not required on free fishing day, the second Saturday of June, annually. All other laws and rules apply.

R657-13-4. Fishing Contests.

(1)(a) A certificate of registration from the division is required for fishing contests:

(i) with 50 or more contestants; or

(ii) any fishing contest offering $500 or more in prizes.

(b)(i) Application for certificates of registration are

available from division offices and must be submitted at least 60 days prior to the date of the fishing contest.

(ii) The division may take public comment before issuing a certificate of registration if, in the opinion of the division, the proposed fishing contest has potential impacts to the public or substantially impacts a public fishery.

(c) A certificate of registration may cover more than one fishing contest.

(d) The division may deny issuing a certificate of registration or impose stipulations or conditions on the issuance of the certificate of registration in order to achieve a management objective, to adequately protect a fishery or to offset impacts on a fishery or heavy uses of other public resources.

(e) A report must be filed with the division within 30 days after the fishing contest is held. The information required shall be listed on the certificate of registration.

(f)(i) Only one fishing contest may be held on a given water at any time. Each fishing contest is restricted to being held on only one water at a time.

(ii) Fishing contests may not be held on a holiday weekend, state or federal holiday, or free fishing day, except as provided in Subsection (g).

(g) A fishing contest may be held on free fishing day and a certificate of registration is not required if :

(i) contestants are limited to persons 13 years of age or younger; and

(ii) less than $500 are offered in prizes.

(2) Fishing contests conducted for cold water species of fish such as trout and salmon may not be conducted:

(a) if the fishing contest offers $500 or more in total prizes, except on Flaming Gorge Reservoir there is no limit to the amount that may be offered in prizes;

(b) those waters where the Wildlife Board has imposed special harvest rules as provided in the annual proclamation of the Wildlife Board for taking fish and crayfish.

(3) Contests for warm water species of fish shall be conducted as follows:

(a) all contests as provided in Subsection (1)(a) must be:

(i) authorized by the division through the issuance of a certificate of registration; and

(ii) carried out consistent with any requirements imposed by the division;

(b) Fish brought in to be weighed or measured may not be released within 1/2 mile of a marina, boat ramp, or other weigh-in site and must be released back into suitable habitat for that species; and

(c) If tournament rules allow larger or smaller fish to be entered in the contest than the size allowed for possession under the proclamation of the Wildlife Board for taking fish and crayfish, the fish must be weighed or measured immediately and released where they were caught.

R657-13-5. Interstate Waters.

(1) Lake Powell and Flaming Gorge Reservoir:

(a) The purchase of a reciprocal fishing stamp allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing stamps are offered for Lake Powell and Flaming Gorge Reservoir.

(c) Any person qualifying as an Arizona resident and having in their possession a valid Arizona resident fishing license and a Utah reciprocal fishing stamp for Lake Powell, is permitted to fish within the Utah boundaries of Lake Powell.

(d) Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing stamp for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

(e) Utah residents may obtain reciprocal fishing stamps by contacting the state of Arizona for Lake Powell, and the state of Wyoming for Flaming Gorge.

(f) Nonresidents may obtain reciprocal fishing stamps from division offices and selected license agents.

(g) The reciprocal fishing stamp must be:

(i) used in conjunction with a valid unexpired fishing or combination license from a reciprocating state;

(ii) signed across the face by the holder as the holder's name appears on the valid unexpired fishing or combination license from the reciprocating state; and

(iii) attached to the fishing or combination license from the reciprocating state.

(h) Reciprocal fishing stamps are valid on a calendar year basis.

(i) Anglers are subject to the laws and rules of the state in which they are fishing.

(j) Only one bag limit may be taken and held in possession even if licensed in both states.

(2) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within both the Utah and Idaho boundaries of Bear Lake.

(b) Only one bag limit may be taken and held in possession even if licensed in both states.

R657-13-6. Angling.

(1) While angling, the angler shall be within sight (not to exceed 100 feet) of the equipment being used at all times, except setlines.

(2) Angling with more than one line is unlawful, except while fishing for crayfish without the use of fish hooks and on selected waters with a valid second pole permit. A second pole permit is not required when fishing for crayfish with lines without hooks.

(3) No artificial lure may have more than three hooks.

(4) A person may not use or possess hooks, single or multipoint, larger than 9/16 inches at the shortest point, between the shank and the point on specific waters as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(5) No line may have attached to it more than two baited hooks, two artificial flies, or two artificial lures, except for a setline or while fishing at Flaming Gorge Reservoir.

(6) When angling through the ice, the hole may not exceed 12 inches across at the widest point, except at Bear Lake, Flaming Gorge Reservoir, and Fish Lake where specific limitations apply.

R657-13-7. Fishing With a Second Pole.

(1) A person may use a second pole to take fish only in the:

(a) Bear River from the Idaho state line downstream, including Cutler Reservoir and the outlet canals;

(b) Little Bear River below Valley View highway (SR-130);

(c) Malad River;

(d) Newton Reservoir;

(e) Hyrum Reservoir;

(f) Willard Bay Reservoir;

(g) Pine View Reservoir;

(h) Flaming Gorge Reservoir;

(i) Pelican Lake;

(j) Starvation Reservoir;

(k) Utah Lake;

(l) Yuba Reservoir;

(m) D.M.A.D.;

(n) Gunnison Bend;

(o) Lake Powell; and

(p) Gunlock Reservoir.

(2)(a) A second pole permit may be obtained at license agents and any division office.

(b) A second pole permit is required in addition to a valid Utah one day, seven day or season fishing license, or combination license.

(c) A second pole permit is an annual permit, but may only be used in conjunction with an unexpired Utah one day, seven day or season fishing or combination license.

(3) Anglers under 14 years of age must purchase a valid fishing or combination license and second pole permit in order to use a second pole.

(4) A second pole permit shall only be used by the person to whom the second pole permit was issued.

R657-13-8. Setline Fishing.

(1) A person may use a setline to take fish only in the Bear River proper downstream from the Idaho state line, including Cutler Reservoir and outlet canals; Little Bear River below Valley View Highway (SR-30); Malad River; and Utah Lake.

(2)(a) Angling with one pole is permitted while setline fishing, except as provided in Subsection (b).

(b) A person who obtains a second pole permit may fish with two poles while setline fishing.

(3) No more than one setline per angler may be used and it may not contain more than 15 hooks.

(4)(a) A setline permit may be obtained at any division office.

(b) A setline permit is required in addition to a valid Utah one day, seven day or season fishing or combination license.

(c) A setline permit is an annual permit, but may only be used in conjunction with an unexpired Utah one day, seven day or season fishing or combination license.

(5) When fishing with a setline, the angler shall be within 100 yards of the surface or bank of the water being fished.

(6) A setline shall have one end attached to a nonmoving object, not attached to a fishing pole, and shall have attached a legible tag with the name, address, and setline permit number of the angler.

(7) Anglers under 14 years of age must purchase a valid Utah one day, seven day or season fishing or combination license and setline permit in order to use a setline.

R657-13-9. Underwater Spearfishing.

(1) Underwater spearfishing is permitted from official sunrise to official sunset.

(2) Use of artificial light is unlawful while underwater spearfishing.

(3) Causey Reservoir, Deer Creek Reservoir, Fish Lake, Flaming Gorge Reservoir, Joe's Valley Reservoir, Ken's Lake, Lost Creek, Red Fleet Reservoir, Steinaker Reservoir, Starvation Reservoir, and Willard Bay Reservoir are open to taking game fish by means of underwater spearfishing from June 1 through September 30. These are the only waters open to underwater spearfishing for game fish.

(4) The bag and possession limit is two game fish. No more than one fish greater than 20 inches may be taken, except at Flaming Gorge Reservoir only one lake trout (mackinaw) greater than 28 inches may be taken.

(5) Nongame fish may be taken by underwater spearfishing only in the waters listed in Subsection (3) above and as provided in Section R657-13-14.

R657-13-10. Dipnetting.

(1) Hand-held dipnets may be used to take Bonneville cisco only at Bear Lake.

(2) The opening of the dipnet may not exceed 18 inches.

(3) When dipnetting through the ice, the size of the hole is unrestricted.

R657-13-11. Restrictions on Taking Fish and Crayfish.

(1) Artificial light is permitted, except when underwater spearfishing.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment, except as provided in Subsection R657-13-14(1)(c) to take fish or crayfish.

(3) A person may not take protected aquatic wildlife by snagging or gaffing; however, a gaff may be used to land fish caught by lawful means, except at Flaming Gorge Reservoir and Fish Lake.

(4) Chumming is prohibited, on all waters except Lake Powell where dead anchovies only may be used for taking striped bass.

(5) The use of a float tube or a boat, with or without a motor, for fishing is unlawful on some waters. Boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

R657-13-12. Bait.

(1)(a) Fishing is permitted with any bait, except corn, hominy, or live fish.

(b) Possession or use of corn or hominy while fishing is unlawful.

(2) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(3) Game fish or their parts may not be used, except for the following:

(a) Dead Bonneville cisco may be used as bait only in

Bear Lake.

(b) Dead yellow perch may be used as bait only in: Deer Creek, Echo, Fish Lake, Gunnison, Hyrum, Johnson, Jordanelle, Newton, Pineview, Rockport, Sevier Bridge (Yuba), Utah Lake and Willard Bay reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake.

(d) The eggs of any species of fish, except prohibited fish, may be used. However, eggs may not be taken or used from fish that are being released.

(4) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(5) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

R657-13-13. Prohibited Fish.

(1) The following species of fish are classified as prohibited and may not be taken or held in possession:

(a) Bonytail chub (Gila elegans);

(b) Bluehead sucker (Catostomus discobolus);

(c) Colorado pikeminnow (Ptychocheilus lucius);

(d) Flannelmouth sucker (Catostomus latipinnis);

(e) Gizzard shad (Dorosoma cepedianum);

(f) Grass carp (Ctenopharyngodon idella);

(g) Humpback chub (Gila cypha);

(h) June sucker (Chasmistes liorus);

(i) Least chub (Iotichthys phlegethontis);

(j) Leatherside chub (Gila copei);

(k) Razorback sucker (Xyrauchen texanus);

(l) Roundtail chub (Gila robusta);

(m) Virgin River chub (Gila robusta seminuda);

(n) Virgin spinedace (Lepidomeda mollispinis); and

(o) Woundfin (Plagopterus argentissimus).

(2) Any of these species taken while attempting to take other legal species shall be immediately released.

R657-13-14. Taking Nongame Fish.

(1)(a) Except as provided in Subsections (b) and (c), a person possessing a valid Utah fishing or combination license may take nongame fish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(b) A person may not take any species of fish designated as prohibited in Section R657-13-13.

(c) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, spear, or underwater spearfishing:

(i) San Juan River;

(ii) Colorado River;

(iii) Green River (from confluence with Colorado River upstream to Colorado state line in Dinosaur National Monument);

(iv) Green River (from Colorado state line in Brown's Park upstream to Flaming Gorge Dam, including Gorge Creek, a tributary entering the Green River at Little Hole);

(v) White River (Uintah County);

(vi) Duchesne River (from Myton to confluence with Green River);

(vii) Virgin River (Main stem, North, and East Forks).

(viii) Ash Creek;

(ix) Beaver Dam Wash;

(x) Fort Pierce Wash;

(xi) La Verkin Creek;

(xii) Santa Clara River (Pine Valley Reservoir downstream to the confluence with the Virgin River);

(xiii) Diamond Fork;

(xiv) Thistle Creek;

(xv) Main Canyon Creek (tributary to Wallsburg Creek);

(xvi) South Fork of Provo River (below Deer Creek Dam); and

(xvii) Snake Valley waters (west and north of US-6 and that part of US-6 and US-50 in Millard and Juab counties).

(2) Nongame fish, except those species listed in Section R657-13-13, may be taken by spear or underwater spearfishing in the waters specified in Subsection R657-13-9(3), angling, traps, bow and arrow, liftnets, or seine.

(3) Seines shall not exceed 10 feet in length or width.

(4) Lawfully taken nongame fish shall be either released or killed immediately upon removing them from the water, however, they may not be left or abandoned on the shoreline.

R657-13-15. Taking Crayfish.

(1) A person possessing a valid Utah fishing or combination license may take crayfish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(2) Crayfish may be taken by hand or with a trap, pole, liftnet, handline, or seine, provided that:

(a) game fish or their parts, or any substance unlawful for angling, is not used for bait;

(b) seines shall not exceed 10 feet in length or width;

(c) no more than five lines are used, and no more than one line may have hooks attached (bait is tied to the line so that the crayfish grasps the bait with its claw); and

(d) live crayfish are not transported from the body of water where taken.

R657-13-16. Possession and Transportation of Dead Fish and Crayfish.

(1) Fish held in possession in the field or in transit shall be kept in such a manner that:

(a) the species of fish can be readily identified;

(b) the number of fish can be readily counted;

(c) the size of the fish can be readily measured when the fish are taken from waters where size limits apply and the fish taken from those waters may not be filleted and the heads or tails may not be removed; and

(d) fillets shall have attached sufficient skin to include the conspicuous markings so species may be identified.

(2) A legal limit of game fish or crayfish may accompany the holder of a valid fishing or combination license within Utah or when leaving Utah.

(3) A person may possess or transport a legal limit of game fish or crayfish for another person when accompanied by a donation letter.

(4) A person may not take more than one bag limit in any one day or possess more than one bag limit of each species or

species aggregate regardless of the number of days spent fishing.

(5) A person may possess or transport dead fish on a receipt from a registered commercial fee fishing installation, a private pond owner, or a short-term fishing event. This receipt shall specify:

(a) the number and species of fish;

(b) date caught;

(c) the certificate of registration number of the installation, pond, or short-term fishing event; and

(d) the name, address, telephone number of the seller.

R657-13-17. Possession of Live Fish and Crayfish.

(1) A person may not possess or transport live protected aquatic wildlife except as provided by the Wildlife Code or the rules and proclamation of the Wildlife Board.

(2) For purposes of this rule, a person may not transport live fish or crayfish away from the water where taken.

(3) This does not preclude the use of live fish stringers, live wells, or hold type cages as part of normal angling procedures while on the same water in which the fish or crayfish are taken.

R657-13-18. Release of Tagged or Marked Fish.

Without prior authorization from the division, a person may not:

(1) tag, mark, or fin-clip fish for the purpose of offering a prize or reward as part of a contest;

(2) introduce a tagged, marked, or fin-clipped fish into the water; or

(3) tag, mark, or fin-clip a fish and return it to the water.

R657-13-19. Season Dates and Bag and Possession Limits.

(1) All waters of state fish rearing and spawning facilities are closed to fishing.

(2) State waterfowl management areas are closed to fishing except as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(3) The season for taking fish and crayfish is January 1 through December 31, 24 hours each day. Exceptions are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(4)(a) Bag and possession limits are specified in the proclamation of the Wildlife Board for taking fish and crayfish and apply statewide unless otherwise specified.

(b)(i) A person may not fish in waters that have a specific bag or size limit while possessing fish in violation of that limit.

(ii) Fish not meeting the size, bag, or species provisions on specified waters shall be returned to the water immediately.

(c)(i) Trout, salmon and grayling that are not immediately released and are held in possession, dead or alive, are included in the person's bag and possession limit.

(ii) Once a trout, salmon or grayling is held in or on a stringer, fish basket, livewell, or by any other device, a trout, salmon or grayling may not be released.

(5) A person may not take more than one bag limit in any one day or have in possession more than one bag limit of each species or species aggregate regardless of the number of days spent on fishing.

R657-13-20. Variations to General Provisions.

Variations to season dates, times, bag and possession limits, methods of take, use of a float tube or a boat for fishing, and exceptions to closed areas are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-21. Nonresident One-Day Fishing Stamp.

(1)(a) A nonresident may purchase a one-day fishing stamp to extend a one-day or seven-day fishing license provided the nonresident person has obtained a valid Utah nonresident one-day or seven-day fishing license.

(b) A nonresident must present the one-day or seven-day fishing license to the Division or license agent upon purchasing a one-day fishing stamp.

(2) A one-day fishing stamp will extend the one-day or seven-day fishing license within the current year for one additional day.

(3) The effective date shall be indicated on the one-day fishing stamp.

KEY: fish, fishing, wildlife, wildlife law

January 2, 2002	**23-14-18**
Notice of Continuation 2002	**23-14-19**
	23-19-1
	23-22-3

R657. Natural Resources, Wildlife Resources.
R657-38. Dedicated Hunter Program.
R657-38-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18, this rule provides the standards and requirements for qualified deer hunters to participate in the Dedicated Hunter Program by obtaining a certificate of registration.

(2) The Dedicated Hunter Program provides the opportunity for participants to:

(a) increase the opportunity for recreational general deer hunting, while the division regulates harvest;

(b) increase participation in wildlife management decisions;

(c) increase participation in wildlife conservation projects that are beneficial to wildlife conservation and the division; and

(d) attend wildlife conservation courses about hunter ethics and the division's wildlife conservation philosophies and strategies.

R657-38-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Dedicated Hunter Permit" means a general buck deer permit issued to a dedicated hunter participant in the Dedicated Hunter Program, which authorizes the participant to hunt general archery, general season and general muzzleloader in the region specified on the permit.

(b) "Hunt area" means an area prescribed by the Wildlife Board where general archery, general season or general muzzleloader deer hunting is open to permit holders for taking deer.

(c) "Limited Entry Dedicated Hunter Permit" means a limited entry deer permit or limited entry elk permit, for use in an area selected by the Division, which shall be offered through the Dedicated Hunter Program Drawing.

(d) "Participant" means a person who has obtained and signed a certificate of registration for the Dedicated Hunter Program.

(e) "Program" means the Dedicated Hunter Program, a program administered by the division as provided in this rule.

(f) "Wildlife conservation course" means a course of instruction provided by the division on hunter ethics and wildlife conservation philosophies and strategies.

(g) "Wildlife conservation project" means a project designed by the division, or any other individual or entity and pre-approved by the division, that provides wildlife habitat protection or enhancement on public or private lands, improves hunting or fishing access, or other conservation projects or activities that benefit wildlife or directly benefits the division.

(h) "Wildlife conservation project manager" means an employee of the division, or person approved by the division, responsible for supervising a wildlife conservation project and maintaining and reporting records of service hours to the division.

R657-38-3. Certificate of Registration Required.

(1) A person may not participate in the program if that person has been convicted of or entered a plea in abeyance to any of the following classes of violations of Title 23, Wildlife Resources Code, or any rule or proclamation of the Wildlife Board, or is currently on wildlife license suspension:

(a) felony;

(b) Class A misdemeanor in the last five years; or

(c) three or more Class B or Class C misdemeanors in the past five years.

(2)(a) To participate in the program a person must sign and obtain a certificate of registration from the division.

(b) No more than ten thousand certificates of registration for the program may be in effect at any given time.

(c) Each participant must provide proof of having attended a wildlife conservation course before the division may issue the certificate of registration for the program.

(d) A certificate of registration to participate in the program may not be issued to any person after April 1 annually.

(3) Each certificate of registration is valid for three consecutive general deer hunting seasons.

(4)(a) Any person who is 14 years of age or older may obtain a certificate of registration. A person 13 years of age may obtain a certificate of registration if the date of that person's 14th birthday is before the end of the calendar year in which the certificate of registration is issued.

(b) Any person who is 17 years of age or younger before the beginning date of the annual general archery deer hunt shall pay the youth participant fees.

(c) Any person who is 18 years of age or older on or before the beginning date of the annual general archery deer hunt shall pay the adult participant fees.

(5) A certificate of registration authorizes the participant an opportunity to receive annually a Dedicated Hunter Permit to hunt during the general archery, general season and general muzzleloader deer hunts. The Dedicated Hunter Permit may be used during the dates and within the hunt area boundaries established by the Wildlife Board.

(6)(a) Except as provided in Subsection R657-38-8(7), a participant entering the program may take two deer within three years of enrollment, but only one deer in any one year.

(b) The harvest of an antlerless deer using a Dedicated Hunter Permit, as authorized under specific hunt choice areas during the general archery deer hunt, shall be considered a program harvest.

(7) The certificate of registration must be signed by the participant and a division representative. The certificate of registration is not valid without the required signatures.

(8) The participant and holder of the certificate of registration must have a valid Dedicated Hunter Permit in possession while hunting.

(9) Certificates of registration are not transferable and shall expire at the end of a participant's third general deer hunting season.

(10) Certificates of registration will not be issued to any person who has previously obtained a certificate of registration if that person failed to provide the program requirements or fees until prior program requirements are met or fees are paid.

(11)(a) The program requirements set forth in Sections R657-38-5, R657-38-6, and R657-38-7 may be waived annually if the participant provides proof of leaving the state for a minimum period of one year during the enrollment period for the Dedicated Hunter Certificate of Registration to serve in the

armed forces of the United States, or for religious or educational purposes.

(b) If the participant requests that the annual requirements be waived in accordance with Subsection (a), and the request is granted, the participant shall not receive a Dedicated Hunter Permit for the year in which the program requirements were waived.

(c) A refund for the Dedicated Hunter Certificate of Registration may not be issued pursuant to Section 23-19-38.

R657-38-4. Dedicated Hunter Permits.

(1) Participants may hunt during the general archery, general season and general muzzleloader deer hunts within the hunt area and during the season dates prescribed in the proclamation of the Wildlife Board for taking big game.

(2)(a) Participants must designate a regional hunt choice upon joining the program.

(b) The regional hunt choice shall remain in effect unless otherwise changed in writing by the participant on the annual harvest questionnaire.

(3) Participants must notify the division of any change of mailing address in order to receive a Dedicated Hunter Permit by mail.

(4)(a) Lifetime license holders may participate in the program.

(b) Upon signing the certificate of registration, the lifetime license holder agrees to forego any rights to receive a buck deer permit for the general archery, general season or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general season or general muzzleloader permit.

(5)(a) A participant may exchange or surrender a Dedicated Hunter Permit in accordance with Rule R657-42.

(b) A participant may not exchange or surrender a Dedicated Hunter Permit for any other buck deer permit once the Dedicated Hunter Permit is issued and the general archery deer hunt has begun.

(6)(a) Dedicated hunter permits may be issued through the mail no sooner than July 1 of each year, and only upon proof that all annual program requirements have been completed by the participant.

(b)(i) Participants completing annual program requirements later than two weeks prior to the beginning of the general archery deer hunt must obtain their Dedicated Hunter Permit over-the-counter from any division office.

(ii) Over-the-counter dedicated hunter permits shall not be issued sooner than two weeks prior to the beginning of the general archery deer hunt, and only upon proof that all annual program requirements have been completed by the participant.

R657-38-5. Wildlife Conservation Course.

(1)(a) The division shall provide an annual wildlife conservation course.

(b) Prior to becoming a participant or obtaining a certificate of registration for the program, a person must complete one wildlife conservation course.

(2) The wildlife conservation course shall explain the program in detail to give a prospective participant a reasonable understanding of the program as well as hunter ethics, the division's Regional Advisory Council and Wildlife Board processes, and wildlife conservation philosophies and strategies.

(3) Wildlife conservation courses are scheduled by division offices.

(4)(a) Proof of completion of the wildlife conservation course shall be provided to the prospective participant upon completion of the wildlife conservation course.

(b) Certificates of registration shall not be issued without verification of the participant having completed the wildlife conservation course.

(c) The division shall keep a record of all participants who attend the wildlife conservation course.

R657-38-6. Wildlife Conservation Projects.

(1)(a) Each participant in the program shall:

(i) provide no fewer than an average of eight hours of service annually, by working on a wildlife conservation project or other division approved program or activity; or

(ii) pay a fee of $18.75 for each hour not completed.

(b) Residents may not substitute more than 16 of the 24 total required service hours. Nonresidents may substitute all of the 24 total required service hours.

(c) The division may, upon request, approve a person who is physically unable to provide service by working on a wildlife conservation project to provide other forms of service.

(2) Wildlife conservation projects shall be designed by the division, or any other individual or entity and shall be pre-approved by the division.

(3)(a) Wildlife conservation projects may occur anytime during the year as determined by the division.

(b) The division shall publicize the dates, times, locations and description of approved wildlife conservation projects and activities at division offices.

(4)(a) Prior to being issued an annual Dedicated Hunter Permit, participants must complete eight hours credit on approved wildlife conservation projects in the first year of enrollment, and thereafter the participant must average an additional eight hours credit in each of the two succeeding years.

(b) Service hours completed in any given year in excess of the annual requirement may be carried over to the following years, however excess service hours shall not be carried over to any year outside of the three-year enrollment period.

(c) Dedicated hunter permits issued to participants who fail to make the deadline, two weeks prior to the opening date of the general archery deer hunt annually, shall be issued only as an over-the-counter transaction at division offices.

(5) Proof of the number of hours worked shall be provided to the participant.

(6)(a) If a participant fails to fulfill the annual wildlife conservation project service requirement in any year of participation, as required under Subsection (4), the participant shall not be issued a Dedicated Hunter Permit for that year.

(b) The participant may obtain a Dedicated Hunter Permit for subsequent years upon completion of the wildlife conservation project program requirements due or payment of the fee in lieu thereof.

(7) The wildlife conservation project manager shall keep a record of all participants who attend the wildlife conservation

project and the number of hours worked.

R657-38-7. Regional Advisory Council.

(1) Each participant in the program is required to attend one regional advisory council meeting in its entirety prior to obtaining a permit during the second year of the program.

(2) Proof of attendance shall be provided by the division to the participant.

(3) The division shall keep a record of all participants who attend a regional advisory council meeting.

R657-38-8. Obtaining Other Permits.

(1)(a) Participants may apply for or obtain premium limited entry, limited entry, cooperative wildlife management unit, limited entry landowner or conservation buck deer permits as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(b) Participants may apply for or obtain a Dedicated Hunter Limited Entry Permit as provided under Section R657-38-10.

(c) If the participant obtains a premium limited entry, limited entry, cooperative wildlife management unit, limited entry landowner, conservation, Dedicated Hunter Limited Entry buck deer permit, the Dedicated Hunter Permit becomes invalid and the participant must surrender the Dedicated Hunter Permit prior to the opening day of the general archery deer hunt. A refund may not be issued pursuant to Section 23-19-38.

(d) If the participant obtains a limited entry archery, limited entry any weapon, limited entry muzzleloader, limited entry landowner or conservation buck deer permit, or a Dedicated Hunter Limited Entry Permit, the participant, upon completion of annual program requirements, may use the permit only in the prescribed area during the season dates listed on the permit.

(e) Participants who obtain a cooperative wildlife management unit permit may hunt only within those areas identified on the permit and only during the dates determined by the cooperative wildlife management unit landowner or operator.

(2)(a) Participants may not apply for or obtain general deer permits through the big game drawing as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(b) In the initial sign-up year for the program, if the participant previously applied for a general buck deer permit through the big game drawing, a participant must withdraw that permit application prior to the application withdrawal date as published in the proclamation of the Wildlife Board for taking big game.

(i) The general buck deer permit fee may be refunded by the division in May, but the handling fee shall not be refunded.

(ii) If the participant fails to withdraw the general buck deer application and the permit is drawn, the general deer permit obtained through the drawing becomes invalid and must be surrendered prior to the beginning date of the general archery deer hunt. A refund may not be issued pursuant to Section 23-19-38.

(3) Participants may not apply for or obtain general landowner buck deer permits as provided under Rule R657-43.

(4) The division may exclude multiple season opportunities on specific units due to extenuating circumstances on that specific unit.

(5) The permit must be on the person while hunting.

(6)(a) Obtaining a premium limited entry, limited entry, cooperative wildlife management unit, limited entry landowner or conservation buck deer permit does not authorize a participant to take an additional deer.

(b) Any deer harvested by a participant using a premium limited entry, limited entry, cooperative wildlife management unit, limited entry landowner, or conservation buck deer permit shall be considered a program harvest.

(7)(a) Participants may apply for or obtain antlerless deer permits as provided in Rule R657-5 and the Antlerless Addendum to the proclamation of the Wildlife Board for taking big game.

(b) Antlerless permits do not count against the number of permits issued pursuant to this program.

(c) Antlerless harvest as provided in Rule R657-5 and the Antlerless Addendum to the proclamation of the Wildlife Board for taking big game shall not be considered a program harvest.

R657-38-9. Reporting Requirements.

(1) The division shall provide an annual harvest questionnaire to each participant.

(2)(a) A participant must complete, sign and return the harvest questionnaire to the division by January 15 annually.

(b) A participant may specify a change to their regional hunt choice for a Dedicated Hunter Permit on the harvest questionnaire, however, if no change is specified, the regional hunt choice selected initially or in the prior year shall be assigned.

(c) A participant must identify on the harvest questionnaire whether a deer was harvested and the sex of the deer.

(3)(a) Any Dedicated Hunter Permit and attached tag that is not used to tag a deer must be received with the harvest questionnaire by a division office.

(b) Any Dedicated Hunter Permit and attached tag that is not submitted with the harvest questionnaire shall be considered filled.

(4) A Dedicated Hunter Permit shall not be issued until the previous year's completed harvest questionnaire is received by the division.

R657-38-10. Limited Entry Dedicated Hunter Program Drawing.

(1) Any unfilled Dedicated Hunter Permit returned to the Division by January 15 annually, may qualify the participant to be entered into the Dedicated Hunter Program Drawing provided:

(a) the participant is currently enrolled in the program; and

(b) the participant has met all program requirements by July 1 for the current year in which the Limited Entry Dedicated Hunter Permit is valid.

(2) One limited entry deer permit and one limited entry elk permit shall be offered through the drawing for each 250 permits received by the Division in accordance with Subsection (1).

(3) The drawing results may be posted at division offices and on the division Internet address on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(4)(a) Successful participants shall be notified by mail.

(b) If the successful participant designated to receive a Limited Entry Dedicated Hunter Permit already possesses a Utah permit for the same species of animal that year, or is otherwise ineligible or unable to participate in the hunt and utilize the Limited Entry Dedicated Hunter Permit, the available Limited Entry Dedicated Hunter Permit may be issued to the next participant, who would have drawn the permit, in accordance with Rule R657-42.

(5)(a) The successful participant designated to receive a Limited Entry Dedicated Hunter Permit must select one of the following legal weapon choices and hunting season for the Limited Entry Dedicated Hunter Permit:

(i) limited entry archery;

(ii) limited entry any weapon; or

(iii) limited entry muzzleloader.

(b) The Limited Entry Dedicated Hunter permits may be used within the specified boundaries of the limited entry hunt area and during the dates specified in the proclamation of the Wildlife Board for taking big game.

(6)(a) Bonus points shall not be awarded or utilized when applying for or obtaining Limited Entry Dedicated Hunter permits.

(b) Any participant who obtains a Limited Entry Dedicated Hunter Permit is not subject to the waiting periods set forth in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

R657-38-11. Certificate of Registration Suspension.

(1) A Dedicated Hunter Permit and tag may not be issued to any participant who:

(a) does not perform the program requirements; or

(b) violates the terms of this rule or the Dedicated Hunter Certificate of Registration.

(2) The division may revoke or suspend a certificate of registration as provided in Section 23-19-9.

KEY: wildlife, hunting, recreation, wildlife conservation
January 15, 2002 23-14-18
Notice of Continuation November 30, 2000

R698. Public Safety, Administration.
R698-1. Public Petitions for Declaratory Orders.
R698-1-1. Authority.

A. As required by Section 63-46b-21, this rule provides the procedures for submission, review and disposition of petitions for agency declaratory orders on the applicability of statutes, rules and orders governing or issued by the agency.

B. In order of importance, procedures governing declaratory orders are:

1. Procedures specified in this rule pursuant to Chapter 46b of Title 63.

2. The applicable procedures of Chapter 46b of Title 63.

3. Applicable procedures of other governing state and federal law; and

4. The Utah Rules of Civil Procedure

R698-1-2. Definitions.

Terms used in this rule are defined in Section 63-46b-2, except and in addition:

A. "Agency" means the pertinent division, bureau or office within the Department of Public Safety except the Division of Peace Officer Standards and Training and the Division of Driver License Services.

B. "Declaratory order" means an administrative interpretation or explanation of rights, status and other legal relations under a statute, rule or order.

C. "Director" means the agency head or governing body with jurisdiction over the agency's adjudicative proceedings.

D. "Order" is defined in 63-46a-2.

E. "Superior agency" means Commissioner of the Department of Public Safety.

R698-1-3. Petition Form and Filing.

A. The petition shall be addressed and delivered to the director who shall mark the petition with the date of receipt.

B. The petition shall:

1. Be clearly designated as a request for an agency declaratory order.

2. Identify the statute, rule or order to be reviewed.

3. Describe in detail the situation or circumstances in which applicability is to be reviewed.

4. Describe the reason or need for the applicability review, addressing, in particular, why the review should not be considered frivolous.

5. Include an address and telephone number where the petitioner can be contacted during regular working hours.

6. Declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months.

7. Be signed by the petitioner.

R698-1-4. Reviewability.

The agency shall not review a petition for declaratory orders that is:

A. Not within the jurisdiction or competence of the agency.

B. Trivial, irrelevant or immaterial.

C. Otherwise excluded by state or federal law.

R698-1-5. Intervention.

A person may file a petition for intervention under Section 63-46b-9 if delivered to the director within 20 days of the director's receipt of the declaratory order petition filed under Section 3 of this rule.

R698-1-6. Petition Review and Disposition.

A. The director shall promptly review and consider the petition and may:

1. Meet with the petitioner.

2. Consult with counsel or the Attorney General.

3. Take any action consistent with law that the agency deems necessary to provide the petition adequate review and due consideration.

B. The director may issue an order pursuant to Section 63-46b-21(6).

C. If the director orders an adjudicative proceeding under 63-46b-21(6):

1. The proceeding shall be formal and governed by the procedures of 63-46b or other applicable law if a petition for intervention has been filed within the limits of Section 5 of this rule, or

2. The proceeding may be designated as formal or informal and follow the appropriate procedures of 63-46b, agency rules or other applicable law if a petition for intervention has not been filed within the limits of Section 5 of this rule.

R698-1-7. Administrative Review.

A petitioner may seek review or reconsideration of a declaratory order by petitioning the director under the procedures of Section 63-46b-12 and -13 or as otherwise provided by law:

A. If the presiding officer issuing the declaratory order is the director, the petitioner may seek the review of the superior agency.

B. The petitioner may appeal a director's review or reconsideration decision to the superior agency unless otherwise provided by law.

C. If the petitioner receives no response from the superior agency within 20 days of filing a petition for review or reconsideration, the appeal shall be considered denied.

KEY: administrative procedure, enforcement (administrative)
1993 63-46b-21
Notice of Continuation January 3, 2002

R698. Public Safety, Administration.
R698-2. Government Records Access and Management Act Rule.
R698-2-1. Purpose.

The purpose of the following rule is to provide procedures for access to government records of the Utah Department of Public Safety (Department).

R698-2-2. Authority.

This rule is authorized by Sections 63-2-204 of the Government Records Access and Management Act (GRAMA), and Section 63-46a-3 of the State Rulemaking Act.

R698-2-3. Allocation of Responsibility within Entity.

A. The Department and its agencies shall be considered a single government entity and the Commissioner of Public Safety or designee shall be considered the chief administrative officer of the Department and its agencies for purposes of Section 63-2-401.

B. For the purposes of Section 63-2-206, the Department shall be considered a single government entity. The agencies within the Department may share their records as necessary to perform their respective tasks provided that the recipient agency shall not further disclose any non-public record which it receives. Any decision concerning the disclosure of non-public records outside the Department shall be made only by the records officer or responsible authority in the agency which created the record, except when such decision has been appealed as provided in this rule.

C. The Department or its agencies may create general written agreements to govern the sharing of non-public records with law enforcement agencies outside the Department. Such an agreement shall include a list of the record series intended to be covered by the agreement, the classifications of each record series, and the certification by the recipient agency outside the Department that the recipient agency shall not make any further disclosure of the non-public record without the consent of the Department or the agency which created the record. When such an agreement is in place for the Department or any of its agencies, the Department or the agency which created the record may waive the requirement for a specific disclosure statement for each record requested, provided that the requested record is included in the list of record series in the agreement.

R698-2-4. Requests for Access.

Requests for access to government records of the Department of Public Safety (DPS) and its agencies should be made in writing. Such written requests shall be in accordance with the provisions of, or on department forms which are specified in R698-2-5.

A. For media organizations requests: DPS, Public Information Officer, 4501 South 2700 West, Salt Lake City, Utah 84119.

B. For all other requests, application should be made in writing to the agency from which the information is requested, as follows:

1. For records held by DPS, Administrative Services Division and all other records held by DPS agencies not specifically referenced below: Records Officer, Administrative Services Division, 4501 South 2700 West, Salt Lake City, Utah 84119.

2. For records held by the Division of Comprehensive Emergency Management: Records Officer, Comprehensive Emergency Management, 1110 State Office Building, Salt Lake City, Utah 84114.

3. For records held by the Driver License Division: Records Officer, Driver License Division, 4501 South 2700 West, Salt Lake City, Utah 84119.

4. For records held by the Law Enforcement and Technical Services Division select the appropriate bureau below:

a. Records Officer, Bureau of Criminal Identification, 4501 South 2700 West, Salt Lake City, Utah 84119.

b. Records Officer, DPS, Communications Bureau, 4501 South 2700 West, Salt Lake City, Utah 84119.

c. Records Officer, Regulatory/Security Licensing Bureau, 4501 South 2700 West, Salt Lake City, Utah 84119.

d. Records Officer, State Crime Lab, 4501 South 2700 West, Salt Lake City, Utah 84119.

5. For records held by DPS, Management Information Services Division: Records Officer, Management Information Services, 4501 South 2700 West, Salt Lake City, utah 84119.

6. For records held by Peace Officer Standards and Training: Records Officer, Peace Officer Standards and Training, 4525 South 2700 West, Salt Lake City, Utah 84119.

7. For records held by the State Fire Marshal: Records Officer, State Fire Marshal, 4501 South 2700 West, Salt Lake City, Utah 84119.

8. For records held by the Utah Division of Investigation: Records Officer, Division of Investigation, 5272 College Drive, Murray, Utah 84107.

9. For records held by the Utah Highway Patrol: Records Officer, Utah Highway Patrol, 4501 South 2700 West, Salt Lake City, Utah 84119.

R698-2-5. Forms.

A. The forms described as follows, or a written document containing substantially similar information to that requested in the forms, shall be completed by requesters in connection with records requests.

1. Form DPS 2-204(1), "Request for Records", is for use by all persons requesting records from the Department. It is intended to assist persons who request records to comply with the requirements of Subsection 63-2-204(1) regarding the contents of a request. The form requires the requester's name, address, telephone, organization (if any), a description of the records requested, and information regarding the requester's status, for records which are not public.

2. Form DPS 2-206(2), "Certification by Requesting Governmental Entity", is for use by another governmental entity requesting controlled or private records from the Department, pursuant to Subsection 63-2-206(2). This form requires the information found in Form DPS 2-204(1), as well as certain representations required from the governmental entity, if the information sought is not public.

3. Form DPS 2-206(5), "Disclosure and Agreement", is for use when another governmental entity requests controlled, private or protected records, pursuant to Subsection 63-2-206(5). This form discloses to the governmental entity certain

information regarding restrictions on access, and obtains the written agreement of the governmental entity to abide by those restrictions.

B. The Department or its agencies may use forms to respond to requests for records.

R698-2-6. Fees.

A fee may be charged for copies of records provided. Amounts charged for photocopying will reflect costs as authorized by Chapter 38, Title 63, and Subsection 63-2-203(1). Fees must be paid at the time the records are provided to the requester. A fee schedule for the direct and indirect costs of photocopying or compiling a record may be obtained from the appropriate records officer.

R698-2-7. Waiver of Fees.

Fees for photocopying and compilation of a record may be waived under certain circumstances described in Subsection 63-2-203(3). Request for this waiver of fees shall be made to the appropriate records officer.

R698-2-8. Requests for Access for Research Purpose.

Access to private or controlled records for research purposes shall be accomplished in accordance with Subsection 63-2-202(8). Requests for access to such records for research purposes shall be made to the appropriate records officer.

R698-2-9. Intellectual Property Records.

When the Department determines that it owns an intellectual property right, it may elect to duplicate and distribute such materials in accordance with Subsection 63-2-201(10). Decisions with regard to these materials will be made by the Department Records Officer. Any questions regarding the photocopying and distribution of such materials should be addressed to the Department Records Officer.

R698-2-10. Request to Amend a Record.

An individual may contest the accuracy or completeness of a document pertaining to him/her pursuant to Section 63-2-603. Such request should be made to the appropriate records officer.

R698-2-11. Appeals of Requests to Amend a Record.

Appeals of requests to amend a record shall be handled as informal adjudicative proceedings under the Utah Administrative Procedures Act. See Chapter 46b, Title 63.

R698-2-12. Appeals.

The Department Administrative Law Judge, 4501 South 2700 West, Salt Lake City, Utah 84119, shall serve as the designee of the Commissioner of Public Safety for the purpose of determining discretionary access to records as set forth in Subsection 63-2-201(5)(b) and also for the purpose of hearing appeals as set forth in Section 63-2-401.

KEY: government documents, freedom of information, public records
1993 63-2-204
Notice of Continuation January 3, 2002

R698. Public Safety, Administration.
R698-3. Americans With Disabilities Act (ADA) Complaint Procedure.
R698-3-1. Authority and Purpose.

A. This rule is promulgated pursuant to Section 63-46a-3(2) of the State Administrative Rulemaking Act. The Department of Public Safety (hereinafter; department), hereby adopts and defines, a complaint procedure to provide for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, pursuant to 28 CFR 35.107, 1992 edition.

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

R698-3-2. Definitions.

A. "The Department ADA Coordinator" means the Department of Public Safety's coordinator, or his designee, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.

B. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(1) Office of Planning and Budget;
(2) Department of Human Resource Management;
(3) Division of Risk Management;
(4) Division of Facilities Construction Management; and
(5) Office of the Attorney General.

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

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

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

R698-3-3. Filing of Complaints.

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

B. The complaint shall be filed with the department's ADA Coordinator in writing or in another accessible format suitable to the individual.

C. Each complaint shall:

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

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

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

(4) describe the action and accommodation desired; and

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

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

R698-3-4. Investigation of Complaint.

A. The ADA Coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section 3 (C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the department's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:

(1) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;

(2) facility modifications; or

(3) reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

R698-3-5. Issuance of Decision.

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

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

R698-3-6. Appeals.

A. The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

B. The appeal shall be filed in writing with the department's executive director or a designee other than the department's ADA Coordinator.

C. The filing of an appeal shall be considered as authorization by the individual to allow review of all information classified as private or controlled, by the department's executive director or designee.

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

E. The executive director or designee shall review the

factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making a decision that would involve the executive director or designee to:

(1) an expenditure of funds which is not absorbable and would require appropriation authority;

(2) facility modifications; or

(3) reclassification or reallocation in grade; he shall also consult with the State ADA Coordinating Committee.

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

G. If the executive director or his designee is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another acceptable suitable format why the decision is being delayed and the additional time needed to reach a decision.

R698-3-7. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section (67-19-32); the Federal ADA Complaint Procedures (28 CFR Part 35.170, 1992 edition); or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, disabilities act*
1993 67-19-32
Notice of Continuation January 3, 2002

R710. Public Safety, Fire Marshal.
R710-2. Rules Pursuant to the Utah Fireworks Act.
R710-2-1. Adoption.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts rules establishing minimum safety standards for retail storage, handling, and sale of class C common state approved explosives; minimum requirements for placement and discharge of display fireworks; and requirements for importer, wholesaler, display or special effects operator licenses.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2000 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-2-9, et seq.

1.2 National Fire Protection Association (NFPA), Standard 1123, Code for Fireworks Display, 2000 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-9, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1126, Standard for the Use of Pyrotechnics Before a Proximate Audience, 2001 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-9, et seq.

1.4 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal's Office.

R710-2-2. Definitions.

2.1 "Authority having jurisdiction (AHJ)" means such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.

2.2 "ICC" means International Code Council, Inc.

2.3 "IFC" means International Fire Code.

2.4 "NFPA" means National Fire Protection Association.

2.5 "Permanent structure" means a non-movable building, securely attached to a foundation, housing a business.

2.6 "Person" means an individual, company, partnership or corporation.

2.7 "Pre-packaged means that the product is wrapped in a clear plastic wrap or other equivalent material to prevent the fuse of the class C common state approved explosive from being accessible to the customer.

2.8 "Resale" means the act of reselling class B or C explosives to a new party.

2.9 "SFM" means the State Fire Marshal.

2.10 "Tent" means a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects.

2.11 "Temporary Stands and Trailers" means a non-permanent structure used exclusively for the sale of fireworks.

2.12 "UCA" means Utah Code Annotated.

R710-2-3. General Requirements.

3.1 No person shall engage in any type of retail storage or sale of class C common state approved explosives, without first having obtained a license to sell fireworks from the authority having jurisdiction, if required.

3.2 If a municipality or county in which fireworks are offered for sale, requires a seller to obtain a license, it shall be available at the store or stand for presentation upon request to authorized public safety officials.

3.3 All fireworks retail sales locations shall be under the direct supervision of a responsible person who is 18 years of age or older. A salesperson shall remain at the sales location at all times unless suitable locking devices are provided to prevent the unauthorized access to the merchandise by others, or the merchandise is removed.

3.4 Class C common state approved explosives shall not be sold to any person under the age of 16 years, unless accompanied by an adult.

3.5 All retail sales locations shall be kept clear of dry grass or other combustible material for a distance of at least 25 feet in all directions.

3.6 Storage of class C common state approved explosives shall not be located in residences to include attached garages.

3.7 "No Smoking" signs shall be conspicuously posted at all sales and storage locations.

3.8 A sign, clearly visible to the general public, shall be posted at all fireworks sales locations, indicating the legal dates for discharge of fireworks.

3.9 All retail sales locations shall be equipped with an approved, portable fire extinguisher having a minimum 2A rating.

R710-2-4. Indoor Sales.

4.1 Display of class C common state approved explosives inside of buildings shall be so located to ensure constant visual supervision.

4.2 In all retail sales locations in permanent structures, the area where class C common state approved explosives are displayed or stored shall be at least 50 feet from any flammable liquid or gas, or other highly combustible material.

4.3 In permanent structures, retail sales displays of Class C common state approved explosives shall not be placed in locations that would impede egress from the building.

4.4 Class C common state approved explosives shall only be stored, handled, displayed, and sold as packaged units, with unexposed fuses, within a permanent structure.

R710-2-5. Temporary Stands, Trailers and Tents.

5.1 Temporary stands, trailers and tents less than 200 square feet used for the retail sales of class C common state approved explosives shall be constructed in compliance with local rules, or if none, in accordance with nationally recognized practice. Tents having an area in excess of 200 square feet shall comply with IFC, Chapter 24.

5.2 The general public shall not be allowed to enter a temporary stand or trailer.

5.3 Each stand, trailer or tent less than 200 square feet shall have a minimum three foot wide unobstructed aisle, running the length of the stand, trailer or tent.

5.4 All tents where customers enter inside shall have a minimum three foot wide unobstructed aisle and two separate exits located a reasonable distance apart and so located that if one is blocked the other will be available.

5.5 The area used for sales of class C common state

approved explosives in stands, trailers or tents shall be arranged to permit the customer to only touch or handle pre-packaged class C common state approved explosives. All non pre-packaged class C common state approved explosives shall be displayed in a manner which prevents the fireworks from being handled by the customer without the direct intervention of the retailer who shall be able to maintain visual contact with the customer.

5.6 Temporary stands, trailers or tents for the sale of class C common state approved explosives shall be located at least 50 feet from other stands, trailers, tents, LPG, flammable liquid or gas storage and dispensing units.

5.7 If the stand or trailer is used for the overnight storage of class C common state approved explosives, it shall be equipped with suitable locking devices to prevent unauthorized entry. Tents shall not be used for overnight storage of class C common state approved explosives unless on site security is provided.

5.8 No person shall be allowed to sleep in any temporary stand, trailer or tent in which class C common state approved explosives are stored or sold.

5.9 Stands, trailers or tents shall not be illuminated or heated by any device requiring an open flame or exposed heating elements. All heaters shall be approved by the authority having jurisdiction (AHJ).

5.10 All illumination shall be installed in accordance with the temporary wiring section of the National Electric Code and approved by the authority having jurisdiction (AHJ).

R710-2-6. List of Approved Class C Common State Approved Explosives.

6.1 The State Fire Marshal shall publish a list of approved class C common state approved explosives each year.

6.2 The testing shall be conducted annually or as needed.

R710-2-7. Importer, Wholesaler, Display or Special Effects Operator Licenses.

7.1 Application for a importer, wholesaler, display or special effects operator license shall be made in writing on forms provided by the SFM.

7.2 Application for a license shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association, it shall be signed by a principal officer.

7.3 Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Licenses issued on or after October 1st, will be valid through December 31st of the following year.

7.4 Application for renewal of license shall be made before January 1st of each year. Application for renewal shall be made in writing on forms provided by the SFM.

7.5 The SFM may refuse to renew any license pursuant to Section 8 of these rules. The applicant, upon such refusal, shall also have those rights as are granted by Section 8 of these rules.

7.6 Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

7.7 No licensee shall conduct his licensed business under a name other than the name which appears on his license.

7.8 No license shall be issued to any person as licensee who is under eighteen (18) years of age.

7.9 The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

7.10 Every person who wishes to secure a display or special effects operator original license shall demonstrate proof of competence by:

7.10.1 Successfully passing a closed book written examination and obtaining a minimum grade of seventy percent (70%).

7.10.2 Submit written verification with the application of having completed a display or special effects operators safety class or demonstrate previous experience acceptable to the SFM.

7.10.3 Submit written verification with the application that the applicant has worked with a licensed display or special effects operator for at least three shows or demonstrate previous experience acceptable to the SFM.

7.11 The written examination stated in Section 7.10(a) shall be valid for five years from the date of the examination.

7.12 At the end of the five year period the licensed display or special effects operator shall take a re-examination. The re-examination shall be open book and sent to the license holder at least 60 days before the renewal date. The re-examination shall focus on the changes in the last 5 years to the adopted standards. The license holder is responsible to complete the re-examination and return it to the Division in time to renew and also comply with the requirements listed in Section 7.13.

7.13 After the issuance of the original license, and each year thereafter, the display or special effects operator shall complete a minimum of one fireworks performance annually or attend an operator safety class annually or work with another licensed display or special effects operator with a show annually to demonstrate proof of competence.

7.14 When the license has expired for more than one year, an application shall be made for an original license and the initial requirements shall be completed as required in Section 7.10 of these rules.

7.15 Every person who wishes to secure an importer, wholesaler, display or special effects operators license shall be at least 21 years of age.

7.16 Every licensed display or special effects operator shall complete the Pyrotechnician's After Action Report for Fireworks Display form within ten (10) working days after the conclusion of any display or special effects show and mail it to the State Fire Marshal.

R710-2-8. Adjudicative Proceedings.

8.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

8.2 The issuance, renewal, or continued validity of a license may be denied, suspended or revoked, if the SFM, or his authorized deputies finds that the applicant, person employed for, the person having authority, or the person in question commits any of the following violations:

8.2.1 The person or applicant is not the real person in interest.

8.2.2 Material misrepresentation or false statement in the application.

8.2.3 Refusal to allow inspection by the AHJ.

8.2.4 The person or applicant for a license does not possess the qualifications of skill or competence to conduct operations for which application is made, as evidenced by failure to pass the examination or demonstrate practical skills.

8.2.5 The person or applicant has been convicted of any of the following:

8.2.5.1 a violation of the provisions of these rules;

8.2.5.2 a crime of violence or theft; or

8.2.5.3 any crime that bears upon the person or applicant's ability to perform their functions and duties.

8.2.6 Failure to accurately complete the Pyrotechnician's After Action Report for Fireworks Display form.

8.3 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final notice from the AHJ.

8.4 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

8.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

8.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

8.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

8.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63-46b-15.

R710-2-9. Amendments and Additions.

9.1 The following are amendments and additions to the codes and standards adopted to regulate class C common state approved explosives, placement and discharge of display fireworks, and importer, wholesaler, display or special effects operator licenses, as adopted in Section 1 of these rules:

9.2 UFC, Section 7802.3 is deleted, and amended to read as follows:

9.2.1 For the following periods of time: June 1 through July 31; December 1 through January 5; and 30 days before and up to 5 days after the Chinese New Year; class C common state approved explosives may be stored for retail sale as follows:

9.2.1.1 The retail seller shall notify the local fire authority to where the class C common state approved explosives are to be stored.

9.2.1.2 Class C common state approved explosives shall not be stored in residences to include attached garages.

9.2.1.3 The local fire authority shall approve the storage site of the class C common state approved explosives and may use the following guidelines for acceptable places of storage:

9.2.1.3.1 In self storage units where the owner allows it.

9.2.1.3.2 In a temporary stand or trailer used for the retail sales of Class C common state approved explosives, which must be locked or secured when not open for business.

9.2.1.3.3 In a locked or secured truck, trailer, or other vehicle at an approved location.

9.2.1.3.4 In a locked or secured container, garage, shed, barn, or other building, which is detached from an inhabited building.

9.2.1.3.5 Wholesalers warehouse.

9.2.1.3.6 An approved Group M occupancy.

9.2.1.3.7 Any other structure or location approved by the authority having jurisdiction.

9.2.2 All other periods of time, except those stated in Section 9.2(1) of these rules, the storage, use, and handling of fireworks are prohibited, except as follows:

9.2.2.1 The storage and handling of fireworks are allowed as required in IFC, Chapter 33 and these rules.

9.2.2.2 The use of fireworks for display is allowed as set forth in IFC, Chapter 33 and these rules.

KEY: fireworks
January 2, 2002 **53-7-204**
Notice of Continuation June 19, 1997

R710. Public Safety, Fire Marshal.
R710-3. Assisted Living Facilities.
R710-3-1. Introduction.

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts for the purpose of establishing minimum standards for prevention of fire and for the protection of life and property against fire and panic in assisted living facilities.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2000 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-3-3, et seq.

1.2 International Building Code (IBC), 2000 edition, as published by the International Code Council, Inc. (ICC), and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.3 Copies of the above code are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-3-2. Definitions.

2.1 "Ambulatory" means a person who is capable of achieving mobility sufficient to exit without the assistance of another person. An equivalency to "Ambulatory" may be approved under the conditions stated in Section 3.3.7.

2.2 "Assisted Living Facility" means:

2.2.1 a Type 1 Assisted Living Facility, which is a residential facility that provides a protected living arrangement for ambulatory, nonrestrained persons who are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

2.2.2 a Type 2 Assisted Living Facility, which is a residential facility that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent.

2.2.3 Assisted Living Facilities shall be classified as follows:

2.2.3.1 "Type 1 and 2 Limited Capacity Assisted Living Facility" means a facility accommodating five or less residents, excluding staff.

2.2.3.2 "Type 1 and 2 Small Assisted Living Facility" means a facility accommodating at least six and not more than 16 residents, excluding staff.

2.2.3.3 "Type 1 and 2 Large Assisted Living Facility" means a facility accommodating more than sixteen residents, excluding staff.

2.3 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

2.4 "Board" means Utah Fire Prevention Board.

2.5 "IBC" means International Building Code.

2.6 "ICC" means International Code Council, Inc.

2.7 "IFC" means International Fire Code.

2.8 "Licensing Authority" means the Utah Department of Health or the Utah Department of Human Services.

2.9 "Semi-independent" means a person who is:

2.9.1 physically disabled but able to direct his or her own care; or

2.9.2 cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

2.10 "SFM" means State Fire Marshal.

R710-3-3. Amendments and Additions.

3.1 General Requirements

3.1.1 All facilities shall be inspected annually and obtain a certificate of fire clearance signed by the AHJ.

3.1.2 All facility administrators shall develop emergency plans and preparedness as required in IFC, Chapter 4.

3.1.3 IFC, Chapter 9, Sections 907.3.1.2 and 907.3.1.9 is deleted.

3.2 Type 1 Assisted Living Facilities

3.2.1 Type 1 Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

3.2.2 Type 1 Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.3 Residents in Type 1 Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

3.2.4 In Type 1 Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have escape or rescue windows as required in IBC, Chapter 10, Section 1009.

3.2.5 In Type 1 Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed in each sleeping room and access hallway.

3.2.6 Type 1 Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

3.2.6.1 An automatic fire sprinkler system shall be provided throughout buildings listed as Group R-4 that contain more than eight occupants. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.2.7 Type 1 Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.8 Type 1 Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

3.2.8.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3 Type 2 Assisted Living Facilities

3.3.1 Type 2 Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group

R-4, and maintained in accordance with the IBC and IFC.

3.3.1.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group R-4 that contain more than eight occupants. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.2 Type 2 Limited Capacity Assisted Living Facilities shall have an approved automatic fire extinguishing system installed in compliance with the IBC and IFC, or provide a staff to a resident ratio of one to one on a 24 hour basis.

3.3.3 Type 2 Small Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

3.3.3.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.4 Type 2 Small Assisted Living Facilities shall have a minimum corridor width of six feet.

3.3.5 Type 2 Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-2, and maintained in accordance with the IBC and IFC.

3.3.5.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.6 Upon request to the Utah Department of Health for a non-ambulatory variance as allowed in Utah Administrative Code, R432-2-18, the following conditions shall be met:

3.3.6.1 The attending physician's diagnosis and orders for care.

3.3.6.2 Hospice plan of care if applicable

3.3.6.3 The facilities service plan which includes a statement that the facility is willing and capable of meeting the residents needs.

3.3.6.4 A statement from the responsible party stating that they will be involved in the plan of care.

3.3.6.5 The resident will be provided with 24 hour/7 day one to one care and that care giver will be capable of exiting the resident from the facility in an emergency.

3.3.6.6 The authority having jurisdiction will be sent a copy of this variance.

R710-3-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-3-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or the codes adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portions as may be declared invalid.

R710-3-6. Conflicts.

In the event where separate requirements pertain to the same situation in the adopted codes, the more restrictive requirement shall govern, as determined by the AHJ.

R710-3-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: assisted living facilities
January 2, 2002 **53-7-204**
Notice of Continuation June 19, 1997

R710. Public Safety, Fire Marshal.

R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.

R710-4-1. Adoption of Fire Codes.

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, assisted living facility, children's home or day care center, or any similar institutional type occupancy of any capacity; and in any place of assemblage where fifty (50) or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), 2000 edition, except as amended by provisions listed in R710-4-3, et seq. The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 18 - New Health Care Occupancies; Chapter 19 - Existing Health Care Occupancies; Chapter 20 - New Ambulatory Health Care Occupancies; Chapter 21 - Existing Ambulatory Health Care Occupancies; Chapter 22 - New Detention and Correctional Occupancies; Chapter 23 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only.

1.2 National Fire Protection Association (NFPA), Standard 13, Installation of Sprinkler Systems, 1999 edition, except as amended by provisions listed in R710-4-3, et seq.

1.3 National Fire Protection Association (NFPA), Standard 72, National Fire Alarm Code, 1996 edition, except as amended by provisions listed in R710-4-3, et seq.

1.4 National Fire Protection Association (NFPA), Standard 70, National Electric Code (NEC), 1999 edition, as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953. Wherever there are sections or tables in the International Fire Code (IFC) that reference "ICC Electrical Standard", the reference to "ICC Electrical Standard" shall be replaced with "National Electric Code".

1.5 International Building Code (IBC), 2000 edition, as published by the International Code Council, Inc. (ICC), and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.6 International Fire Code (IFC), 2000 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-4-3, et seq.

1.7 International Mechanical Code (IMC), 2000 edition, as published by the International Code Council, Inc., and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.8 International Fuel Gas Code (IFGC), 2000 edition, as published by the International Code Council, and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.9 International Plumbing Code (IPC), 2000 edition, as published by the International Code Council, Inc., and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.10 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-4-2. Definitions.

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "AWWA" means American Water Works Association.

2.3 "Board" means Utah Fire Prevention Board.

2.4 "Bureau of Fire Prevention or Fire Prevention Bureau" means the AHJ.

2.5 "Fire Chief or Chief of the Department" means the AHJ.

2.6 "Fire Department" means the AHJ.

2.7 "Fire Marshal" means the AHJ.

2.8 "Fire Officer"means the State Fire Marshal, the state fire marshal's deputies, the fire chief or fire marshal of any county, city, or town fire department, the fire officer of any fire district or special service district organized for fire protection purposes is the AHJ.

2.9 "IBC" means International Building Code.

2.10 "ICC" means International Code Council, Inc.

2.11 "IFC" means International Fire Code.

2.12 "IFGC" means International Fuel Gas Code.

2.13 "IMC" means International Mechanical Code.

2.14 "IPC" means International Plumbing Code.

2.15 "LSC" means Life Safety Code.

2.16 "NEC" means National Electric Code.

2.17 "NFPA" means National Fire Protection Association.

2.18 "SFM" means State Fire Marshal.

2.19 "UCA" means Utah State Code Annotated 1953 as amended.

R710-4-3. Amendments and Additions.

3.1 Door Closures

3.1.1 IFC, Chapter 7, Section 703.2. Add the following Exception. In Group E Occupancies, where the corridor occupant load is greater than 30 and the building does not have an automatic fire sprinkler system installed, the door closures may be of the friction hold-open type on classrooms doors only.

3.2 Dumpsters

3.2.1 IFC, Chapter 3, Section 304.3.3, with reference to Group E Occupancies, is amended to add the following requirement:

Dumpsters and containers with an individual capacity of 1.5 cubic yards (40.5 cubic feet)(1.15m) or more shall not be stored in buildings or placed within 20 feet of combustible walls, openings or combustible roof eave lines.

3.3 Fire Alarm Systems

3.3.1 General Provisions

3.3.1.1 Presignal feature type systems are prohibited,

except in I-3 Occupancies.

3.3.1.2 Fire alarm system designs submitted to the AHJ, shall include complete floor plans showing location of all devices, occupancy use of each room, schematic wiring diagrams, battery calculations, and any other items deemed necessary.

3.3.2 Required Installations

3.3.2.1 Fire alarm systems shall be provided as required in IFC, Chapter 9, Section 907, and LSC Chapters as adopted, and in other rules promulgated by the Board.

3.3.2.2 All state-owned buildings, college and university buildings, other than institutional, with an occupant load of 100 or more, all schools with an occupant load of 50 or more, shall have an approved fire alarm system with the following features:

3.3.2.2.1 Products-of-combustion (smoke) detectors installed throughout all corridors and common areas of egress at the maximum prescribed spacing of thirty feet on center, and no more than fifteen feet from the walls.

3.3.2.2.2 In other than fully sprinklered buildings, automatic detectors shall be installed in each enclosed space, other than corridors, at maximum prescribed spacing as specified in NFPA, Standard 72, or by their listing.

3.3.2.2.3 Manual fire alarm boxes shall be provided as required. In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

3.3.2.2.4 The fire alarm system shall be connected to a proprietary panel, where provided within the complex.

3.3.3 Main Panel

3.3.3.1 An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

3.3.3.2 The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

3.3.4 System Wiring

3.3.4.1 System Wiring shall be in accordance with the following:

3.3.4.1.1 The Initiating Device circuits (IDC) shall be Style D as defined in NFPA, Standard 72.

3.3.4.1.2 The Indicating Appliance circuits (IAC) shall be Style Z as defined in NFPA, Standard 72.

3.3.4.1.3 Signaling line circuits shall be Style 6 or 7 as defined in NFPA, Standard 72.

3.3.4.2 All junction boxes shall be adequately identified as part of the fire alarm system. Covers for the concealed boxes shall be painted red.

3.3.5 System Devices

All equipment and devices shall be listed and/or labeled by a nationally recognized testing laboratory for fire alarm use.

3.3.6 Fan Shut Down

3.3.6.1 The fan shut down relay(s) in the air handling equipment shall be normally energized, and connected through and controlled by a normally closed contact in the fire alarm panel, or a normally closed contact of a remote relay under supervision by the main panel. The relays will transfer on alarm, and shall not restore until the panel is reset.

3.3.6.2 Duct detectors required by the IMC, shall be interconnected, and compatible with the fire alarm system.

3.3.7 Maintenance and Tests

The owner/administrator of each building shall insure maintenance and testing as required in IFC, Chapter 9, Section 901.5 and 901.6. A written log, verifying these tests, shall be kept on file for inspection by the AHJ.

3.4 Fireworks

3.4.1 IFC, Chapter 33, Section 3301.1.3 is amended to include the additional Exception:

5. The use of fireworks for display and retail sales is allowed as set forth in UCA 53-7-220 and UCA 11-3-1.

3.5 Health Care Facilities

3.5.1 LSC Chapters 18, 19, 20 and 21, Sections 18.1.2.4, 19.1.2.4, 20.1.2.2 and 21.1.2.2 (Exiting Through Adjoining Occupancies) exception is deleted.

3.5.2 LSC Chapter 19, Section 19.3.6.1, (Rooms Allowed open to Corridor) exceptions No. 1, No. 5, No. 6, and No. 8 are deleted.

3.6 Fire Department Connections

3.6.1 The fire department connection on automatic fire sprinkler and standpipe systems shall be located a reasonable distance as approved by the AHJ.

3.7 Fire Sprinklers and Standpipes

3.7.1 The potable water supply to automatic fire sprinkler and standpipe systems shall be protected against backflow as required in Utah Administrative Code, R156-56-707(41).

3.7.2 Antifreeze systems shall be protected against backflow as required in Utah Administrative Code, R156-56-707(42).

3.8 Water Supply Analysis

3.8.1 For proposed construction in both sprinklered and unsprinklered occupancies, the owner or architect shall provide an engineer's water supply analysis evaluating the available water supply.

3.8.2 The owner or architect shall provide the water supply analysis during the preliminary design phase of the proposed construction.

3.8.3 The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, Appendix A-9-2.1.

3.9 Fire Drills

3.9.1 IFC, Chapter 4, Section 405.2 is amended to include the following to Group E as specified in Table 405.2:

A fire drill in secondary schools shall be conducted at least every two months, to a total of four fire drills during the nine month school year. The first fire drill shall be conducted within the first two weeks of the school year.

3.10 Institutional

3.10.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word

"five" and replace it with the word "four".

3.10.2 IFC, Chapter 2, Section 202, Institutional Group I-1 is amended to add the following: On line nine add "type 1" in front of the words "assisted living facilities".

3.10.3 IFC, Chapter 2, Section 202, Institutional Group I-2 is amended as follows: On line three delete the word "five" and replace it with the word "three". On line eight after the words "detoxification facilities" delete the rest of the paragraph, and add the following: "ambulatory surgical centers with two or more operating rooms where care is less than 24 hours and type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

3.10.4 IFC, Chapter 2, Section 202, Institutional Group I-2, Child care facility is amended as follows: On line two delete the word "five" and replace it with the word "four".

3.10.5 IFC, Chapter 2, Section 202, Institutional Group I-4 day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

3.11 Automatic Sprinkler Systems

3.11.1 IFC, Chapter 9, Section 903.2.5 is deleted and rewritten as follows: An automatic fire sprinkler system shall be provided throughout buildings with Group I fire areas. Listed quick response or residential sprinkler heads shall be installed in patient ro resident sleeping areas.

3.11.2 IFC, Chapter 9, Section 903.2.9 is deleted and rewritten as follows: An automatic fire sprinkler system shall be provided throughout buildings with Group R-4 fire areas that contain more than eight occupants. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.12 Retroactive Installation of Automatic Fire Alarm Systems

3.12.1 IFC, Chapter 9, Sections 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4 and 907.3.1.9 is deleted.

R710-4-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-4-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared, for any reason, to be invalid, it is the intent of the Board that it would have passed all other portions of this Board action, independent of the elimination here from of any such portion as may be declared invalid.

R710-4-6. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ, or his authorized representative.

R710-4-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: fire prevention, public buildings
January 2, 2002 53-7-204
Notice of Continuation June 19, 1997

R710. Public Safety, Fire Marshal.
R710-6. Liquefied Petroleum Gas Rules.
R710-6-1. Adoption, Title, Purpose and Scope.

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 2001 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 1999 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, 1999 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 International Fire Code (IFC), Chapter 38, 2000 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-6-8, et seq.

1.5 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

1.6 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

1.7 Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

1.8 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

R710-6-2. Definitions.

2.1 "Board" means the Liquefied Petroleum Gas Board.

2.2 "Concern" means a person, firm, corporation, partnership, or association, licensed by the Board.

2.3 "Division" means the Division of the State Fire Marshal.

2.4 "Enforcing Authority" means the division, the municipal or county fire department, other fire prevention agency acting within its respective fire prevention jurisdiction, or the building official of any city or county.

2.5 "ICC" means International Code Council, Inc.

2.6 "IFC" means International Fire Code.

2.7 "License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business.

2.8 "LPG" means Liquefied Petroleum Gas.

2.9 "LPG Certificate" means a written document issued by the Division to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.10 "NFPA" means the National Fire Protection Association.

2.11 "Possessory Rights" means the right to possess LPG, but excludes broker trading or selling.

2.12 "Public Place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, travels, traverses or is likely to frequent.

2.13 "Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing.

2.14 "UCA" means Utah State Code Annotated 1953 as amended.

R710-6-3. Licensing.

3.1 Type of license.

3.1.1 Class I: A licensed dealer who is engaged in the business of installing gas appliances or systems for the use of LPG and who sells, fills, refills, delivers, or is permitted to deliver any LPG.

3.1.2 Class II: A business engaged in the sale, transportation, and exchange of cylinders, but not transporting or transferring gas in liquid.

3.1.3 Class III: A business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances, or LPG systems.

3.1.4 Class IV: Those businesses listed below:

3.1.4.1 Dispensers

3.1.4.2 Sale of containers greater than 96 pounds water capacity.

3.1.4.3 Other LPG businesses not listed above.

3.2 Signature on Application.

The application shall be signed by an authorized representative of the applicant. If the application is made by a partnership, it shall be signed by at least one partner. If the application is made by a corporation or association other than a partnership, it shall be signed by the principal officers, or authorized agents.

3.3 Issuance.

Following receipt of the properly completed application, an inspection, completion of all inspection requirements, and compliance with the provision of the statute and these rules, the Division shall issue a license.

3.4 Original, Valid Date.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals thereof shall be valid for one year from issuance.

3.5 Renewal.

Application for renewal shall be made on forms provided by the SFM.

3.6 Refusal to Renew.

The Board may refuse to renew any license in the same manner, and for any reason, that they are authorized, pursuant to Article 5 of these rules to deny a license. The applicant shall,

upon such refusal, have the same rights as are granted by Article 5 of this article to an applicant for a license which has been denied by the Board.

3.7 Change of Address.

Every licensee shall notify the Division, in writing, within thirty (30) days of any change of his address.

3.8 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.9 List of Licensed Concerns.

3.9.1 The Division shall make available, upon request and without cost, to the Enforcing Authority, the name, address, and license number of each concern that is licensed pursuant to these rules.

3.9.2 Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.10 Inspection.

The holder of any license shall submit such license for inspection upon request of the Division or the Enforcing Authority.

3.11 Notification and LPG Certificate.

Every licensed concern shall, within twenty (20) days of employment, and within twenty (20) days of termination of any employee, report to the Division, the name, address, and LPG certificate number, if any, of every person performing any act requiring an LPG certificate for such licensed concern.

3.12 Posting.

Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed location.

3.13 Duplicate License.

A duplicate license may be issued by the Division to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the Division. Such statement shall attest to the fact that the license has been lost or destroyed. If the original license is found it shall be surrendered to Division within 15 days.

3.14 Registration Number.

Every license shall be identified by a number, delineated as P-(number).

3.15 Accidents, Reporting.

Any accident where a licensee and LPG are involved must be reported to the Board in writing by the affected licensee within 3 days upon receipt of information of the accident. The report must contain any pertinent information such as the location, names of persons involved, cause, contributing factors, and the type of accident. If death or serious injury of person(s), or property damage of $5000.00 or more results from the accident, the report must be made immediately by telephone and followed by a written report.

3.16 Board investigation of accidents.

At their discretion, the Board will investigate, or direct the Division to investigate, all serious accidents as defined in Subsection 3.15.

R710-6-4. LP Gas Certificates.

4.1 Application.

Application for an LPG certificate shall be made in writing to the Division. The application shall be signed by the applicant.

4.2 Examination.

Every person who performs any act or acts within the scope of a license issued under these rules, shall pass an initial examination in accordance with the provisions of this article.

4.3 Types of Initial Examinations:

4.3.1 Carburetion

4.3.2 Dispenser

4.3.3 HVAC/Plumber

4.3.4 Recreational Vehicle Service

4.3.5 Serviceman

4.3.6 Transportation and Delivery

4.4 Initial Examinations.

4.4.1 The initial examination shall include an open book written test of the applicant's knowledge of the work to be performed by the applicant. The written examination questions shall be taken from the adopted statute, administrative rules, NFPA 54, and NFPA 58.

4.4.2 The initial examination shall also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant.

4.4.3 To successfully complete the written and practical initial examinations, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination will be graded separately. Failure of any one portion of the examination will not delete the entire test.

4.4.4 Examinations may be given at various field locations as deemed necessary by the Division. Appointments for field examinations are required.

4.4.5 As required in Sections 4.2 and 4.3, those applicants that have successfully completed the requirements of the Certified Employee Training Program (CETP), as written by the National Propane Gas Association, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.5 Original and Renewal Date.

Original LPG certificates shall be valid for one year from the date of issuance. Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid from for one year from issuance.

4.6 Renewal Date.

Application for renewal shall be made on forms provided by the Division.

4.7 Re-examination.

Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original certificate issuance, to comply with the provisions of Section 4.3 of these rules as follows:

4.7.1 The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of one 25 question open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

4.7.2 The 25 question re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on

practices of concern as noted by the Board or Division.

4.7.3 The certificate holder is responsible to complete the 25 question re-examination and return it to the Division in sufficient time to renew.

4.7.4 The certificate holder is responsible to return to the Division with the re-examination the correct renewal fees to complete that certificate renewal.

4.8 Refusal to Renew.

The Division may refuse to renew any LPG certificate in the same manner and for any reason that is authorized pursuant to Article 5.

4.9 Inspection.

The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

4.10 Type.

4.10.1 Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

4.10.2 Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.10.3 It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

4.11 Change of Address.

Any change in home address of any holder of a valid LPG certificate shall be reported by the registered person to the Division within thirty (30) days of such change.

4.12 Duplicate.

A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person. Such statement shall attest to the certificate having been lost or destroyed. If the original is found, it shall be surrendered to the Division within 15 days.

4.13 Contents of Certificate of Registration.

Every LPG certificate issued shall contain the following information:

4.13.1 The name and address of the applicant.

4.13.2 The physical description of applicant.

4.13.3 The signature of the LP Gas Board Chairman.

4.13.4 The date of issuance.

4.13.5 The expiration date.

4.13.6 Type of service the person is qualified to perform.

4.13.7 Have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

4.14 Minimum Age.

No LPG certificate shall be issued to any person who is under sixteen (16) years of age.

4.15 Restrictive Use.

4.15.1 No LPG certificate shall constitute authorization for any person to enforce any provisions of these rules.

4.15.2 A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

4.15.3 Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

4.15.4 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a LPG certificate has qualified shall be permissible by such applicant.

4.16 Right to Contest.

4.16.1 Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

4.16.2 Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the Division within 48 hours after taking said examination. Contentions shall state the reason for the objection.

4.16.3 The decision as to the action to be taken on the submitted contention shall be by the Board, and such decision shall be final.

4.16.4 The decision made by the Board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 Non-Transferable.

LPG Certificates shall not be transferable to another individual. Individual LPG certificates shall be carried by the person to whom issued.

4.18 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed forty five (45) days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination. In the event the employee fails the examination, re-examination shall be taken within 30 days. The employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

4.19 Certificate Identification.

Every LPG certificate shall be identified by a number, delineated as PE-(number). Such number shall not be transferred from one person to another.

R710-6-5. Adjudicative Proceedings.

5.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

5.2 The issuance, renewal, or continued validity of a license or LPG certificate may be denied, suspended or revoked by the Division, if the Division finds that the applicant, person employed for, or the person having authority and management of a concern commits any of the following violations:

5.2.1 The person or applicant is not the real person in interest.

(b) Material misrepresentation or false statement in the application, whether original or renewal.

5.2.2 Refusal to allow inspection by the Division or enforcing authority on an annual basis to determine compliance with the provisions of these rules.

5.2.3 The person, applicant, or concern for a license does not have the proper or necessary facilities, including qualified personnel, to conduct the operations for which application is

made.

5.2.4 The person or applicant for a LPG certificate does not possess the qualifications of skill or competence to conduct the operations for which application is made. This can also be evidenced by failure to pass the examination and/or practical tests.

5.2.5 The person or applicant refuses to take the examination.

5.2.6 The person or applicant has been convicted of any of the following:

5.2.6.1 a violation of the provisions of these rules;

5.2.6.2 a crime of violence or theft; or

5.2.6.3 a crime that bears upon the person or applicant's ability to perform their functions and duties.

5.2.7 The person or applicant does not complete the re-examination process by the person or applicants certificate or license expiration date.

5.3 A person whose license or certificate of registration is suspended or revoked by the Division shall have an opportunity for a hearing before the LPG Board if requested by that person within 20 days after receiving notice.

5.4 All adjudicative proceedings, other than criminal prosecution, taken by the Enforcing Authority to enforce the Liquefied Petroleum Gas Section, Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

5.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

5.6 The Board shall direct the Division to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

5.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

5.8 After a period of three (3) years from the date of revocation, the Board may review the written application of a person whose license or certificate of registration has been revoked.

5.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

R710-6-6. Fees.

6.1 Fee Schedule.

TABLE

6.1.1 License and LPG Certificates (new and renewals):	
6.1.1.1 License	
6.1.1.1.1 Class I	$300.00
6.1.1.1.2 Class II	300.00
6.1.1.1.3 Class III	70.00
6.1.1.1.4 Class IV	100.00
6.1.1.2 Branch office license	225.00
6.1.1.3 LPG Certificate	30.00
6.1.1.4 LPG Certificate (Dispenser--Class B)	10.00
6.1.1.5 Duplicate	30.00
6.1.2 Examinations:	
6.1.2.1 Initial examination	20.00
6.1.2.2 Re-examination	20.00
6.1.2.3 Five year examination	20.00
6.1.3 Plan Reviews:	
6.1.3.1 More than 5000 water gallons of LPG	90.00
6.1.3.2 5,000 water gallons or less of LPG	45.00
6.1.4 Special Inspections.	
6.1.4.1 Per hour of inspection (charged in half hour increments with part half hours charged as full half hours).	30.00
6.1.5 Re-inspection (3rd Inspection or more)	250.00

6.2 Payment of Fees.

The required fee shall accompany the application for license or LPG certificate or submission of plans for review.

6.3 Late Renewal Fees.

6.3.1 Any license or LPG certificate not renewed on or before one year from the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

6.3.2 When an LPG certificate has expired for more than one year, an application shall be made for an original certificate as if the application was being taken for the first time. Examinations will be retaken with initial examination fees.

R710-6-7. Board Procedures.

7.1 The Board will review the Division and Enforcing Authorities activities since the last meeting, and review and act on license and permit applications, review financial transactions, consider recommendations of the Division, and all other matters brought to the Board.

7.2 The Board may be asked to serve as a review board for items under disagreement.

7.3 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman.

7.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the Division, not less than twenty-one (21) days before the regularly scheduled Board meeting.

7.5 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

7.6 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

7.7 The Division shall provide the Board with a secretary, who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least twenty-one (21) days prior to the scheduled Board meeting.

7.8 The Board may be called upon to interpret codes adopted by the Board.

7.9 The Board Chairman may assign member(s) various assignments as required to aid in the promotion of safety, health and welfare in the use of LPG.

R710-6-8. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board:

8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:

8.1.1 All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.

8.1.2 If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

8.1.3 The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.

8.1.4 The inspection records shall be available to be inspected on a regular basis by the Division.

8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).

8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:

8.3.1 Those excluded from the act in UCA, Section 53-7-303.

8.3.2 Containers under federal control.

8.3.3 Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.

8.3.4 Containers located at private residences.

8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the licensed dealer stating that those using the self-serve key or card service have been trained.

8.5 IFC Amendments:

8.5.1 IFC, Section 3801.2 Permits. On line 2 after the word "105.7" add "and the adopted LPG rules".

8.5.2 IFC, Section 3803.1 - General. After the word "Code" on line 2 insert ",NFPA 54.

8.5.3 Section 3809.12 is deleted and replaced with NFPA, Standard 58, Section 5-4.1.

8.6 NFPA, Standard 58 Amendments:

8.6.1 NFPA, Standard 58, Section 2-2.1.3 is amended to add the following section: (c) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels". All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels", Section VIII, and shall either be registered by the National Board of Boiler and Pressure Vessel Inspectors or the Manufacturer's Data Report for Pressure Vessels, Form U-1A, be provided.

8.6.2 NFPA, Standard 58, Section 2-2.1.3 is amended to add the following section: (d) If an existing container is relocated within the State of Utah, and depending upon the container size, does not bear the required ASME construction code and/or National Board Stamping, the new owner may submit to the Division a request for "Special Classification Permit". Material specifications and calculations of the container shall be submitted to the Division by the new owner. Also, the new owner shall insure that a review of the proposed container be completed by a registered professional engineer experienced in pressure vessel container design and construction, and the new owner submit that report to the Division. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

8.6.3 NFPA, Standard 58, Section 2-2.1.9 is deleted and rewritten as follows: Repair or alteration of containers shall comply with the latest edition of the National Board Inspection Code or the API Pressure Vessel Inspection Code as applicable. Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

8.6.4 NFPA, Standard 58, Section 2-2.5.1 is amended to add the following: Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

8.6.5 NFPA Standard 58, Sections 2-4.3(3)(a) and (b) are deleted and amended to read as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

8.6.6 NFPA, Standard 58, Section 5.4.1.1 is deleted and rewritten as follows: At least 10 feet from the doorway or opening frequented by the public.

R710-6-9. Penalties.

9.1 Civil penalties for violation of any rule or referenced code shall be as follows:

TABLE

9.1.1	Concern failure to license	$210.00 to $900.00
9.1.2	Person failure to obtain LPG Certificate	$30.00 to $90.00
9.1.3	Failure of concern to obtain LPG Certificate for employees who dispense LPG	$210.00 to $900.00
9.1.4	Concern doing business under improper class	$140.00 to $600.00
9.1.5	Failure to notify SFM of change of address	$60.00
	Violation of the adopted Statute or Rules	$210.00 to $900.00

9.2 Rationale.

9.2.1 Double the fee plus the cost of the license.

9.2.2 Double the fee plus the cost of the certificate.

9.2.3 Double the fee plus the cost of the license.

9.2.4 Double the fee.

9.2.5 Based on two hours of inspection fee at $30.00 per hour.

9.2.6 Triple the fee.

KEY: liquefied petroleum gas
January 2, 2002 **53-7-305**
Notice of Continuation July 5, 2001

R710. Public Safety, Fire Marshal.
R710-8. Day Care Rules.
R710-8-1. Adoption of Codes.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any day care facility or children's home.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2000 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-8-3, et seq.

1.2 International Building Code (IBC), 2000 edition, as published by the International Code Council, Inc. (ICC), and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.3 Copies of the above codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-8-2. Definitions.

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Client" means a child or adult receiving care from other than a parent, guardian, relative by blood, marriage or adoption.

2.4 "Day Care Facility" means any building or structure occupied by clients of any age who receive custodial care for less than 24 hours by individuals other than parents, guardians, relatives by blood, marriage or adoption.

2.5 "Day Care Center" means providing care for five or more clients in a place other than the home of the person cared for. This would also include Child Care Centers or Hourly Child Care Centers licensed by the Department of Health.

2.6 "Family Day Care" means providing care for clients listed in the following two groups:

2.6.1 Type 1 - Services provided for five to eight clients in a home. This would also include a home that is certified by the Department of Health as Residential Certificate Child Care or licensed as Family Child Care.

2.6.2 Type 2 - Services provided for nine to sixteen clients in a home with sufficient staffing. This would also include a home that is licensed by the Department of Health as Family Child Care.

2.7 "IBC" means International Building Code.

2.8 "ICC" means International Code Council, Inc.

2.9 "IFC" means International Fire Code.

2.10 "SFM" means State Fire Marshal.

R710-8-3. Amendments and Additions.

3.1 Exemptions

3.1.1 Places of religious worship shall not be required to meet the provisions of this rule in order to operate a nursery or day care while religious services are being held in the building.

3.2 Fire Code Amendments

3.2.1 IFC, Chapter 2, Section 202, Educational E, Day Care is amended as follows: On line three delete the word "five" and replace it with the word "four".

3.2.2 IFC, Chapter 2, Section 202, Institutional Group I-4, day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

3.2.3 IFC, Chapter 9, Sections 907.3.1.1 Group E is deleted.

3.3 Family Day Care

3.3.1 Family Day Care units shall have on each floor occupied by clients, two separate means of egress, arranged so that if one is blocked the other will be available.

3.3.2 Family Day Care units that are located in the basement or on the second story shall be provided with two means of egress, one of which shall discharge directly to the outside.

3.3.2.1 Type 1 Family Day Care units, located on the ground level or in a basement, may use an emergency escape or rescue window as allowed in IFC, Chapter 10, Section 1009.

3.3.3 Family Day Care units shall not be located above the second story.

3.3.4 In Family Day Care units, clients under the age of two shall not be located above or below the first story.

3.3.5 Family Day Care units located in split entry/split level type homes in which stairs to the lower level and upper level are equal or nearly equal, may have clients housed on both levels when approved by the AHJ.

3.3.6 Family Day Care units shall have a portable fire extinguisher on each level occupied by clients, which shall have a classification of not less than 2A:10BC, and shall be serviced in accordance with NFPA, Standard 10.

3.3.7 Family Day Care units shall have single station smoke detectors in good operating condition on each level occupied by clients. Battery operated smoke detectors shall be permitted if the facility demonstrates testing, maintenance, and battery replacement to insure continued operation of the smoke detectors.

3.3.8 Rooms in Family Day Care units that are provided for clients to sleep or nap, shall have at least one window or door approved for emergency escape.

3.3.9 Fire drills shall be conducted in Family Day Care units monthly and shall include the complete evacuation from the building of all clients and staff. At least quarterly, in Type I Family Day Care units, the fire drill shall include the actual evacuation using the escape or rescue window, if one is used as a substitute for one of the required means of egress.

3.4 Day Care Centers

3.4.1 Day Care Centers shall comply with either I-4 requirements or E requirements of the IBC, whichever is applicable for the type of Day Care Center.

3.4.2 Fire Drills shall be completed as required in IFC, Chapter 4, Section 405.

3.5 Requirements for all Day Care

3.5.1 Heating equipment in spaces occupied by children shall be provided with partitions, screens, or other means to protect children from hot surfaces and open flames.

3.5.2 A fire escape plan shall be completed and posted in a conspicuous place. All staff shall be trained on the fire escape

plan and procedure.

3.5.3 The AHJ shall insure at each inspection there is sufficient adult staff to client ratios to allow safe and orderly evacuation in case of fire.

3.5.3.1 For Day Care involving children, the AHJ may use the care giver to children ratios established in rule by the Department of Health as an established guideline.

R710-8-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-8-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-8-6. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ.

R710-8-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving the final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: fire prevention, day care
January 2, 2002 53-7-204
Notice of Continuation May 2, 1997

R710. Public Safety, Fire Marshal.
R710-9. Rules Pursuant to the Utah Fire Prevention Law.
R710-9-1. Title and Authority.

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention Law", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

R710-9-2. Definitions.

2.1 "Academy" means Utah Fire and Rescue Academy.

2.2 "Academy Director" means the Director of the Utah Fire and Rescue Academy.

2.3 "Administrator" means Fire Service Education Administrator.

2.4 "Board" means Utah Fire Prevention Board.

2.5 "Certification Council" means Utah Fire Service Certification Council.

2.6 "Coordinator" means Fire Education Program Coordinator.

2.7 "Division" means State Fire Marshal.

2.8 "ICC" means International Code Council, Inc.

2.9 "IFC" means International Fire Code.

2.10 "Institutional occupancy" means asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health care facilities, children's homes or institutions, or any similar institutional occupancy.

2.11 "LFA" means Local Fire Authority.

2.12 "NFPA" means National Fire Protection Association.

2.13 "Place of assembly" means where 50 or more people gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education.

2.14 "Plan" means Fire Academy Strategic Plan.

2.15 "SFM" means State Fire Marshal.

2.16 "Standards Council" means Fire Service Standards and Training Council.

2.17 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.18 "UCA" means Utah Code Annotated, 1953.

R710-9-3. Specific Editions of the Fire Code and Standards.

3.1 The International Fire Code (IFC), 2000 edition, excluding appendices, as promulgated by the International Code Council, Inc., is hereby adopted and incorporated by reference as the state fire code, for the safeguarding of life and property from the hazards of fire and explosion, except as amended by provisions listed in R710-9-6, et seq.

3.2 National Fire Protection Association (NFPA), Standard 160, Standard for Flame Effects Before an Audience, 1998 edition, except as amended by provisions listed in R710-9-6, et seq.

R710-9-4. Conduct of Board Members and Board Meetings.

4.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

4.2 A quorum shall be required to approve any action of the Board.

4.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

4.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less that 21 days before the regularly scheduled Board meetings.

4.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

4.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

4.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governors office for status review.

R710-9-5. Procedures to Amend the International Fire Code.

5.1 All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the Board at the next regularly scheduled Board meeting.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next regularly scheduled Board meeting.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

5.3.1 accept the proposed amendment as submitted or as modified by the Board;

5.3.2 reject the proposed amendment;

5.3.3 submit the proposed amendment to the Board Amendment Subcommittee for further study; or

5.3.4 return the proposed amendment to the requesting agency, accompanied by Board comments, allowing the requesting agency to resubmit the proposed amendment with modifications.

5.4 The Board Amendment Subcommittee shall report its recommendation to the Board at the next regularly scheduled Board meeting.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting following the original submission.

5.6 The Board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

5.7 When approved by the Board, the requesting agency shall provide to the division within 45 days, the completed ordinance.

5.8 The division shall maintain a list of amendments to the IFC that have been granted by the Board.

5.9 The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of UCA, 63-2-203.

R710-9-6. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board for application statewide:

6.1 Institutional

6.1.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word "five" and replace it with the word "four".

6.1.2 IFC, Chapter 2, Section 202, Institutional Group I-1 is amended to add the following: On line nine add "type 1" in front of the words "assisted living facilities".

6.1.3 IFC, Chapter 2 Section 202, Institutional Group I-2 is amended as follows: On line three delete the word "five" and replace it with the word "three". On line eight after the words "detoxification facilities" delete the rest of the paragraph, and add the following: "ambulatory surgical centers with two or more operating rooms where care is less than 24 hours and type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

6.1.4 IFC, Chapter 2, Section 202, Institutional Group I-2, Child care facility is amended as follows: On line two delete the word "five" and replace it with the word "four".

6.1.5 IFC, Chapter 2, Section 202, Institutional Group I-4 day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

6.2 Record Drawings

6.2.1 IFC, Chapter 9, Section 901.2.1 is amended to add the following: The code official has the authority to request record drawings ("as builts") to verify any modifications to the previously approved construction documents.

6.2.2 IFC, Chapter 9, Section 902.1 Definitions, RECORD DRAWINGS is deleted and rewritten as follows: Drawings ("as builts") that document all aspects of a fire protection system as installed.

6.3 Automatic Fire Sprinkler Systems

6.3.1 IFC, Chapter 9, Section 903.2.5 is deleted to include the exception and rewritten as follows: An automatic fire sprinkler system shall be provided throughout buildings with Group I fire areas. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

6.4 Class K Portable Fire Extinguishers

6.4.1 IFC, Chapter 9, Section 906.4, and NFPA, Standard 10, Section 2-3.2, 1998 edition, is deleted and replaced with the following:

6.4.1.1 Class K labeled portable fire extinguishers shall be provided for the protection of commercial food heat-processing equipment using vegetable or animal oils and fat cooking media. A placard shall be provided and placed above the Class K portable fire extinguisher that states that if a fire protection system exists, it shall be activated prior to use of the Class K portable fire extinguisher.

6.4.1.2 Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-BC, and specifically placed for protection of commercial food heat-processing equipment, shall be allowed to remain in use in the kitchen area to provide protection to hazards other than the commercial food heat-processing oils and cooking media.

6.5 Retroactive Installations of Automatic Fire Alarm Systems in Existing Buildings

6.5.1 IFC, Chapter 9, Sections 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4, 907.3.1.6, 907.3.1.7, 907.3.1.8 and 907.3.1.9 are deleted.

6.6 Backflow Protection

6.6.1 The potable water supply to automatic fire sprinkler systems and standpipe systems shall be protected against backflow as required in Utah Administrative Code, R156-56-707(41).

6.7 Exit Signs

6.7.1 IFC, Chapter 10, Section 1003.2.10 is amended to add the following section: 1003.2.10.1.1 Floor-level exit signs. Where exit signs are required in Section 1003.2.10.1, additional approved exit signs that are internally or externally illuminated, photo luminescent or self-luminous, shall be provided in all corridors serving guest rooms of R-1 occupancies and amusement building exits. The bottom of such signs shall not be less than six inches (152mm) nor more than 8 inches (203mm) above the floor level and shall indicate the path of travel. For exit and access doors, the sign shall be on the door or adjacent to the door with the closest edge of the sign within eight inches (203mm) of the door frame.

6.8 Fireworks

6.8.1 IFC, Chapter 33, Section 3301.1.3 is amended to add the following Exception: 5. The use of fireworks for display and retail sales is allowed as set forth in UCA 53-7-220 and UCA 11-3-1.

6.9 Flammable and Combustible Liquids

6.9.1 IFC, Chapter 34, Section 3404.4.3 is amended as follows: Delete 3403.6 on line three and replace it with 3403.4.

6.10 Liquefied Petroleum Gas

6.10.1 IFC, Chapter 38, Section 3809.12, is amended as follows: Delete 20 from line three and replace it with 10.

R710-9-7. Fire Advisory and Code Analysis Committee.

7.1 There is created by the Board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the Board in the matters of fire prevention and building codes.

7.2 The committee shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve for a term of three years, and shall consist of the following members:

7.2.1 A member of the State Fire Marshal's Office.

7.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

7.2.3 A fire marshal from a local fire department.

7.2.4 A fire inspector or fire officer involved in fire prevention duties.

7.2.5 A member appointed at large.

7.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

7.4 The Council shall meet as directed by the Board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require

definitive and specific analysis.

7.5 The Council shall select one of it's members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

7.6 The chair or vice chair of the council shall report to the Board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

R710-9-8. Fire Service Education Administrator and Fire Education Program Coordinator.

8.1 There is created by the Board a Fire Service Education Administrator for the State of Utah. This Administrator shall be the State Fire Marshal.

8.2 The Administrator shall oversee statewide fire service education of all personnel receiving training monies from the Fire Academy Support Account.

8.2.1 The Administrator shall oversee fire service education in fire suppression, fire prevention, fire administration, operations, hazardous materials, rescue, fire investigation, and public fire education in the State of Utah.

8.3 The Administrator shall dedicate sufficient time and efforts to ensure that those monies dedicated from the Fire Academy Support Account are expended in the best interests of all personnel receiving fire service education.

8.4 The Administrator shall ensure equitable monies are expended in fire service education to volunteer, career, and prospective fire service personnel.

8.5 The Administrator shall as directed by the Board, solicit the legislature for funding to ensure that fire service personnel receive sufficient monies to receive the education necessary to prevent loss of life or property.

8.6 The Administrator shall oversee the Fire Department Assistance Grant program by completing the following:

8.6.1 Insure that a broad based selection committee is impaneled each year.

8.6.2 Compile for presentation to the Board the proposed grants.

8.6.3 Receive the Board's approval before issuing the grants.

8.7 The Administrator shall if necessary, establish proposed changes to fire service education statewide, insuring personnel receive the most proficient and professional training available, insure completion of agreements and contracts, and insure that payments on agreements and contracts are completed expeditiously.

8.8 The Administrator shall report to the Board at each regularly scheduled Board meeting the current status of fire service education statewide. The Administrator shall present any proposed changes in fire service education to the Board, and receive direction and approval from the Board, before making those changes.

8.9 To assist the Administrator in statewide fire service education there is hereby created a Fire Education Program Coordinator.

8.10 The Coordinator shall conduct fire service education evaluations, budget reviews, performance audits, and oversee the effectiveness of fire service education statewide.

8.11 The Coordinator shall ensure that there is an established Utah Fire Service Strategic Training Plan for fire service education statewide. The Coordinator shall work with the Academy Director to update the Strategic Plan and keep it current to the needs of the fire service.

8.12 The Coordinator shall report findings of audits, budgetary reviews, training contracts or agreements, evaluation of training standards, and any other necessary items of interest with regard to fire service education to the Administrator.

8.13 The Coordinator shall ensure that contracts are established each year for training and education of fire personnel that meets the needs of those involved in fire service education statewide.

8.14 The Coordinator shall be the staff assistant to the Fire Service Standards and Training Council and shall present agenda items to the Council Chair that need resolution or review. As the staff assistant to the Training Council, the coordinator shall ensure that appointed members attend, encourage that the decisions made further the interests of fire service education statewide, and ensure that the Board is kept informed of the Training Council's decisions.

R710-9-9. Enforcement of the Rules of the State Fire Marshal.

9.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

9.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

9.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

9.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

9.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

9.4.2 Public and private schools.

9.4.3 Privately owned colleges and universities.

9.4.4 Institutional occupancies as defined in Section 9-2 of this rule.

9.4.5 Places of assembly as defined in Section 9-2 of this rule.

9.5 The Board shall require prior to approval of a grant the following:

9.5.1 That the applying fire agency be actively participating in the statewide fire statistics reporting program.

9.5.2 The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

R710-9-10. Fire Service Standards and Training Council.

10.1 There is created by the Board, the Fire Service Standards and Training Council, whose duties are to provide direction to the Board and Academy in matters relating to fire service standards, training, and certification.

10.2 This Council shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve three year terms, and shall consist of the following members:

10.2.1 Representative from the Utah State Fire Chiefs Association.

10.2.2 Representative from the Utah State Firemen's Association.

10.2.3 Representative from the Fire Marshal's Association of Utah.

10.2.4 Specialist in hazardous materials representing the Hazardous Materials Institute.

10.2.5 Fire/arson investigator representing the Utah Chapter of the International Association of Arson Investigators.

10.2.6 Specialist in wildland fire suppression and prevention from the Utah State Division of Forestry, Fire and State Lands.

10.2.7 Representative from the International Association of Firefighters.

10.2.8 Representative from the Utah Fire Service Certification Council.

10.2.9 Representative from the fire service that sits on the Utah State Emergency Medical Services Committee.

10.2.10 Representative from the Utah Fire Training Officers Association.

10.3 The Council shall meet quarterly and may hold other meetings as necessary for proper transaction of business. The majority of the Council shall be present to constitute a quorum.

10.4 The Council shall select one of its members to act in the position of chair, and another member to act as vice chair. The chair and vice chair shall serve one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year. If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.

10.5 If a council member has two or more unexcused absences during a 12 month period, from regularly scheduled Council meetings, it is considered grounds for dismissal pending review by the Board. The Coordinator shall submit the name of the Council member to the Board for status review.

10.6 A member of the Council may have a representative of their respective organization sit in proxy of that member, if submitted in writing and approved by the Coordinator prior to the meeting.

10.7 The Chair or Vice Chair of the Council shall report to the Board the activities of the Council at regularly scheduled Board meetings. The Coordinator may report to the Board the activities of the Council in the absence of the Chair or Vice Chair.

10.8 The Council shall consider all subjects presented to them, subjects assigned to them by the Board, and shall report their recommendations to the Board at regularly scheduled Board meetings.

R710-9-11. Fire Prevention Board Budget and Amendment Sub-Committees.

11.1 There is created two Fire Prevention Board Sub-Committees known as the Budget Subcommittee and the Amendment Subcommittee. The subcommittees membership shall be appointed from members of the Board.

11.2 Membership on the Sub-Committee shall be by appointment of the Board Chair or as volunteered by Board members. Membership on the Sub-Committee shall be limited to four Board members.

11.3 The Sub-Committee shall meet as necessary and shall vote and appoint a chair to represent the Sub-Committee at regularly scheduled Board meetings.

R710-9-12. Utah Fire Service Certification Council.

12.1 There is created by the Board, the Utah Fire Service Certification Council, whose duties are to oversee fire service certification in the State of Utah.

12.2 The Certification Council shall be made up of 12 members, appointed by the Academy Director, approved by the Board, and each member shall serve three year terms.

12.3 The Certification Council shall be made up of users of the certification system and comprise both paid and volunteer fire personnel, members with special expertise, and members from various geographical locations in the state.

12.4 The purpose of the Certification Council is to provide direction on all aspects of certification, and shall report the activities of the Certification Council to the Fire Service Standards and Training Council.

12.5 Functioning of the Certification Council with regard to certification, re-certification, testing, meeting procedures, examinations, suspension, denial, annulment, revocation, appeals, and reciprocity, shall be conducted as specified in the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual.

12.6 A copy of the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual, shall be kept on file at the State Fire Marshal's Office and the Utah Fire and Rescue Academy.

R710-9-13. Utah Fire and Rescue Academy.

13.1 The fire service training school shall be known as the Utah Fire and Rescue Academy.

13.2 The Director of the Utah Fire and Rescue Academy shall report to the Administrator the activities of the Academy with regard to completion of the agreed academy contract.

13.3 The Academy Director may recommend to the Administrator or Coordinator new or expanded standards regarding fire suppression, fire prevention, public fire education, safety, certification, and any other items of necessary interest about the Academy.

13.4 The Academy shall receive approval from the Administrator, after being presented to the Standards and Training Council, any substantial changes in Academy training programs that vary from the agreed contract.

13.5 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those students attending the Academy in the following categories:

13.6.1 Those participating in the certification process and those who have received certification during the previous

contract period.

13.6.2 Those working towards and those who have received an Associate in Fire Science in the previous contract period.

13.6.3 Those who have completed other Academy classes during the previous contract period.

13.6 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical comparison of the categories required in Section 13.5, comparing attendance in the previous contract period.

13.7 The Academy Director shall provide to the Coordinator by October 1st of each year, in accepted budgeting practices, a cost analysis of classes provided by the Academy, and the cost per student to the Academy to provide those classes.

13.8 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those students attending Academy courses in the following categories:

13.8.1 Non-fire service personnel enrolled in college courses.

13.8.2 Volunteer or career fire service personnel enrolled in college credit courses.

13.8.3 Volunteer or career fire service personnel enrolled in non-credit continuing education courses.

13.9 The Academy Director shall present to the Coordinator by January of each year, proposals to be incorporated in the Academy contract for the next fiscal year.

R710-9-14. Deputizing Persons to Act as Special Deputy State Fire Marshals.

14.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

14.2 Special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancies listed in the Fire Prevention Law.

14.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

14.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

14.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

R710-9-15. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-9-16. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-9-17. Adjudicative Proceedings.

17.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

17.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the UFC, the appealing party may petition the Board to act as the board of appeals.

17.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

17.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63-46b-3.

17.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

17.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

17.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

17.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: fire prevention, law
January 2, 2002 53-7-204
Notice of Continuation June 19, 1997

R746. Public Service Commission, Administration.
R746-348. Interconnection.
R746-348-1. Applicability.

These rules apply to each certified telecommunications corporation that provides local exchange service in Utah.

R746-348-2. 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 Section 54-8b-2 or these rules. As used in these rules, unless context states otherwise, the following definitions shall apply:

1. "Collocation" --

a. Physical collocation is an offering by an incumbent local exchange carrier that enables a requesting telecommunications corporation to:

i. place its own equipment to be used for interconnection or access to unbundled network elements within or upon an incumbent local exchange carrier's premises;

ii. use the equipment to interconnect with an incumbent local exchange carrier's network facilities for the transmission and routing of telephone exchange service, exchange access service, or both, or to gain access to an incumbent local exchange carrier's unbundled network elements for the provision of a telecommunications service;

iii. enter those premises, subject to reasonable terms and conditions, to install, maintain and repair equipment necessary for interconnection or access to unbundled elements; and

iv. obtain reasonable amounts of space in an incumbent local exchange carrier's premises, for the equipment necessary for interconnection or access to unbundled elements, allocated on a first-come, first-served basis entrants who are ready and able to use the entire space they receive within a reasonable time.

b. Virtual collocation is an offering by an incumbent local exchange carrier that enables a requesting telecommunications corporation to:

i. Designate or specify equipment to be used for interconnection or access to unbundled network elements to be located within or upon an incumbent local exchange carrier's premises, and dedicated to that telecommunications carrier's use;

ii. use that equipment to interconnect with an incumbent local exchange carrier's network facilities for the transmission and routing of telephone exchange service, exchange access service, or both, or for access to an incumbent local exchange carrier's unbundled network elements for the provision of a telecommunications service; and

iii. Electronically monitor and control its communications channels terminating in that equipment.

2. "Common Transport Links" -- means shared transmission facilities between two switching systems where traffic originating with or terminating to multiple telecommunication service providers is comingled. These facilities normally exist between end offices and a tandem switch.

3. "Dedicated Transport Links" -- means transmission facilities between two switching systems where traffic originates with or terminates to the same or another public telecommunications service provider.

4. "Incumbent Local Exchange Carrier" -- means the local exchange carrier that on February 8, 1996, provided telephone exchange service in a defined geographic service territory, and on that date was a member of the Exchange Carrier Association pursuant to 47 CFR 69.601(b), or is a person that became a successor or assign of a member of the Exchange Carrier Association.

5. "Interconnection" -- means the linking of two networks for the mutual exchange of traffic. It does not include the transport and termination of traffic.

6. "Local Number Portability" -- means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without unreasonable impairment of quality, reliability, or convenience when switching from one telecommunications corporation to another.

7. "Loop Concentration" -- means the function performed by electronic equipment that provides for the multiplexing or demultiplexing of a quantity of loops into a different number of digital or optical communication channels that connect to another network element.

8. "Loop Distribution" -- means transmission facilities from the termination of the feeder or loop concentration facility to the customer's network interface.

9. "Loop Feeder" -- means transmission facilities between a central office and the distribution cable or a loop concentration facility.

10. "Network Elements" -- means the features, functions, and capabilities of network facilities and equipment used to transmit, route, bill or otherwise provide public telecommunications services.

11. "Network Interface Device" -- means the cross connect device used to connect loop facilities to intra-premises cabling or inside wiring.

12. "Operator Systems" -- means systems used to provide live or mechanized operator functions to assist end users with call completion, call assistance, and directory assistance.

13. "Operational Support" -- means the processing of local exchange customer service and repair orders, and the electronic exchange of billing, customer account, service provisioning and service administration data among local exchange service providers.

14. "Premises" -- shall carry the same definition as prescribed in 47 CFR 51.5.

15. "Service Control Point" -- means a database in the signaling network where queries for call processing instructions are directed.

16. "Signaling Links" -- means transmission facilities in a signaling network which carry any out-of-band signaling channels from and between the various elements of a signaling network.

17. "Signal Transfer Point" -- means a packet switch that acts as a routing hub for a signaling network and transfers messages between various points in and among signaling networks.

18. "Switch" -- means a facility required to connect lines or trunks to a communications transmission path.

19. "Tandem Switch" -- means a facility that connects trunks to trunks in order to complete inter-switch calls.

20. "Unbundling" means the disaggregation of facilities

and functions into multiple network elements and services that can be individually purchased by a competing public telecommunications service provider.

R746-348-3. Terms and Conditions of Facilities Interconnection.

A. Points of Interconnection -- Incumbent local exchange carriers shall allow any other public telecommunication service provider to interconnect its network at any technically feasible point, to provide transmission and routing of public telecommunication services.

1. A local exchange service provider requesting interconnection with an incumbent local exchange carrier shall identify a desired point of interconnection.

B. Joint Facilities Construction and Use -- In furtherance of efficient interconnection contemplated by Sections 54-4-8 and 54-4-12, public telecommunication service providers may jointly construct interconnection facilities and apportion the cost and expense between any joint users of the facility.

1. The incumbent local exchange carrier and the requesting local exchange service provider shall negotiate meet points for interconnection. Each party shall be responsible for the costs of constructing its facilities to the meet point, and neither party may impose a meet point that would require that one party incur significantly greater construction costs to build to the meet point than the other party.

C. Types of Line Connection -- The requesting local exchange provider shall choose either DS-3, DS-1, or DS-0 connections or other technically feasible interconnection interfaces and protocols including loops conditioned to provide digital subscriber line services.

D. Collocation Rate Elements -- Physical and virtual collocation shall be offered under terms and conditions that are just, reasonable, and nondiscriminatory.

R746-348-4. Reciprocity.

A. Compliance -- Interconnection of the facilities of public telecommunications service providers shall be fully reciprocal, shall not be unreasonably delayed or withheld and shall fully comply with Subsection 54-8b-2.2(1)(b) and 47 USC Sections 224, 251, 252, 256 and Subsection 271(c).

B. Written Acknowledgment -- Each local exchange service provider shall provide written acknowledgment, within five business days, of receipt of a written request by another local exchange service provider for interconnection facilities and services.

C. Time Limit -- Incumbent local exchange carriers and other terminating local exchange service providers shall provide interconnection facilities and services within 60 days following receipt of a written request unless the Commission extends the time.

R746-348-5. Construction and Maintenance.

A. Responsibility -- Each local exchange service provider shall be responsible for construction and maintenance of facilities on its side of the point of interconnection, unless two or more providers mutually agree to another arrangement.

B. Standards -- Each local exchange service provider shall construct and maintain its facilities at the point of interconnection in accordance with accepted engineering standards and practices in the exchange carrier industry.

1. Each terminating provider will make available to each originating provider any documents and technical references issued by industry standards bodies or equipment manufacturers which define the engineering specifications necessary for the originating provider's equipment to interface with the terminating provider's essential interconnection facilities.

2. No local exchange service provider shall construct or maintain facilities on its side of the point of interconnection in a manner contrary to 47 USC Section 256, or in a manner that is lower in quality than that which it provides itself, its affiliates, or another local exchange service provider.

R746-348-6. Ancillary Features and Functions.

A. Compliance -- Incumbent local exchange carriers shall make available to other local exchange service providers the following network features and functions pursuant to 47 USC Section 251 and Subsection 54-8b-2.2.

1. Access to signaling protocols and elements of signaling protocols used to route local and interexchange traffic, including access to signaling links, signal transfer points, and service control points through the incumbent local exchange carrier's signal transfer point.

2. Answer and disconnect supervision as well as the information necessary for customer billing.

a. Telecommunications corporations shall protect customer proprietary network information in compliance with 47 USC Section 702 and applicable federal and state rules.

b. Telecommunications corporations shall enter into billing and collection agreements to permit exchange of telephone line number information, use of non-proprietary calling cards, and collect billing of third-party calls to a number served by another provider.

3. Local exchange service providers shall provide the capability for operators on interconnected networks to perform functions such as completing collect calls, third party calls, busy line verification calls, and busy line interrupt.

4. Local exchange service providers shall develop and implement repair service referral procedures to direct trouble reports to the correct provider.

5. Pursuant to contract or tariff, each local exchange service provider shall offer electronic interfaces to operational support systems to enable other certified local exchange service providers to provide service quality equal to that required by the Commission for incumbent local exchange carriers. These contracts or tariffs shall be approved by the Commission and available for public review.

6. Local exchange service providers shall provide nondiscriminatory access to subscriber information, such as that contained in published "White Pages" telephone directories.

a. Customers of local exchange service providers shall receive directories as part of basic local exchange service.

b. An incumbent local exchange service provider, or its affiliate, shall make available to a new local exchange service provider adequate space in the Customer Guide pages of the directory to allow a new local exchange service provider to provide its customers and prospective customers with information reasonably similar to that provided by an incumbent

local exchange service provider for its customers.

B. Emergency Call Networks -- Each local exchange service provider will cooperate to insure the seamless operation of emergency call networks, including 911, E-911 and 0- calls.

1. Incumbent local exchange carriers will permit other local exchange service providers to interconnect at its E-911 tandem so that each local exchange service provider's customers may place calls to public safety answering points by dialing 911.

2. Local exchange service providers shall not charge each other for any service, activity or facility associated with provision of 911 or E-911 services other than call transport and termination charges.

R746-348-7. Essential Facilities and Services.

A. Designation -- At a minimum, the following are considered to be essential facilities or services pursuant to 54-8b-2. 2.:

1. Unbundled local loops including 2-wire, 4-wire and digital subscriber line facilities;

2. Loop concentration, loop distribution and loop feeder facilities;

3. Network interface devices;

4. Switching capability including line-side facilities, trunk-side facilities and tandem facilities;

5. 911 and E911 emergency call networks;

6. Access to numbering resources;

7. Local telephone number portability;

8. Inter-office transmission facilities;

9. Signaling networks and call-related databases including signaling links, signaling transfer points and databases used for billing and collection, and transmission and routing of public telecommunications services;

10. Operations support systems used to pre-order, order, provision, maintain and repair unbundled network elements, or services purchased for resale from an incumbent local exchange carrier by another telecommunications corporation;

11. Billing functions;

12. Operator services and directory assistance;

13. Physical and virtual collocation and,

14. Intra-premises cabling and inside wiring owned or controlled by an incumbent local exchange carrier.

B. Determination of Essential Nature -- A telecommunications corporation may request any essential network facility or service from another telecommunications corporation and that telecommunications corporation shall timely provide the network facility or service in accordance R746-348-4 unless it demonstrates that providing that facility or service is technically infeasible.

1. A person may petition the Commission for a finding that a facility or service is essential or should no longer be deemed essential.

KEY: interconnection*, network interconnection*, telecommunications, telephone utility regulation

October 7, 1997 54-4-1
Notice of Continuation January 30, 2002 54-4-8
54-4-12
54-8b-2

R765. Regents (Board of), Administration.
R765-610. Utah Higher Education Assistance Authority Federal Family Education Loan Program, PLUS, SLS and Loan Consolidation Programs.
R765-610-1. Purpose.

To incorporate by reference all statutes, regulations and rules governing the Federal Family Education Loan Program, PLUS, SLS and Loan Consolidation programs.

R765-610-2. References.

2.1 Utah Code. Title 53B, Utah System of Higher Education, Chapter 12.

2.2 U.S. Congress, Title IV of the Higher Education Act of 1965, as amended.

2.3 U.S. Department of Education. Code of Federal Regulations, 34 CFR Parts 600, 668 and 682.

2.4 "Common Manual, Unified Student Loan Policy" published by Common Manual Guarantors, 2001.

R765-610-3. Definitions.

3.1 "UHEAA" means Utah Higher Education Assistance Authority.

3.2 "SLS" means Federal Supplemental Loans for Students Program.

3.3 "PLUS" means Federal PLUS Program.

3.4 "FFELP" means the Federal Family Education Loan Program. This consists of the Federal Subsidized Stafford Loan Program, the Federal Unsubsidized Stafford Loan Program, the Federal PLUS Program, the Federal Supplemental Loans for Students Program (SLS), and the Federal Loan Consolidation Program.

R765-610-4. Incorporation by Reference.

4.1 UHEAA, as the designated guarantor for the FFELP in the state of Utah, hereby incorporates by reference the following documents:

4.1.1 Title IV of the U.S. Higher Education Act of 1965, as amended.

4.1.2 U.S. Department of Education 34 CFR Parts 600, 668, and 682.

4.1.3 "Common Manual, Unified Student Loan Policy", published by Common Manual Guarantors, 2000.

R765-610-5. Policy.

5.1 Any action taken by UHEAA in accordance with UHEAA policies shall be performed by the Executive Director of UHEAA, or the Executive Director's designee.

5.2 UHEAA shall establish, from time to time, additional policies governing the operation of FFELP in accordance with requirements as referenced in 4.1.1, 4.1.2 and 4.1.3 of this rule. Such policies will be filed as rules in the Utah Administrative Code in accordance with the Administrative Rulemaking Act of this state as found in Title 63, Chapter 46a of the Utah Code.

5.3 Students and parents who are eligible for loans contemplated by this rule, and who wish to apply, shall be expected to comply with these rules. A copy of all federal statutes and regulations, and state rules, directly affecting FFELP, and a copy of the "Common Manual, Unified Student Loan Policy", are available for public inspection, or can be obtained from UHEAA's offices at 355 West North Temple, 3 Triad Center, Suite 550, Salt Lake City, Utah 84180.

KEY: higher education, student loans*
December 4, 2001 53B-12-101(6)
Notice of Continuation January 4, 2002

R765. Regents (Board of), Administration.
R765-612. Lender Participation.
R765-612-1. Purpose.

To establish the lender eligibility requirements for participation as an originating lender in the UHEAA loan program.

R765-612-2. References.

2.1 Utah Code Annotated Title 53B, Chapter 12.

2.2 Higher Education Act of 1965, as amended.

R765-612-3. Definitions.

3.1 Originating Lender. A lending institution which originates Federal Stafford, PLUS, SLS or Consolidation Loans.

3.2 Located in Utah. With respect to this rule, a lender is located in Utah if the lender has an office in Utah where the lender's full range of products and services is available to the lender's customers for routine business transactions. An office established for the sole purpose of collecting student loan applications is not sufficient to qualify a lender as being located in Utah.

3.3 Headquartered. With respect to this rule, the state in which a lender or entity is headquartered is determined by the location of its primary administrative center.

3.4 Affiliation. With respect to this rule, an affiliation exists between schools if a school is under common control with another school and the controlling entity is headquartered in Utah.

R765-612-4. Policy.

4.1 To participate as an originating lender in the UHEAA loan program, a lender must:

4.1.1 be located in Utah;

4.1.2 be an eligible lender as defined by the Higher Education Act of 1965, as amended;

4.1.3 obtain a six-digit lender identification number issued by the U.S. Department of Education; and

4.1.4 execute an "Agreement to Guarantee Loans" with UHEAA.

4.2 A lender which meets the requirements of 4.1 may make loans guaranteed by UHEAA to any eligible borrower who:

4.2.1 attends a school which is located in Utah or has an affiliation with a school located in Utah;or

4.2.2 is a Utah resident, or a non-Utah resident who has previously received a loan guaranteed by UHEAA.

4.3 A lender which meets the requirements of 4.1 and is headquartered in Utah may make loans guaranteed by UHEAA to any eligible borrower.

4.4 A lender which participates in the UHEAA loan program is considered pre-approved.

4.5 By disbursing the loan, the lender acknowledges its approval of the loan.

4.6 A guarantee issued by UHEAA may be cancelled by the lender, if the lender does not grant approval of the loan.

4.7 If the lender violates or fails to comply with the provisions of this policy or the Higher Education Act of 1965, as amended, the lender will be liable for any penalties, claims, actions and expenses relating to the violation. In addition, the lender may be subject to limitation, suspension or termination under the Higher Education Act of 1965, as amended.

KEY: higher education, student loans*
December 4, 2001 53B-12-101(6)
Notice of Continuation January 4, 2002

R850. School and Institutional Trust Lands, Administration.
R850-90. Land Exchanges.
R850-90-100. 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(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to specify application procedures and review criteria for the exchange of trust lands.

R850-90-150. 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);

2. Evaluation of and response to comments received through the RDCC process; and

3. Evaluation of and response to any comments received through the solicitation process conducted pursuant to R850-90-400(1).

R850-90-200. Exchange Criteria.

1. The agency may exchange trust land for land or other assets of equal or greater value. The criteria by which an exchange proposal will be considered follows.

(a) Asset is herein defined as personal property, including cash, which has a readily determined market value.

(b) The percentage of cash which may be included in an exchange transaction shall not exceed 25% of the value.

2. Exchanges must clearly be in the best interest of the appropriate trust as documented in a record of decision by the agency. The record of decision shall address:

(a) the appraised value of affected lands or other assets;

(b) the degree to which there is reasonable assurance that the acquired land or other asset may provide income in excess of that being generated from existing trust land;

(c) the likelihood of greater revenue flowing to the appropriate trust from sale of fee or leasehold estates in existing trust land; and

(d) management costs and opportunities.

3. The record of decision shall verify that the exchange will not result in an unmanageable and uneconomical parcel of trust land, nor eliminate access to a remnant holding, without appropriate remuneration or compensation.

R850-90-300. Application Requirements.

This section does not apply to exchange proposals initiated by the agency.

1. Preapplication review: In order to avoid unnecessary expenses, persons requesting an exchange shall be afforded the opportunity to discuss the concept of the exchange with the agency prior to submitting a formal application.

2. A completed application form must be received pursuant to R850-3.

R850-90-400. Competitive Offering.

1. Upon receipt of an exchange application, the agency shall solicit competing exchange proposals, lease applications and sale applications. Competing applications will be solicited through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county in which the trust land is located. At least 30 days prior to consummation of an exchange, sale or lease, certified notification will be sent to permittees of record, adjoining permittees/lessees and adjoining landowners. Notices will also be posted in the local governmental administrative building or courthouse. Lease applications shall be processed in accordance with R850-30-500(2). Sale applications shall be reviewed pursuant to R850-80-500.

2. In addition to the advertising requirements of R850-90-400(1), the agency may advertise for competing applications for exchange, lease, or sale to the extent which the director has determined may reasonably increase the potential for additional competing applications.

3. The agency shall allow all applicants at least 20 days from the date of mailing of notice, as evidenced by the certified mail posting receipt (Postal Service form 3800), within which to submit a sealed bid containing their proposal for the subject parcel. Competing bids will be evaluated using the criteria found in R850-30-500(2)(g), R850-80-500, and R850-90-200.

R850-90-500. Determination for the Exchange of Trust Lands.

1. The agency shall choose the successful applicant by conducting a market analysis pursuant to R850-80-500(2) on each option for which an application has been received. The determination as to which application will be approved shall be based on R850-80-500(3) and R850-90-200(2).

2. The successful applicant shall be charged an amount equal to all appraisal and advertisement costs. All monies, except application fees, tendered by unsuccessful applicants will be refunded.

3. The director may approve the exchange when the criteria specified in R850-90-200 have been satisfied.

4. Applicants desiring reconsideration of agency action relative to exchange determinations may petition for review pursuant to agency rule.

R850-90-600. Land Exchange Appraisals.

1. The agency shall contract for appraisals of properties proposed for exchange utilizing the deposit paid by the applicant. Appraisals to determine values of trust land shall be provided protected records status pursuant to Section 63-2-304(7).

2. Appraisals for land exchanges with the federal government shall be, whenever possible, completed jointly and be subject to review and approval of both parties and to agreements undertaken pursuant to the Federal Land Exchange Facilitation Act, 43 U.S.C. 1716.

R850-90-700. Private Exchange Procedures.

1. Political subdivisions of the state and agencies of the federal government shall be eligible for private exchange.

2. In order to determine that a private exchange is in the best interests of the trust beneficiaries, advertising to provide notice of this action shall be required pursuant to Section 53C-

4-102(3). The cost of this advertising shall be negotiated.

3. All agency rules governing land exchanges shall apply to private exchanges except R850-90-400 and R850-90-500. R850-90-300(2), R850-90-500(2), and R850-90-900(4) may be waived when the agency is a co-applicant.

R850-90-800. Existing Improvements.

Any exchange of trust land upon which authorized improvements have been made shall be subject to the reimbursement of the depreciated value of the improvements to the owner of the improvements by the person receiving the land in the exchange.

R850-90-900. Mineral Estates and Leases.

1. Trust Lands Administration mineral interests may be exchanged in accordance with Section 53C-2-401(2).

2. Mineral estate exchanges must clearly be in the best interest of the applicable trust as documented by a record of decision. The record of decision shall address those criteria listed in R850-90-200.

3. In exchanges with persons other than the federal government, all mineral estates are reserved to the Trust Lands Administration unless exceptional circumstances justify the exchange of the mineral estate.

4. Upon the exchange of Trust Lands Administration mineral estate, Trust Lands Administration mineral leases shall continue to be administered by the agency until the termination, relinquishment or expiration of the lease. Upon termination of the mineral lease the administration of the mineral estate transfers to the acquiring party.

5. Acquired mineral estates shall be managed in accordance with Sections 53C-2-407(3), 53C-2-412 and 53C-2-413.

R850-90-1000. Existing Rights on Acquired Lands.

Valid existing rights on lands acquired from the federal government will be managed in accordance with Sections 53C-5-102(2) and 53C-4-301(2).

R850-90-1100. Existing Leases and Permits.

Prior to completion of exchanges, Trust Lands Administration lessees and permittees shall be notified and leases and permits cancelled or amended in accordance with the terms of the lease or permit.

KEY: land exchange, administrative procedure
July 2, 1996 53C-1-302(1)(a)(ii)
Notice of Continuation January 15, 2002 53C-2-201(1)(a)
53C-4-101(1)
53C-4-102

R850. School and Institutional Trust Lands, Administration.
R850-120. Beneficiary Use of Institutional Trust Land.
R850-120-100. Authorities.

This rule implements the Utah Enabling Act to allow use of land granted under Section 8 of that Act by its beneficiary institution as a direct economic benefit to the institution and specifies application procedures and review criteria under authority of Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1).

R850-120-150. 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 and response to comments received through the RDCC process.

R850-120-200. Scope.

This rule applies to applications by the University of Utah and Utah State University for in-kind use of their respective institutional trust lands administered by the agency.

R850-120-300. Application Requirements.

1. A letter of application must be received with a non-refundable application fee. The letter of application must include:

(a) the name and address of contact authority;

(b) a legal description of the land involved;

(c) a statement of the intended in-kind use;

(d) documentation that describes the manner in which the intended in-kind use is consistent with plans and programs approved or under development by the institution, and the institution's statutory mandates.

2. Upon receipt of a letter of application, the agency shall review it for completeness. Institutions submitting deficient letters of application shall be allowed 120 days to provide the required information.

R850-120-400. Review Criteria.

The agency may enter into agreements for in-kind use of institutional trust land by its beneficiary. The criteria by which an application will be considered are:

1. The applicant must be the beneficiary of the land under application.

2. The agreed use must be a prudent use of the property, taking into account related plans and programs approved by the institution, the opportunity cost of the in-kind use and the effect of that use on the management of other institutional trust lands.

3. The in-kind use must not result in net derogation of trust asset value.

4. The in-kind use must be consistent with the institution's constitutional and statutory mandate.

R850-120-500. Determination for Beneficiary Use.

1. The director may approve the in-kind use when the criteria specified in R850-120-400 are satisfied.

2. Applicants desiring reconsideration of agency action relative to in-kind use determinations may petition for review pursuant to R850-9.

3. An in-kind use agreement may, in the discretion of the agency, contain stipulations including, but not limited to, the following:

(a) Provisions for periodic monitoring of the in-kind use to assure compliance with the purposes of the use agreement;

(b) Provisions allowing for the collection of compensation to the agency for frequent or extensive monitoring; and

(c) Provisions which will allow for cancellation or amendment of leases in order to comply with statutory changes.

4. Beneficiary institutions shall, at early stages of in-kind use proposal development, contact the agency regarding the feasibility of in-kind use. Beneficiary institutions may not use or otherwise occupy the property until a formal in-kind use agreement has been fully executed.

KEY: beneficiaries, land use, administrative procedure
August 1, 1995 53C-1-302(1)(a)(ii)
Notice of Continuation January 15, 2002 53C-2-201(1)(a)
53C-4-101(1)

R907. Transportation, Administration.
R907-1. Administrative Procedures.
R907-1-0. Purpose.

R907-1-1 through R907-1-20 are made pursuant to Chapter 46b, Title 63 the Administrative Procedures Act. These rules are intended to apply to all adjudicative proceedings of the Utah Department of Transportation and Transportation Commission. These rules apply to all adjudicative proceedings of the Department, except for the Tramway Committee.

R907-1-1. Informal Proceedings.

(1) All adjudicative proceedings conducted pursuant to the Rules of the Transportation Commission or the Utah Department of Transportation shall be characterized as commencing "informally" and shall be processed in accordance with R907-1.

(2) All adjudicative proceedings shall be commenced initially before the Executive Director of the Utah Department of Transportation or a designee.

(3) The procedures for the adjudicative process are identified in R907-1. All other requirements of Rules adopted by the Transportation Commission or the Utah Department of Transportation shall apply when they supplement these Rules governing the adjudicative process and when not in conflict with any of R907-1. In case of conflict between these "Administrative Procedures" of R907-1 and any other provision of the Rules Adopted by the Transportation Commission or the Utah Department of Transportation, these "Administrative Procedures" Rules and Regulation of R907-1 shall control and govern the adjudicative process.

R907-1-2. Definitions.

As used in these rules:

(1) "COMMISSION" or "TRANSPORTATION COMMISSION" means the Utah State Transportation Commission.

(2) "DIRECTOR" means the Executive Director of the Utah Department of Transportation or a designee.

(3) "RULE" refers to R907-1.

(4) "UDOT" means the Utah Department of Transportation.

R907-1-3. Commencement of Adjudicative Proceedings.

The Director is the Presiding Officer for adjudicative proceedings under these rules which commence informally or which become formal as a result of a request for formal hearing. The Director may appoint a Hearings Examiner for any hearing which shall be a Presiding Officer of the hearing and subject to rules specified herein for the formal adjudicative process. At the discretion of the Director and with concurrence of the Transportation Commission, or when otherwise required by law, the Transportation Commission shall be the Presiding Officer and conduct the formal hearing under these Rules and reference in these rules, under this circumstance, to "Director" shall mean the Transportation Commission.

(1) Except for emergency orders described further in these rules, all adjudicative proceedings, which commence in the informal phase, shall be commenced by either:

(a) A Notice of Agency Action, if proceedings are commenced by the Director; or

(b) A request for Agency Action, if proceedings are commenced by persons other than the Director.

(2) A Notice of Agency Action and a Request for Agency Action shall be filed and served according to the following requirements:

(a) When adjudicative proceedings are commenced by the Director, the Notice of Agency Action shall be in writing, signed by the Director, and shall include:

(i) The names and mailing addresses of all respondents and other persons to whom notice is being given by the Director, and the name, title, and mailing address of any attorney or employee who has been designated to appear for UDOT:

(ii) UDOT's file number or other reference number;

(iii) The name of the adjudicative proceeding;

(iv) The date that the Notice of Agency Action was mailed;

(v) A statement that the adjudicative proceeding is to be conducted informally according to the provision of these Rules and Section 63-46b-4 and 63-46b-5 unless a request for formal hearing is timely filed in which case a final order will not be issued in the informal process and the matter will proceed with a formal hearing before the Director in conformance with Sections 63-46b-6 to 63-46b-11;

(vi) A statement that the parties may request a formal hearing before the Director within ten days of the date of mailing or publication and that failure to make such a request for hearing may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

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

(viii) The name, title, mailing address, and telephone number of the Director; and

(ix) A statement of the purpose of the adjudicative proceeding and, to the extent known by the Director, the questions to be decided.

(b) UDOT shall:

(i) Mail the Notice of Agency Action to each party; and

(ii) Publish the Notice of Agency Action if required by statute or by any Rules of UDOT or the Transportation Commission.

(c) All the adjudicative processes that commence informally may be petitioned for by a person other than the Director. That person's Request for Agency Action shall be in writing and signed by the person invoking the jurisdiction of the Director or by his or her attorney, and shall include:

(i) The names and addresses of all persons to whom a copy of the Request for Agency Action is being sent;

(ii) A space for UDOT's files number or their reference number;

(iii) The name of the adjudicative proceeding, if known;

(iv) Certificate of mailing of the Request for Agency Action to the Director and all persons;

(v) A statement of the legal authority and jurisdiction under which agency action is requested;

(vi) A statement of the relief sought from the Director; and

(vii) A statement of the facts and reasons forming the basis

for relief.

(d) The person requesting the Director action shall use the forms provided by UDOT with the additional information required by this R907-1. The Director is hereby authorized to codify said forms in conformance with this Rule. Said forms shall be deemed a "Request for Agency Action." The person requesting agency action shall file the request with the Director and shall, send a copy by mail to each person known to have a direct interest in the requested agency action.

(e) In the case of a Request for Agency Action, the Director shall, unless waived, insure that notice by mail has been promptly given to all parties, or by publication when required by statute or any of the Rules of UDOT or the Transportation Commission. The written notice shall:

(i) Give UDOT's file number or other reference number;

(ii) Give the name of the proceeding;

(iii) Designate that the proceeding is to be conducted informally according to the provisions of these Rules and Sections 63-46b-4 and 63-46b-5 unless a request for hearing is timely filed in which case no final order will be issued and the matter will proceed with a formal hearing before the Director in conformance with these Rules and Section 63-26b-6 to 63-46b-11;

(iv) A statement that the parties' may request a formal hearing before the Director within ten days of the date of mailing or publication and that failure to make such a request may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

(v) Give the name, title, mailing address, and telephone number of the Director; and

(vi) If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the Director may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

R907-1-4. Conversion of Informal to Formal Phase.

(1) Any time before a final order is issued in any adjudicative proceeding before the Director, the Director may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

(a) Conversion of the proceeding is in the public interest; and

(b) Conversion of the proceeding does not unfairly prejudice the rights of any party.

(2) An adjudicative proceeding which commences informally may be converted to a formal proceeding by the Director if a request for hearing is timely filed under these Rules. Such request requires a formal hearing process before the Director to best protect the interests of the public as well as the parties involved.

R907-1-5. Procedures for Informal Phase.

(1) A Request for Agency Action or Notice of Agency Action shall be the method of commencement of an adjudicative process as previously discussed in these Rules.

(2) The mailing requirements of these Rules shall be met.

(3) The Notice of Agency Action shall be published in a newspaper of general circulation likely to give notice to interested persons when required by statute or by any Rules of UDOT or the Transportation Commission.

(4) All notices required herein shall indicate the date of publication or mailing and specify that any affected person may file with the Director within ten days of said date, a written objection and request for formal hearing before the Director and that failure to make such a request may preclude that person from further participation, appeal or judicial review in regard to the subject adjudicative proceeding. Said ten day period shall be waived if the Director receives a waiver signed by those entitled to notice under these rules.

(5) Hearings shall be conducted in accordance with the Utah Administrative Procedures Act and as described by these Rules below.

(6) If the parties fail to file a timely request for hearing and the application is to be approved or approved with conditions acceptable to the applicant, the Director within a reasonable time thereafter shall issue a written, signed final order. If no formal hearing was held and the application is to be denied or approved with conditions unacceptable to the applicant, then only a tentative order shall be issued. The applicant shall be given ten days from notification of such tentative order to file a written request for formal hearing. Within a reasonable time after the applicant fails to request a hearing under such circumstances, the Director shall issue a written, signed order. No final order is issued in the informal process if a request for a formal hearing is timely filed. Any order issued in the informal process shall include the elements required by the statute.

(7) The Director's order in the informal process shall be based on the facts appearing in UDOT's files and on any facts presented in evidence.

(8) A copy of the Director's order shall be promptly mailed to each of the parties.

(9) Nothing in this section restricts or precludes any investigative right or power given to the Transportation Commission or Director by another statute.

(10) Default. The Director may enter an order of default against a party if the party fails to participate in the adjudicative proceeding. The order shall include a statement of the grounds for default and shall be mailed to all parties. A defaulted party may seek to have the Director set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure. After issuing the order of default, the Director shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

(11) Written Request for Formal Hearing. Any written request for hearing shall be treated as converting the process from an informal process to a formal process and processed in accordance with the Rules described hereinbelow and the Utah Administrative Procedures Act.

R907-1-6. Formal Process and Hearing: Initiation.

The formal hearing process shall be conducted as follows:

(1) If a timely request for hearing is filed as described in R907-1-5, the Director shall issue a Notice of Agency Action which commences a formal hearing process before the Director

in the matter.

(2) Notice of Agency Action, notice of formal hearing. A Notice of Agency Action shall be in writing, signed by the Director, and shall include:

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

(i) The file number or other reference number;

(ii) The name of the adjudicative proceeding;

(iii) The date that the Notice of Agency Action was mailed;

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

(v) A statement that a written response must be filed within 30 days of the mailing date of the Notice of Agency Action;

(vi) A statement of the time and place of the hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

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

(viii) The name, title, mailing address, and telephone number of the Director; and

(ix) A statement of the purpose of the adjudicative proceeding and, to the extent known by the Director, the questions to be decided.

(b) The Director shall:

(i) Mail the Notice of Agency Action to each party; and

(ii) Publish the Notice of Agency Action if required by statute or rule.

R907-1-7. Formal Process and Hearing: Responses.

In all formal adjudicative proceedings, the respondent shall file and serve a written response signed by the respondent or a representative within 30 days of the mailing date of the Notice of Agency Action that shall include:

(1) UDOT's file number or other reference number;

(2) The name of the adjudicative proceeding;

(3) A statement of the relief that the respondent seeks;

(4) A statement of the facts; and

(5) A statement summarizing the reasons that the relief requested should be granted.

(6) The response shall be filed with UDOT and one copy shall be sent by mail to each party.

(7) All papers permitted or required to be filed under these rules shall be filed with UDOT and one copy shall be sent by mail to each party.

(8) In the discretion of the Director, any respondent may be heard without written pleadings or an order of default may be entered pursuant to the Rules below.

R907-1-8. Formal Process and Hearing: Default.

The Director may enter an order of default as provided by statute.

R907-1-9. Formal Process and Hearing: Intervention.

(1) Order Granting Leave to Intervene Required. Any person, not a party, desiring to intervene in a formal proceeding shall obtain an order from the Director granting leave to intervene before being allowed to participate. Such order shall be requested by means of a signed, written petition to intervene which shall be filed with UDOT by the time a response is due as prescribed in R907-1-7 and a copy promptly mailed to each party. Any petition to intervene or materials filed after the date a response is due, may be considered by the Director only upon separate motion of the intervenor made at or before the hearing for good cause shown.

(2) Content of Petition. Petitions for leave to intervene must identify the proceedings. The petition must contain a statement of facts demonstrating that the petitioner's legal rights or interest are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law. Additionally, the petition shall include a statement of the relief, including the basis thereof, that the petitioner seeks from the Director.

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

(4) Granting of Petition. The Director shall grant a petition for intervention if he or she determines that:

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

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

(5) Order Requirements.

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

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

(c) The Director may impose conditions at any time after the intervention.

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

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

R907-1-10. Formal Process and Hearing: Conduct of Hearings.

All hearings before the Director shall be governed by the following procedures:

(1) Public Hearings. All hearings before the Director shall be open to the public, unless otherwise ordered by the Director for good cause shown. All hearings shall be open to all parties

(2) Full Disclosure. The Director shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties a reasonable opportunity to present their positions.

(3) Rules of Evidence. The Director shall use as appropriate guides, the Utah Rules of Evidence insofar as the same may be applicable and not inconsistent with these rules. Notwithstanding this, on its own motion or upon objection of a party, the Director:

(a) May exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(b) Shall exclude evidence privileged in the courts of Utah.

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

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

(4) Hearsay. Notwithstanding subsection C. above, the Director may not exclude evidence solely because it is hearsay.

(5) Parties Rights. The Director shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

(6) Public Participation. The Director may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

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

(8) Failure to Appear. When a party to a proceeding fails to appear at a hearing after due notice has been given, the Director may enter an order of default in accordance with the Rules described hereinabove.

(9) Time Limits. The Director may set reasonable time limits for the participants of the hearing.

(10) Continuances of the Hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why such a continuance is necessary and not due to the fault of the party requesting the continuance. The continuance of the hearing may also be made by the request of the Director when in the public interest.

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

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

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

(b) The record of the proceedings may also be made by means of a tape recorder or other recording device if the Director determines that it is unnecessary or impracticable to employ a certified shorthand reporter and the parties do not desire to employ a certified shorthand reporter. Any party, at its own expense, may have a person approved by the Director prepare a transcript of the hearing, subject to any restrictions that the Director is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or tape recording of a hearing is made, it will be made available at the appropriate UDOT office for use of the parties, but may not be withdrawn therefrom.

(13) Preserving Integrity. This section does not preclude the Director from taking appropriate measures necessary to preserve the integrity of the hearing.

(14) Summons, Witness Fees and Discovery. The Director may allow appropriate witness fees as provided by statute or rule.

(a) Summons. The Director may issue a summons or subpoena on its own motion, or upon request of a party, shall issue summons or subpoenas for the attendance of witnesses and the production of any pertinent paper, book, record, document, or other appropriate discovery of evidence.

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

(c) Construction. Nothing in this section restricts or precludes any investigative right or power given to the Transportation Commission or Director by law.

R907-1-11. Formal Process and Hearing: Decisions and Orders.

Decision. The Director shall sign and issue an order that includes:

(1) A statement of the Director's findings of fact, conclusions of law and decision, based exclusively on the evidence of the record in the adjudicative proceedings or on facts officially noted;

(2) A statement of the reasons for the Director's decision;

(3) A statement of any relief ordered;

(4) A notice of the right to apply for reconsideration;

(5) A notice of any right to administrative or judicial review of the order available to aggrieved parties; and

(6) The time limits applicable to any reconsideration or review.

(7) Preparation of Order. The Director may direct the prevailing party to prepare proposed findings of fact, conclusions of law and an order consistent with the requirements of this rule, which shall be completed within ten days of the direction, unless otherwise instructed by the Director. Copies of the proposed findings of fact, conclusions of law and order shall be served by the prevailing party upon all

parties of record prior to being presented by the Director for signature. Notice of objection thereto shall be submitted to the Director and all parties of record within ten days of service.

(8) Entry of Order. The Director shall sign the order and cause the same to be entered and indexed in books kept for that purpose. The order shall be effective on the date of issuance, unless otherwise provided in the order. Upon the petition of a person subject to the order and for good cause shown, the Director may extend the time for compliance fixed in its order.

(9) Evaluation of Evidence. The Director may use his expertise, technical competence, and specialized knowledge to evaluate the evidence.

(10) Hearsay. No finding of fact that was contested may be based solely on hearsay evidence.

(11) Interim Orders. This section does not preclude the Director from issuing interim orders to:

(a) Notify the parties of further hearings;

(b) Notify the parties of provisional rulings on a portion of the issues presented; or

(c) Otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

(12) Notice. The Director shall notify all parties to the proceeding of its decision. A copy of the order with accompanying findings of fact and conclusions of law shall be delivered or mailed to each party.

R907-1-12. Formal Process and Hearing: Reconsideration and Modification of Existing Orders.

(1) Time for Filing. Within 20 days after the date that a final order is issued in the formal adjudicative process, any party may file a written request for reconsideration, rehearing, stating the specific grounds upon which relief is requested.

(2) Not Prerequisite for Judicial Review. Unless otherwise provided by law, the filing of the request for reconsideration is not a prerequisite for seeking judicial review of the order.

(3) Mailing Requirement. The request for reconsideration shall be filed with the Director. One copy shall be sent by mail, within three days of said filing, to each party by the person making the request.

(4) Contents of Petition. A petition for reconsideration shall set forth specifically the particulars in which it is claimed the Director's order or decision is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the Director failed to consider certain evidence, it shall include an abstract of that evidence. If the petition is based upon newly discovered evidence, then the petition shall be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not, with reasonable diligence, have discovered the evidence prior to the hearing.

(5) Response to Petition. All other parties to the proceeding upon which a reconsideration is sought may file a response to the petition no later than ten days from the filing of the petition. A copy of such responses shall be mailed to the petitioner by the person so responding on the date the response is filed.

(6) Action on the Petition. The Director is authorized to act upon the petition for reconsideration. If the Director does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered denied. The Director may, by written order, set a time for hearing on said petition or deny the petition.

(7) Modification of Existing Orders. A request for modification or amendment of an existing order of the Director shall be treated as a new Request for Agency Action for the purposes of these Rules. Such request for modification or amendment shall include as directly affected persons all parties to the previous adjudicative proceeding and their successors in interest.

R907-1-13. Declaratory Rulings.

(1) Petition for Declaratory Orders. Any person may petition the Director for a declaratory order on the applicability of any administrative rule, regulation or order as well as any provision of the Utah Code within the jurisdiction of UDOT, which relate to the operations or activities of that person. The petition shall include the questions and answers sought and reasons in support of or in opposition to the applicability of the statute, rule, regulation or order involved.

(2) Not Subject to Declaratory Rulings. The Director shall not issue a declaratory ruling if:

(a) The person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request; or

(b) There would be substantial prejudice to the rights of a person who would be a necessary party unless that person consents in writing to the determination of the matter by a declaratory proceeding.

(3) Intervention. Persons may intervene in declaratory proceedings if they meet the requirements of R907-1-9 hereinabove.

(4) Forms of Rulings. After receipt of a petition for a declaratory order, the Director may issue a written order:

(a) Declaring the applicability of the statute, rule, regulation or order in question to the specified circumstances; or

(b) Decline to issue a declaratory order and state the reasons for its action.

(5) Contents of Order. A declaratory order shall contain:

(a) The names of all parties to the proceeding on which it is based;

(b) The particular facts on which it is based; and

(c) The reasons for its conclusion.

(6) Mailing of Order. A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.

(7) Binding Effect. A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.

(8) Time Limit. Unless the petitioner and the Director agree in writing to an extension, if the Director has not issued a declaratory order within 60 days after receipt of the request for a declaratory order, the petition is denied.

R907-1-14. Emergency Orders.

Emergency orders will be issued in accordance with the following guidelines: notwithstanding the other provisions of these Rules, the Director or any member of the Transportation

Commission is authorized to issue an emergency order without notice and hearing in accordance with applicable law. The emergency order shall remain in effect no longer than until the next regular meeting of the Transportation Commission, or such shorter period of time as shall be prescribed by statute.

(1) Prerequisites for Emergency Order. The following must exist to allow an emergency order:

(a) The facts known to the Director or Commission member or presented to the Director or Commission member show that an immediate and significant danger to the public health, safety, or welfare exists; and

(b) The threat requires immediate action by the Director of Commission member.

(2) Limitations. In issuing its Emergency Order, the Director or Commission member shall:

(a) Limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

(b) Issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the Director or Commission member's utilization of emergency adjudicative proceedings;

(c) Give immediate notice to the persons who are required to comply with the order; and

(d) If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the Director shall commence a formal adjudicative proceeding before the Director in accordance with R907-1.

R907-1-15. Exhaustion of Administrative Remedies.

(1) Persons must exhaust their administrative remedies in accordance with Section 63-46b-14, prior to seeking judicial review.

(2) Informal phases as described in these Rules are intended to apply to the uncontested stage of the adjudicative process. No final order is issued in the informal phase if there is a timely objection and request for hearing made. If such a timely objection and request for hearing is made, the matter is treated as a contested case which is processed as a formal proceeding before the Director. Such right to have the matter be contested and processed "formally" is an available and adequate administrative remedy and should be exercised prior to seeking judicial review.

(3) In any formal adjudicative proceeding before the Director, there is an opportunity for affected parties to respond and participate. Only those aggrieved parties that so exhausted these available and adequate remedies before the Director may be allowed to seek judicial review of the final Director action.

R907-1-16. Deadline for Judicial Review.

A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued. The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in Title 63, Chapter 46b.

R907-1-17. Judicial Review of Formal Adjudicative Proceedings.

Judicial review of formal adjudicative proceedings shall be conducted in conformance with Sections 63-46b-16 through 63-46b-18.

R907-1-18. Civil Enforcement.

(1) Agency Action. In addition to other remedies provided by law and other Rules of the Transportation Commission or UDOT, the Commission or UDOT may seek enforcement of an order by seeking civil enforcement in the district courts subject to the following:

(a) The action seeking civil enforcement must name, as defendants, each alleged violator against whom civil enforcement is sought.

(b) Venue for an action seeking civil enforcement shall be determined by the Utah Rules of Civil Procedure.

(c) The action may request, and the court may grant, any of the following:

(i) Declaratory relief;

(ii) temporary or permanent injunctive relief;

(iii) any other civil remedy provided by law; or

(iv) any combination of the foregoing.

(2) Individual Action. Any person whose interests are directly impaired or threatened by the failure of an agency to enforce its order may timely file a complaint seeking civil enforcement of that order. The complaint must name as defendants, the agency whose order is sought to be enforced, the agency that is vested with the power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement. The action may not be commenced:

(a) Until at least 30 days after the plaintiff has given notice of its intent to seek civil enforcement of the alleged violation to the Commission or UDOT, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

(b) If the Commission or UDOT has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or similarly situated defendant;

(c) If a petition for judicial review of the same order has been filed and is pending in court.

R907-1-19. Waivers.

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person by a signed, written waiver in a form acceptable to UDOT.

R907-1-20. Construction.

The Utah Administrative Procedures Act described in Title 63, Chapter 46b shall supersede any conflicting provision of these Rules. These Rules should be construed to be in compliance with said Act.

KEY: administrative procedure, enforcement (administrative)
April 1, 1997 63-46b-1 through 20
Notice of Continuation January 30, 2002

R907. Transportation, Administration.
R907-60. Handling of Publications Prepared by the Utah Department of Transportation Either for Sale or Free Copy.
R907-60-1. Authority and Purpose.

To place the responsibility for handling of publications prepared by the Utah Department of Transportation either for sale or free distribution.

R907-60-2. Procedure.

(1) If the publication is of a technical or non technical nature and is for sale to the public or others because of demand, the Cashier in the Comptroller's Office shall receive the fees charged for the publication and issue a receipt. The originator shall issue the publication to persons with a receipt for payment of the publication.

(2) If the publication is of a public information nature, public hearing transcripts, environmental statements, traffic counts, State and county maps, the Community Relations Division shall have available for sale or free copy those publications.

(3) If the publication is not of a public information nature, is for internal distribution, but may be of interest to the public, and is free of charge, it should be available from the Community Relations Division.

KEY: printing, government paperwork, transportation research, standards
1987 63-2-102
Notice of Continuation February 1, 2002

R907. Transportation, Administration.
R907-62. Americans with Disabilities Act.
R907-62-1. Authority and Purpose.

(1) The Department of Transportation, pursuant to 28 CFR 35.107, adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act.

(2) The provision of 28 CFR 35, implements of Title II of the Americans With Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by this or any such entity.

R907-62-2. Definitions.

(1) "The ADA Coordinator" means the Department's coordinator or his designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

(2) "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(a) Office of Planning and Budget;

(b) Department of Human Resource Management;

(c) Division of Risk Management;

(d) Division of Facilities Construction Management; and

(e) Office of the Attorney General.

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

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

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

(6) "Public Entity" means the Utah Department of Transportation.

R907-62-3. Filing of Complaints.

(1) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination.

(2) The complaint shall be filed with the department's ADA Coordinator in writing or in another accessible format suitable to the individual.

(3) Each complaint shall:

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

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

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

(d) describe the action and accommodation desired; and

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

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

R907-62-4. Investigation of Complaint.

(1) The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in R907-62-3(3) if it is not made available by the individual.

(2) When conducting the investigation, the coordinator may seek assistance from the department's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:

(a) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;

(b) facility modifications; or

(c) reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

R907-62-5. Issuance of Decision.

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

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

R907-62-6. Appeals.

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

(2) The appeal shall be filed in writing with the department's executive director or a designee other than the department's ADA Coordinator.

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

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

(5) The executive director or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an

independent conclusion. Before making any decision that would involve:

(a) an expenditure of funds which is not absorbable and would require appropriation authority;

(b) facility modifications; or

(c) reclassification or reallocation in grade; he/she shall also consult with the State ADA Coordinating Committee.

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

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

R907-62-7. Classification of Records.

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

R907-62-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures, Section 67-19-32; the Federal ADA Complaint Procedures 28 CFR Subpart F, beginning with Part 35.170; or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, discrimination, ADA*
1992 63-46a-3(2)
Notice of Continuation February 1, 2002 67-19-32

R907. Transportation, Administration.
R907-63. Structure Repair and Loss Recovery Procedure.
R907-63-1. Authority and Purpose.

This rule establishes procedure for loss recovery for damages to bridge-structures, appurtenances thereto and the roadway as provided in Section 72-7-301.

R907-63-2. Procedure to Collect for Damage to Highways.

(1) Upon notification of damage to UDOT property, the Utah Department of Transportation shall repair or replace it.

(2) All costs associated with the repair or replacement of damaged property shall then be billed to the owner of the vehicle causing the damage, or to the person directly responsible for the damage.

(3) If the damage is caused by a vehicle, the person responsible shall pay the bill.

(4) If payment is not received by UDOT within 60 days of billing, the UDOT may pursue payment by one of the following means:

(a) UDOT may pursue collection of a delinquent account in accordance with Sections 63A-3-301 through 63A-3-310, Accounts Receivable Collection.

(b) The account may be turned over to a collection agency for immediate collection.

(5) In cases where undue financial pressure would be caused by full payment of a bill, the owner of the vehicle or person responsible for damage may arrange to make installment payments on the debt.

R907-63-3. Eligible Region Recovery Costs.

The appropriate region may seek recovery of all costs associated with an incident for traffic control, maintenance and repair when such work is performed by region work forces to maintain the integrity of the highway system, structure, or restore the system and facilities to preexisting condition.

R907-63-4. Eligible Division Recovery Costs.

When damage is to a bridge structure:

(1) The Structures Division shall accumulate all costs for preparing engineering estimates, design plans, and costs associated with publication, preparation and advertising for bids, plus engineering overhead costs.

(2) The Structures Division shall award the project to the lowest responsive and qualified bidder and include all eligible region charges and submit to UDOT Risk Management for recovery process.

R907-63-5. Department Settlement Policy.

(1) It shall be the Department's intent to secure full recovery from the responsible party(s) based on the full actual cost of such repairs to the structure or highway system damaged including all indirect costs associated with or resulting from an occurrence.

(2) The Department may at its discretion elect to accept settlement based on detailed engineering estimates and any direct or indirect costs associated with or resulting from an occurrence when it deems it is in the best interest of the motoring public and tax payer to delay or forgo repairs to the structure.

(3) The Department may submit to the Attorney General any claim for recovery, which is in dispute, requesting legal action be taken to recover the State's losses and settle such claims based on the laws of liability or as directed by the courts.

KEY: bridges, damages, loss recovery*

April 1, 1997	**72-7-301**
Notice of Continuation February 1, 2002	**63A-3-301 through 63A-3-310**

R909. Transportation, Motor Carrier.

R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification.

R909-19-1. Authority.

This rule is enacted under the authority of Sections 72-9-601, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, 41-6-102, Utah Code.

R909-19-2. Applicability.

(1) All tow trucks motor carriers and employees must comply and observe all rules, regulations, traffic laws and guidelines as prescribed by State Law and 49 CFR Part 350 - 399, hereby incorporated by reference in accordance with Sections 41-6-101, 41-6-102, 41-6-104, 72-9-301, 72-9-303, 72-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, 72-9-703, and 72-9-703, Utah Code.

(2) Until the certification program is established all Tow Truck Motor Carriers, equipment and driver's will be deemed certified until April 1, 2002. After that date, all Tow Truck Motor Carriers, equipment and drivers will need to receive training and certification.

R909-19-3. Definitions.

(1) "Abandoned Vehicle" means a vehicle that is left unattended on a highway for a period in excess of 48 hours; or on any public or private property for a period in excess of seven days without express or implied consent or the owner or person in lawful possession or control of the property.

(2) "Consent Tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102, after performing any tow truck service that is done at the vehicle, vessel, or outboard motor owner's knowledge.

(3) "Division" means the Motor Carrier Division

(4) "Department" means the Utah Department of Transportation.

(5) "Driveaway-Towaway Operation" means any operation in which a motor vehicle constitutes the commodity being transported.

(6) "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(7) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(8) "Non Consent Tow " means:

(a) tow truck service as ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority as defined in Section 72-1-102, or

(b) any tow truck service performed without the vehicle, vessel, or outboard motor owner's knowledge or permission, and may include tow truck services that are performed on private property.

(9) "Non-consent Private Impoundment" means towing services performed without the prior consent of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property.

(10) "Non-Consent Police Generated Tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102, after performing a tow truck service that is performed without the vehicle, vessel, or outboard motor owner's knowledge or permission.

(11) "Personal Property" means articles associated with a person, as property having more or less intimate relation to person, Including clothing, tools, home/family/vocation items, etc. Items that are considered to be the original manufactured equipment, and/or attached property to the vehicle, including tires, rims, vehicle-stereos, speakers, or CD changers are not considered personal property and will remain in the vehicle.

(12) "Rollback/Auto Carrier " means a vehicle constructed, designed, altered, or equipped primarily for the purpose of removing damaged, disabled, abandoned, seized, or impounded vehicles from the highway or other place by means of a tilt bed or roll-back deck.

(13) "Tow Truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damages, disabled, abandoned, seized, or impounded vehicles from highway or other place my means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(14) "Tow Truck Certification" means a program to authorize and approve tow truck motor carrier owners and operators, and is the process by which the Department, acting under Section 72-9-602, Utah Code, shall verify compliance with the State and Federal Motor Carriers Safety Regulations, including terms and conditions as outlined in the permit and materials incorporated into the permit either by attachment or reference. This process includes certification for tow truck motor carriers, tow truck owners, drivers, and related equipment. Certificates will be issued for the following categories:

(a) "Basic Certification" means training applicable to standard tow truck motor carrier operations where the towed vehicle weighs 10,000 lbs or less.

(b) "Commercial Certification" means training applicable to tow truck motor carrier operations where the towed vehicle weighs 10,001 lbs or more.

(c) "Hazardous Material Certification" means training applicable to tow truck motor carrier operations where the towed vehicle is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(d) "Hazardous Material Certification - Cargo Tank Special Endorsement" means special endorsement training applicable to towing operations limited to the recovery of cargo tanks. Cargo Tank Special Endorsements training and certification requirements are outlined specifically in the Utah Regulations for Towing Operation and Certification Manual.

(15) "Tow Truck Motor Carrier" means a for-hire tow truck motor carrier or a private tow truck motor carrier, and

includes a tow truck motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment and/or accessories.

(16) "Tow Truck Service" means the transportation upon the public streets and highways of the State of damaged, disabled, or abandoned vehicles together with personal effects and/or cargo. The terms wrecker service, tow car service, and garage tow truck service are synonymous and shall be considered as "tow truck service."

(a) "Class A Tow Truck" means a tow truck, rollback/auto carrier with a minimum manufacturer's GVWR of 10,000 lbs.

(b) "Class B - Light Duty Tow Truck" means a tow truck with a minimum manufacturer's GVWR equal to 10,001 lbs or less than 18,000 lbs.

(c) "Class C - Medium Duty Tow Truck" means a tow truck with a minimum manufacturer's GVWR equal to 18,001 lbs or less than 26,001 lbs.

(d) "Class D - Heavy Duty Tow Truck" means a tow truck with a minimum manufacturer's GVWR of 26,001 lbs or greater.

(17) "Tow Truck Motor-Carrier Steering Committee" means a committee established by the Administrator of the Motor Carrier Division and will include enforcement personnel, industry representatives and, Transportation Commissioner(s) or other persons as deemed necessary.

R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.

The Department shall administer and in cooperation with the Department of Public Safety, Utah Highway Patrol Division as specified under Section 53-8-105, Utah Code, shall administer and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, equipment for inspection and examination and shall submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

R909-19-5. Insurance.

All tow trucks will be required to carry at least $750,000 of insurance minimum liability plus the MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers. Evidence of required insurance will be maintained at the principal place of business and made available to the Department and/or investigator upon request and prior to tow truck carrier certification.

R909-19-6. Penalties and Fines.

Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations or any part of this rule or conditions set forth in the permit or materials incorporated into the permit either by attachment or reference or Departmental order is subject to a civil penalty as authorized by Section 72-9-701, and 72-9-703 and may be acceptable as sufficient cause for the Department to revoke tow truck motor carrier, driver, and/or vehicle certification.

R909-19-7. Cease and Desist Orders - Registration Sanctions.

(1) The Department may issue a cease and desist order to any tow truck motor carrier that fails or neglects to comply with State and Federal Motor Carrier Safety Regulations or any part of this rule or conditions set forth in the permit or materials incorporated into the permit either by attachment or reference or Departmental order as authorized by Section 72-9-303.

(2) The Department shall notify the Motor Vehicle Division of the State Tax Commission upon having reasonable grounds to believe that a tow truck motor carrier is in violation of this rule as authorized by Section 72-9-303(2).

R909-19-8. Towing Notice Requirements.

(1) A tow truck motor carrier after performing a tow truck service, that was not ordered by a peace officer, or a person acting on behalf of a law enforcement agency or a highway authority, as defined in R909-19-3, without the vehicle, vessel, or outboard motor owner's knowledge shall immediately upon arriving at the place of storage or impound of the vehicle contact by radio or phone, the law enforcement agency having jurisdiction over the area where the vehicle, vessel, or outboard motor was picked up and notify the agency as per requirements set forth in 72-9-603(1).

Pursuant to the requirement to "immediately" ... "contact the law enforcement agency having jurisdiction" as required by Section 72-9-603, Utah Code, a tow-truck motor-carrier operator shall:

(a) Report the removal immediately upon arriving at the place of storage or impound of the vehicle, if removal was completed during posted office hours.

(b) Report the removal within 2 hours of the next business day if the removal occurred after normal posted office hours.

(c) For purposes of Section 72-9-603, the "contact" to the law enforcement agency shall be considered accomplished if made as per Section R909-19-9.

(d) If this reporting is not completed within the time frame, the Tow Truck Motor Carrier or Operator will not be allowed to collect any fees or begin charging storage fees as authorized under Section 72-9-603. Notification and reporting requirements will be completed in electronic form on a website.

(2) Any Tow Truck Motor Carrier or its agents who violates notification requirements as outlined or uses a restriction devise or means of disabling the vehicle may be assessed civil penalties determined by the Department as authorized under Section 72-9-603.

R909-19-9. Requirement for Tow Truck Motor Carriers to input required information for Government and Public Notification.

All Tow Truck Motor Carriers must follow notification procedures as required by 72-9-603 and input required information in electronic form (website).

R909-19-10. Certification.

(1) The Department shall inspect, investigate/audit, and certify tow truck motor carriers, tow trucks, and tow truck drivers at least every two years to ensure compliance as required by Sections 41-6-102.5, 41-6-102.7, Utah Code, and 49 CFR

Parts 350 - 399, 170-180 where applicable.

(2) The Department will charge a biennial fee as authorized by Section 72-9-602(1) to cover costs associated with the inspection, investigation/compliance review, and certification.

R909-19-11. Certification Fees.

Each separate Tow Truck Motor Carrier is responsible for the cost of vehicle inspections, compliance audits and certification as authorized by this rule. Cost-estimates associated with vehicle inspections, investigation/compliance review and certification are available from the Division.

R909-19-12. Certification from a Qualified Training Facility.

(1) The Department will accept training or equivalent certification from a qualified professional training facility that meets the minimum requirements. Training segments that meet minimum requirements can be applied toward a tow truck motor carrier certification, vehicle certification, or driver certification as outlined in the Utah Regulations for Towing Operation and Certification Manual. Until April 1, 2002, however, as stated in R909-19-2, Tow Truck Carriers, equipment, and drivers are considered certified.

(2) From April 1, 2002 through March 31, 2003, the Department will only accept training or equivalent certification from a facility that the Division considers qualified to offer professional training. After April 1, 2003, all Tow Truck Motor Carriers operating within the state must be certified in accordance with rules to be issued by the Division.

(3) The automatic certification granted in this rule does not waive any of the requirements set forth in Title 72, Chapter 9, Part 6, Transportation Code, Tow Truck Provisions, or other rules, regulations, federal or state statutes regarding motor carrier safety. Similarly, nothing in this rule is intended to limit the Division's or the Department's power to inspect, investigate, or take action against a Tow Truck Carrier for failure to comply with any of those laws.

R909-19-13. Maximum Towing Rates. Public Non-Consent Tows.

(1) $110 per hour for the use of Class A and B Tow Truck Service;

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified as outlined in the Utah Regulations for Towing Operations and Certification Manual.

(2) $200 per hour for the use of a Class C Tow Truck Service;

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transport transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified as outlined in the Utah Regulations for Towing Operations and Certification Manual.

(3) $250 per hour for the use of a Class D Tow Truck Service

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transport transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified as outlined in the Utah Regulations for Towing Operations and Certification Manual.

(4) $400 per hour for the use of any tow truck service in the recovery of a hazardous material cargo tank vehicles of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified.

(5) Pursuant to Utah Code Ann. Section 72-9-603(3), it is illegal for a Tow Truck Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule, plus the administrative impound fee set forth in Utah Code Ann. Section 41-6-102.5, if applicable. Any Tow Truck Carrier or Private Impound Yard charging more than the maximum approved rates will be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

R909-19-14. Maximum Private Non-Consent Impoundment Rates.

(1) Tow Truck Motor Carriers and/or Private Impound Yards may charge up to $110 maximum rate for private impoundment of vehicles.

(2) Tow Truck Motor Carriers and/or Private Impound Yards may apply for a Special Function Permit that allows a maximum rate of up to $150 during special functions as defined in the Utah Regulations for Towing Operations and Certification Manual.

(3) Applications must be submitted two weeks prior to the event and approved by the Motor Carrier Division.

(a) Applications can be obtained by calling the Motor Carrier Division at (801) 965-4951.

(4) The $150 rate can only be charged during approved time frames for special functions.

(5) Pursuant to Utah Code Ann. Section 72-9-603(3), it is illegal for a Tow Truck Carrier or Private Impound Yard to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule, plus the administrative impound fee set forth in Utah Code Ann. Section 41-6-102.5, if applicable. Any Tow Truck Carrier or Private Impound Yard charging more than the maximum approved rates will be assessed civil penalties determined by the Department as authorized under Section 72-9-603.

R909-19-15. Maximum Storage Rates. Public/Private Non-Consent Tows.

(1) $15 Maximum per day, per unit, for outside storage of

cars, pickups, and smaller vehicles;

(2) $20 Maximum per day, per unit may be charged for inside storage of cars; pickups and smaller vehicles only at the owner's request.

(3) $35 Maximum per day, per unit for outside storage of semi tractors or trailers;

(4) $70 Maximum per day, per unit may be charged for inside storage of semi tractors or trailers only at the owner's request.

(5) $100 Maximum per day, per unit for outside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(6) $150 Maximum per day, per unit may be charged for inside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F, only at the owner's request.

(7)) Pursuant to Utah Code Ann. Section 72-9-603(3), it is illegal for a Tow Truck Carrier or Private Impound Yard to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule, plus the administrative impound fee set forth in Utah Code Ann. Section 41-6-102.5, if applicable. Any Tow Truck Carrier or Private Impound Yard charging more than the maximum approved rates will be assessed civil penalties determined by the Department as authorized under Section 72-9-603.

R909-19-16. Towing and Storage Rates. Public Consent Tows.

Because contracted-for services are not regulated by the Department, towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier. Those rates are not set by this rule.

R909-19-17. Rates and Storage Posting Requirements.

Pursuant to Section 72-9-603(6), a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current non-consent fees and rates for towing and storage of a vehicle, including any other fees or charges the carrier may impose before allowing a consumer to get his or her vehicle out of an impound yard.

R909-19-18. Federal Motor Carrier Safety Requirements.

All tow truck motor carriers that meet the definition of a commercial motor carrier shall comply with all State and Federal Motor Carrier Safety Regulations and all other legal requirements.

R909-19-19. Consumer Protection Information.

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, the public can call the Motor Carrier Division at (801) 965-4261.

R909-19-20. Establishment of Tow Truck Steering Committee and Work Group.

(1) The Administrator for the Motor Carrier Division will establish a Tow Truck Steering Committee and Work Group to provide advisory information and input.

(2) The Work Group will meet on a quarterly basis or as needed to review policies and procedures.

R909-19-21. Annual Review of Rates, Fees and Certification Process.

(1) The Tow Truck Steering Committee will meet on the 1st Tuesday in August on an annual basis to review rates, fees, tow truck motor carrier procedures and the certification process.

(2) An annual report will be issued by the committee and will be made available at the department's main office, and on the Internet.

R909-19-22. Ability to Petition for Review.

Any Tow Truck Carrier who believes the Department or the Division has acted wrongfully in denying or suspending certification or in imposing a cease-and-desist order may petition the Department for review of that action. The review shall be initiated and processed pursuant to the rules and procedures set forth in Utah Admin. Code R907-1 as an informal appeal under the Utah Administrative Procedures Act, title 63, Chapter 46b, Utah Code Annotated.

KEY: safety regulation, truck, towing, certification

January 18, 2002

41-6-101
41-6-102
41-6-104
53-1-106
53-8-105
63-38-3.2
72-9-601
72-9-602
72-9-603
72-9-604
72-9-301
72-9-303
72-9-701
72-9-702
72-9-703

R916. Transportation, Operations, Construction.
R916-1. Advertising and Awarding Construction Contracts.
R916-1-1. Authority and Purpose.

This rule establishes the procedures for the advertising and awarding of Utah Department of Transportation construction contracts. This rule is authorized under Sections 27-12-7, 27-12-108, 63-49-4, and Subsection 63-56-13(3).

R916-1-2. Definitions.

(1) Terms used in this rule are defined in Section 27-12-2.

(2) In addition, "Notice to Contractors" means the advertisement or public announcement inviting bids for work to be performed or materials to be furnished.

R916-1-3. Invitation for Bids.

(1) The department shall prepare a notice to contractors inviting bid proposals on each project. The notice to contractors shall specify the type of construction, the location, the principal items of work, and the bid opening time and date.

(2) The advertisement for bids shall be published for a minimum period of two weeks in a newspaper of general circulation in the county in which the work is to be performed.

(3) Contractors and suppliers may receive notice to contractors by requesting their name be placed on a distribution list which is maintained by the department.

R916-1-4. Bidding Proposals, Plans and Specifications.

(1) Bidding proposals, plans and specifications shall be available for inspection at all Region offices, Cedar City, Price, Richfield and Salt Lake City headquarters. Plans are available for sale (non-refundable fee) only at the Salt Lake City headquarters, Construction Division office.

(2) Prior to submitting a bid, the bidder shall become prequalified at least 10 working days prior to bid opening date, under Rule R916-2 concerning prequalification of contractors. Prequalification of bidders is not required on projects estimated under $500,000.

(3) Prequalified contractors may obtain bidding proposals, plans and specifications and non-prequalified contractors may obtain non-bidding plans and specifications upon payment of a non-refundable fee as specified in the notice to contractors.

(a) Projects shall not be awarded when the sum of the amount of uncompleted work, both in and outside of the state of Utah, shown on the contractor's "Status of Work Under Contract" form and the bid amount submitted exceeds the amount for which the contractor is prequalified. This transaction is performed at the close of bid opening for all apparent low bidders, on all projects with an advertised engineer's estimate over $500,000.

(b) Two or more contractors who have prequalified separately and desire to enter a joint bid on a single project may do so upon submitting a letter of intent to the department prequalification secretary at least four working days prior to bid opening. The prequalification of each contractor can then be considered for consolidation to place a bid as prime.

(4) If it is necessary to issue an addendum to the plans and specifications during the advertising period, the department shall call and fax a copy to the prime bidders, then mail a copy of the addendum by certified mail to each contractor holding bidding proposals. The department shall mail a copy of the addendum by first class mail to all other plan holders.

R916-1-5. Bidding Requirements and Conditions.

(1) Each bidder shall submit their proposal upon the forms furnished by the department.

(2) Sealed proposals shall be submitted to the department prior to the time and at the place specified in the notice to contractors.

(3) Proposals shall be opened and read publicly at the time and place indicated in the notice to contractors.

(4) No proposal shall be considered unless accompanied by a guaranty in the form of certified check, cashier's check or guaranty bond for not less than five percent of the total amount of the bid.

(5) Each bidder must comply with the laws of Utah relative to the licensing of contractors. A contractor's license is required prior to the submission of a bid, except that a contractor may submit a bid on a Federal-aid highway project without having first obtained a license, provided the contractor, prior to undertaking any construction under that bid (at time of official award notification), shall be licensed in Utah.

(6) The right to reject any or all proposals is reserved by the department.

R916-1-6. Award of Contracts.

(1) The department shall award the contract to the lowest responsible and qualified bidder.

(2) When all bids received exceed the engineer's estimate by more than 10%, the department reserves the right to either accept the low bid or to reject all bids.

(3) The award, if made, shall be within 30 days after the opening of proposals. The department may, subject to approval of the successful bidder, withhold the award beyond the 30 day time frame. After 30 days, if no award has been made, the contractor may withdraw their proposal without liability.

(4) The successful bidder shall be notified, by mail using the address shown on their proposal, that they have been awarded the contract.

(5) The department reserves the right to cancel the award of any contract at any time before the execution of the contract by all parties with no liability against the department.

R916-1-7. Execution of Contracts.

(1) At the time of execution of the contract, the successful bidder shall furnish a performance bond and a payment bond, each in a sum equal to the full amount of the contract. Each bond shall be on the form provided by the department and shall be executed by a surety company or companies licensed by the state of Utah. These companies must be listed on the current United States Department of the Treasury Circular 570 as acceptable sureties on Federal bonds. The department shall make available to the public this Circular at the following locations: Construction Division, UDOT Library, and Internet.

(2) The contract shall be signed by the successful bidder and returned together with the fully executed contract bonds within 15 days after the contract has been awarded.

(3) Failure to execute a contract and file acceptable bonds within 15 days after the contract has been awarded shall be just

cause for the cancellation of the award and the forfeiture of the proposal guaranty.

(4) If the contract is not executed by the Commission within 30 days after receiving signed contracts and bonds, the bidder shall have the right to withdraw their bid without penalty.

(5) No contract shall be considered effective until it has been fully executed by all the parties thereto.

KEY: bids, advertising, contracts, bonding requirements

April 1, 1997	**27-12-7**
Notice of Continuation January 18, 2002	**27-12-108**
	63-49-4
	63-56-38
	63-56-13

R916. Transportation, Operations, Construction.
R916-2. Prequalification of Contractors.
R916-2-1. Authority and Purpose.

This rule establishes procedure for prequalification of contractors desiring to submit bid proposals on Utah Department of Transportation construction projects. This rule is authorized under Section 72-1-201, and Subsection 63-56-13(3).

R916-2-2. Definitions.

(1) Terms used in this rule are defined in Section 72-1-102 and Subsection 63-56-13(3).

(2) In addition, "board" means the prequalification board, consisting of 4 positions: Department of Transportation comptroller, project development engineer, engineer for construction, and the construction administrative secretary.

R916-2-3. Prequalification Policy.

(1) Contractors desiring to submit bid proposals for construction contracts shall be prequalified by the department to ensure they have the resources and capability to successfully complete awarded contracts. Prequalification of contractors is not required for contracts that have an advertised estimate under $500,000.

(2) Qualification ratings establish the type of construction work contractors may be permitted to perform and the maximum dollar value of contracts they are allowed to undertake at any one time.

(3) Contractors who attain a total prequalification of $50,000,000 shall be classified as unlimited. Each contractor's prequalification shall be reviewed at least annually; more often if circumstances so warrant.

(4) Qualification ratings shall be based on evaluation of the contractor's:

(a) experience;

(b) past performance; and

(c) analysis of certified audited financial statements, including balance sheet, income statements, and changes in financial condition.

(i) Unaudited financial statements accompanied by the company federal income tax return for the same time period may be accepted in lieu of the required certified audited financial statements, however, this shall result in a lower prequalification rating.

(5) Each bid proposal submitted shall include a complete "Status of Work Under Contract" form. The form shall include all work presently the responsibility of said contractor, both in and out of the state of Utah.

(a) Contractors with a prequalification amount classified as unlimited are exempt from this requirement.

(6) This policy shall be administered to ensure adequate competition in bidding for construction contracts.

R916-2-4. Prequalification Board.

(1) The Prequalification board is established to:

(a) direct the prequalification of contractors;

(b) review and analyze prequalification applications; and

(c) establish the amount and type of prequalification to be granted to contractors.

R916-2-5. Disqualification.

(1) If the board determines a contractor is not performing in a satisfactory manner on projects, the board may disqualify the contractor from bidding on future projects for a period of time as the board may determine.

(2) Each contractor desiring to bid on a project shall be required to complete a "Status of Work Under Contract" form. The form shall include all work, both in and out of the state of Utah, presently the responsibility of that contractor. If it is determined any contractor knowingly or negligently falsifies their "Status of Work Under Contract," they may be disqualified from bidding on projects for a period of time as the board may determine.

(3) Bonding companies that do not satisfactorily perform on contract bonds, as determined by the board, or are not listed in the Department of Treasury Circular 570, may be suspended from supplying bonds for projects for a period of time as the board may determine. The department shall make Circular 570 available to the public at the following locations: Construction Division, UDOT Library, and Internet.

(4) Any contractor or bonding company so suspended may appeal any decision of the board to the transportation commission.

KEY: bids, contracts

1994	**72-1-102**
Notice of Continuation January 18, 2002	**72-1-201**
	63-56-13(3)

R916. Transportation, Operations, Construction.
R916-3. DESIGN-BUILD Contracts.
R916-3-1. Purpose.

(1) This rule is to provide guidance under which the Utah Department of Transportation (UDOT) may use the DESIGN-BUILD approach to contracting pursuant to Utah Code Section 63-56-36.1. DESIGN-BUILD seeks to provide: a savings of time, cost, and administrative burden; improved quality expectations as to the end product, schedule, and budget; and risk management savings due to lack of duplication of expenses and improved coordination of efforts.

R916-3-2. Authority.

(1) The provisions of this rule are authorized by the following grants of rulemaking authority and provisions of Utah Code: Title 63, Chapter 56; Title 63, Chapter 46a; and Sections 72-1-201, 72-5-114, and 72-6-105.

R916-3-3. Policy.

(1) UDOT may use, where determined appropriate by the Executive Director, the DESIGN-BUILD method of project delivery. When DESIGN-BUILD is used, UDOT shall enter into a contract with a single entity to provide both engineering/design services, construction services, and/or maintenance services pursuant to a UDOT provided scope of work statement. DESIGN-BUILD is not recommended for every project. The use of the DESIGN-BUILD method may be determined by the individual needs and merits of the project.

R916-3-4. Pre-qualification.

(1) UDOT may issue a Request for Qualifications, RFQ, soliciting qualification statements from contractors wishing to submit proposals on a UDOT design-build project. The RFQ shall state the minimum and maximum number of highly qualified proposers that will be invited to submit final proposals.

(2) Pre-qualification shall be based on an evaluation of the criteria set forth in the RFQ, including construction experience; design experience; technical competence; capability to perform, including financial, manpower and equipment resources; experience in other design-build projects; and past performance.

(3) The field of competing proposers shall be narrowed to the most qualified proposers, not to exceed the number designated in the RFQ. Failure to achieve at least two qualified proposers shall necessitate the resolicitation of the project.

R916-3-5. Preparation of Specifications.

(1) UDOT may use any method of specifying construction items which the Executive Director determines is in the best interest of UDOT. Engineering firms who participated in preparation of specifications used in the procurement for a portion (but not all) of the project shall have the right to participate as proposers.

R916-3-6. Request for Proposals (RFP).

(1) The pre-qualified proposers shall be invited to submit proposals on the designated design-build project pursuant to an RFP. UDOT may elect to ask for initial proposals followed by discussions and best and final offers, or may elect to award the contract without discussions or best and final offers. The RFP may ask for proposals based on a stipulated sum.

(2) UDOT may award a stipulated fee to the proposers who submit responsive proposals but who are not selected for contract award. The amount of the fee (if any) shall be identified in the RFP.

(3) The RFP shall require separate technical and price proposals, meeting requirements as stated in the RFP. The RFP may require proposals to meet a mandatory technical level, and may include a request for alternative proposals.

(4) Technical solutions/design concepts contained in proposals shall be considered proprietary information unless a stipulated fee is paid.

R916-3-7. Evaluation of Proposals and Discussions with Proposers.

(1) UDOT shall evaluate the technical and price proposals separately, in accordance with the evaluation factors set forth in the RFP.

(2) UDOT may offer the proposers the opportunity to participate in presentations and/or discussions regarding their proposals. Discussions, either oral or in writing, may be held with proposers for the purpose of clarification of the proposals and/or to identify deficiencies in initial proposals. If presentations or discussions are held with one proposer, they must be held with all pre-qualified proposers.

(3) If discussions are held, best and final offers will be requested. If best and final offers are requested they will be the basis for award and will be evaluated as stated in the RFP.

R916-3-8. Acceptable Bid Security; Performance and Payment Bonds.

(1) The Executive Director shall have the right to waive the requirement to provide bid security, or may reduce the amount of such security, if he or she determines that the bid security otherwise required by Utah Code Sections 63-56- 37 through 39 to be unnecessary to protect the State.

(2) The Executive Director shall have the right to reduce the amount of the payment and performance bonds below the 100% level required by Utah Code Sections 63-56-37 through 39, if he or she determines that a 100% bond is unnecessary to protect the State.

(3) Bid security, payment bonds and performance bonds must be provided on the forms included in the RFP.

R916-3-9. Required Contract Clauses.

The design-build contract documents shall include the contract clauses set forth in Utah Administrative Code R23-1-7, subject to such modifications as the Executive Director deems advisable. Any modifications shall be supported by a written determination of the Executive Director that describes the circumstances justifying the variations, and notice of any material variation shall be included in the RFP.

R916-3-10. Award and Contract.

The basis for award shall be stated in the RFP. Award may be based on any of the following approaches (all of which shall be deemed to constitute award to the lowest responsible bidder as such term is used in Utah Code Section 63-56-36.1(6)(b):

(1) Award to the responsible proposer offering the lowest

priced responsive proposal. If the RFP includes a mandatory technical level, no proposal shall be considered responsive unless it meets that level.

(2) Award to the responsible proposer whose proposal is evaluated as providing the best value to UDOT.

(3) If the RFP provides for a stipulated sum, award to the responsible proposer whose proposal is evaluated as providing the best value to UDOT.

There is no requirement that a contract be awarded. Following award a contract shall be executed and notice given to the successful design-build proposer to proceed with the work.

KEY: construction, contracts, DESIGN-BUILD, highways
December 31, 1996 63-56-36
Notice of Continuation January 18, 2002

R926. Transportation, Program Development.
R926-2. Evaluation Of Proposed Additions to the State Highway System.
R926-2-1. Authority.

This rule establishes the procedure and criteria by which highways shall be considered for inclusion in the state highway system as required by Utah Code Ann. Section 72-4-102.5.

R926-2-2. Purpose.

The purpose of this rule is to provide the following:

(1) a procedure for requesting additions to the state highway system;

(2) a procedure for evaluating requested additions to the state highway system;

(3) a set of criteria by which proposed additions shall be consistently checked.

R926-2-3. Procedure for Requesting an Addition to the State Highway System.

A written request for the addition of a highway to the state highway system shall be made by the government agency currently responsible for the highway, a member of the Utah Transportation Commission or the Department of Transportation. The request shall be conveyed to the Utah Department of Transportation region director responsible for the area where the highway is primarily located.

R926-2-4. Procedure for Evaluating Proposed Additions to the State System.

The procedure for evaluating proposed additions to the state highway system is as follows:

(1) The region director shall make a preliminary review of the proposed addition and may request the highway be evaluated for inclusion on the state highway system.

(2) The engineer for statewide planning shall review the request from the region director and shall determine if the road qualifies for inclusion on the state highway system.

(3) The engineer for statewide planning shall forward the request and evaluation, regardless of the outcome, to the program development director.

(4) The program development director shall present the evaluation to the Transportation Commission with a recommendation whether the route qualifies for inclusion on the state highway system.

(5) The Transportation Commission shall review the recommendation and shall approve or reject the route as part of the state highway system.

(a) Review the recommendation,

(b) Provide opportunity for the government agency currently responsible for the highway to comment on the proposal during a Transportation Commission meeting, and

(c) Approve or reject the route as part of the state highway system.

(6) The Transportation Commission shall, if it approves the route, add the route to the state highway system by resolution.

(7) The State Legislature shall review the addition to the state highway system and shall approve or disapprove the addition.

R926-2-5. Criteria for Inclusion of Highways in the State Highway System.

Highways requested to be added to the state highway system shall be evaluated as follows:

(1) Rural Criteria:

(a) Interstate routes - interstate routes shall be state highways.

(b) U.S. numbered routes - U.S. numbered routes should be state highways.

(c) Principal arterials - highways functionally classified as principal arterial shall be state highways.

(d) Minor arterials - highways functionally classified as minor arterial shall be state highways.

(e) Major collectors - major collector highways should be city or county highways. Rural highways functionally classified as major collector that cross county lines and are significant intercounty routes may be state highways provided the areas are not served by another state highway.

(f) Major rural traffic generators - major rural traffic generators are county seats, incorporated cities or towns with 1,500 or greater population, or traffic generators that produce traffic equivalent to 1,500 population. State highways should serve major rural traffic generators.

(i) Major rural traffic generators shall be considered served if within ten miles of a state highway.

(ii) Rural traffic generators that do not meet these criteria shall be city or county highways.

(g) Minor Collectors - highways functionally classified as minor collector shall be city or county highways.

(h) Local - public streets and roads functionally classified as local shall be city or county highways.

(2) Urban Criteria:

(a) Interstate routes - interstate highways shall be state highways.

(b) U.S. numbered routes - U.S. numbered routes should be state highways.

(c) Principal arterials - highways functionally classified as principal arterial should be state highways.

(d) Minor Arterials - urban highways functionally classified as minor arterial should be city or county highways.

(i) Minor arterial highways that connect to a state highway at the urbanized area boundary shall continue as a state highway to a logical connection with another state highway. Minor arterial highways that do not meet this criterium shall be city or county highways.

(e) Collectors - highways functionally classified as collectors shall be city or county highways.

(f) Locals - public streets or roads functionally classified as local shall be city or county highways.

KEY: transportation planning, highway planning
May 29, 1998 72-4-102
Notice of Continuation January 21, 2002

R926. Transportation, Program Development.
R926-3. Class B and Class C Road Funds.
R926-3-1. Authority.

Utah Code Ann. Sections 72-2-109, 72-3-103, and 72-3-104 authorize the Utah Department of Transportation and city and county officials to mutually adopt rules governing the expenditure of class B and class C road funds.

R926-3-2. Purpose.

The following rules are to govern the expenditure of class B and C road funds as mutually agreed on by the City and County Joint Highway Committee and the Utah Department of Transportation.

R926-3-3. Definitions.

(1) "Class B and class C Roads" means all public highways, roads or streets that are traveled ways under the jurisdiction of, and maintained to a minimum standard or higher by a county or incorporated city or town, over which a conventional two-wheel drive vehicle may travel.

(2) "Class B and class C road account" is as defined in Utah Code Ann. Section 72-2-107.

(3) "Alleys" means those publicly or privately owned passageways, regardless of width, that were established more as a necessary convenience for adjoining property owners than for free movement of ordinary two-wheel drive vehicular travel. They are typically used for garbage collection, access to private garages and rear entrances to commercial establishments.

(4) "Construction" includes the definitions provided in Utah Code Ann. Section 72-1-102; and Title 72, Chapter 6, Transportation Code.

(5) "Maintenance" has the definition provided in Utah Code Ann. Section 72-6-109.

(6) "Improvement Project" has the definition provided in Utah Code Ann. Section 72-6-109.

(7) "Project" has the definition provided in Utah Code Ann. Section 72-6-109.

(8) "UDOT" means the Utah Department of Transportation.

(9) "Local Authority" means a county or municipality.

R926-3-4. Rules.

The program to use class B and class C roads account funds will be conducted according to Title 72, Chapter 6, Transportation Code; and other laws governing the Utah Department of Transportation, 51-2-1 through 51-2-3, and 51-2-5 through 51-2-6. The following information is provided for clarification and implementation of the statutes.

(1) Class B and C roads account funds may be used only for construction, maintenance and highway related purposes on eligible B and C roads. Except under emergency conditions, all equipment purchased with B and C roads account funds shall be used on public roads only.

(2) The local authority shall meet the requirements of Section.

(3) Approval shall be required from the UDOT region director to use B and C roads account funds on state highways, for any permitted purpose.

(4) Unlocked gates shall be permitted on eligible roads only if approved by county governing board for a county road or by the city council if a city street. Any portion of a road restricted by a privately locked gate shall not be eligible for class B and C roads account funds.

(5) Signing that restricts use of a public road shall not be permitted. Examples of restrictive signing include:

(a) any sign that implies the road is private or may be used only by authorized personnel;

(b) any sign posted on an unlocked gate across an otherwise public road that reads "No Trespassing", "Private Property", or "Keep Out". It is permissible, however, for these signs to be posted on fences or posts that run parallel to a public road to mark private property.

(6) Any local authority desiring to allow its class B or C roads account funds to accumulate until sufficient funds are available for more extensive road projects may invest said monies in accordance with the Utah State Money Management Act, Title 51, Chapter 7. All interest earned shall be credited to the local authority class B or C roads account fund.

(7) The acceptance by a local authority of monies from the B and C roads account fund shall constitute an agreement to use the funds according to all laws and regulations that apply. Failure of any local authority to comply with the laws, regulations and procedures regarding class B and C roads account funds shall constitute a breach of contract and UDOT shall have the authority, at its discretion, to withhold subsequent allocations in each instance until compliance with all laws and regulations is accomplished.

(8) The local authority shall meet audit requirements set forth in Title 51, Chapter 2.

(9) The local authority may issue bonds against class B and C road account fund revenues up to a 10-year period, as provided in Utah Code Ann. Section 72-2-108.

R926-3-5. Procedures.

(1) Class B and C roads account funds shall be distributed based on Section 72-2-108.

(2) Population figures utilized in allocating B and C s account funds shall be based on the most recent Bureau of Census figures as set forth in Section 72-2-108.

(3) The UDOT Planning Statistics Section shall conduct a continuing program in which all traveled ways in each county, city and town are regularly inventoried by physical inspection during a four to seven year period. This inventory shall determine eligible mileage and up-to-date land area for each local jurisdiction, which shall then be used in allocating B and C roads account funds.

(4) Local authorities may request UDOT, no more than once per year, to conduct a special update to the regularly scheduled inventory so the local government may receive credit for changes to the corporate limits or road and street systems that occur between the regular inventory cycle. The request shall be in writing to the supervisor of the road inventory program in the UDOT Planning Statistics Section.

(5) Mileage figures for streets and roads are determined by scaling from maps established by UDOT with assistance from the local authorities. Information necessary to establish roads and streets on the UDOT maps shall be obtained from the local government before mileage can receive Class B or C roads

account credit.

(6) Alleys are not included in the mileage for fund allocation.

R926-3-6. Uses of Class B and Class C Roads Account Funds.

(1) Permissible uses of class B and C roads account funds include, but are not limited to, the following:

(a) all construction and maintenance on eligible class B and C roads, as defined in Utah Code Ann. Sections 72-3-103 and 72-1-104;

(b) sidewalks, curb, and gutter on all eligible class B and C roads and state highways, safety features, traffic signals, and traffic signs, as provided in Title 72, Chapter 8, Transportation Code;

(c) investments for interest purposes; interest to be retained in the fund;

(d) equipment purchases or equipment leases and rentals;

(e) engineering and administration;

(f) future reimbursement of other funds for large construction projects;

(g) rights-of-way acquisition, fencing, and cattle guards;

(h) matching federal funds as provided in Utah Code Ann. Section 72-2-110;

(i) equipment purchased with class B and C roads account funds may be leased from the road department to another department or agency using the rental rate established by the current "Cost Reference Guide for Construction Equipment", distributed by K-3 Directory Corp., 1735 Technology Dr., San Jose, California, 95110, Phone 1-800-669-3282;

(j) construction of road and maintenance buildings, storage sheds, and yards. Multiple use facilities may be constructed by mixing funds on a proportional basis;

(k) construction and maintenance of alleys.

(2) Non-permissible uses include, but are not limited to, the following:

(a) non-road uses;

(b) police costs;

(c) payment for rental on equipment previously purchased with B and C roads account funds.

R926-3-7. Responsibilities.

(1) The Utah Transportation Commission shall receive appeals from administrative actions.

(2) The Utah Department of Transportation in cooperation with city and county officials, shall promulgate rules and procedures covering the class b and c roads program. The Department shall:

(a) apportion class B funds to counties and C funds to cities in accordance with the formula provided by law at Utah Code Ann. Section 72-2-108;

(b) make and mutually adopt with cities, towns and counties, rules and procedures for expenditures of these funds. The City and County "Joint Highway Committee" represents all cities and counties;

(c) cooperate with officials of counties, cities and towns to put into effect the provisions of the law.

(3) For the purpose of handling the affairs of the class B and C roads account fund, UDOT has assigned particular duties within the department as follows:

(a) Each region office shall randomly check completed projects to assure responsible use of the funds.

(b) Program Development, Planning Statistics Section prepares the quarterly class B and C allocation list using the prescribed formula.

(i) On request UDOT shall provide individual population, mileage, and land area information used in the distribution formula.

(ii) UDOT calculates the allocation of B and C funds each quarter.

(iii) Each city and county receives a transfer of funds directly from the State Division of Finance.

(c) Program Development, Planning Statistics Section shall conduct a regularly scheduled inventory to physically inspect all roads and streets under local jurisdiction and to collect data to establish current corporate limits.

(d) Program Development, Cartography Unit may publish a complete set of maps for each county, including all cities and towns within each county, within a year or less following completion of the regular inventory in a county. The new maps shall bear the same year date the inventory was completed in the county. Each local authority shall be entitled to receive two complimentary maps of their jurisdiction when published.

(e) UDOT may conduct special updates by request of the local authority to allow changes to be made in the figures used in allocating B and C funds between the regular inventory cycle.

(i) Local authorities shall be notified of the final results of the update on completion of the field work by UDOT personnel; changes in the allocation figures should be made within six months after submittal of the request.

(ii) Updates shall be subject to availability of roads for physical inspection during winter months.

(f) UDOT reserves the right to disqualify a road from class B or C funding if maintenance is below the minimum standard and is not improved within 90 days of notification from UDOT to local officials. A disqualification may be appealed.

(g) Office of Comptroller shall maintain record of all authorized distributions.

(h) The UDOT local government projects engineer shall be responsible for administration of the B and C program and shall be available to assist all cities and counties.

(i) UDOT makes no guarantee of the availability of future fund allocations and assumes no financial responsibility in that regard.

(4) The local authority shall:

(a) become acquainted with and follow all rules, procedures and law regarding the use of B and C roads account funds;

(b) make definite assignments for reporting and using class B and C roads account funds;

(c) provide for financial and compliance audits of the class B and C roads account funds as required by Sections 51-2-1 through 51-2-3, 51-2-5, and 51-2-6;

(d) submit a copy of the required audit report and management letter/financial statement or financial report to the State Auditor's Office and to the UDOT local government projects engineer within six months of the end of the local government's fiscal year.

(e) select and complete projects using class B and C roads account funds;

(f) deposit and account for class B and C roads account funds in accordance with the State of Utah Uniform Accounting Manual;

(g) maintain class B and class C roads and streets to the minimum standard or higher;

(i) Minimum standard includes keeping the roadway free from such obstructions as excessively high centers, overgrowth of vegetation, and washouts. Unimproved roads shall be graded on a regular basis to meet this requirement.

(ii) Roadways shall be traversable by a conventional two-wheel drive passenger vehicle during dry weather conditions.

(iii) Snow removal and keeping a roadway passable during extreme weather conditions shall be the discretion of the local agency.

(h) furnish to UDOT any information at the local authority's disposal that may assist UDOT in updating the mileage and land area figures of the local entity during the inventory process.

(i) Examples of the type of information needed regarding changes in road and street mileage are:

(A) computerized data containing a scaled map or other descriptive information, such as point of beginning, bearings, distances and curve data, that provides accurate location and alignment of individual roads and streets; or

(B) copies of recorded subdivision plats containing descriptive information as in; or

(C) a map showing locations of roads or streets.

(ii) Examples of the type of information needed regarding changes to corporate limits are:

(A) copies of annexation documents that have been filed and recorded with the county recorder's office. These documents shall contain legal descriptions that refer to commonly known reference points such as township, range, and section; or latitude and longitude; or state plane coordinates. Any annexations described by local or farm surveys that identify only lots, blocks, or properties and cannot be plotted on the map maintained by UDOT shall not be added to the land area total.

(B) If available, computerized data showing current corporate limits as recorded with the county on a map. Local officials shall be willing to certify the corporate limits as shown on the map reflect only those annexations that have been recorded with the county.

R926-3-8. Eligibility Requirements for Class B and Class C Roads.

(1) UDOT shall recognize claim to jurisdiction by decree of local officials. These officials include county governing boards or the governing officials of the city.

(2) UDOT shall recognize a county/city claim of jurisdiction of any public road through private land within national forest boundaries with no additional documentation.

(3) UDOT shall require a copy of the agreement with the National Forest Service granting jurisdiction, including temporary with renewable option, of any road passing through public lands within national forest boundaries to a county/city for these roads to be eligible.

(4) Roads and streets leading to the entrance of a public park or cemetery are eligible. However, those roads inside the park or cemetery are ineligible unless they serve as a through street that carries traffic to other destinations.

KEY: transportation policy, highway finances, highway, roads

April 1, 1997	**27-12**
Notice of Continuation January 21, 2002	**72-6**
	51-2-1
	through
	51-2-3
	51-2-5
	through
	51-2-6

R926. Transportation, Program Development.
R926-5. State Park Access Highways Improvement Program.
R926-5-1. Authority and Purpose.

Utah Code Ann. Section 72-3-207 authorizes the Utah Department of Transportation to administer this program and to establish procedures for a County, City, or Town to apply for a grant of program monies.

R926-5-2. Definitions.

(1) Class B and C Roads: As defined in Utah Code Ann. Sections 72-3-103 and 72-3-104.

(2) State Park Access Roads: As defined in Title 72, Chapter 3, Part 2, Transportation Code.

(3) Construction: As defined in Utah Code Ann. Section 72–6-109.

(4) Maintenance: As defined in Section 72–6-109.

(5) Project: As defined in Section 72–6-109.

(6) Commission: The Utah Transportation Commission.

(7) UDOT: The Utah Department of Transportation.

(8) Joint Highway Committee: An advisory body of fifteen officials each from the Utah League of Cities and Towns, and the Utah Association of Counties.

(9) Local Authority: A county or incorporated city or town in Utah.

R926-5-3. Eligibility.

(1) State Park Access Highways that are also Class B and C Roads are eligible.

(2) This program is for Construction Projects. Maintenance Projects are not eligible.

(3) Administrative and indirect costs are not eligible.

R926-5-4. Rules.

The State Park Access Highways Improvement Program is administered under all State Statutes. The following rules also apply.

(1) The Commission sets priorities for program monies.

(2) The Commission uses the Joint Highway Committee to help in the project selection process.

(3) Projects are selected annually unless an emergency arises.

(4) Local Authorities shall follow the procedures of Section 72-6-107.

(5) The Local Authority provides at least 50% of the cost of each project in matching funds.

(6) The Local Authority agrees to use the funds within three years. The local authority repays all unused funds to UDOT.

(7) The Local Authority certifies completion of the project and compliance with these rules to UDOT.

R926-5-5. Procedures and Responsibilities.

(1) Local Authorities submit a grant application to the Joint Highway Committee. The application includes a concept report describing the location, scope of work, project limits, and cost estimate.

(2) The Joint Highway Committee prioritizes grant requests considering the following factors:

a. Highway usage.

b. Physical condition of the road as determined by a Road Surface Management System.

c. Ability of local authority to maintain and preserve the highway, and

d. Capital and operation improvement plans of the Utah Division of Parks and Recreation.

(3) The Joint Highway Committee recommends up to three years of projects for Commission approval.

(4) The Commission reviews the Joint Highway Committee recommendations, makes adjustments if necessary, and approves a list of projects.

(5) UDOT executes an agreement with the Local Authority and grants funds for each approved project. The awarding of grants is subject to availability of funding.

(6) Local Authority completes the construction project.

(7) Local Authority submits certification of compliance and completion to UDOT.

KEY: state parks, transportation, highway finance*
April 14, 1997 72-3-207
Notice of Continuation January 21, 2002

R926. Transportation, Program Development.
R926-6. Transportation Corridor Preservation Revolving Loan Fund.
R926-6-1. Purpose and Authority.

(1) Subsection 72-2-117.7(c) and Subsection 72-2-117.10(a) authorizes the Utah Transportation Commission to establish this rule. The purpose of this rule is to establish procedures for:

(a) the Utah Department of Transportation to apply for fund monies;

(b) the Utah Transportation Commission to award fund monies; and

(c) repayment conditions; and

(d) establishing a corridor preservation advisory council committee.

R926-6-2. Definitions.

(1) "Commission" means the Utah Transportation Commission.

(2) "UDOT" means the Utah Department of Transportation.

(3) "Council" means the Utah Transportation Corridor Preservation Advisory Committee Council.

(4) "Corridor" means a strip of land between two termini within which traffic, topography, environment and other characteristics are evaluated for transportation purposes.

(5) "Fund" means the Transportation Corridor Preservation Revolving Loan Fund.

R926-6-3. Utah Transportation Preservation Advisory Council Committee.

(1) UDOT shall establish a council committee to provide recommendations and priorities concerning the use of fund monies to the commission. assist in prioritizing requests for funding. The council committee shall be chaired by the UDOT Engineer for Transportation Planning. Additional committee members shall be Chief, UDOT Right of Way Division, two commission members selected by the Chairman of the Commission, one designated member from each of the Metropolitan Planning Organizations in the State, any additional members appointed by the Commission, and a representative with relevant technical expertise or experience from each of the following:

(a) Bear River Association of Governments;

(b) Five County Association of Governments;

(c) Mountainland Association of Governments;

(d) Six-County Association of Governments;

(e) Southeastern Association of Governments;

(f) Uintah Basin Association of Governments; and

(g) Wasatch Front Regional Council.

R926-6-4. Council Responsibilities.

The council shall receive and review all requests for monies from the fund; and shall prioritize such requests based upon Subsections 72-2-117.7(a) and (b). Priority shall be given to cost-effective preservation projects which maximize cost savings for future transportation right of way acquisitions.

R926-6-5. UDOT Responsibilities.

(1) In addition to the specified statutory considerations, UDOT may also:

(a) review requests and determine if sufficient studies have been completed in a corridor to:

(i) identify environmentally sensitive areas;

(ii) determine feasible alignments;

(iii) determine cost-effectiveness of the project; and

(iv) allow for adequate public involvement.

(b) forward council recommendations to the commission and request commission approval for funding specific corridors;

(c) acquire real property or any interest in real property necessary for corridor preservation in corridors authorized by the commission;

(d) manage monies of the fund; and

(e) administer repayment contracts with counties and municipalities.

R926-6-6. Procedure for the Awarding of Fund Monies.

Requests for monies shall be directed to the council for review and prioritization based upon Section R926-6-4. The results of the evaluation of requests shall be forwarded to the Commission. The Commission shall review the recommendations of the Council as well as any other pennant factors and approve, adjust, or reject the recommended expenditures in accordance with Section 72-2-117(4a).

R926-6-7. Repayment Conditions.

The commission may determine a loan repayment schedule. All corridor preservation loans shall be paid back according to the approved loan repayment schedule or the earlier of: when the remainder of the right of way has been acquired; or when the project has been advertised for construction. If the commission determines an alignment for a transportation project is not feasible and property for the alignment was purchased under this program, the property shall be disposed of in accordance with Section 72-5-111. All loan repayments together with rents, lease proceeds, profits, and monies resulting from the sale of excess properties shall be returned to the fund.

KEY: transportation, transportation corridor preservation revolving loan fund, transportation planning, right of way
November 20, 2001 72-2-117.7(c)
Notice of Continuation January 21, 2002 72-2-117.10(a)

R930. Transportation, Preconstruction.
R930-1. Installation of New Mailboxes and Correction of Nonconforming Mailboxes.
R930-1-1. Authority.

(1) This rule is allowed under Utah Code Ann. Section 72-7-102.

R930-1-2. Definitions.

(1) "State Highway" in this rule is defined in Utah Code Ann. Section 72-3-102.

(2) "Mailbox" means a box, approved by the United State Postal Service, at or near a dwelling or building which holds the occupants' mail.

R930-1-3. Purpose.

(1) The purpose of this rule is to provide:

(a) a procedure for installation of new mailboxes;

(b) for the correction of nonconforming mailboxes.

R930-1-4. When Mailboxes are on Highway Right of Way.

(1) All new mailboxes placed on State highways shall be constructed by the owner in conformance with current standards and regulations of the Utah Department of Transportation and United States Postal Service.

(2) Existing mailboxes which do not conform to this rule shall be removed or altered by the owner to conform to the standards of this rule.

(3) The following provisions shall govern installation of new mailboxes and correction of nonconforming mailboxes:

(a) Mailbox supports that are deemed nonconforming and hazardous by the Utah Department of Transportation region director shall be reconstructed and replaced at the owner's expense. The following criteria shall be used to determine nonconformity:

(i) Mailbox supports of wood with over 25 square inches (16,000 square millimeters) cross sectional area;

(ii) Mailbox supports of metal shapes, if the supports are over 3.5 inches (89 millimeters) in greatest dimension or on pipe of over two inches (50 millimeters) diameter.

(b) Mailboxes and supports which are improperly located, in poor repair, and detract from the appearance of the highway, or if any part of the mailbox is closer than the shoulder of the road or over 50 inches (1.25 meters) high, shall be considered as nonconforming and shall be reconstructed or replaced at the owner's expense.

(c) All new mailboxes placed on State highways shall be constructed in conformance with Standard Drawings 725-1 and 725-1A of the Utah Department of Transportation's Standard Drawings for Road and Bridge Construction, which is hereby adopted and incorporated by reference.

(d) The Utah Department of Transportation's region permits officer shall:

(i) keep mailbox owners informed of current standards and regulations for mailbox installations on State highways;

(ii) conduct field checks of mailbox installations to insure compliance with standards and regulations;

(iii) notify the owner in writing of any nonconforming mailbox installation, which writing shall require the owner to correct any deficiencies within 30 days of receipt of the writing;

(iv) if owner fails to comply with the notice, removes the mailbox and delivers it onto the property of the owner.

KEY: postal service

1987	**72-3-102**
Notice of Continuation January 22, 2002	**72-3-102**

R930. Transportation, Preconstruction.
R930-2. Public Hearings.
R930-2-1. Definitions.

(1) "UDOT" means Utah Department of Transportation.
(2) "FHWA" means Federal Highway Administration.

R930-2-2. Coordination with Other Laws and Regulations.

(1) In order to promote greater public involvement in the highway program the Utah Department of Transportation will conduct public hearings or afford opportunities for public hearings on highway projects in accordance with state and federal laws. Hearing procedures contained in 23 CFR 771, 40 CFR Parts 1500-1508 and 23 USC 128, Public Hearings are herewith incorporated by reference.

(2) The provisions of R930-2 may be waived by the Executive Director of the Utah Department of Transportation or, on Federal-aid projects, the Federal Highway Administrator if it is determined that the construction of a project is urgently needed because of a national emergency, a natural disaster or a catastrophic failure.

R930-2-3. When Hearings are Held or Opportunities Afforded.

Public hearings will be held or an opportunity for public hearing afforded on all highway projects where the project is on new location; where the project would have a substantially different social, economic or environmental effect; or where the project would essentially change the layout or function of connecting roads or streets. Uniform public hearing procedures shall be established and practiced in such a manner to insure that:

(1) The public is given ample notification of each public hearing and such public hearing will be held at a time and place convenient to those concerned.

(2) All interested persons shall have an opportunity to become fully acquainted with highway proposals of concern to them and to express their views at those stages of development when flexibility to respond to those views still exists.

(3) The Utah Transportation Commission has an opportunity to consider the testimony or comments of any interested person or group having properly submitted such testimony or comments in accordance with published instructions.

R930-2-4. Types of Hearings.

The Utah Department of Transportation will hold location hearings to discuss general location alternatives and environmental documents, if any; design hearings to discuss the design details of a proposal; or combined location and design hearings. The Utah Department of Transportation may afford an opportunity for such hearings to satisfy this rule.

R930-2-5. Notice - Project Public Hearings.

On each public hearing, the UDOT Community Involvement Officer will arrange for at least two notices to be published in a daily newspaper with statewide circulation. The first notice shall be published at least two weeks prior to the public hearing. The second notice shall be published five to ten days prior to the public hearing. Additional notice may also be published in local weekly or shopper newspapers with circulation in the project area.

Notices shall contain the date, time and place of the public hearing in addition to identifying the proposed project or hearing subject in a clear and easily understood manner. Notices shall also contain information pertaining to the submission of testimony for those unable to attend the public hearing.

Affirmative consideration will be given to minorities in advertising all project public hearings, where appropriate.

R930-2-6. Hearing Conduct.

All public hearings held pursuant to this section will be conducted by a member of the Utah Transportation Commission, his representative, normally the UDOT Community Involvement Officer, or by a local official. The hearing shall be conducted impartially.

R930-2-7. Notice - Opportunities for Public Hearings.

When an Opportunity for Public Hearing is provided, the UDOT Community Involvement Officer will arrange for at least two notices to be published in newspaper(s) described in Section R930-2-5. The first notice shall provide at least fourteen days for a request for public hearing to be submitted. The second notice shall provide for at least seven days for a request for public hearing to be submitted. Notices shall identify the proposed project or subject in a clear and easily understood manner. Deadlines stated will be postmark deadlines.

Affirmative consideration will be given to minorities in advertising all project opportunities for public hearings, where appropriate.

R930-2-8. Requests for Project Public Hearings.

When an opportunity for a public hearing is advertised, any person with a social, economic or environmental interest in the project may request in writing that a public hearing be held, provided the request is received by the UDOT Community Involvement Officer in accordance with the published instructions and before the published deadline. Requests shall describe the interest of the requesting party and what the requesting party hopes to discuss or examine at the public hearing.

When questions exist concerning a request for a public hearing, the UDOT Community Involvement Officer may contact the requesting party/parties to further determine their interest in the project. If, as a result of such contact it is determined that a public hearing is not necessary, or that the requesting party might better satisfy their needs in another way, the requesting party may withdraw their request. In the event of such a withdrawal the UDOT Community Involvement Officer may cancel the hearing or proceed with the hearing if in his/her judgment the goals of the Department would be better served or the requested hearing has already been publicized.

R930-2-9. Local Government Projects.

Public Hearings conducted on local government projects must be held and conducted in accordance with R930-2.

R930-2-10. Official Public Hearing Formats.

The Utah Department of Transportation may conduct public hearings using either of two formats. One is the formal meeting format public hearing where the public gathers as an audience and the meeting is conducted by a moderator. The other format is the open forum hearing where the public is allowed to review information in an open house type setting and provisions are made to record any testimony individuals wish to give. A combination Open Forum/Formal Meeting or Formal Meeting/Open Forum hearing may also be conducted.

R930-2-11. Transcript of Official Public Hearings.

The Utah Department of Transportation will prepare and distribute a transcript of the public hearing for the consideration of the Utah Transportation Commission and other interested agencies. The transcript may include a map or drawing illustrating the proposed project, when available. When a formal hearing is held, a verbatim record of the hearing proceedings will be included. When an open forum hearing is held, a record of individual statements, if any, submitted by the attendees will be included. Also included will be petitions and written testimony pertaining to the proposed improvements submitted in accordance with the instructions published in the legal notice or submitted at the public hearing. Extensive petition signature pages or form letter mass mailings shall be preserved but need not become a part of the distributed transcript. Instructions will provide that written statements received from the time the hearing was first advertised to a postmark deadline at least ten days following the hearing will be included in the transcript. If the tenth day following the hearing falls on a Sunday or holiday an additional day shall be added.

The UDOT Community Involvement Officer may restrict written testimony to that which is 8-1/2 inches by 11 inches in size and can be reproduced on a standard photocopy machine.

R930-2-12. Other Meetings and Activities.

The Utah Department of Transportation may hold information meetings, supplemental public hearings or conduct additional community involvement activities other than those required above when the goals and objectives of this rule can be better fulfilled.

KEY: government hearings, highway hearings, public hearings
1993 72-1-201
Notice of Continuation January 22, 2002

R930. Transportation, Preconstruction.
R930-3. Highway Noise Abatement.
R930-3-0. Purpose.

The following is consistent with the Federal Highway Administration's Procedures for Abatement of Highway Traffic Noise, 23 CFR 772, which is hereby adopted and incorporated by reference, and in accordance with Utah Code Ann. Section 72-6-111. It is provided to address highway noise impacts and to determine the conditions under which noise abatement may be approved.

R930-3-1. Definitions.

(1) "Existing Noise Level" means the noise level, Leq, resulting from the natural and mechanical sources and human activity, considered to be usually present in a particular area.

(2) "Design Noise Level" means the noise level, Leq, calculated for the worst traffic noise conditions likely to occur on a regular basis during the future design year, using a method approved by FHWA.

(3) "Type I Project" means a highway construction project that is related to an increase in traffic noise - construction of a highway on new location or the physical alteration of an existing highway which significantly changes the alignment or increases the number of through-traffic lanes.

(4) "Type II Project" means a proposed highway project strictly for noise abatement on an existing highway.

(5) "UDOT" means Utah Department of Transportation.

(6) "FHWA" means Federal Highway Administration.

(7) "Sensitive Land Use" means dwelling units or other fixed, developed sites of frequent human use not exceeding 300 m from the right-of-way line.

(8) "dBA" means decibels of sound expressed or measured using the "A" weighting scale of a sound-pressure level meter.

(9) "AASHTO" means American Association of State Highway and Transportation Officials.

R930-3-2. Applicability.

(1) Type I Projects. Noise abatement shall be considered for Type I projects where noise impacts are identified. A new or proposed subdivision or other development must have obtained approval from the appropriate local government agency for final plans for development prior to either of the following dates, whichever comes first:

(a) the earliest environmental approval date of the highway improvement,

(b) the date the local government agency's general plan or master plan has designated the highway for major improvements.

(2) Type II Projects. Noise abatement may be considered for Type II projects where noise impacts are identified and under the following conditions:

(a) As requests are received by the Department from local government agencies, noise studies shall be conducted and qualifying projects shall be prioritized.

(b) Type II projects apply only to freeways (high speed highways with full access control), and to expressways (high speed highways with limited access control).

(c) Noise abatement for developments that are approved after the earliest date as provided in R930-3-2(1) shall not be considered.

(d) Residences are the primary focus of Type II noise abatement.

(e) Type II projects shall be prioritized annually for funding purposes based upon the existing noise level for typical dwellings nearest the highway. The project with the highest existing noise level has the highest priority. In case of a tie, the project with the earliest agency request date is higher on the list.

(f) Projects from the prioritized list shall be designed and built as funding becomes available for Type II projects.

(g) Projects that are not high enough on the list to be funded shall be carried over to the next year's list and reprioritized along with new projects.

R930-3-3. Noise Impact Determination.

A traffic noise impact occurs, for purposes of this policy, when either of the following conditions exists at a sensitive land use:

(1) both and Type II The design noise level approaches (is within two dBA of) or exceeds the Noise Abatement Criterion (NAC) in Table 1. Applies to Type I projects only.

(2) The design noise level substantially exceeds (ten dBA or more) the existing noise level. Applies to Type I projects only.

(3) The existing noise level approaches (is within two dBA of) or exceeds the Noise Abatement Criterion (NAC) in Table II. Applies to Type II projects only.

R930-3-4. Noise Abatement Objective.

When noise abatement measures are being considered, every reasonable effort shall be made to obtain substantial noise reductions consistent with Department procedures.

R930-3-5. Noise Abatement Conditions.

In order to be considered for noise abatement, all of the following conditions must be met, if applicable:

(1) A noise abatement device shall not be installed where it will create a hazard or violate design standards. Specifically, noise abatement walls shall not be added within the highway clear zone as defined in the AASHTO Roadside Design Guide, unless a safety barrier already exists.

(2) At least five dBA of noise reduction must be achievable at typical impacted receivers nearest the highway.

(3) The cost per dwelling in the formula shown in paragraph (c) below should not exceed either of the following limits. These limits are tied to a three year average bid price index published annually by the Department, and a standard noise barrier wall configuration of three meter high by seventy meter long wall per receptor. The Direct Cost Limit is calculated to be thirty percent greater than the Abatement Limit.

(a) Abatement Limit - A limit for fabrication and installation of noise abatement measures without appurtenances (other direct costs).

(b) Direct Cost Limit - A limit for noise abatement measures with appurtenances. Appurtenances are direct costs associated with the noise abatement and depends on the particular site. They may include earthwork, landscaping and associated irrigation, aesthetic or sound absorbing on walls, new right-of-way, easements for construction and/or maintenance

and incidental construction costs.

(c) Cost per dwelling = C/SD.

(i) C = total cost of abatement.

(ii) D = total number of impacted dwellings that shall likely receive some noticeable benefit, three dBA or more, within 300 meters of the Department right-of-way.

(iii) S = Severity factor - an average weight applied to the number of affected dwellings, related to the amount of noise impact. For Type II projects, S = 1.

TABLE I - SEVERITY FACTORS, S
(Applicable Only to Type-I Projects)

Noise Level Approach	Does the Design or Exceed the NAC?	Increase in Noise, dBA Level, dBA (Design- Existing) 0-9	10-19	20-29	30+
	Yes	1	2	3	4
	No	*	1	2	3

* Impact severity = 0, so abatement is not considered

(d) Noise barriers shall not be planned for dwellings with access directly onto the highway. The reasons are poor barrier performance and poor sight-distance.

(e) Noise abatement shall not be planned for Land Use Categories C and D shown in Table II.

(f) Other land use activities shall be analyzed on a case by case basis.

R930-3-6. Other Considerations.

Noise abatement benefits shall be consistent with overall social, economic, and environmental conditions on both sides of the highway. Aesthetics shall be considered where appropriate' including graffiti deterence and surrounding landscape. Other factors may be considered.

R930-3-7. Declaration of Intent.

Environmental documents shall indicate those areas where mitigation is "likely." "Likely" does not mean a firm commitment. A final decision on the installation of the abatement measures shall be made upon completion of the project design and the public involvement process.

R930-3-8. Public Involvement.

(1) Department representatives shall contact the local government agency, affected residents on both sides of the highway, and land owners. This shall be done prior to completion of design. The concerns of the impacted land owners, residents, and local government agency shall be a major consideration in reaching a decision on the abatement measures to be provided.

(2) Noise abatement may not be planned after local government agency and affected land owner involvement if the majority of the affected people are in opposition or indifferent to noise mitigation.

R930-3-9. Coordination with Local Officials.

(1) Effective control of highway traffic noise requires land uses near highways to be controlled. Local authorities must have taken measures to exercise land use control over undeveloped lands adjacent to State highways in the local jurisdiction to:

(a) conduct a study to determine the noise levels along new development adjacent to an existing state highway or a dedicated right-of-way; and

(b) the construction of noise abatement measures at the expense of the developer if noise levels exceed values shown in Table II.

(2) The Department shall coordinate in the local government review process with regard to aesthetics, height, and other design features of the proposed noise abatement measure. Effective control of highway traffic noise requires land uses near highways to be controlled, but land use planning and control belong to local government jurisdiction. UDOT shall, upon request, assist local agencies by giving information that shall help them to be aware of incompatible land uses near state highways. Developments that come into existence after the earliest date of public knowledge of the highway's approved alignment shall not be considered for Type II projects.

R930-3-10. Local Government Participation.

In instances where abatement costs would exceed a limit in paragraph R930-3-5(3), the local government agency may be offered the option to share in the cost of abatement. In order for the Department to participate in shared abatement costs, the following conditions must be met:

(1) The Department's share of the cost shall not exceed the limits in paragraph R930-3-5(3). The participating local government agency shall pay the Department an amount equal to the estimated cost of the abatement measure and appurtenances proposed that exceeds the limits in paragraph R930-3-5(3). The settlement agreement shall be signed before design begins. Payment shall be made to the Department before construction begins.

(2) The participating local government agency's final share shall be based on actual construction costs.

R930-3-11. Projects Funded From Other Sources.

The Utah Code authorizes the Department to construct and maintain noise abatement measures along state highways in cases where the cost for the noise abatement is provided by citizens, adjacent property owners, developers, or local governments, and meeting other established criteria. These cases may be treated as a special application of Paragraph R930-3-10, in which the Department may design, build, and maintain the abatement measure, and the local government agency shall pay the Department for all preliminary engineering and construction costs.

R930-3-12. Construction Off Right-of-Way.

Normally, noise barriers (walls or berms) built pursuant to this policy shall be constructed within Department right-of-way and owned and maintained by the Department. There are cases in which Department right-of-way is not the most prudent location for noise barriers, yet noise abatement can be very feasible and reasonable if built on adjacent property or adjacent public right-of-way. In these cases:

(1) The Department's cost is limited to normal cost for abatement on Department right-of-way.

(2) In no case shall the Department construct a noise barrier unless the adjacent property owners allow access and

easements as necessary in order to construct and maintain the barrier.

(3) Maintenance of noise walls and associated landscaping on the side facing the highway shall normally be the Department's responsibility. The opposite side shall be maintained by the property owner.

(4) When landscaping is included off the Department right-of-way, the Department and landowner shall sign an irrigation agreement. The Department shall not pay for irrigation off the right-of-way.

TABLE II - NOISE ABATEMENT CRITERIA
Hourly A-Weighted Sound Level - decibels (dBA)

Land Use Activity Category	Leq	Description of Activity Category
A	57 (Exterior)	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B	67 (Exterior)	Picnic areas, fixed recreation areas, active sports areas, parks, residences, motels, hotels, schools, churches, libraries, and hospitals.
C	72	Cemeteries, commercial areas, industrial areas, exterior office buildings, and other developed lands, properties or activities not included in Categories A or B above.
D	No limit	Undeveloped lands, including roadside facilities and dispersed recreation.
E	52 (Interior)	Motels, hotels, public meeting rooms, schools churches, libraries, hospitals, and auditoriums. (The interior criterion only applies when there are no exterior activities affected by traffic noise.)

KEY: noise control, noise abatement*, noise wall*
February 15, 1997 72-1-201
Notice of Continuation January 22, 2002 72-7-101

R930. Transportation, Preconstruction.
R930-5. Establishment and Regulation of At-Grade Railroad Crossings.
R930-5-1. Policy.

(1) The policy of the Utah Department of Transportation shall be to review for safety all existing public at-grade highway/railway crossings in the state of Utah in accordance with the Manual on Uniform Traffic Control Devices, evaluate the location of new crossings, prescribe the types of at-grade crossing railroad warning devices, and determine maintenance and funding apportionments for all highway/railway projects.

(2) Highway/railway projects utilizing federal railroad safety funds shall be done in accordance with 23 Code of Federal Regulation Part 646 Subpart B and Utah Code Ann. Section 72-1-102.

R930-5-2. Authority.

The provisions of this rule are authorized by the following grants of rulemaking authority: Sections 54-4-15, 10-8-34, 10-8-82, 72-1-102, 72-2-112; 23 CFR 924 and 23 CFR 646 (1995).

R930-5-3. Purpose.

The Utah Department of Transportation shall oversee all at-grade public highway/railway crossings in the state of Utah and provide for the safe, efficient operation of vehicles and pedestrians through the highway/railway intersections. UDOT shall also promote elimination of at-grade highway/railway crossings, eliminate hazards to improve at-grade crossings, and recommend the construction of grade separation structures to replace at-grade crossings.

This rule shall describe procedures for the selection of highway/railway crossings for improvement, the selection of passive and active railroad warning devices, design, maintenance operations and the funding sources for the improvement of crossings.

R930-5-4. Incorporation by Reference.

The following federal law, federal agency manuals and association standards, railway manuals and technical requirements are adopted and incorporated by reference:

(1) 23 CFR Chapter G "Engineering and Traffic Operations" Part 646 "Railroads" Subpart B,(April 1, 1995).

(2) 23 CFR Chapter 1, Subchapter J "Highway Safety" Part 924 "Highway Safety Improvement Program",(April 1, 1995).

(3) AASHTO's Policy on Geometric Design of Highway and Streets", 1994 Edition. For incorporated material see R930-6.

(4) Manual on Uniform Traffic Control Devices, Federal Administration, 1988 edition.(For Incorporated Material See R927-1)

(5) UDOT Standard Plans

R930-5-5. Definitions.

(1) "Active warning devices" means those types of traffic control devices activated by the approach or presence of a train, such as flashing light signals, automatic gates and similar devices, as well as manually operated devices and crossing watchmen, all of which display to motorists positive warning of the approach or presence of a train;

(2) "At-Grade Crossing" means the crossing of a highway and railway at the same elevation;

(3) "CFR" means Code of Federal Regulations;

(4) "Clear roadside" means UDOT's practice to provide a roadside clear zone for safe use by errant vehicles through design, construction, and maintenance activities, implementing the clear zone as defined in AASHTO's Roadway Design Guide;

(5) "Company" shall mean any railroad or utility company including any wholly owned or controlled subsidiary thereof;

(6) "Construction" shall mean the actual physical construction to improve or eliminate a highway/railway grade crossing or accomplish other involved work;

(7) "Diagnostic team/surveillance team" means an appointed group of knowledgeable representatives of the parties of interest in a highway/railway crossing or group of crossings;

(8) "FHWA" means Federal Highway Administration;

(9) "G Funds" means those Federal-Aid highway funds which, pursuant to 23 U.S.C. 120d, may be used for projects for the elimination of hazards of highway/railway crossings not to exceed ten percent of the Federal-aid funds apportioned in accordance with 23 U.S.C. 104;

(10) "Local Agency" means a public agency or corporation authorized to do public enterprise;

(11) "Main line railroad track" means a track of a principal line of a railroad, including extensions through yards, upon which trains are operated by timetable or train order or both, or the use of which is governed by block signals or by centralized traffic control;

(12) "MUTCD" means the Federal Highway Administration's Manual of Uniform Traffic Control Devices;

(13) "Passive warning devices" means those types of traffic control device, including signs, markings and other devices located at or in advance of grade crossings to indicate the presence of a crossing but which do not change aspect upon the approach or presence of a train;

(14) "Preliminary engineering" shall mean the work necessary to produce construction plans, specifications, and estimates to the degree of completeness required for undertaking construction, including locating, surveying, designing, and related work;

(15) "PSC" means the Public Service Commission;

(16) "Roadway" means the portion of the highway, including shoulders, for vehicular use;

(17) "Railroad" shall mean all rail carriers, publicly-owned, private, and common carriers, including line haul freight and passenger railroads, switching and terminal railroads and passenger carrying railroads such as rapid transit, commuter and street railroads;

(18) "UDOT" means the Utah Department of Transportation;

(19) "Utility facility" shall mean pipe line installations or systems for transmitting or distributing communications, power, electricity, light, heat, gas, oil, petroleum products, cable television, water, sewer, steam, waste, storm water not connected with highway drainage, and other similar commodities.

R930-5-6. Types of Projects.

Projects for the elimination of hazards for both vehicles and pedestrians at highway/railway crossings may include, but not be limited to the following types of projects:

(1) Elimination of at-grade highway/railway crossings or combining of crossings;

(2) Elimination of an at-grade highway/railway crossings by the relocation of a highway;

(3) Elimination of an at-grade crossing by the construction of a new grade separation where full access control is required regardless of the volume of train or highway vehicles;

(4) Existing at-grade highway/railway crossing improvements;

(5) Reconstruction of an existing highway/railway grade separation structure;

(6) Other highway/railway projects which use railroad properties or involve adjustments to railroad facilities required by highway construction, but do not involve the elimination of hazards of railway/highway crossings;

(7) Construction of new highway crossings of a railroad track where a new street or highway is proposed that is not essentially a relocation of an existing street;

(8) Construction of a new railroad crossing of an existing highway.

R930-5-7. Planning of Improvements for Highway/Railway Crossings.

(1) UDOT shall have a program for the identification of highway/railway crossings for improvement.

(2) Improvements at the selected highway/railway intersection crossings shall be determined by a Diagnostic/Surveillance Review Team. The team shall also review railroad crossings requested by local agencies they consider to be unsafe. They shall also review railroad crossing intersections where accidents have recently occurred. The UDOT Division of Traffic and Safety's Engineering Coordinator Railroad Inspector shall make arrangements for Diagnostic/Surveillance Reviews of selected crossings.

(a) The Diagnostic/Surveillance Team shall be composed of the following team members:

(i) Engineering Coordinator Railroad Inspector from the Division of Traffic and Safety;

(ii) Engineering Coordinator, Contracts Utility and Railroad Officer, and a Design Technician from the Railroad and Utility Unit of the Preconstruction Division;

(iii) Representatives from the railroad company;

(iv) Representatives from the local government public works department, and when available the local law enforcement groups where the highway/railway crossing is located.

(b) Duties of the Diagnostic/Surveillance Team shall include:

(i) Investigates the elimination of at-grade highway/railway crossings;

(ii) Specifies the passive railroad warning devices to be installed at crossings in accordance with the MUTCD;

(iii) Prescribes installation of active railroad warning devices at highway/railway crossings;

(iv) Specifies the type of railroad crossing materials to be installed at highway/railway crossings;

(v) Prescribes the improvement of the highway approach grades to the tracks to improve sight distance;

(vi) Specifies removal of trees, brush and foliage from the highway and railroad rights-of-way and private properties to provide better sight distance for motor vehicles;

(vii) Specifies compliance with UDOT's Standard Plan STD 715-2A for Disabled Pedestrian Access when pedestrian sidewalks cross tracks;

(viii) Reviews and approves all requests for new at-grade crossings of existing railroads;

(A) The highway agency making the request for a new crossing shall provide a master street plan showing the agency's plan to eliminate or combine existing railroad crossings before new crossings will be approved.

(B) The Surveillance Team shall specify the type of railroad crossing materials, and the active and passive railroad warning devices to be installed at crossings.

(ix) Reviews change of use of highway/railway crossings;

(A) The local agency shall verify the permitted use, public or private, of any highway/railway crossing in writing from the authorized owner of the track prior to approval of new development or change in land use or ownership.

(x) Recommends new overpass structures;

(xi) Where a new railroad crosses an existing highway, UDOT will consider the new crossing in conformance with Section 54-4-15. Public notice will be made in conformance with R930-5-14, Notice of Intended Action. If approved, the required separation or railroad warning devices, and any pavement work at the crossing shall not be considered to be of benefit to the road user and 100 percent railroad participation shall be required. The determination as to separation of type of warning devices shall be according to classification and traffic volume of the highway crossed and the predicted traffic hazard and as recommended by the Surveillance Team.

(c) Duties of Diagnostic/Surveillance Team members shall include:

(i) Engineering Coordinator Railroad inspector, Division of Traffic and Safety, schedules the Diagnostic/Surveillance Team reviews. Notifies team members who are to attend the review by letter twenty working days prior to the review date. Conducts the reviews and issues diagnostic/surveillance team reports within two weeks after the review is held and sends copies of the report to all those attending the review.

(ii) Engineering Coordinator of the Railroad and Utilities Unit establishes requirements for horizontal and vertical alignments of the roadway, determines passive and active railroad warning device locations on the roadway, and funding apportionments on federal railroad safety projects. Initiates all Notices of Intended Action for all railroad projects.

(iii) Contracts Utility and Railroad Officer of the Railroad and Utility Unit reviews the plans and contractual agreement requirements on projects requiring matching funds from local agencies.

(iv) Design Technician from the Railroad and Utility Unit obtains all necessary field data for plan site maps and takes photographs of the existing conditions of all quadrants of the intersection.

(v) The railroad company representative shall provide all train volumes and accident data and any other pertinent data regarding the railroad crossing.

(vi) Local agency public works officer shall provide highway traffic volumes, any proposed road construction activities on the highway or an approved master plan for the highway, and any other necessary data regarding the crossing.

(vii) Local agency law enforcement officer shall supply traffic accident data and other pertinent traffic problems relating to the highway/railway crossing.

R930-5-8. Design of At-Grade Highway/Railway Crossings.

UDOT shall oversee and approve the design of all highway/railway at-grade crossings.

(1) Facilities that are the responsibility of the railroad for maintenance and operation shall conform to the specifications and design standards used by the railroad in its normal practice.

(2) At-Grade crossings that are the responsibility of the local agency for maintenance and operation shall conform to the specifications and design standards and guides used by the highway agency in its normal practice subject to approval by UDOT.

(3) Traffic control devices at all grade crossing improvements shall comply with the MUTCD.

(4) All design plans shall include DOT numbers and street addresses or railroad mile posts for at-grade crossings.

(5) Railroad crossing materials shall be designed as follows:

(a) When it is determined that the railroad crossing material needs to be extended or replaced, the agency doing the design of the crossing shall determine the minimum length of the crossing material. The length shall be determined based on the proposed width of the new roadway or from the approved master plan roadway width. The crossing material length shall be in accordance with the MUTCD and extend at least two feet from the outer edge of the roadway, beyond the roadway clear zone area, or to the back of the concrete curb and gutter or out past the sidewalks. When sidewalks are required on at-grade crossings, the sidewalks shall be in conformance with UDOT's Standard Plan Drawing 715-2A for Disabled Pedestrian Access.

(b) The approach grades of the roadway to the railroad crossing material shall be designed to match the grade of the railroad crossing material and top elevation of the railroad tracks for a minimum distance of 50 feet, but preferably 100 feet, in both directions to provide a smooth crossing for vehicles. The cross slope of the roadway shall match the cross slope of the railroad tracks at the crossing and shall then be transitioned to match the cross slope of the roadway.

(c) When the existing railroad crossing material is to be extended but the existing material is too old and cannot be connected to the new material, complete replacement of the railroad crossing material shall be required.

(d) New railroad crossing materials shall always be concrete material unless another material is approved by the Diagnostic/ Surveillance Team.

(6) Active railroad warning devices shall be designed as follows:

(a) When it is determined by the Diagnostic/Surveillance Team that active warning devices are required, it shall be the responsibility of the railroad company to design the devices.

(i) When curb and gutter and/or sidewalks are in place or being installed, the active warning devices shall be placed in accordance with current railroad standards and the MUTCD.

(ii) When no curb and gutter is being installed, the active warning devices shall be placed beyond the roadway clear zone area or two feet beyond the edge of the paved roadway in accordance with the MUTCD.

(iii) When the active warning devices are placed within the roadway clear zone, appropriate attenuation devices shall be installed.

(b) When an existing roadway is to be widened, the new location of the active railroad warning devices shall be determined by the railroad and highway agency and the railroad company shall relocate the devices.

(c) When active warning devices are within 200 feet of a traffic signal the railroad company shall design the preemption system and extend cable from their controller box so the owner or operator of the traffic signal can connect the cables to the signal controller and program the controller.

(d) Design plans shall show the location of the devices by both roadway and railroad milepost or station.

(7) Passive railroad warning devices at railroad crossings shall be designed as follows:

(a) The following passive warning devices shall be designed and installed by the railroad company in accordance with the MUTCD:

(i) Railroad crossing sign R15-1(crossbuck;

(ii) Railroad crossing sign R15-2 (number of tracks).

(b) Design and installation of all other passive railroad warning devices, including the following, are the responsibility of the highway agency that crosses the railroad tracks. Design and location of the devices shall be in accordance with the MUTCD and as engineering studies indicate necessary. Passive railroad warning devices shall be installed by the local highway agency on local roadways.

(i) Railroad advance warning signs W10-1, W10-2, W10-3 and W10-4;

(ii) Railroad pavement markings;

(iii) "Exempt" crossing signs R15-3 (White background), or W10-1a (yellow background). The exempt sign shall only be installed when authorized by the representative from UDOT, Traffic and Safety Division.

(iv) "No Turn on Red" sign R10-11;

(v) "Do Not Stop on Tracks" sign R8-8;

(vi) "Tracks out of Service" sign R8-9 shall be UDOT approved;

(vii) "Stop" sign R1-1 and W3-1, or "Yield" Sign R1-2 may be installed as if it had been recommended by the Diagnostic/Surveillance Team. The local agency may do an engineering study and install the stop or yield sign if warranted under MUTCD guidelines.

(c) Street light illumination at grade crossings may be recommended by the Diagnostic/Surveillance Team and shall be designed and installed in accordance with the MUTCD by the agency owning the roadway.

R930-5-9. Responsibility to Arrange for the Installation of Railroad Materials and Devices.

(1) Responsibility for installation of railroad crossing material is as follows:

(a) When a roadway is widened by a local agency, the

local agency shall be responsible to arrange by agreement with the railroad company to install the railroad crossing extension.

(b) When local agencies reconstruct a roadway and new railroad crossing material is required, the local agency shall arrange by agreement with the railroad company for the complete replacement of the railroad crossing material when material cannot be extended.

(c) When a highway/railway crossing is listed on UDOT's Annual High Accident Prediction List and the Diagnostic/Surveillance Team determines railroad crossing materials need to be replaced, UDOT shall arrange by agreement with the railroad company for the replacement of the crossing material. The local agency owning the roadway shall participate in the cost with matching funds. When the local agency does not want to participate in the project with matching funds, the project is terminated.

(2) Responsibility for installation of active warning devices is as follows:

(a) When a local agency widens a roadway which changes the existing conditions of the highway/railway crossing and it requires active warning devices, the local agency shall be responsible to arrange by agreement with the railroad company for the installation of the active railroad warning devices after their plans are approved by UDOT.

(b) When a local agency widens a roadway that has existing active railroad warning devices, the local agency shall have their plans approved by UDOT and arrange by agreement with the railroad company for the relocation of the devices.

(c) When a roadside community development is approved by a local agency that changes the conditions of a highway/railway at-grade crossing by increasing traffic volumes and/or by adding new access openings onto a highway within 250 feet, the agency plans shall be approved by UDOT and the local agency shall arrange by agreement with the railroad company for any required railroad changes.

(d) When a highway/railway at-grade crossing is listed in UDOT's Annual High Accident Prediction List and active warning devices are required, UDOT shall arrange by agreement with the railroad company for the installation of the active railroad warning devices.

(e) When a local agency requests a surveillance review of a highway/railway intersection or a corridor of intersections and the Diagnostic/Surveillance Team determines that a crossing or crossings can be eliminated and other crossings are upgraded, UDOT shall determine if Federal Railroad Safety Funds may be used for any or all of the improvements. UDOT shall also arrange by agreement with the railroad company for the installation of the active railroad warning devices.

(3) Responsibility for installation of passive railroad warning devices is as follows:

(a) When local agencies widen roadways, they shall be responsible to provide and install the passive railroad warning devices.

(b) When a local agency requests a surveillance of a highway/railway intersection or a corridor of intersections and the Diagnostic/Surveillance Team determines crossings can be eliminated if other crossings are upgraded, the local agency shall be responsible to install the passive railroad warning devices.

(c) When a highway/railway crossing is listed in UDOT's Annual High Accident Prediction List and the Diagnostic/Surveillance Team determines that passive railroad warning devices are required, the local agency owning the roadway shall be responsible to provide and install the passive railroad warning devices.

R930-5-10. Maintenance.

(1) The maintenance of automatic signal devices and the pavement area between rails, including space between multiple tracks if the railroad company owns the easement rights between the multiple tracks, and two feet beyond each outside rails shall be the responsibility of the railroad company.

(2) Maintenance of signals including the pavement between the rails on temporary highway detours shall in all cases become the responsibility of the railroad company at the expense of the highway agency owning the roadway.

(3) Maintenance of the crossing approaches up to within two feet of the rails shall be the responsibility of the agency owning the roadway. When the railway is raised due to track and ballast maintenance, the railroad company shall coordinate their work with the agency owning the roadway so the pavement on the approaches can be adjusted to provide a smooth ride for motorists.

(4) Responsibility for maintenance of a newly constructed grade separation shall be as follows:

(a) Where a separation facility overpasses a railroad, maintenance responsibility for the entire structure and approaches shall be assumed by the agency owning the structure and roadway.

(b) When a grade separation structure underpasses a railroad, maintenance of the roadway and the entire structure below and including the deck plate, handrail, and parapets, shall be the responsibility of the owner of the roadway. Maintenance of the waterproofing, ballast, ties, rails and any portion of the supporting structure above the top of the ballast deck plate between parapets shall be the responsibility of the railroad company.

(c) Cost of repairing damages to a highway or a highway structure, occasioned by collision, equipment failure or derailment of the railroad's equipment, shall be borne by the railroad company.

(5) Responsibility for maintenance of private industrial trackage not owned by a railroad company that crosses public highways shall be as follows:

(a) When a facility, plant or property owner receives goods and services from a railroad company train over private industrial trackage that crosses a public highway, maintenance of the crossing shall be the responsibility of those companies receiving the goods and services.

(b) When the highway/railway crossing becomes a safety hazard to vehicles and is not maintained, UDOT and the railroad company shipping the goods and services shall notify the facility, plant or property owners in writing to maintain or replace the railroad crossing material.

(c) If the owner of the private trackage does not maintain or replace the crossing material by a specified date, UDOT shall order the railroad company to cease and desist operations across the highway/railway crossing.

(d) If the owner still does not respond to the order to

maintain or replace the railroad crossing material the following action shall be taken by the highway agency owning the roadway:

(i) The highway agency shall remove the trackage from across the roadway and bill the facility owner of the trackage for the expenses to remove the trackage.

(ii) The highway agency shall not issue a permit for a new highway/railway at-grade crossing until owner of the trackage agrees to pay for the cost of removing the trackage across the roadway and agrees to pay for and install new crossing material and repair the roadway approaches to the tracks.

(6) Responsibility for removal of unused railroad tracks shall be in accordance with Sections 10-8-34 and 10-8-82. Railroad tracks may be removed if the governing body of the highway declares the tracks to be a safety hazard, nuisance, and when the railroad has not operated for long periods of time, at least nine months. UDOT's Traffic and Safety Division shall direct the governing body of the highway or the railroad company to remove the tracks.

R930-5-11. Authorizations.

(1) The costs of preliminary engineering, right-of-way acquisition, and construction incurred after the date each phase of the work is included in an approved program and authorized by FHWA are eligible for federal participation. Preliminary engineering and right-of-way acquisition costs which are otherwise eligible, but incurred by the railroad prior to authorization by FHWA, although not reimbursable, may be included as part of the railroad share of the project cost where such share is required.

(2) Prior to issuance of authorization by FHWA either to advertise the physical construction for bids to proceed with force account construction for railroad work or for other construction affected by railroad work the following must be accomplished:

(a) Plans and specifications and estimates must be approved by FHWA.

(b) A proposed agreement between the state and the railroad company must be found satisfactory by FHWA. Before Federal funds may be used to reimburse the state for railroad costs the executed agreement must be approved by FHWA.

R930-5-12. Agreements.

Where construction of a federal aid project requires use of railroad properties or adjustments to railroad facilities, UDOT shall prepare an agreement between UDOT and the railroad company.

(1) Master agreements between UDOT and a railroad company on an area wide or statewide basis may be used. These agreements shall contain the specifications, regulations and provisions required in conjunction with work performed on all projects.

(2) On a project by project basis, the written agreement between UDOT and the railroad company shall, as a minimum, include the following, where applicable:

(a) Reference to appropriate federal regulations;

(b) A detailed statement of the work to be performed by each party;

(c) Method of payment shall be actual cost;

(d) For projects which are not for elimination of hazards of highway/railway crossings, the extent to which the railroad is obligated to move or adjust facilities at the expense of the agency owning the roadway;

(e) The railroad's share of the project cost;

(f) An itemized estimate of the cost of the work to be preformed by the railroad;

(g) Method to be used for preforming the work, either by railroad forces or by contract;

(h) Maintenance responsibility;

(i) Form, duration, and amounts of any needed insurance;

(j) Appropriate reference to or identification of plans and specifications.

(3) On matching fund agreements between UDOT and the local agency, on a project by project basis the written agreement shall include the following:

(a) Description of work and location, city, county, state;

(b) Reference to federal regulations that matching funds will be provided by the agency having jurisdiction over the street or highway right-of-way where improvements are desired;

(c) Detailed statement of work to be preformed by each party regarding design engineering, agreements, inspection and maintenance;

(d) Statement of finances of project and matching funds to be provided by local agency, deposits, invoices and cost overruns or underruns.

(4) Agreements prepared for local government and industrial trackage crossing are prepared between the agency owning the street or highway right-of-way and the industry on forms furnished by the railroad companies.

(5) In order that a highway/railway project shall not become unduly delayed, UDOT shall consider a six month period of time from issuance of the railroad agreement to be adequate for completion of execution by the railroad company involved. Should more than the specified period of time elapse, UDOT shall require the railroad to proceed with the work covered by the agreement under the authority contained in Section 54-4-15 and approval from the FHWA will be solicited in conformance with 23 CFR 646.

R930-5-13. Apportionment of Costs.

Apportionment of costs for installation, maintenance, and reconstruction of active and passive railroad warning devices at highway/railway intersections shall be in accordance with 23 646.

(1) When a roadway is widened by the state or local governmental agency, the agency shall fund all passive and active railroad warning devices determined necessary by the Diagnostic/Surveillance Team.

(2) When a roadway is widened by a local agency, and the existing railroad crossing material is old and cannot be attached to the new material, the local agency shall fund the replacement of all new existing crossing material.

(3) When a highway/railway at-grade crossing is listed on UDOT's Annual High Accident Prediction List, and it is determined by the Diagnostic/Surveillance Team that the crossing shall be upgraded, it shall be funded by federal railroad safety funds and local highway agency matching funds. The local highway agency shall install the passive warning devices

at their own expense.

(4) When a local agency requests a surveillance review of a highway/railway crossing or a corridor of crossings and the Diagnostic/Surveillance Team determines a crossing or number of crossings can be eliminated, and other crossings are upgraded, federal railroad safety and local agency matching funds shall be used to upgrade the crossing. When a crossing is eliminated and others upgraded, the railroad company shall also participate in the upgrade of the crossing.

(5) If approved construction of a separation structure or the installation of a signal device at such crossing is not considered a benefit to the railroad, railroad participation shall not be required.

(6) A project to reconstruct an existing overpass or underpass shall include the entire structure and railway and the highest approaches thereto. Since there is no railway liability for such projects, it is considered that there shall be no benefit to the railroad and railroad participation shall not be required.

R930-5-14. Notice of Intended Action Process.

(1) When UDOT is considering the execution of an agreement with a railroad involving construction, of a railroad separation structure, new at-grade crossings, or in any manner the elimination, substantial modification, construction or improvement of any existing crossing or other facility in connection with existing or proposed contracts for UDOT or any other highway agency, UDOT shall advertise a notice of its intended action in a newspaper of general circulation at least twice with a provision that written protests may be filed with UDOT 15 days from the date of the last publication of the notice. The notice shall identify the project, briefly describe the changes proposed, and contain general information relating to the proposed action.

(2) Construction of a new highway crossing of a railroad track where a new street or highway is proposed which is not essentially a relocation of an existing street, the UDOT will consider the new crossing in conformance with Section 54-4-15. Public notice will be made in conformance with this rule.

(3) All requests for a public hearing shall be in writing and shall detail how a proposed action will adversely affect a group of people, firm or corporation, and if it appears that the adverse affect cannot be alleviated by UDOT. Such a hearing will be conducted informally by UDOT. Any party aggravated by any determination made by UDOT shall have their statutory right under Section 54-4-15, as amended, to petition the PSC for a hearing to be governed by the procedures of the PSC.

(4) In instances where the action proposed by UDOT does not substantially affect the general public, UDOT may waive the requirement to public notice, provided all parties affected concur in writing with the action proposed. For the purposes of this section, parties affected shall mean railroads or other common parties, state, county, city or other environmental agencies, boards or commissions, having jurisdiction over any property rights of facilities, and private persons or directly affected.

(5) The Executive Director of UDOT shall be authorized to issue all Notices of Intended Action in the name of UDOT.

KEY: railroads, railroad crossings*

March 11, 1998	**10-8-34**
Notice of Continuation January 22, 2002	**10-8-82**
	54-4-15
	72-1-102
	72-2-112

R930. Transportation, Preconstruction.

R930-6. Rules for the Accommodation of Utility Facilities and the Control and Protection of State Highway Rights-of-Way.

R930-6-1. Policy.

(1) The policy of the Utah Department of Transportation (UDOT) is to accommodate utility facilities installations on federal aid and non-federal aid highway rights-of-way, to the extent that these facilities may be accommodated without compromising the safety or integrity of the highway and without interference with the normal operation and maintenance activities as required for state highways in accordance with Title 72, Chapter 1.

(2) The Utah Department of Transportation shall allow utilities to place utility facilities on highway rights-of-way which receive federal funds subject to their compliance with the 23 Code of Federal Regulations, Part 645, Subpart B, "Accommodation of Utilities".

R930-6-2. Authority.

The provisions of this rule are authorized by the following grants of rulemaking authority: Section 72-3-109; Section 72-6-116; Section 72-6-117; Section 72-7-102; and Section 72-7-503.

R930-6-3. Purpose.

Control of State Highway right-of-way is necessary to provide for the safe and efficient operation of highways and to utilize the full potential of the highway investment. Owners of property fronting on a highway have certain rights of access unless such access has been restricted by purchase or by legal action. Utility facilities shall be accommodated for public service. Road users should also be able to expect reasonably safe highways for travel. These rules are necessary to provide efficient use of the right-of-way to satisfy all of these needs.

These rules and procedures are promulgated to achieve traffic safety and to provide reasonable convenience to the traveling public and adjoining property owners, and to provide guidelines for accommodation of utilities facilities within or across the highway rights-of-way and access management.

R930-6-4. Incorporations by Reference.

The following federal law, Federal agency manuals, national organizations and associations standards, and UDOT illustrations standard specifications technical manuals with tables, and technical requirements are adopted and incorporated by reference:

(1) 23 CFR, Part 645, Subpart B, Accommodation of Utilities, May 2000 edition.

(2) Federal Pipeline Safety Act, 49 USCA Section 60101 et seq., July 1994 Edition.

(3) Transportation of Natural Gas and Other Gas by Pipeline, 49 CFR, Part 192, Edition March 20, 1995.

(4) AASHTO's Roadside Design Guide, edition of 1996.

(5) AASHTO's, "A Policy On the Accommodation of Utilities within Freeway Right-of-Way", February, 1989 edition.

(6) AASHTO's, "Policy on Geometric Design of Highways and Streets", 1994 edition.

(7) AASHTO's "Standard Specifications for Highway Materials and Methods of Sampling and Testing Part II", 1993 edition, AASHTO Designation T-99.

(8) American National Standards Institute (ANSI) B31.3 1993 edition.

(9) American Petroleum Institute (API) 1104 for Piping, 18th edition 1994.

(10) American Society of Testing and Materials (ASTM), A53-93a, and A134, A135 and A139, 1993 edition.

(11) American Water Works Association (AWWA), specifications C200-86, 1987 edition.

(12) Manual on Uniform Traffic Control Devices, MUTCD, Federal Highway Administration.

(13) National Electrical Safety Code, C-2 Section 232, 1993 edition.

(14) UDOT Standard Plans.

(15) Standard Specification for Road and Bridge Construction, 1994 edition.

R930-6-5. Definitions.

(1) AASHTO - American Association of State Highway and Transportation Officials.

(2) ANSI - National Standards Institute.

(3) API - American Petroleum Institute.

(4) Arterial Highway - A general term denoting a highway primarily for through traffic, usually on a continuous route.

(5) ASTM - American Society of Testing and Materials.

(6) Average Daily Traffic (ADT) - The estimated average 24-hour volume, being the estimated total annual volume during a stated period divided by 365 estimated days annually.

(7) Backfill - Replacement of soil around and over a pipe or utility line.

(8) Bury - Depth of top of pipe or utility line below grade of roadway or natural ground or the bottom of a stream channel.

(9) Cap - Rigid structural element surmounting a pipe or utility line.

(10) Carrier - Pipe directly enclosing a transmitted fluid (liquid or gas).

(11) Casing - A larger pipe enclosing a carrier.

(12) Clear Roadside Policy - The policy employed by UDOT to increase safety, improve traffic operations and enhance the appearance of highways by designing, constructing, and maintaining highway roadsides as wide, flat and rounded as practical and as free as practical from physical obstructions above the ground, within the clear zone as defined in AASHTO's "Roadside Design Guide".

(13) Company - The utility company either publicly, privately or municipally owned who is making application to occupy highway right-of-way.

(14) Conduit or Duct - An enclosed casing for protecting wires or cables.

(15) Control of Access - The condition where the right of owners of abutting land or any other persons having access to highway right-of-way is controlled by the appropriate public authority.

(16) Contiguous Property - A parcel of land which has two or more frontages abutting highway rights-of-way.

(17) Drain - A facility to accommodate the discharge of fluids from a conduit, culvert or casing.

(18) Driveway - A driveway is an access constructed within the public way, connecting the public roadway with the

adjacent property.

(19) Encasement - Structural element surrounding a pipe.

(20) Encroachment - Unauthorized use of highway right-of-way.

(21) Encroachment Permit - Document which specifies the requirements and conditions under which work on the highway right-of-way may be performed.

(22) Expressway - A divided arterial highway for through traffic with full or partial control of access.

(23) Freeway - An expressway with full control of access.

(24) Easement - An interest in real property that conveys use, but not ownership, of a portion of an owner's property.

(25) Frontage Road - A local street or road auxiliary to and located on the side of an arterial highway for service to abutting and adjacent properties.

(26) Galleries - An underpass for two or more underground utilities.

(27) Highway Prism - The portion of a highway within the construction limits of roadway between the top of cut or toe of fills.

(28) Highway, Street or Road - A general term denoting a public area way for purposes of vehicular travel, including the entire area within the right-of-way.

(29) Industrial and Commercial - Areas designated as industrial and commercial under local government zoning ordinances.

(30) Intersection - The general area where two or more highways join or cross at-grade.

(31) Limited (Partial) Control of Access - preference is given to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections.

(32) Manhole - An access opening in an underground system which workers or others may enter for the purpose of making installations, repairs or maintenance.

(33) Median - The portion of a divided highway separating the traveled ways for traffic in opposite directions.

(34) MUTCD - Manual on Uniform Traffic Control Devices.

(35) Normal and Routine Maintenance Activities - Normal maintenance operations are those not requiring excavations in excess of the minimum horizontal clearance and depth of bury.

(36) Pavement Structure - The combination of subbase, base course, and surface course placed on a subgrade to support the traffic load.

(37) Permit - See Encroachment Permit.

(38) Person - "Person" means any individual, partnership, corporation, association, government entity, or public or private organization or any character other than an agency, as noted in Subsection 63-46a-2(10).

(39) Pressure - Relative internal pressure in pascal (PA).

(40) Public Authority - A public administrative agency or corporation authorized to administer a public enterprise.

(41) Rest Area - A roadside area with parking and other facilities, separated from the roadway, provided for motorists to stop and rest.

(42) Roadside - A general term denoting the area adjoining the outer edge of the roadway.

(43) Roadway - The portion of a highway, including shoulders, for vehicular use.

(44) Rural - Areas incorporated, or census designated of under 2,500 population.

(45) Shoulder - The paved or unpaved portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles.

(46) Structure - Any device used to convey vehicles, pedestrians, animals, waterways or other materials over highways, streams, canyons, or other obstacles. A major structure is a highway structure with a span or multiple span length of 20 feet or more measured along the center line of the roadway and a minor structure is the same as a major structure except it is less than 20 feet.

(47) Subbase - A layer or layers of specified or selected material of designed thickness placed on a subgrade to support a base course.

(48) Traveled Way - The portion of the roadway for the movement of vehicles exclusive of shoulders and auxiliary lanes.

(49) Trenched - Installed in a narrow open excavation.

(50) UDOT - The Utah Department of Transportation.

(51) Untrenched - Installed without breaking ground or pavement surface such as boring, jacking or augering.

(52) Urban - A census designated area with a population of 2,500 or more or any portion of a designated Metropolitan Planning Organization planning boundary.

(53) Utility - Privately, publicly, cooperatively or municipally owned pipe lines, facilities or systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, petroleum products, cable television, water, sewer, steam, waste, storm water not connected with highway drainage, and other similar commodities, which directly or indirectly service the public or any part thereof.

(54) Utility Facility - Pipe lines, installations or systems for transmitting or distributing communications, power, electricity, light, heat, gas, oil, petroleum products, cable television, water, sewer, steam, waste, storm water not connected with highway drainage, and other similar commodities.

(55) Utility Line Agreement - Document by which UDOT approves the use and occupancy of highway rights-of-way by utility facilities or private lines.

(56) Vent - Appurtenance to discharge gaseous accumulations from casings.

(57) View Area - A roadside area provided for motorists to stop and view the scenery in safety.

R930-6-6. Right-of-Way Use: Conditions and Requirements.

(1) General Conditions. The following provisions are applicable to all commercial and industrial establishments, service areas, utility companies, private residences, farms, or any other property.

(a) Transferability. No permitted interest or right-of-way shall be transferred to another utility or person except by written consent of UDOT.

(b) Recognition of existing interests. UDOT recognizes that pre-existing property interests within UDOT rights-of-way exist. Proof of a pre-existing property interest within a public

right-of-way shall be accepted in the form of either a duly executed deed, grant or other document establishing the same, or at least two affidavits sufficient to establish prior right or title of the utility or person.

In the absence of such proof, it shall be assumed that the utility or person occupies the right-of-way as a permittee (i.e. by permission), and enjoys no vested interest.

In those instances when UDOT requires a utility or person with a pre-existing property interest to move completely or partially off the right-of-way, UDOT shall make appropriate remuneration for the relinquishment of that interest.

(c) Indemnification. Applicants to whom permits may be granted shall at all times indemnify and hold harmless UDOT, its employees and the State of Utah from responsibility for any damage or liability arising from their construction, maintenance, repair, operation, or use of any pole line, surface or subsurface line or other facility. The permit holder shall be responsible for the maintenance of the excavation for a period of three years in accordance with applicable specifications for excavations across State Highway rights-of-way.

The adoption of these rules by UDOT does not constitute an acceptance or recognition of pre-existing property interests. UDOT assumes no liability associated with these interests and uses, either for the safety to users or the traveling public, damage to property, or for the continued use thereof.

(d) Notice of damage. Notification of damage to any underground utility facility by UDOT or by another utility shall be made to the affected utility as specified in Title 54, Chapter 8a and Section 72-7-102.

(e) Installation of New Utilities, and Upgrading or Relocating of Existing Utilities.

(i) UDOT acquires rights-of-way which are adequate not only for the construction of the highway facility, but also for its safe operation and maintenance. The rights-of-way shall be devoted exclusively to public highway purposes, except that certain nonhighway uses of rights-of-way may be allowed which are in the public interest provided such uses do not impair or interfere with the free and safe flow of traffic and highway maintenance.

(ii) UDOT recognizes that it is in the public interest for utilities to jointly use the right-of-way of public roads and streets when such use does not interfere with the primary purpose of the highway. The opportunity for joint use avoids the additional cost of acquiring separate right-of-way for the exclusive accommodation of utilities.

(iii) UDOT may require the relocation of utilities located on any highway right-of-way when highway changes are required to provide for the free and safe flow of traffic.

(iv) Utility facilities owned by political subdivisions may occupy state highway rights-of-way to provide services to abutting residents, but utilities may not interfere with the free and safe flow of the traffic. When highway improvements require the relocation of facilities, they shall be moved at the owner's sole expense unless UDOT has agreed to pay or share in the cost of relocation as is required under Section 72-6-116.

(v) Utility facilities owned by political subdivisions may be placed in highway rights-of-way that do not directly serve abutting owners. However, the relocation costs may not be funded with highway funds, and shall be totally paid for by the owner unless UDOT has agreed to pay or share in the cost of relocation as is required under Section 72-6-116.

(vi) Reimbursement to a utility for expenses incurred in relocating it's facility shall be waived as a condition of obtaining a permit when requests are made to install new facilities within the highway right-of-way under any of the following circumstances:

(A) When the installation of such facilities is to be by attachment to a highway structure. See Section R930-6-10.

(B) When the installation is to be longitudinally along the highway under the highway prism or under a cut ditch adjacent to such highway and it does not meet the 60"-inch depth requirement. See Section R930-6-6(1)(g).

(C) When the installation is within a highway right-of-way in an area that is designated for construction by UDOT on its five or ten year highway improvement planning documents.

(vii) These rules shall apply only to state highways as defined in Section 72-3-102.

(f) Severability. If any part or parts of these rules shall be held to be unlawful, such unlawfulness may not affect the validity of the remaining parts of these rules. Nothing in these rules shall be construed to disqualify UDOT from receiving Federal participation on any Federal-aid Highway Project.

(g) Depth of Bury. Depth of bury shall be at least 0.91m (3 feet). When facilities are installed within 6.10m (20 feet) from the edge of pavement, the depth requirement is 1.52m (5 feet) in order to clear signs of delineators installed by UDOT.

R930-6-7. Utility Line Agreements, Permits and Utility Installation Requirements.

(1) Utility line agreements. Any utility company or political subdivision desiring to use a right-of-way for the construction, maintenance, repair, operation, or use of any pole line, surface or subsurface line or other facility shall be licensed to do so by entering into a utility line agreement with UDOT.

A licensing agreement may not be required for service connections after a main line has been installed.

(2) Permits - Reasonableness and Requirements of Issuance.

(a) Permits issued shall contain reasonable terms and conditions pertaining to crossing, digging-up, or the placement, construction, and maintenance of approach roads, driveways, structures, poles, pipelines, conduits, sewers, ditches, culverts, facilities, or any other structures or objects on rights-of-way.

(b) No utility or person shall work in or from, dig up, disturb, or alter the land surface or the roadway surface within the right-of-way of any State Highway under any utility line agreement until a permit, in writing, has first been obtained from UDOT except in emergency situations as provided in Section V.C.9 of this manual.

The UDOT Region Director or his authorized representative shall issue permits for locating or relocating of any utility facility on rights-of-way. Permit applicants shall comply with all applicable environmental laws before the UDOT Region/District Director or his authorized representative shall issue a permit to proceed with any work.

(c) Permit Process

(i) Submit two (2) sets of plans with application. The plans shall show the right of way, all existing utilities, depth of

proposed line, location of new facility in relation to center line of road, and location of manholes.

(ii) Plans are reviewed by UDOT staff taking into consideration any future projects. If plans are approved, the permit officer will stamp them approved and give the utility company a copy and will retain an approved copy to give to the inspector.

(iii) The utility contractor will come in and obtain the permit in the name of the utility company. The contractor will notify UDOT's inspector prior to beginning any work.

(iv) If an inspector is not needed on the job, the contractor will notify UDOT when work is completed.

(d) For each permit issued, UDOT shall recover the cost for:

(i) Planning coordination;

(ii) Administration support cost;

(iii)Review of plans by UDOT staff;

(iv) Field review by UDOT staff;

(v) Inspection cost.

(3) Utility Facility Installation Requirements.

(a) Surety Bonds. Unless otherwise provided by prior written agreement, pursuant to Section 72-7-102, the following bonding requirements are to be met by each utility or person applying for a permit.

(i) A minimum performance bond of $10,000 for each project shall be required for all excavation permits except from counties and municipalities, except that the UDOT Region Director shall have power to require a bond of any county or municipality that fails to live up to the terms and conditions of any previous permit issued. Larger bonds may be required at the option of the UDOT Region Director for extensive work. Bonds shall run for a term of three (3) years after completion of the work to guarantee satisfactory performance. The UDOT may proceed against the bond to recover all expenses incurred by UDOT, its employees or representatives, in bringing the section of roadway interfered with to required standards.

(ii) A payment bond to ensure payment of costs incurred by UDOT for planning coordination, administration and support, plan review, field review, and inspection costs. UDOT may proceed against the bond to recover all expenses incurred by UDOT.

(b) Location.

(i) Utility facilities shall be located in such a manner so as to:

(A) eliminate or at least minimize need for later adjustment to accommodate future highway improvements, and

(B) permit access for servicing with minimum interference to highway traffic.

(ii) Longitudinal utility facility installations shall be located on uniform alignment within 0.91m (3 feet) to the right-of-way line so as to provide a safe environment for traffic operation and preserve space for future highway improvements or other utility installations.

(iii) New transverse utility facility installations permitted under highways shall be placed by boring. Open excavation shall be allowed only when prior knowledge of ground conditions or demonstrated attempts to bore prove impossible.

(iv) To the extent feasible and practicable, utility facility highway crossings shall be on a line generally 90 degrees to the highway alignment.

(v) The horizontal and vertical location of utility facilities within the highway right-of-way limits shall conform with the clear zone policies as defined in the AASHTO "Roadside Design Guide", current edition. Above ground utility facilities are roadside obstacles and their location shall be consistent with the clearances applicable to all roadside obstacles for the type of highway involved. Any above-ground utilities installed behind barrier curb and gutter shall be placed a minimum of 460 mm (18 inches) behind the front face of the curb when no sidewalk exists or preferably 460 mm (18 inches) behind the sidewalk when both barrier curb and gutter and sidewalk exist when right-of-way is available. Installation shall meet vertical clearance of electrical power lines as defined in V.2.b. "Power and Communication Lines." When a new utility pole is approved to be installed in the sidewalk area, the pole shall be installed to allow ADA requirements for sidewalk clearance past the pole.

(vi) It is the utility company's responsibility to maintain a set of certified reproducible plans and an electronic file showing the location of utility facilities. The utility company shall use Global Positioning System to survey their facilities in order to establish its location and maintain an accurate file to be used by UDOT. These plans shall include appropriate vertical and horizontal ties to the highway control point in order that the exact location of the facility may be established as the need may arise.

If the utility company does not have the utility location plans and files available to give to UDOT when requested, then it is the responsibility of the utility company to obtain the actual location of their facilities at their own expense. If the utility fails to provide the information requested by UDOT within the schedule established by UDOT, UDOT will hire a Subsurface Utility Engineering consultant out of the pool and bill the utility company for the cost of locating their facilities.

(c) Design.

(i) Utilities shall be required to design distribution or service line crossings of freeways, spaced as needed to serve consumers in a general area along either or both sides so as to minimize the need for crossings by utility service connections. In areas where utility services are not available within a reasonable distance along the side of freeways, crossings of freeways by utility service connections may be permitted.

(ii) All utility installations on, over, or under the rights-of-way of UDOT and utility attachments to highway structures shall as a minimum meet the following requirements:

(A) Electric power and communication facilities shall conform with the most current edition of the National Electrical Safety Code.

(B) Waterlines shall conform with the American Water Works Association (AWWA), specifications C200-86, 1987 edition and any local restrictions by political subdivisions.

Pressure pipelines shall conform with the current American National Standards Institute (ANSI) B31.3 1993 edition including addenda B31.3a 1993, B31.3b 1994 and B31.3c 1995; American Petroleum Institute (API) 1104 for Piping, 18th edition 1994 including addenda B31.3a 1993, B31.3b 1994, and B31.3c 1995; American Society of Testing and Materials (ASTM), A53-93a and A134, A135 and A139, 1993 edition.

(C) Liquid petroleum pipelines shall conform with the ANSI and API specifications.

(D) Unpressurized sanitary sewer system shall conform to the ASTM specifications.

(E) Federal Pipeline Safety Act, 49 USCA Section 60101 et. seq., July 1994 edition and Transportation of Natural Gas and Other Gas by Pipeline 49 CFR Part 192, 1995 edition.

(iii) Pipelines located in casings, galleries or utility tunnels shall be designed to withstand expected internal pressure and to resist internal and external corrosion. Uncased pipelines shall be designed to withstand stresses due to external loading.

(iv) Joints for carrier line pipes operating under pressure shall be of leak-proof type of construction.

(v) Ground-mounted utility facilities shall be of a design compatible with the scenic quality of the specific highway section being traversed.

(vi) All utility facilities on, over, or under on highway rights-of-way and attachments to highway structures shall be of durable materials designed for long service life expectancy reasonably free from servicing and maintenance.

(vii) On new installations or adjustments of existing utility facilities, provision shall be made for known or planned expansion of the facilities. They shall be planned so as to avoid interference when additional overhead or underground lines are installed at some future date.

(viii) The utility shall be responsible for the design of the facility to be installed within the highway rights-of-way or attached to a highway structure. UDOT shall be responsible for review and acceptance of the company's proposal particularly the manner in which the utility facility is to be installed including the measures to preserve the safe and free flow of traffic, structural integrity of the roadway or highway structure, and ease of highway maintenance and appearance of the highway.

(g) Appurtenances.

(i) Where pipeline carriers of hazardous transmittants are to be encased, each location shall be individually analyzed to determine the need for venting. Where vents are required, they shall be located at the high end of casings less than 46 m (150 feet) in length. Where casings are more than 46 m (150 feet) in length and vents are to be installed, they shall be placed at both ends of the casing. Vent stand pipes shall be located so as to conform with the Department's clear roadside policy and so as not to interfere with highway maintenance operations nor to be concealed by vegetation. Vent stand pipes shall preferably be located at fences or right-of-way lines.

(ii) Where drains are required for tunnels, casings, or galleries enclosing carriers of liquid, liquefied gas, or heavy gas, the drains may outfall into roadside ditches or natural drainage courses approved by UDOT. When such hazardous materials are discharged into UDOT's roadside ditches or natural drainage courses, the owner of the carrier shall remove the material from UDOT's right-of-way and restore the site to its original condition at their own expense. These outfalls may not be used as a wasteway for purging the carrier unless prior written approval is obtained from the UDOT Region/District Director or his authorized representative after clearance with the Office of Loss Control.

(iii) Utilities shall be required to install readily identifiable and suitable markers at the right-of-way line where it is crossed by pipelines carrying transmittants which are flammable, corrosive, expansive, energized, or unstable. Vents shall be allowed to serve as markers where possible. Markers are desirable and are encouraged by UDOT for all other pipelines.

(iv) Location of manholes in the pavement or shoulders of major highways, including urban highways, shall be avoided. Exceptions may be made on streets at those locations where manholes are necessary to access existing utility facilities. Insofar as practicable, every effort shall be made to minimize these installations and to avoid their location at street intersections.

Manholes shall be designed and located in such a manner that shall cause the least interference to other utilities and future highway expansion. Adjustment of manholes to fit new or reconstructed highway paving, grading or slope flattening shall be made by the utility at its own expense. To restore the highway pavement riding surface around the manhole, the utility shall pour a concrete collar around the manhole ring and cover to a width and depth approved by the UDOT Region/District Office.

(v) Shut off valves shall be installed in lines at or near ends of structures and near areas where there may be unusual hazards unless hazardous segments can be isolated by other sectionalizing devices within a reasonable distance.

(h) Inspection.

UDOT shall routinely inspect the work of the utility or their contractor to assure compliance with the agreement and to insure proper compliance with State and Federal rules and regulations. These construction inspections shall be made by the UDOT Region Director or an authorized representative. All costs of construction inspection shall be paid by the company and may be paid in advance. If the inspection costs exceed the original amount deposited by the utility, the utility shall reimburse the additional funds to UDOT within thirty (30) days of billing. Failure to do so shall be cause to revoke the permit, review the utility license and remove the utility from the right-of-way. UDOT shall refund any inspection fee surplus when the inspection costs underrun.

(i) Date of Completion.

The work covered by the agreement shall be completed within a specified number of days. Failure to complete the work within the specified time shall give UDOT the option of extending the time or revoking the permit and using the bond to pay for completion of the work. Any time extension shall be in writing and approved by UDOT.

(j) Costs.

On new installations, the entire costs of the utility facility shall be paid for by the utility. In the event a highway is reconstructed requiring adjustment of manholes or relocation of the utility on the right-of-way, reimbursement for the relocation shall occur pursuant to Section 72-6-116.

(k) Beginning Construction.

All excavations and/or other operations on UDOT property or right-of-way may not be commenced by the utility until and after forty-eight hours (48 hrs) notice is given by the utility to the UDOT Region Director or his authorized representative and a permit obtained. Construction shall be carried forward to completion in the manner required by the UDOT

Region/District Director or his authorized representative.

(l) Excavation and Backfill.

All excavation and backfill shall be made in compliance with R930-6-16 "the Specifications for Excavation on State Highway Right-of-way". No excavation shall be made without first obtaining and posting the required permit. The permittee shall also be cleared on a variety of environmental laws, as outlined in letter dated October 9, 1997 issued by UDOT's Deputy Director before the permit is issued. An emergency excavation may be made without prior permit if there is imminent danger or loss of life or severe damage to property. In such emergency situations, the excavating parties shall contact UDOT not later than the end of the first working day following the excavation. None of the provisions of these rules are waived for emergency situations except for the prior permit requirement. In all cases the permittee shall comply with the State Law requiring notification of all utility owners prior to excavation.

(m) Traffic Control.

The permittee shall conduct their operation so there shall be a minimum of interference to highway traffic. The utility shall provide a traffic control plan in conformance with the current Federal Highway Administration "Manual on Uniform Traffic Control Devices", "MUTCD", during all operations of the utility, in constructing said line. No lane closure shall be made without prior approval of the UDOT Region Director or his authorized representative. Traffic control plans showing detours and signing operations shall be required in advance for review and approval for all lane closures. Peak hour lane closures may be prohibited.

(n) Restoration of Existing Pavement.

(i) The permittee shall at their own expense replace any pavement removed or damaged with pavement of a type and depth approved by the UDOT Region Director or his authorized representative, including gravel base material. The restoration shall be accomplished within 48 hours after completion of excavation and backfill, unless additional time is granted in writing by the UDOT Region Director or his authorized representative.

(ii) New or replaced pavement shall be constructed in conformity with Section R930-6-16, the "Specifications for Excavation on State Highway Right-of-way", and shall be subject to the inspection and approval of the UDOT Region Director or his authorized representative. If weather conditions do not permit immediate placing of permanent pavement, a temporary pavement shall be placed. As soon as weather shall permit, the temporary pavement shall be removed and replaced with a permanent pavement. If the gravel surface, gravel shoulders or gravel surfaced approach roads becomes contaminated and is not consistent with UDOT specifications, gravel surfacing material shall be entirely removed and replaced with new gravel surfacing material. The repairs to pavement or surface shall include pavements which are damaged with construction equipment or construction operations. UDOT shall have the option of restoring the roadbed at the expense of the permittee.

(o) Restoration of Traffic Signal Equipment.

Any traffic signal equipment or facilities which are disturbed or relocated as a result of the utility work shall be restored in accordance with plans approved by UDOT. Restoration of traffic signal equipment shall be done at the permittee's expense by a UDOT approved electrical contractor experienced in signal installation, retained by the permittee and approved in advance by UDOT. Work shall be scheduled to ensure that disruption of any traffic signal operation is kept to a minimum.

(p) Cleaning Up Highway Right-of-way.

(i) Upon completion of the work, all material shall be removed from within the limits of the highway, including mud tracks on paved roads. The disturbed surface shall be carefully graded to the lines and grades established. Seeding shall be required to restore vegetation damaged or destroyed.

(ii) Any highway features or facilities such as paint stripes, signs, culverts, etc., disturbed or damaged during the progress of the work shall be properly restored to satisfy current standards and rules.

(q) Maintenance.

The utility facility shall at all times be maintained, repaired, renewed and operated by and at the expense of the utility. The utility shall be serviced without access from any interstate highway or ramp. UDOT reserves the right, without relieving the utility of their obligation, to reconstruct or make emergency repairs to the utility as it may consider necessary. UDOT will give a utility company reasonable time to maintain their facility, but if UDOT is required to make the repairs, the utility shall reimburse UDOT its cost.

(r) Future Highway Construction.

As a condition of permitting a new utility facility in a state right-of-way, UDOT will retain the right to cross such facility at any point within UDOT's right-of-way, necessary for future construction, expansion or improvement of it's highway system provided that UDOT uses due care in protecting the utility facility.

(s) Liability.

Unless otherwise provided by prior written agreement, the utility or permittee is required to post a performance bond, running for a term of three years after completion of the work, to guarantee satisfactory performance as provided in the agreement, license, or permit. UDOT may proceed against said bond to recover all expenses incurred by UDOT, their employees or representatives in the sections of roadway interfered with by the permittee to restore to UDOT standards. These expenses refer to all expenses incurred in the repairing of portions of the roadway determined by UDOT inspectors to be inadequately restored or maintained by the utility. The liability of the utility or permittee shall not be limited to the amount of the bond. The utility or permittee shall protect and indemnify and save harmless UDOT for any and all claims including claims from third parties for damage and/or injuries caused by construction or use of the utility facility, and from all costs and expenses, including attorney's fees.

(t) Cancellation of License and/or Permit.

If the utility shall fail to construct, repair or remove said utility in accordance with the terms of the agreement to the entire satisfaction of UDOT, or shall fail to pay UDOT any sum of money for the inspection, reconstruction, repair or maintenance of said utility, UDOT retains the right to cancel the permit and remove said utility and restore the highway at the sole expense of the utility. Before UDOT cancels the

agreement, it may notify the utility in writing, setting forth violations and shall give the utility a reasonable time to fully correct the same.

(u) UDOT Maintenance Operations.

Underground facilities must be buried to the proper depth to avoid conflict with UDOT's normal and routine maintenance activities. In entering into a utility line agreement with the UDOT and obtaining an encroachment permit for the work, the utility will be required to avoid conflicts by placing its facilities to the required horizontal clearance and minimum depth of bury. The utility owner by the terms of the permit will be required to protect, indemnify and hold harmless the UDOT for damages to lines not in conformance with the horizontal or vertical clearances. Any noncompliance to the above may result in annulment of the utility company's agreement or permit.

R930-6-8. Pipelines.

(1) Location.

(a) To the extent feasible and practicable, UDOT shall require pipeline crossings normal to the highway alignment thereby minimizing interference with traffic during construction and conflict with other highway facilities.

(b) Conditions which are generally unsuitable or undesirable for pipeline crossings shall be avoided. These include locations in deep cuts, across cuts and fills, on steep slopes, locations near footings of bridges and retaining walls and across intersections at grade or ramp terminals. Also, locations shall be avoided at cross drains where flow of water, drift or stream bedload may be obstructed and in wet or rocky terrain where it shall be expensive to provide minimum bury.

(c) All locations shall be subject to a plan or field review by the UDOT's Region Director or an authorized representative to insure that the proposed pipeline installation may not interfere with existing or planned highway facilities or with highway operation and maintenance processes. Installation of privately owned pipelines for the purpose of draining wetlands will not be allowed on highway rights-of-way.

(2) Depth of Bury.

(a) The critical control for bury on a pipeline crossing shall be the low point in the highway cross-section. In establishing the depth of bury below an unpaved ditch, allowances shall be made for potential increase in ditch depth resulting from scour, ditch maintenance operations or from the need to increase the capacity of the ditch. On longitudinal installations, bury shall be controlled by the depths of lateral drainage facilities, buried cable, bridge structures, and likely highway maintenance operations.

(b) In cold climates the depth of frost penetration shall be taken into consideration in determining the depth of bury. The use and occupancy permits and utility line agreements shall require the utility company to keep accurate records as to location and depth of bury and provide the information to UDOT as per V.C.2.f. Controls for the bury of pipelines shall be as follows:

(i) Within the highway right-of-way, the grade of the top of a pipe shall be at least 0.91 m (3 feet) under the pavement surface. In areas within 6.10m (20 feet) from the edge of pavement where signs or delineators are located, utilities shall be buried to a depth of not less than 1.52 m (5 feet). Place utilities at least 600 mm (2 feet) under sidewalks, paved ditches, unlined ditches or gutters. The UDOT Region/District Director or his authorized representative may require a greater depth of bury when it is decided necessary to avoid known conflicts, the depth of bury and conflict shall be noted in the permit.

(ii) For flexible pipe under pavement, minimum depth of bury shall be 1 m (3 feet) or 1/2 the outside diameter of the pipe whichever is greater.

(c) Depth of bury less than the above may be permitted only when it can be shown by the company that compliance would be unreasonably costly and written approval has been obtained from the UDOT Region/District Director or his authorized representative.

(d) Where less than minimum depth of bury is essential to avoid the laying of pipelines below the permanent water table, the top of pipe must not project into the pavement subbase. The depth of the pipe shall be approved by the UDOT Region/District Director or an authorized representative and shall be protected with a casing or capping acceptable to the Department.

(e) Cover for pipelines carrying materials which are flammable, corrosive, expansive, energized, or unstable (particularly as carried at high or potentially high pressures) may not be reduced below acceptable safety limits.

(3) Encasement.

(a) Utilities and persons shall use casings for all pipes carrying hazardous transmittants which are flammable, corrosive, expansive, energized or unstable. The wall thickness of the casing shall be reviewed and approved by UDOT's Structures Division based on depth of bury, diameter of the casing and other local conditions at the site. Lines shall avoid highway structures especially those at depressed grade.

(b) A casing shall be required for jacked or bored installations of coated carrier pipe unless there is reasonable assurance against damage to the protective coating. Rigid encasement or capping shall be required if support of pavement might be impaired by a change in shape of a flexible pipe. Encasement shall be required for any pipeline located within minimum clearances or near bridge footings or other elements of unusual hazard.

Where federal regulations including 49 CFR Part 192 require, UDOT will allow the use of heavy wall, extra strength pipe approved by the UDOT Region Director or his authorized representative in lieu of casings as required by the two paragraphs above.

(c) Where casings are used to cross a non-Interstate highway, the casing pipe shall extend a minimum of 10 m (30 feet) beyond the traveled way and at least 1.5 m (5 feet) beyond the toe of fill slopes whichever is greater. This shall be the case except when the utility is located longitudinal to the highway and outside the roadway prism and longitudinal to the highway under the surfacing when permitted. Encasements will not be required in these instances. On curbed sections, the casing shall extend outside the outer curb. On freeways, expressways and other controlled access highways, casings shall extend to the access control lines.

(d) Where there is a concentration of utility crossings at any one location, utility galleries shall be considered. Utility galleries may consist of concrete box structures or large

diameter reinforced concrete or corrugated steel pipe.

(e) Vent stand pipes shall be located and constructed so as not to interfere with maintenance of the highway and shall preferably be located at the fence or right-of-way line. Vents shall be required for galleries enclosing carriers of fuel.

(f) Casings shall be considered for pipeline crossings of a highway as follows:

(i) As an expediency in the insertion of a carrier pipe crossing where casing is necessary in order to avoid open trenched construction.

(ii) As protection to the carrier pipe from external loads or excessive vibrations either during or after construction of the highway.

(iii) It is considered advisable to provide a means for conveying leaking fluids or gases away from the area directly beneath the traveled way to the point of venting at or near the right-of-way line.

(iv) Consideration for encasement or other suitable protection for any pipeline shall be given where there shall be less than minimum bury, the facility shall be located near footings of bridges or other highway structures where the utility shall be located in an area of unstable or subsiding ground or at any other location when there may be hazards.

(4) Installation.

Installation or replacement of pipelines along or crossing existing highways shall be controlled by the Department's specifications as described under Pipelines above. Trenched construction, when allowed, shall be accomplished in accordance with R930-6-16, UDOT specification for "Specifications for Excavation on State Highway Rights-of-way".

R930-6-9. Power and Communication Lines.

(1) Underground Electric Power and Communication Lines.

In general, controls previously outlined for pipelines as related to depth of burial, encasement and installation, shall be applied to underground installations of electric power and communication lines see Section V.D.2.a. Other controls shall be as follows: longitudinal installations shall be located on uniform alignment, preferably parallel to the roadway at or adjacent to the highway right-of-way line and beyond the clear zone and, as a minimum, 1.5 m (5 feet) beyond the fill slope, ditch or curb lines. On conventional highways, crossings of underground lines shall be suitably encased in protective conduit extending beyond the recovery and clear zone area, or 10 m (30 feet) beyond the edge of traveled way or 1.5 m (5 feet) beyond the slope, ditch or curb lines, whichever is the greater distance. On urban curbed sections conduit shall extend outside of the outer curbs of the roadway. On freeways, expressways, and other controlled access highways, longer encasement shall be required to extend to the access control lines and where appropriate under frontage roads for a sufficient distance to allow future widening of the highway facilities. Installation parallel to the highway right-of-way shall be located a minimum distance away from the highway right-of-way line to allow room for installation equipment. However, loops shall be provided which will allow placement of above ground appurtenances such as splice box closures, underground distribution terminals, etc., as close to the highway right-of-way as is possible, or outside of the right-of-way on private right-of-way as determined by the UDOT Region Director or his authorized representative.

(2) Overhead Power and Communication Lines.

The type of construction, vertical clearance above pavement and location of poles, guys and related ground mounted utility appurtenances along the roadway are considered to be factors of major importance to preserve a safe traffic environment, the appearance of the highway and the efficiency and economy of highway maintenance. Careful consideration, shall, therefore, be given in determining proper location for overhead utility facilities. Where ground-mounted utilities are to occupy the space between the edge of pavement and the right-of-way line, they shall be placed as far as possible from the traveled way and beyond the recovery and clear zone area. In the interest of preserving a safe roadside, highway appearance and efficiency of highway maintenance operations, the following controls shall be used for installation of overhead electric power and communication lines.

(a) Type of Construction.

(i) Longitudinal installations on the highway right-of-way shall be limited to single pole construction.

(ii) Joint use single pole construction shall be encouraged at locations where more than one utility or type of facility is involved. Particular emphasis shall be placed on this requirement at locations where the right-of-way widths approach the minimum needed for safe operations.

(b) Vertical Clearance for Power Lines, Communication Lines and Other Lines.

(i) The vertical clearance for overhead lines above the highway and the vertical and lateral clearance from bridges shall conform with the current edition of the National Electrical Safety Code, except the minimum vertical clearance above highway pavement shall exceed the National Electrical Safety Code minimum by 3.91 m (13 feet) at highway intersection and 2.44 m (8 feet) at all other locations.

(ii) Companies planning on attaching a cable to other utility company poles shall obtain a variance from UDOT by completing the "Communication Cable Release Form" (No. T-600) before a permit shall be issued by UDOT's District Permits Officer.

(iii) For Buried Cable see Section V.D.2.

(c) Location.

(i) The location of poles, guys and related ground-mounted utility facilities on freeways and other highways having partial control of access shall conform with AASHTO's "A Policy On the Accommodation of Utilities within Freeway Right-of-Way" February, 1989 edition.

(ii) On and along non-Interstate highways, poles and related facilities shall be located at or as near as possible to the right-of-way line. As a minimum the poles shall be located outside the recovery and clear zone area for the highway section involved. Pole locations should provide for the least conflicts with highway maintenance. There is no single dimension for the width of a clear zone, but shall be based upon the 1990 Edition of the AASHTO "Policy on Geometric Design of Highways and Streets" and the AASHTO "Roadside Design Guide".

(iii) Where there are barrier curbed sections, the utility

poles shall be located as far as practicable behind the face of outer barrier curbs with a minimum of 460 mm (18 inches) and preferably behind the sidewalk section.

(iv) Location of overhead utility installations on highways with exceptionally narrow rights-of-way or on urban streets with abutting improvements may be given a special consideration and shall be resolved in a manner consistent with prevailing limitations and conditions. Techniques permitted by governmental or industry codes that are conducive to a safe traffic environment shall be employed.

(v) Guy wires to ground anchors and stub poles may not be placed between a pole and the traveled way where they encroach upon the clear zone area. Exceptions may be allowed by the UDOT Region/District Director or his authorized representative. Guy wires within the right-of-way may require delineation.

(vi) Longitudinal installations of poles, guys or other related facilities may not be located in a highway median. When crossing a highway, facilities may not be located in a highway median less than 30 m (100 feet) in width. Poles and other appurtenances for highway lighting may be located in the median if other alternatives are determined to be impractical and when suitable protection can be provided to the highway user.

R930-6-10. Installation on Highway Structures.

(1) Attaching utility lines to a highway structure can materially affect the safe operation of traffic and the efficiency of maintenance.

(2) Utility lines will not be permitted to be installed on bridges except in extreme cases where there is a showing that any other utility location is extremely difficult and unreasonably costly to the utility consumer. In order to be considered "extremely difficult" or "unreasonable cost", the total cost of alternate routing shall exceed the cost of attaching to the structure by four times and comply with R930-6-6(1)(e)(VI).

(3) In extreme cases covered by the paragraph above, the location and design of utility installation on bridges shall be subject to review and approval or denial by the UDOT Structures Department. Appeal to the UDOT Deputy Director may be requested if the utility disagrees with the decision of the UDOT Region/District Director or his authorized representative.

(4) This does not apply to utility lines serving facilities required for operating the highway.

(5) Attachment of a pipeline carrying a hazardous transmittant shall be avoided whenever possible. When allowed and the pipeline attachment is cased, the casing shall be opened or vented at each end to prevent possible buildup of pressure and to detect leakage of gases or fluids. When located near a live stream the casing shall be constructed so that leakage of the transmittant will not enter the stream.

(6) Attachment of a utility may not be considered unless the structure is of a design that is adequate to support the additional load and can accommodate the utility without compromise of highway features.

(7) Manholes for utility access may not be allowed in a bridge deck.

(8) The entire utility installation on the structure shall be mounted so as not to reduce the vertical clearance otherwise available.

(9) Utility facilities which shall occupy a position beneath the structure floor preferably shall be located between the outer girders or beams or within a cell and at an elevation above the lowest superstructure steel or masonry.

(10) Attachments of utility facilities to the outside of a structure may not be permitted unless there is no reasonable alternative.

(11) Utility facility mountings shall be of a type which may not rattle due to vibrations caused by traffic. Communication and electrical power line attachments shall be suitably insulated, grounded, and preferably carried in protective conduit or pipe from the point of exit from the ground to re-entry. The cable shall preferably be carried to a manhole located beyond the back wall of the structure. Carrier pipe and casing pipe shall be suitably insulated from electrical power line attachments.

(12) Acceptable utility attachment methods are hangers and/or roller assemblies suspended either from inserts from the underside of the bridge floor or from the hanger rods clamped to the flange of some superstructure member. Bolting through the bridge floor may not be permitted.

(13) Clearances of the utility facility from structure members shall conform to all governing codes and may not render any portion of the structure inaccessible for any maintenance function.

(14) The utility shall be required to make satisfactory provisions for the lineal expansion and contraction of its facility due to temperature variations.

(15) The permit shall make the utility responsible for restoration or repair of any portion of a structure or highway damaged by utility facility use.

(16) Where a casing is not provided for a utility pipeline attachment to a structure additional protective measures shall be taken. These measures shall employ a higher factor of safety in the design, construction and testing of the pipeline than would normally be required for cased construction.

R930-6-11. Utility Facility Locations Within Scenic Enhancement Areas.

(1) New utility facility shall be avoided whenever possible within scenic corridor strips, overlooks, rest areas, recreation areas, public parks and historical sites and adjacent rights-of-way.

(2) New underground utility installations may be permitted within such areas where they do not require extensive removal or alteration of trees visible to the highway user or do not impair the appearance of the area.

(3) New overhead installations of communication and aerial power lines shall be permitted only when other utility locations are not available or are extremely difficult and unreasonably costly, or are less desirable from the standpoint of scenic appearance. Installations may be allowed when the placing of the utility facility underground is not technically or economically feasible or is more detrimental to the scenic appearance of the area.

(4) Overhead installations may be allowed where the proposed installation can be made at a location and in a manner that may not significantly detract from the scenic quality of the area being traversed and the facility can be designed in such a manner which shall give adequate attention to aesthetic values.

(5) Utility installations that are needed for highway purposes, such as for continuous highway lighting, to serve a weigh station, rest or recreational area, shall be located and designed to conform with the above requirements.

R930-6-12. Miscellaneous.

(1) Preservation, Restoration and Cleanup.

The size of a disturbed area shall be kept to a minimum. Construction methods shall be in accordance with UDOT specifications and in compliance with the conditions of the utility line agreements and permits. Unsatisfactory restoration work shall be promptly repaired by the Company.

(2) Spraying, Cutting and Trimming of Trees.

The Company shall be required to obtain written permission from the Department before disturbing trees which are located within the highway right-of-way. UDOT shall give written permission for only light trimming. When the removal of a tree is permitted, the stump shall be removed and the hole properly backfilled. The UDOT Region Director or his authorized representative may require replacement with several trees of the same species to assure equal restoration and mitigation in compliance with federal requirements.

(3) Servicing, Maintenance and Repairs.

All utility facilities shall be kept in a good state of repair both structurally and from a standpoint of appearance.

R930-6-13. Signs, Signals, Lighting, Crosswalks, Curb, Gutter and Sidewalks.

(1) This section describes UDOT policies regarding traffic signs and street name signs, traffic signals, highway lighting, crosswalks, curb, gutter and sidewalks located within the rights-of-way of any State highway. Requests for the installation of and permission to install any of these facilities shall be made by permit from the appropriate UDOT Region/District Director or his authorized representative.

(a) Community Name Signs.

UDOT shall install all community name signs. Signs for communities shown on the official highway map shall be installed by UDOT with the official community name in conformance with the Federal Highway Administration's "Manual on Uniform Traffic Control Devices" (MUTCD) and UDOT's Safety Standards. Signs shall be installed on or as close as possible to corporate boundaries. If the community desires to provide a more elaborate notice or identification of the community and/or other information, it shall be done outside the existing right-of-way and in accordance with the rules for outdoor advertising.

(b) Street Name Signs.

The installation and maintenance of street name signs are not functions of UDOT. Local authorities may install street name signs within the rights-of-way of State highways. All signs placed within the right-of-way shall conform to "MUTCD" standards.

(c) Traffic Signs, Signals, Lighting and Crosswalks.

The installation and maintenance of these items conform to "MUTCD" and UDOT standards.

(d) Modification of Existing Traffic Control Devices.

When it is necessary to relocate traffic control signs, traffic signal poles, circuitry and appurtenant equipment or other traffic control devices as part of the permitted work, the utility shall accomplish said relocation at its expense according to a design approved by UDOT. These modifications require the applicant to provide a traffic study to evaluate the impact.

(e) Damage to Existing Traffic Control Equipment.

Any damage to existing traffic control equipment shall be repaired or restored at permittee's expense in accordance with plans approved by UDOT.

(f) Sidewalks.

Except as outlined in UDOT's Policy 08A-2, "Pedestrian Safety Facilities on Construction Projects" 1998, the installation of sidewalks is not normally the responsibility of UDOT. However, when a road is reconstructed and existing sidewalks are removed or destroyed, or when obligated to do so, UDOT shall construct or reconstruct said sidewalks to current standards.

(g) Curb and Gutter.

In the interest of vehicle and pedestrian safety, efficient movement and regulation of traffic, and the more effective and economical maintenance of highway surface and drainage, UDOT may, install new curb and gutter when one or more of the conditions listed below exist.

(i) Traffic volumes require the utilization of the entire right-of-way.

(ii) Intersection channelization is needed.

(iii) Additional right-of-way is necessary to provide:

(A) standard or bituminous ditch treatment to prevent scour;

(B) the proper and safe roadway width and slopes; and

(C) the cost of curb and gutter, plus any additional cost made necessary by curb and gutter and installation are less than right-of-way costs.

(D) Ponding occurs in an unpaved ditch because of extremely flat grades (normally less than 0.3%), and drainage does not function properly except in paved concrete gutter.

(E) Traffic needs to flow through a narrower than normal structure.

(F) Restriction of access and parking is necessary to protect pedestrian traffic and to obtain full utilization of the street for required capacity.

(G) In order to control highway runoff after curb and gutter is installed, UDOT should pave full width between the curbs to be in compliance with UDOT's Policy 06A-43 "Widening Pavements to Curb and Gutter" 1999.

R930-6-14. Driveways.

(1) General Provisions.

(a) Control of driveway connections is necessary to provide efficient and safe operation of highways and to utilize full potential of the highway investment. Abutting landowners have rights-of-access consistent with their needs and the safe and efficient operation of the highway. Road users are to be provided reasonably safe highways for travel and efficient expenditure of public highway funds. UDOT is responsible to regulate and control the location, design, construction and operation of access driveways, to reconcile and, to the extent feasible, to satisfy the needs and rights of both the road user and abutting landowners.

(b) UDOT shall utilize the whole of the right of way to the

best advantage for highway purposes, by controlling the number, location, width and design of driveways from the adjacent private property.

(c) Driveway design and location should assure reasonably good service to driveway users and at the same time minimize interference to highway traffic.

(d) When there are several adjacent roadway establishments or when the probability of commercial development exists, consideration of a frontage road shall be given to reduce the number of connections to the highways. If impossible, the minimum number of driveways shall be allowed so that all the establishments can be served. Several businesses may share one driveway. Encroachment on the adjacent property frontage may be permitted only when an agreement is entered into by the adjoining property owners for joint usage of the driveway.

(e) UDOT will employ the following six applicable access management techniques in the review of driveway permits:

(i) Unsignalized Access Spacing;

(ii) Corner Clearance;

(iii) Signalized Access Spacing;

(iv) Medial Placement and Design;

(v) Access Separation from Interchanges; and

(vi) Speed Change Lanes.

New or modified access permits may be denied based on traffic engineering standards associated with each of the six primary access management techniques, if, in the judgment of the Region Team, new or modified access points will negatively affect the safety or the efficiency of the highway users.

(2) Provisions Governing the Location, Design and Construction of Driveways.

(a) General

The following directives shall apply in relation to the construction of driveways within the rights of way of any highway controlled by these regulations:

(i) Control spacing is an integral part of these regulations. A single set of values would not be suitable for all situations. Accordingly, a range of values is given for each control dimension within which actual dimensions shall conform. Where total site traffic volumes exceed 500 ADT or projected highway traffic volumes exceed 5,000 ADT, a more detailed evaluation shall be required based upon Figures for "Access Management of Streets and Highways".

(ii) Driveways or access points by a railroad at-grade crossing must be 76.20m (250 feet) from the railroad crossing pursuant to rule R930-5.

(b) Permits.

(i) Anyone intending to construct a driveway from the main traveled way of the right-of-way line shall make written application to and secure a permit from the appropriate UDOT District office before commencing construction. Permit applicants must also comply with all environmental laws before the UDOT Region/District Director or his authorized representative can issue a permit to proceed with any work.

(ii) The type of driveway with approved dimensions shall be clearly stated in the permit.

Two copies of the permit shall be issued. One copy is for the applicant, and the other shall be prominently displayed at the construction site during the period of construction. Failure to properly display the permit in compliance with this regulation may result in the cancellation of the permit.

(c) Buffer Area.

If the buffer area between the traveled way and the right-of-way line requires regrading by cutting or filling work shall be done in a manner to insure adequate sight distance for traffic operation, proper drainage, suitable slopes for maintenance operations and good appearance. Trees, shrubs, ground cover or other landscape features may need to be removed, replaced or suitably adjusted. The buffer area must be free of any encroachment that would hinder traffic. The buffer area between driveways shall be grated or landscaped to prevent use by vehicles. This may be accomplished by appropriate physical barriers such as curbing, fencing, etc. in a manner that does not impair clear sight across the area.

(d) Parking.

(i) Each roadside business establishment shall provide sufficient private parking or storage space to handle the needs of that business. Parking or storage of vehicles on the highway right-of-way is not allowed unless approved by the Region/District Director. Traffic circulation on these areas must be arranged to restrict backing onto the highway. When the parking or storage area is deemed to either be inadequate or buildings or other installations do not conform to the required setback dimensions as outlined in these rules, the driveway or driveways shall be located and constructed so as to prevent the illegal storage or backing of vehicles onto the highway right-of-way (Section 72-7-105 - "Obstructing Traffic on Sidewalks or Highways Prohibited" and Section 41-6-106 - "Backing When Permissible").

(ii) Where business establishments are located on the corner of an intersection, parking shall be prohibited for 10 m (30 feet) from the corner in each direction.

(e) Sight Distance.

(i) Driveways shall be located to optimize sight distance along the highway. Any encroachment on sight distance shall be allowed only when approved by the UDOT Region/District Director or his authorized representative prior to construction. Sight distances shall be in accordance with current AASHTO guidelines for Decision Sight Distance.

The Intersection Sight Distance for Passenger Cars is based on information taken from the 1994 edition of the AASHTO Policy on Geometric Design of Highways and Streets, Chapter 9, At-Grade Intersections, Case III - Stop Control on Minor Roads.

(ii) Driveways with less than the required minimum sight distance may require changes to existing highway conditions such as right and/or left turning lanes, use of frontage roads, or other changes as required by the UDOT Region/District Director or his authorized representative.

(iii) Additional sight distance may be required for multilane highways. In these instances, a UDOT traffic engineer shall make a traffic safety evaluation. Findings from the evaluation shall be used in designing the driveway for safe ingress and egress.

(iv) Parking lane space shall be restricted to provide adequate radii and sight distance for turning into and out of a driveway with vehicles that are expected to use the driveway.

(f) Setback.

Improvements on private property adjacent to the right-of-way shall be so located that parking, stopping and maneuvering of vehicles on the right-of-way may not be necessary. Setback is normally controlled by the local government agency through its planning and zoning ordinances. However, a careful evaluation shall be conducted so that commercial operations do not service vehicles on highway right-of-way and so that parking operation does not require backing onto the highway.

(g) Location and Type.

(i) The effect of driveway location on traffic capacity and operation as well as safety should be considered. Factors to be considered may include acceleration, deceleration, weaving, blocking of driveway due to queuing at intersections, sight distance, impact on traffic signal operations, signal coordination and railroad crossings.

(ii) Driveways generally fall into two categories. See UDOT Standard Drawing No. 715-1 Concrete Driveways and Sidewalks.

(A) Open driveway with radius curve on returns.

(B) For flared driveways on each side of drive.

The type of driveway with approved dimensions shall be clearly stated in the permit. Any change of the driveway type (residential, industrial, commercial, farm etc., and appropriate dimensions) shall not occur until a permit is issued by the appropriate UDOT Region office.

(h) Driveways Allowed, Minimum Distances.

The number of driveways allowed and the minimum distance between driveways shall be determined to be either of the following options as determined by the Region Traffic Engineer:

(i) Speed / Spacing Option:

TABLE 1

Posted Speed Limit Km/hr (MPH)	Driveway Spacing m (Feet)
40 Km/hr (25 mph)	32 m (105 feet)
50 Km/hr (30 mph)	38 m (125 feet)
60 Km/hr (35 mph)	46 m (150 feet)
70 Km/hr (45 mph)	70 m (230 feet)
80 Km/hr (50 mph)	84 m (275 feet)

(ii) Frontage / Spacing Option:

(A) Frontages of less than 30 m (100 feet) shall be limited to one (1) two directional driveway or two (2) one directional driveways with minimum spacing as shown:

TABLE 2

	Urban	Rural
Farm and Residential:	3.6 meters (12 feet) minimum	6 meters (20 feet) minimum
Industrial and Commercial:	9 meters (30 feet) minimum	9 meters (30 feet) minimum

(B) Frontages of 30 m (100 feet) to 150 m (500 feet) shall be allowed not more than 2 driveways and the minimum distance between double driveways shall be as follows:

TABLE 3

	Urban	Rural
Farm and Residential:	15 meters (50 feet) minimum	30 meters (100 feet) minimum
Industrial and Commercial:	9 meters (30 feet) minimum 15 meters (50 feet) desirable	15 meters (50 feet) minimum

(C) Frontages with excess of 150 m (500 feet) shall be allowed not more than 3 driveways and the minimum distance between them shall not be less than 30 m (100 feet).

(D) Contiguous property which has more than one (1) frontage abutting State Highways shall have a maximum of two (2) driveways per frontage.

(i) Driveway Geometrics.

Many factors must be considered in the location and placement of driveways. Factors to be considered include: the driveway width shall be adequate to properly handle the anticipated type and volume of traffic, and shall be within the limits specified for the particular conditions and type of roadside establishment. Requests for deviations shall be made to the Region/District Director or his authorized representative and approval of deviations may not compromise traffic flow or safety. The width and radii treatment is specified below:

(i) Width of Driveway (Urban and Rural).

TABLE 4

Farm: 4.8 m (16 ft) minimum to 9.6 m (32 ft) maximum
Residential: 3.6 m (12 ft) minimum to 6 m (20 ft) maximum

Industrial and Commercial:
One-directional: 4.6 m (15 ft) minimum to 9 m (30 ft) maximum
Two-directional: 7.6 m (25 ft) minimum to 15 m (50 ft)* maximum

Exceptions to driveway widths based on safety must be approved by the UDOT Region Director.
*To be supported by traffic study.

(ii) Edge Clearance.

Edge clearance is the distance from the edge of the driveway to the adjacent property. All portions of the driveway shall be within the frontage boundary line and its location will be determined based on either a traffic study or the following minimum standards, at the discretion of the region traffic engineer:

TABLE 5

	Urban	Rural
Farm and Residential:	4.6 m (15 ft) desirable minimum	6.0 m (20 ft) desirable minimum
Industrial and Commercial:	3.0 m (10 ft) minimum	4.6 m (15 ft) desirable minimum

Exceptions to edge clearance width based on safety must be approved by the UDOT Region/District Director or his authorized representative.

(iii) Radius of Curvature (if open concrete drive is used).

At junction of driveway and pavement, radius of curvature may not encroach in the edge clearance or corner clearance. Requests for deviations shall be made to the Region/District Director or his authorized representative and approval of deviations may not compromise traffic flow or safety.

TABLE 6

	Urban	Rural
Farm and Residential:	3.0 m (10 ft) min. to 4.6 m (15 ft) max.	6.0 m (20 ft) min. to 9.0 m (30 ft) max.
Industrial and	3.0 m (10 ft) min.	7.6 m (25 ft) min.

Commercial:	to 18 m (60 ft) max. 9.0 m (30 ft) desirable	to 19.8 m (65 ft) max.

(iv) Driveway Profile.

(A) Driveway gradients shall be within the following minimum and maximum ranges, with the minimum percent grade being desirable:

TABLE 7

Recommended Grade Changes (D)

	(D) ADT	(D) Minimum	(D) Maximum
Low Volume Driveway	(0-500)	6 percent (plus or minus)	Controlled by Vehicle Clearance
Medium Volume Driveway	(500-1500)	3 percent (plus or minus)	6 percent (plus or minus)
High Volume Driveway	(greater than 1500)	0 percent	3 percent (plus or minus)

VERTICAL GEOMETRICS FOR DRIVEWAY
(Refer to Figure C)

(B) Without highway edge curb, negative slope.

(I) From edge of traveled way to outer edge of shoulder, gradient same as shoulder slope.

(II) From outer edge of shoulder continue gradient same as shoulder slope. If downward gradient is necessary, it should be not more than 6 percent.

(III) At all slope changes make sure that a standard automobile can pass without dragging.

(C) Without highway edge curb, positive slope.

(I) From the edge of traveled way to outer edge of shoulder, gradient same as shoulder slope.

(II) From the outer edge of shoulder continue same gradient as shoulder. If upward gradient is necessary, not more than 6 percent.

(III) At all slope changes check for vehicle clearance at front and rear overhang.

(D) With highway edge curbs.

(I) Gutter line to sidewalk (if any), maximum slope difference of 6 percent between downward cross slope of traveled way and upward slope of driveway. Lower the profile of the sidewalk if necessary.

(II) Beyond outer edge of sidewalk maintain a gradient of 6 percent.

(v) Vertical Curves.

(A) Vertical curves shall be as flat as feasible and at least 6 m (20 feet) long. To prevent vehicle center or overhang drag, vertical curves shall avoid a hump or dip greater than 150 mm (6 inches) within a wheelbase of 3 m (10 feet). To prevent center or overhang drag with some allowance for load and bounce, crest vertical curves should not exceed a 75 mm (3-inch) hump in a 3 m (10-foot) chord and sag vertical curves may not exceed a 50 mm (2-inch) depression in a 3 m (10-foot) chord. Rolled gutters crossed by traffic may not be deeper than 50 mm (2 inches).

(B) Deviations from these specifications may only be permitted after written approval is obtained from the UDOT Region/District Director or his authorized representative.

(C) Single driveways shall intersect the roadway at right angles. Where two driveways are used on one frontage and are to be used for access to and from both directions of travel on the highway, each driveway may be placed at an angle other than a right angle with the roadway edge, but the driveway angle may not be less than the specified minimum.

(D) On uncurbed sections of highway the gradient of the driveway shall conform to the slope of the shoulder from the edge of the traveled way to the outer edge of shoulder and thence slope downward on a suitable grade to the gutter or low point over a culvert (swale where a culvert is not used). Thereafter, it shall continue downward or upward to match the abutting property. In some cases, it may be necessary to build an uncurbed gutter of a special design to prevent drainage onto adjacent private land.

(E) Where curbs are used along the roadway and sidewalks are provided or contemplated, the gradient of the driveway usually should fit the plane of the sidewalk. If the difference in elevation of the gutter and the sidewalk is such that this is not practical, then the sidewalk shall be lowered to provide a suitable gradient for the driveway. In such case, the surface of the sidewalk shall be sloped gently from either side of the driveway. Vertical curves onto driveways shall be flat enough to prevent dragging of central or overhung portions of passenger vehicles.

(j) Other Criteria.

(i) Driveway Angle.

TABLE 8

Farm and Residential	90 degrees required except in special cases where minimum is 80 degrees
Industrial and: Commercial: For two-directional use:	90 degrees required except in special cases where minimum is 80 degrees
For one-directional use: (right turns only)	
Entrance:	90 degrees maximum, 60 degrees minimum
Exit:	90 degrees maximum, 60 degrees minimum

(A) Requests for deviations shall be made to the Region/District Director or his authorized representative and approval of deviations may not compromise traffic flow or safety.

(B) Corner Clearances at Intersection:

Urban - 18 m (60 ft) minimum

Rural - 30 m (100 ft) minimum

At signalized intersections increase to 30 m (100 feet).

Requests for deviations shall be made to the Region/District Director or his authorized representative and approval of deviations may not compromise traffic flow or safety.

(iii) Surfacing.

Driveways shall be appropriately surfaced between the traveled way and the service area. On paved highways, the driveway shall be hard surfaced to the right-of-way line or 15 m (50 feet) with concrete or bituminous surfacing of suitable quality unless otherwise authorized by the UDOT Region/District Director or his authorized representative.

(iv) Drainage.

All driveways and buffer areas shall be constructed to

maintain a positive drainage system within the highway right-of-way and may not alter the stability of the roadway subgrade. Surface run-off originating on property under development shall be disposed of in accordance with the master drainage plan of the cities and counties. If the city or county does not have a master plan, anything in excess will be retained on site. The State is not liable for the quality of drainage waters originating at service stations or special industrial processing plants which are directed into irrigation canals through highway drainage system. Such drainage concerns should be the subject of separate agreements and permits by the developers and irrigation companies. All culverts, catch basins, drainage channels and other drainage structures required within the buffer area and under the driveways as the result of the property being developed, shall be installed in accordance with UDOT Standard Plans and the state and/or local health ordinance specifications when applicable.

(v) Lighting.

Directing light beams toward the eyes of approaching drivers on the highway is prohibited. All lighting equipment for the roadside development shall be located off the highway right-of-way.

(k) Control Signing.

(i) The relocation or installation of highway signs, signals, lighting devices or other traffic control devices necessitated by a proposed driveway shall be by UDOT or its agent at the permittee's expense.

(ii) The owner shall pay the cost of the original sign and installation by UDOT, after which UDOT shall be responsible for normal maintenance.

(l) Drive-in Business.

A permit for access to a drive-in business may not be granted unless adequate on-premise parking and storage space is provided. Parking or storing of vehicles on the State right-of-way may not be permitted. Access to the business should be from a local street system wherever possible. When the business is adjacent to a state highway, the local agency shall require the business owner to coordinate with UDOT prior to issuing a building permit.

(m) Disabled Pedestrians.

Work to be done shall comply with applicable federal law and UDOT Standard Drawing No. 715-2A "Disabled Pedestrian Access".

(n) Inspection

See Section R930-6-7(3)(h).

(o) Standards.

All features such as curbs, gutters, driveways, sidewalks, drainage structures and grates, etc., which are constructed on highway right-of-way as allowed by these rules, shall conform to current UDOT Standard Plans.

R930-6-15. Right-of-Way Encroachments.

(1) Highway Encroachments.

(a) No building or structure of any type shall be placed upon State Highway rights-of-way unless authorized by a permit obtained from UDOT.

(b) No part of the right-of-way shall be used for servicing vehicles or equipment, displays, sales, exhibits, business overhang signs, parking areas, banners, or any other form of advertising, or the conduct of private business. Requests for deviations, however, may be made to the Region/District Director or his authorized representative and approval of deviations may not compromise traffic flow or safety and shall be in the public interest.

(2) Limited Time, Special Highway Encroachments.

Permanent private advertising or business endeavors on federally funded or other state highway rights-of-way is prohibited. The use of the right-of-way on a limited time basis for special advertising purposes may be allowed. A permitted encroachment is to occupy the right-of-way for a time not to exceed one week. These authorized encroachments may not compromise traffic flow or safety and shall be in the public interest.

(3) Permits.

For special encroachments, such as parades, Christmas decorations, handbills, banners advertising special events, etc., any individual, political entity, partnership or corporation may apply for a special permit. Requests for encroachments may be made to the Region/District Director or his authorized representative and approval may not compromise traffic flow or safety and shall be in the public interest.

(4) Special Limitations.

All permits issued for special encroachments shall be subject to the following conditions:

(a) Red or Reddish Colored Lights.

Red or reddish colored decorations or advertising lights may not be permitted within the right-of-way.

(b) Clearance Over Highway Surface.

Any decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item placed within the right-of-way shall have a minimum clearance of 6 m (20 feet).

(c) Utility Poles.

No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item shall be attached to a utility facility without written permission of the appropriate utility company.

(d) Signs and Other Devices.

(i) No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item shall block the normal view of any official highway sign or other traffic control device and signals.

(ii) Advertising signs placed on owners real property within 90 m (300 feet) of highway rights-of-way may require a permit from the UDOT Region Director or an authorized representative in accordance with Section 72-7-503 - "Advertising - Permit Required -Penalty for Violation".

(iii) No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item shall be of such shape, size, color or design to any UDOT traffic control sign, signal, marking or device.

(iv) No attachments of any type will be allowed on traffic signals.

(e) Sight Obstructions.

(i) No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item shall obstruct the normal view of traffic.

(ii) In accordance with Utah Code Section 41-6-19

"Removal of Plants or Other Obstructions Impairing View, Notice to Owner-Penalty", owners of real property next to highway rights of way can be ordered to remove any trees, plants, shrubs or any other obstructions that obstruct the view of motorists and thereby constitute a hazard.

(f) Obstructing Traffic.

No decoration, display structure or other advertising or decoration item shall be placed within the right-of-way that may obstruct, impede or endanger the normal flow of traffic.

(g) Insurance.

Permittee shall be required to have in force a liability insurance policy, naming UDOT as an additional insured, the amount of which shall be determined by the UDOT Region/District Director or his authorized representative.

(h) Construction Zone.

To assure the safe placement of the encroachment, the permittee shall provide to and have approved by UDOT a traffic control plan for the construction site.

(5) Mailboxes.

(a) New Mailboxes.

(i) Application to install a new mailbox within the right-of-way of State Highways shall be made to the UDOT Region Director or his authorized representative.

(ii) All new mailboxes placed within the right-of-way of State Highways shall be constructed in conformance with UDOT's Standard Plan Drawings 725-1 "Newspaper and Mailbox Stop Layout" 1999 and 725-1A "Newspaper and Mailbox Support Hardware" 1999.

(b) Existing Mailboxes.

(i) Owners of existing mailboxes which constitute a traffic hazard shall be notified in writing by the UDOT Region Director or his authorized representative. The owner shall correct any deficiencies to be in conformance with current safety standards and regulations of the Department of Transportation at his own expense within thirty (30) days of the receipt of the notice. A copy of the notice shall also be sent to the local postmaster.

(ii) If the owner fails to comply with the notice, a Region/District representative shall contact the postmaster to stop the delivery of mail until the owner complies with UDOT's policy.

(iii) Mailboxes and supports which are in poor repair and detract from the appearance of the highway, or if any part of the mailbox is within the shoulder of the road or is over 1270 mm (50 inches) high, it shall be considered as nonconforming and shall be reconstructed or replaced at the owner's expense.

(iv) Mailbox supports which do not comply with the following shall be considered nonconforming and shall be reconstructed or replaced at the owner's expense.

(A) Mailbox supports of wood with over 10,322 mm^2 (16 square inches) cross-sectional area.

(B) Mailbox supports of metal shapes if the supports are over 90 mm (3.5 inches) in greatest dimension, or on a pipe of over 50 mm (2 inches) in diameter. (If such metal supports are deemed to be a hazard by the UDOT Region Director or his authorized representative, they shall be considered as nonconforming.)

R930-6-16. Specifications for Excavation on State Highway Right-of-Way.

(1) Purpose and Scope. These specifications are to provide uniform guidance for excavation within highway rights-of-way for gas, oil, telephone, power, sewer, water, signal or television and similar facilities. These specifications are implemented to cover special requirements of work contemplated in general maintenance, improvements and additions to utility systems.

(2) Except for emergencies no excavation shall be made without agreement or authorization from the Utah Department of Transportation.

(3) An emergency excavation may be made by a bonded contractor, public agencies or utility companies without prior approval if the excavation is to prevent loss of life or damage to property, and the company cannot contact the Utah Department of Transportation officials. In such emergency situations the excavating party shall contact the Utah Department of Transportation on the first working day following the excavation and obtain a formal permit. Except for the prior-permit requirement none of the provisions of these specifications shall be waived for emergency situations.

(4) Transfer of Work.

Authorized excavation work covered hereunder shall not be subcontracted or otherwise transferred to others without prior written approval of the UDOT Region Director.

(5) Protection of Public During Construction.

(a) The contractor shall comply with all federal, state and local laws, and ordinances, including the "Manual on Uniform Traffic Control Devices" (MUTCD).

(b) The utility company or its contractor shall include a traffic control plan in its application for a permit. This plan shall define the limitations on contractor vehicle parking and materials storage within the clear zone unless protected by curb and gutter or other approved barrier. Access control during construction shall be described as well as protection of the public from any open excavation or other hazards. The traffic control plan shall be in conformance with the "Manual on Uniform Traffic Control Devices" (MUTCD).

(c) Construction operations shall be conducted so that a minimum amount of interference or interruption of highway traffic results. Inconvenience to residents and businesses shall be minimized. Safe and proper connections with all intersecting public or private roads or driveways shall be maintained at all times. These roads shall be kept in usable condition, except when approval is obtained for minimum closure from the governing official having jurisdiction over the street, or the property owner of private driveway.

(d) The contractor shall provide, erect and maintain all necessary barricades, warning lights, signals and signs, and provide watch persons and flaggers and take all reasonable and necessary precautions for the protection of the work and the safety of the public. Highways closed to traffic shall be protected by effective barricades. Suitable warning signs, illuminated at night, or other approved means shall be provided to mark the places where surfacing ends or is not compacted, or where there are other obstructions. All lights for this purpose shall be kept illuminated from sunset to sunrise. The contractor shall erect warning signs in advance of and at any place on the project where operations interfere with the use of the road by

the public. Such warning signs shall be constructed and erected in accordance with the plans. Signs not required during non-work periods shall be removed or covered.

(e) Except in cases of emergency, full road closures may not be permitted unless authorized in advance by the UDOT Region/District Director or his authorized representative. Emergency services (e.g., police, fire and ambulance) shall be advised of the closure and proposed detour routes. No work, except emergency work, shall be done at night without prior approval of the UDOT Region/District Director or his authorized representative. Flaggers shall wear colored vests and hard hats and shall be provided with hand signs clearly recognizable by motorists. All flagging and traffic protection for the work shall conform to the requirements of the Federal Highway Administration's "Manual on Uniform Traffic Control Devices" (MUTCD).

(6) Methods of Crossing.

Jacking or boring is preferred to open trench excavation, and shall be required in all cases of utility facilities crossing under and not parallel to paved surfaces, unless this is not feasible due to soil conditions, other utilities, substructures, or other conditions. Jetting by means of water or compressed air may not be permitted.

(7) Removal of Pavement, Sidewalks, Curbs, Etc.

The pavement, sidewalk, curb and gutter, driveway, etc. shall be cut vertically along the lines forming the trench so that the adjoining pavement is not damaged. The portion to be removed shall be broken up in a manner that does not cause damage to the pavement outside the limits of the trench. Any pavement damaged by operations outside the limits of the trench shall be replaced. Large broken paving materials shall be removed immediately from the site of the work.

(8) Repairs.

Only qualified and skilled workers shall make repairs to utility facilities.

(9) Flowable Fill.

(a) Unless otherwise agreed to by prior written agreement in all urban areas and on rural highways with high volume traffic as determined by UDOT, flowable fill shall be used for backfill under paved areas and shall be in conformance with the requirements of Section 03575 for "Flowable Fill" of the UDOT's "Metric Standard Specifications for Road and Bridge Construction," 1999 edition.

(b) Flowable Fill shall be discharged from the ready mix truck by safe and reasonable means into the trench to be filled. The fill shall be brought up to the bottom of the surface course and shall be finished to provide a uniform surface.

(c) When Flowable Fill is used for backfill the excavated materials shall be disposed of by the utility in an area outside of the highway right-of-way satisfactory to UDOT's Region permits officer or inspector and shall comply with environmental requirements. In rural areas or location when its use would be impractical Flowable Fill may not be required. In such cases backfill shall be in conformance with the requirements of Section 02056-2 for "Borrow, Granular Borrow and Granular Backfill Borrow" of the UDOT's "Metric Standard Specifications for Road and Bridge Construction", 1999 edition.

(10) Compaction of Backfill.

Materials for backfill under paved or adjacent areas used by traffic shall be sand. All large broken concrete, peat, topsoil, loam, decomposed vegetable matter and similar materials obtained from excavation shall be removed from the site prior to beginning of backfilling. All backfill shall be placed in layers not over 150 mm (6-inch) loose measure in thickness. Compaction shall be obtained by mechanical rollers, tampers, or other approved means. Material for backfilling shall be properly moistened or watered to the correct moisture content to ensure proper compaction. Jetting or internal vibrating methods of compacting sand fill or similar methods of compacting sand or similar granular, free draining materials shall be permitted. No frozen material shall be used for backfill under paved surfaces. The UDOT Region/District Director or his authorized representative may require that the "dry" density of the backfill under pavements, sidewalks, curbs or other structures shall be not less than 96 percent of the laboratory standard maximum soil "dry" density as determined by compaction tests made in conformity with AASHTO, "Standard Specifications for Highway Materials and Methods of Sampling and Testing Part II," 1993 edition (AASHTO Designation T-99). The UDOT Region Director or his authorized representative may require the density of the backfill on road shoulders to be not less than 90 percent by the same standards.

(11) Restoration of Surfaces.

All street surfacing, curbs, gutters, sidewalks, driveways, or other hard surfaces that shall be removed in the performance of the work shall be restored in kind by the contractor in accordance with the specifications. Deviations of more than 6 mm (1/4 inch) between old and new work or within new construction shall be corrected. Such measurement shall be made from a 3 m (10 foot) minimum length straight edge.

(12) Protection of Paved Surfaces.

Track equipment shall use rubber cleats or paving pads when operating on or crossing paved surfaces.

(13) Time Limit and Other Requirements.

The contractor shall provide a paved surface on all locations remaining overnight at his own expense for all permanent pavement removed or damaged due to excavation, unless additional time is granted in writing by the UDOT Region Director representative. If weather conditions do not permit immediate placing of permanent pavement, a temporary 80 mm (3-inch) cold mulch shall be placed. When weather conditions are favorable, the temporary pavement shall be removed and replaced with a permanent pavement. If the gravel surface, gravel shoulders, or gravel surfaced approach roads become fouled with clay or other materials, the entire surfacing shall be removed and replaced with new gravel surfacing material. The repairs to pavement or surface shall include pavements which have been damaged with construction equipment. If the utility fails to restore the roadbed to a satisfactory condition, UDOT shall restore the roadbed to a satisfactory condition. The utility shall be charged the cost of the restoration.

(14) Restoring, Concrete, or Asphalt Surfaces.

(a) Temporary Surface

When trenches are excavated in paved traffic lanes and the surface is replaced overnight with a temporary 80 mm (3-inch) cold mulch surface. The gravel below the cold mulch shall be placed deep enough to provide 230 mm (9 inches) of gravel for

asphalt surfaces, and 305 mm (12 inches) of gravel for concrete, and concrete base-asphalt wearing surfaces.

(i) Gravel shall be placed in the trench at the time it is back-filled. The temporary cold mulch surface shall be maintained by rolling, adding cold mulch, etc., to maintain a safe, uniform surface until the final surface is placed. Excess material shall be removed immediately.

(ii) Material for use on gravel surfaces shall be obtained from sound, tough, durable gravel or rock meeting the following requirements for grading:

TABLE 9

Passing No. 25 mm (1 inch) sieve	100 percent
Passing No. 12.5 mm (1/2 inch) sieve	70 percent - 100 percent
Passing No. 100 mm (4 inch) sieve	41 percent - 68 percent
Passing No. 218 mm (16 inch) sieve	21 percent - 41 percent
Passing No. .300 mm (50 inch) sieve	10 percent - 27 percent
Passing No. .075 mm (200 inch) sieve	4 percent - 13 percent

(b) Asphaltic Concrete Surface.

The subbase material and exposed edges of existing pavement shall be primed with a tack coat material. Asphaltic Concrete Mix meeting the requirements of Section 02741 "Hot Mix Asphalt" of the UDOT's 1999 Edition of the "Metric Standard Specifications for Road and Bridge Construction" shall be used. The thickness shall be equal to the adjacent surface thickness but not less than 75 mm (3 inches). On trenches crossing a highway, a Plant Mix Seal Coat shall be applied with a minimum width of 1.5 m (5 feet) on either side of the excavation. If longitudinal trench excavation is permitted under a paved road, a plant mix seal coat meeting the requirements of Section 02786 "Plant Mix Seal Coat" of the UDOT's 1999 edition of the "Metric Standard Specification for Road and Bridge Construction" shall be applied to a minimum width of 1.5 m (5 feet) over the trench or at least to the edge of the traveled lane on either side of the trench. If the trench is located in the shoulder area, a Plant Mix Seal Coat shall be placed from the edge of the traveled way to the outside edge of the shoulder. An alternative method shall be acceptable in cases where the asphalt is cut to straight uniform lines. This method shall use underlap joints and tack coat overlapping road surface in place of seal coat. Minimum thickness of asphalt patch shall be 125 mm (5 inches) when this method is used. Materials and methods shall conform to Division 02747 "Road Mix Asphalt Surface Course" of the UDOT's 1999 Edition of the "Metric Standard Specifications for Road and Bridge Construction".

(c) Concrete Surface.

The subbase shall be pre-wetted just before placing the concrete. Joints and surfaces shall be made to match the original surfaces. The thickness of concrete shall be equal to the adjacent concrete, but in no case less than 180 mm (7 inches) thick. Concrete shall meet Section 505 and be placed in accordance with (Portland Cement concrete pavement) Section 408 "Portland Cement Concrete Pavement" of the State of Utah 1994 Edition of the "Standard Specifications for Road and Bridge Construction".

(d) Concrete Base Asphaltic Wearing Surfaces.

This type of surfacing shall be constructed as described in 2. and 3. above.

(e) Gravel Surfaces.

Trenches excavated through gravel surfaced areas such as gravel roads and gravel shoulders, unpaved driveways, etc., shall have the gravel surface restored and maintained, except that the gravel shall be a minimum of 25 mm (1 inch) more than the thickness of the existing gravel.

(15) Cleanup.

At the completion of work all equipment, barricades and other items shall be removed from the right-of-way. All excess material shall be removed. Adjacent borrow pits and road shoulders used for storage of excavated material shall be smoothed and graded to their original contour.

(16) Seeding.

Any plant growth within the highway right-of-way that is disturbed or removed by the utility construction operations shall be restored by him through seeding or replanting as directed by the UDOT Region/District Director or his authorized representative.

(17) Records.

Construction plan drawings or sketches shall be submitted before proposed work shall be approved. Construction revisions shall be documented with as-constructed plans. The proposed installation shall be tied by survey to nearest permanent-type marker, such as right-of-way, street intersection, section corners, U. S. Geological Survey, and Coast and Geodetic Triangulation Stations. Ties to highway stations when survey work has been completed shall also be accepted. The tolerance of error in these ties may not exceed one minute in direction and 30 mm (0.1 feet) in distance. Any field changes made during construction shall be noted and corrected prints furnished the UDOT Region/District Director or his authorized representative within twelve calendar days after completion of construction.

(18) Liability

Any individual or organization performing work within the state highway right of way shall hold the Utah Department of Transportation and its employees, and the owners and employees of any other utility company within said right of way, free and harmless from all damages caused through such operations. Any defective workmanship discovered within three years of the completion of the job shall be immediately corrected.

R930-6-17. Longitudinal Access to Interstate Highway Right-of-Way for Telecommunication Facilities.

(1) General Provisions

(a) The provisions of this section are authorized by the Utah Code Section 72-7-108 Longitudinal telecommunication access in the Interstate highway system -- Definitions -- Agreements -- Compensation -- Restrictions -- Rulemaking.

(b) UDOT acquires rights-of-way which are adequate not only for the construction of the Interstate highway, but also for its safe operation and maintenance.

(i) The rights-of-way are devoted exclusively to public highway purposes, except that certain non-highway uses of rights-of-way are allowed which are in the public interest, provided the uses do not impair or interfere with the free and safe flow of traffic and highway maintenance.

(ii) UDOT recognizes that it is in the public interest for Providers to use the Interstate highway when it does not interfere with the primary purpose of the highway.

(c) The term "Provider" in this chapter includes the

telecommunication entity applying for permits, conducting the work, hiring subcontractors the Provider hires to complete permitted work. All references to the Provider are inclusive.

(d) The Term "UDOT" in this chapter includes all authorized representatives of the Utah Department of Transportation.

(e) UDOT routinely inspects the work of the Provider for compliance with the license agreement, the permit, and State and Federal regulations. UDOT bills all costs of construction inspection to the Provider, and receives the funds from the Provider.

(i) The Provider notifies UDOT 24 hours in advance of conducting any construction.

(ii) Failure to notify revokes the permit, causes Provider to default the telecommunication provider license, and removes the Provider from the Interstate right-of-way.

(2) Permit Process

(a) Publication of Notice of the Opportunity: UDOT advertises the availability of opportunities for constructing and installing telecommunications facilities in Interstate System highway rights-of-way.

(b) The License Agreement. UDOT grants a license to any Provider who enters into a License Agreement with UDOT to use a right-of-way for construction, maintenance, repair, operation, subsurface line, and/or wireless towers.

(c) UDOT's review team consists of the Chief Utility Engineer or his/her representative, Region Permit Officer, Region Operating Engineer, Region Environmental Engineer, Region Right-of-Way Engineer, Region Hydraulics Engineer, Region Traffic Engineer, ITS manager, Preconstruction Engineer, Structural Engineer and other technical expert required to properly review planned facility installation.

(i) When the proposed project crosses several regions, a team from each region reviews the section of the project within their region.

(ii) The review teams submit their comments and recommendation for approval to the Chief Utility Engineer or designee.

(d) Permit application: The Provider performs work under a permit after the execution of a License Agreement.

(i) The Provider desiring a permit to use UDOT's right-of-way submits to the UDOT review team a detailed set of plans showing:

(A) proposed work

(B) all existing facilities within the UDOT right-of-way

(C) a traffic control plan

(ii) The Provider submits a copy of the Environmental document and all required environmental permits to UDOT. Provider is responsible for complying with all environmental requirements as outlined in:

(A) UDOT's Metric Specifications For Road and Bridge Construction CSI Format, Section 01355 Environmental Protection.

(B) Letter dated October 9, 1997 issued by UDOT's Deputy Director.

The review and approval of the Environmental Document by UDOT does not relieve the Provider from any liability due to errors or omissions in the Document.

(iii) Except in emergency situations as provided in Section IX.8.A of this manual, UDOT does not allow any Provider or person to dig up, disturb, or alter the land surface or the roadway surface within the right-of-way of any Interstate Highway under any License Agreement until Provider or person first obtains a written permit from UDOT.

(iv) Permits contain reasonable terms and conditions pertaining to crossing, excavating, placing, constructing, and maintaining conduits, facilities, or any other structures or objects on rights-of-way.

(v) For each permit issued, UDOT recovers the cost of the plan reviews.

(e) UDOT requires both a Payment Bond and a Performance Bond from the Provider at the time of the execution of the permit, and determines the amount of the bonds at the time the permit is issued.

(i) Bonds run for three (3) years after completion of the work to guarantee satisfactory performance. The Provider's liability is not limited to the amount of the bonds.

(ii) UDOT may proceed against the Performance Bond to recover all expenses incurred by UDOT, its employees or representatives, in bringing the section of Interstate right-of-way interfered with to required standards.

(iii) UDOT may proceed against the Payment Bond to recover all expenses incurred by UDOT for plan review, permit issuance, and inspection costs.

(f) The Provider may not begin excavations and/or other operations on UDOT property or right-of-way until the Provider gives notice to UDOT and obtains a permit. The Provider completes the construction in accordance with approved plans.

(g) The Provider completes work covered by the permit as specified in the license agreement.

(i) Failure to complete the work within the specified time gives UDOT the option of extending the time or revoking the permit and using the bond to restore UDOT's right-of-way to its original condition.

(ii) Time extensions shall be in writing and approved by UDOT.

(h) UDOT retains the right to cancel the permit and remove the facility and restore the Interstate right-of-way at the sole expense of the Provider,

(i) If the Provider fails to:

(A) Construct, maintain or remove said telecommunication facility in accordance with the terms of the permit to the entire satisfaction of UDOT, or

(B) Pay UDOT any sum of money for the inspection, or reconstruction of UDOT's right-of-way to its original condition.

(ii) Before UDOT cancels the permit, it notifies the Provider in writing, discloses violations, and gives the Provider a reasonable time to make full corrections.

(3) Right-of-Way Use Conditions and Requirements

The following provisions apply to all telecommunication facilities:

(a) Do not transfer permitted interest to another Provider or person except by written consent of UDOT.

(b) Providers to whom permits may be granted:

(i) Shall at all times indemnify and hold harmless UDOT, its employees and the State of Utah from responsibility for any damage or liability arising from their construction, maintenance, repair, operation, or use of their facilities.

(ii) Shall be responsible for maintaining the excavation for a period of three years in accordance with applicable specifications for excavations on Interstate highway rights-of-way.

(c) UDOT and Provider shall comply with Utah Code 54-8a before beginning any excavations.

(d) UDOT may require the Provider to relocate the telecommunication facilities located on any Interstate right-of-way when highway changes are required to provide for the free and safe flow of traffic.

(4) Telecommunication Facility Installation Requirements

(a) Provider shall locate telecommunication facilities to:

(i) Eliminate or minimize need for later adjustment to accommodate future highway improvements, and;

(ii) Permit access for servicing with minimum interference to highway traffic.

(b) Providers shall locate longitudinal telecommunication facility installations on a uniform alignment no closer than 0.91 meters (3 feet) from the right-of-way fence at a location approved by UDOT to provide a safe environment for traffic operation, and preserve space for future highway improvements or other telecommunication facility provider installations.

(c) Place by boring, new transverse telecommunication facility installations permitted under highways. Open excavation is not allowed under the Interstate pavement or within the Interstate clear zone.

(d) To the extent feasible and practical, place telecommunication facility highway crossings on a line generally 90 degrees to the highway alignment.

(e) Place the horizontal and vertical location of above ground telecommunication facilities within the highway right-of-way limits to conform with the clear zone policies as defined in the 1996 edition of the AASHTO "Roadside Design Guide."

(f) Keep on file and make available to UDOT upon request, reproducible plans (including electronic plans) showing the location of the telecommunication facilities.

(i) Electronic as-build plans available within 60 days of completion of installation.

(ii) Redline drawings available immediately upon completion of installation at the request of UDOT.

(iii) Files must be in format compatible with Intergraph and Microstation in accordance with UDOT CADD standards.

(iv) The Provider maintains plans and electronic files updated with horizontal and vertical ties to the center line of the highway, so that the exact location of the facility may be established as the need arises.

(g) In general, providers shall apply controls previously outlined for pipelines as related to burial depth, encasement, and installation to underground installations of communication lines. Other controls are as follow:

Provide loops which will allow placement of above ground appurtenances such as splice box closures, underground distribution terminals, etc., as close to the highway right-of-way as is possible, or outside of the right-of-way on private right-of-way as determined by a UDOT authorized representative.

(5) Design

(a) The Provider is responsible for the design of the facility to be installed within the highway rights-of-way. UDOT is responsible for reviewing and accepting the Provider's proposal, particularly the installation method used including the measures to preserve the safe and free flow of traffic, structural integrity of the highway, ease of highway maintenance, and appearance of the highway.

(b) Provider designs distribution or service line crossings of Interstate highways such that the need for crossings by telecommunication service connections is minimized.

(c) As a minimum, meet the requirements of the 1993 edition of the National Electrical Safety Code for all telecommunication facility installations on, over, or under the UDOT rights-of-way.

(d) Design ground-mounted telecommunication facilities to be compatible with the scenic quality of the specific Interstate highway section in question.

(e) Design all telecommunication facilities on, over, or under on highway right-of-way of durable materials and for long service life expectancy reasonably free from servicing and maintenance.

(f) On new installations or adjustments of existing telecommunication facilities, make known any provisions for planned expansion of the facilities. Plan to avoid interference when additional underground lines are installed at some future date.

6.Appurtenances

(a) The Provider is required to install readily identifiable and suitable markers at 500 foot intervals or line of sight as near as practical to UDOT's right-of-way line.

(b) Do not locate handholes in the pavement or shoulders of Interstate highways, unless approved by UDOT. Design and locate handholes to cause the least interference to other utilities and future highway expansion. Provider bears the cost of adjusting handholes to fit new or reconstructed highway paving, grading or slope flattening.

(7) Costs

(a) On new installations, the Provider pays for the entire costs of the telecommunication facility. If a highway is reconstructed requiring adjustment of handholes or relocation of the telecommunication facility on the right-of-way, the telecommuni-cation facility provider assumes and pays all costs incident to adjusting handholes or relocating any part of the telecommunication facility.

(8) Excavation and Backfill

(a) Conduct all excavation and backfill to comply with UDOT's current edition of Metric Specifications For Road and Bridge Construction CSI Format Section 02316 Roadway Excavation, Section 03575 Flowable Fill, and Section 02317, Subsection 3.3 Backfill and Compaction (see Appendix B).

(i) Do not excavate without first obtaining and posting the required permit.

(ii) An emergency excavation may be made without prior permit if there is imminent danger or loss of life or severe damage to property.

(iii) In emergency situations, contact UDOT not later than the end of the first working day following the excavation.

(iv) No provision of this manual is waived for emergency situations except for the prior permit requirement.

(v) In all cases, the permittee complies with the State Law requiring notification of all utilities owners prior to excavation.

(9) Traffic Control

(a) Conduct operations to minimize interruption to highway traffic.

(i) Conform to the instructions of UDOT representatives, and maintain flaggers, watch persons, barricades, lights, and other measures in conformance with the current Federal Highway Administration's "Manual on Uniform Traffic Control Devices" (MUTCD) during maintenance and construction.

(ii) Do not close lanes or shoulders without prior written approval from UDOT. Traffic control plans showing detours and signing operations are required in advance for review and approval. Peak hour lane closures are prohibited.

(10) Restoration of Traffic Signal and Advance Traffic Management system (ATMS) Equipment

(a) Restore any traffic signal equipment or any facilities which are disturbed or relocated as a result of the telecommunication provider work in accordance with plans approved by UDOT.

(i) At the Provider's expense by a qualified electrical contractor experienced in signal installation, retained by the permittee and approved in advance by UDOT.

(ii) Schedule work to minimize disruption of any traffic signal operation.

(11) Cleaning Highway Right-of-Way

(a) Upon completion of the work, remove all material from within the limits of the highway. Carefully grade the disturbed surface to the lines and grades existing prior to the excavation. Seeding and/or replacing sod and/or plants may be required to restore damaged or destroyed vegetation. Accomplish all seeding and replacing activities following UDOT's Metric Standard Specifications For Road and Bridge Construction CSI Format, Section 02922 Seed, Turf seed, and Turf Sod, and Section 02936 Vegetation Establishment Period.

(b) Properly restore any highway features or facilities such as paint striping, signs, culverts, etc., disturbed or damaged during the progress of the work to satisfy UDOT current standards and regulations.

(12) Maintenance

(a) At all times maintain, repair, renew, and operate the telecommunication facility at the Provider's expense.

(i) If the telecommunication facility interferes with the operation of the highway, UDOT will notify the telecommunication provider in writing or verbally setting forth the violations and will request that the problem be corrected.

(ii) If the telecommunication provider does not correct the problem, UDOT reserves the right, without relieving the telecommunication provider of their obligation, to reconstruct or make emergency repairs to the telecommunication facility as it may consider necessary at the expense of the telecommunication provider.

(13) As a condition of being given a permit for a new telecommunication facility, the Provider grants UDOT the perpetual right to cross the telecommunication facility and all associated property if UDOT needs to do so for construction, expansion, improvement or maintenance of the highway system. UDOT shall use due care in crossing the telecommunication facility.

14. Liability

The Provider shall indemnify UDOT, its officers, employees, and agents, and hold them harmless for any and all claims, including claims from third parties, arising out of the construction or use of the telecommunication facility, and from all costs or expenses, including attorneys' fees of preparing for and defending against that claim.

(15) UDOT Maintenance Operations

(a) Bury underground facilities to the minimum depth of 60 inches when located within 20 feet of the edge of pavement and 36 inches on all other locations. Obtain approval from UDOT for any deviations in depth.

(i) In entering into the License Agreement with UDOT and obtaining an encroachment permit for the work, the Provider is required to avoid conflicts by placing its facilities to the required horizontal clearance and minimum burial depth.

(ii) The Provider is required by the terms of the permit to protect, indemnify and hold UDOT harmless for damages to lines within the right-of-way, which are not in compliance with the horizontal and vertical clearances. Any noncompliance to the above may result in annulment of the Provider's agreement or permit.

(16) Overhead Telecommunication Lines

(a) Avoid the following except where the Executive Director or his or her designee finds hardship or impracticality:

(i) Above-ground installations

(ii) Huts, pedestals, boxes, or other equipment and devices within the highway right-of-way

(iii) Use of through traffic roadways, lanes and ramps for construction or maintenance activities

(17) Installation on Highway Structures

(a) Attaching telecommunication facility provider lines to a highway structure can materially affect the safe operation of traffic and the efficiency of maintenance.

(b) Telecommunication facility may not be permitted to be installed on bridges, except in extreme cases where it is shown that any other location is extremely difficult.

(i) The location and design of telecommunication facility installation on bridges is subject to review and approval or denial by UDOT before the Provider proceeds.

(ii) Does not apply to telecommunication facilities required for operating the highway.

(c) Do not consider attachment of a telecommunication facility unless the structure is of a design that is adequate to support the additional load and can accommodate the telecommunication facility without compromise of Interstate highway features.

(d) Handholes for telecommunication provider access are not allowed in a bridge deck.

(e) Mount the entire telecommunication facility installation on the structure so as not to reduce the vertical clearance otherwise available.

(f) Locate telecommunication facilities which will be positioned beneath the structure floor preferably:

(i) Between the outer girders or beams

(ii) Or within a cell and at an elevation above the lowest superstructure steel or masonry.

(g) Attachments of telecommunication facilities to the outside of a structure is not permitted unless there is no reasonable alternative.

(h) Install telecommunication facility mountings which will not rattle due to vibrations caused by traffic.

(i) Suitably insulate and ground communication line attachments, and preferably carry them in protective conduit or pipe from the point of exit from the ground to reentry.

(ii) Preferably carry the cable to a handhole located beyond the backwall of the structure.

(iii) Suitably insulate carrier pipe and casing pipe from electrical power line attachments.

(i) Acceptable telecommunication facility attachment methods are hangers and/or roller assemblies suspended either from inserts from the underside of the bridge floor or from the hanger rods clamped to the flange of some superstructure member. Bolting through the bridge floor is not permitted.

(j) Clearances of the telecommunication facility from structure members:

(i) Conform to all governing codes.

(ii) Do not render any portion of the structure inaccessible for any maintenance function.

(k) Provider makes satisfactory provisions for the lineal expansion and contraction of its facility due to temperature variations.

(L) The Provider is responsible for restoration or repair of any portion of a structure or highway damaged by telecommunication facility use.

(18) Telecommunication Facility Locations Within Scenic Enhancement Areas

New underground telecommunication facility provider installations may be permitted within such areas where they do not require extensive removal or alteration of trees visible to the highway user or do not impair the appearance of the area.

(19) Miscellaneous

(a) Minimize the size of a disturbed area. Use construction methods in accordance with UDOT specifications and in compliance with the conditions of the License Agreements and permits. Promptly repair unsatisfactory restoration work.

(b) The telecommunication provider is required to obtain written permission from UDOT before disturbing trees which are located within the Interstate right-of-way. When the removal of a tree is permitted, remove the stump and properly backfill the hole. UDOT may require replacement with several trees as appropriate and approved by UDOT to assure equal restoration and mitigation.

(c) Keep all telecommunication facilities in a good state of repair both structurally and in appearance.

KEY: utility rules

January 19, 2001	**72-3-109**
Notice of Continuation January 22, 2002	**72-6-116**
	72-7-102
	72-7-108

R933. Transportation, Preconstruction, Right of Way Acquisition.
R933-1. Right of Way Acquisition.
R933-1-1. Right of Way Acquisition Incorporation of Federal Publication.

The State of Utah incorporates by reference 49 CFR 24 as amended in the Federal Register, March 2, 1989, as its administrative rules on the acquisition of rights of way for federal-aid projects.

KEY: right of way, condemnation, highway beautification
November 20, 2001 72-7-501
Notice of Continuation January 22, 2002

R933. Transportation, Preconstruction, Right-of-Way Acquisition.

R933-2. Control of Outdoor Advertising Signs.

R933-2-1. Purpose.

The purpose of these rules is to implement the Utah Outdoor Advertising Act Section 72-7-501 et seq. Nothing in these rules shall be construed to permit outdoor advertising that would disqualify the State for Federal participation of funds under the Federal standards applicable. The Transportation Commission and the Utah Department of Transportation shall, through designated personnel, control outdoor advertising on interstate and primary highway systems.

R933-2-2. Federal Regulations.

The federal regulations governing outdoor advertising contained in 23 CFR 750.101 through 750.713, April 1, 1994 are adopted and incorporated by this reference.

R933-2-3. Definitions.

All references in these Rules to Title 72, Chapter 7, Part 5, are to those sections of the Utah Code known as the Utah Outdoor Advertising Act. In addition to the definitions in that part, the following definitions are supplied:

(1) "Abandoned Sign" means any controlled sign, the sign facing of which has been partially obliterated, has been painted out, has remained blank or has obsolete advertising matter for a continuous period of 12 months or more.

(2) "Act" means the Utah Outdoor Advertising Act.

(3) "Advertising" means any message, whether in words, symbols, pictures or any combination thereof, painted or otherwise applied to the face of an outdoor advertising structure, which message is designed, intended, or used to advertise or inform, and which message is visible from any place on the main travel-way of the interstate or primary highway system.

(4) "Areas zoned for the primary purpose of outdoor advertising" as used in the Act is defined to include areas in which the primary activity is outdoor advertising.

(5) "Commercial or industrial zone" as defined in of the Act is further defined to mean, with regard to those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns referred to in that subsection, those areas not within 8,420 feet of an interstate highway exit-ramp or entrance-ramp as measured from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way that are reserved for business, commerce, or trade under enabling state legislation or comprehensive local zoning ordinances or regulations, and are actually used for commercial or industrial purposes, including the land along both sides of a controlled highway for 600 feet immediately abutting the area of use, measurements under this subsection being made from the outer edge of regularly used buildings, parking lots, gate-houses, entrance gates, or storage or processing areas.

(6) "Conforming Sign" means an off-premise sign maintained in a location that conforms to the size, lighting, spacing, zoning and usage requirements as provided by law and these rules.

(7) "Controlled Sign" means any off-premise sign that is designed, intended, or used to advertise or inform any part of the advertising or informative contents of which is visible from any place on the main traveled way of any interstate or federal-aid primary highway in this State.

(8) "Destroyed Sign" means a sign damaged by natural elements wherein the costs of re-erection exceeds 30% of the depreciated value of the sign as established by departmental appraisal methods.

(9) "Freeway" means a divided highway for through traffic with full control access.

(10) "Grandfather Status" refers to any off-premise controlled sign erected in zoned or unzoned commercial or industrial areas, prior to May 9, 1967, even if the sign does not comply with the size, lighting, or spacing of the Act and these Rules. Signs only, and not sign sites, may qualify for Grandfather Status.

(11) "H-1" means highway service zone as defined in the Act.

(12) "Lease or Consent" means any written agreement by which possession of land, or permission to use land for the purpose of erecting or maintaining a sign, or both, is granted by the owner to another person for a specified period of time.

(13) "Legal copy" means the advertising copy on the sign that occupies at least 50% of the sign size.

(14) "Nonconforming Sign" means a sign that was lawfully erected, but that does not conform to State law or rules passed or made at a later date or that later fails to comply with State legislation or rules because of changed conditions. The term "illegally erected" or "illegally maintained" is not synonymous with the term, "nonconforming sign", nor is a sign with "grandfather" status synonymous with the term, "nonconforming sign."

(15) "Off-Premise Sign" means also, in supplement to the definition stated in the Act, an outdoor advertising sign that advertises an activity, service or product and that is located on premises other than the premises at which activity or service occurs or product is sold or manufactured.

(16) "On-Premise Sign", in supplement to the definition stated in the Act, does not include a sign that advertises a product or service that is only incidental to the principal activity or that brings rental income to the property owner or occupant.

(17) "Out-of-Standard" means any sign that fails to meet the standards and criteria set forth in the Utah-Federal Agreement of January 18, 1968 as referenced in the Utah Outdoor Advertising Controls and Rules, current edition, or more restrictive statutes or rules passed after as to size, height, lighting, or spacing.

(18) "Parkland" means any publicly owned land that is designed or used as a public park, recreation area, wildlife or waterfowl refuge, or historical site.

(19) "Property" as used in the definition of "On-Premise Sign" includes those areas from which the general public is serviced and which are directly connected with and are involved in assembling, manufacturing, servicing, repairing, or storing of products used in the business activity. This property does not include the site of any auxiliary facilities that are not essential to and customarily used in the conduct of business, nor does it include property not contiguous to the property on which the sign is situated.

(20) "Sale or Lease Sign" means any sign situated on the subject property that advertises that the property is for "sale" or

"lease". This sign may not advertise any product or service unrelated to the business of selling or leasing the land upon which it is located, nor may it advertise a projected use of the land or a financing service available or being utilized in its development.

(21) "Scenic Area" as used in the Act includes a scenic byway.

(22) "Transient or Temporary Activity" means any industrial or commercial activity, not otherwise herein excluded, that does not have a prior continuous history for a period of six months.

(23) "Unzoned Area" in supplement to the definition stated in the Act, means an area in which no zoning is in effect. It does not include areas within comprehensive zoning or master plans adopted by local zoning authorities.

(24) "V-Type Sign" means any sign, the center pole of which is nearest the traveled portion of the highway and is a common pole to the two sign faces, or when a common pole is not used, a sign with the sign faces no further than 36 inches apart at the angle of the sign closest to the traveled portion of the highway, and the structure poles at the point nearest the traveled portion of the highway no further apart than 48 inches. Existing V-type signs now controlled and permitted are excluded from this definition.

(25) "Visible" means capable of being seen whether or not readable, without visual aid, by a person of normal visual acuity.

R933-2-4. Permits.

(1) All controlled outdoor advertising signs legally in existence prior to the effective date of the 1967 Act, or that are legally created thereafter, must have a permit. This includes off-premise signs located on the side of or on top of any fixed object or building and visible from the main traveled way of an interstate or federal-aid primary highway.

(2) Anyone preparing to erect a controlled sign shall apply for the permit before beginning construction of the sign. Permits shall be issued in the manner prescribed in the Act. Permits may be issued only for signs that are to be erected in commercial or industrial zones or in unzoned commercial or industrial areas, as defined by the Act. Insomuch as a sign cannot lawfully be constructed or maintained unless there is legal access to the property on which the sign is proposed to be located, a permit may not be issued if the applicant does not have legal access to that property.

(3) Permits may be issued only for signs already lawfully erected or to be lawfully erected within 90 days from the date of the issuance of the permit. Within 30 days from the date of issuance, the permit must be affixed to the completed sign for which the permit was issued as provided in Subsection R933-2-4(5).

(4) A permit affixed to a sign other than the sign for which it was issued is unlawful, and remedial action shall be taken by the permittee by the proper affixing of the permit to the correct sign within 30 days of notice to the permittee.

(5) Permits shall be permanently attached to the sign in a position to be readily visible from the nearest highway in the direction of travel to the sign faces. If the sign is a single-face cross-highway reader, then the permit must be attached to the sign in a position readily visible from the nearest traveled portion of the highway. The permittee is responsible for the proper placement of the permit on the sign.

(6) Sign permits that have been lost or destroyed must be replaced, and new permits for signs otherwise lawful shall be issued upon the payment of a $25 fee for each sign and the completion of a new permit application.

(7) Permits shall be issued on a one year fiscal basis, and shall be renewed on or before the first day of July of each year.

(8) The fee for a new permit is $100 for the one-year fiscal period or any part thereof. The permit expires June 30 of the fiscal year. The fee for permit renewal is $25 for the one-year fiscal period or any part thereof. Notwithstanding the specification in Subsections R933-2-4(8),(12), and (13)(a) of a $100 fee for a sign permit, the fee for the sign permit for a non-profit public service sign shall be $25, and the fee for renewal of the permit for that non-profit public service sign shall be $10.

(9) The fee for permits issued within a one-year fiscal period shall not be prorated.

(10) One-year permit renewals shall be made on renewal forms prepared by the Department. Completion of the renewal application and obtaining of the renewal permit prior to the expiration of the existing permit shall be the sole responsibility of the owner. The renewal may be applied for no sooner than 60 days prior to July 1 of the year in which the permit is to be renewed.

(11) Written proof of lease or consent from site owner to erect or maintain an outdoor advertising sign must be furnished by the applicant at the time of application for an original permit. This proof may consist of an affidavit showing the landowner's name and address, the sign owner's name, and the sign location by route, milepost, address, and county. On renewal of the permit the applicant must certify that the sign site is still under valid lease to the applicant.

(12) If a one-year permit on a conforming sign is not renewed on or before July 1 of the year of its term, a new permit application shall be required for a new permit, along with a fee of $100.

(13) A permit is non transferable, and the permittee shall be liable for any violation of the law regarding the permitted sign. No new permit may be issued for a sign for which a permit has already been issued, except as follows:

(a) Transfer of ownership of a permitted sign shall require the holder of the valid permit to release, in writing, his rights to continue to maintain his sign or use his location for outdoor advertising. The new owner applicant shall then submit to the Utah Department of Transportation the written release and proof of having obtained sign ownership, and a valid lease or consent for the remainder of the permit term. A $100 fee shall accompany the application and both application and fee must be received within 30 days of the ownership transfer.

(b) A conforming sign that is unlawful and forfeited by the permittee may be acquired and permitted, providing the new sign applicant submits the completed permit application and proof of possession of a valid land lease or consent to maintain a sign at the described location and providing the new application and the sign are otherwise lawful.

(14) A supplemental application fee of $100 shall be charged to cover administrative and inspection costs for every sign that was erected without a sign permit, Form R-299, or

altered without prior written approval of the department, Form R-407. This supplemental fee is in addition to the regular $100 permit fee.

(15) Each application for a new permit must be accompanied by the approved building permit of the local governing authority or a written statement from that authority that building permits are not required under its ordinances.

(16) Where local authority has issued a building permit for construction of a sign, but construction is contrary to the Utah Outdoor Advertising Act, the action of the local authority does not require the State to issue a permit.

(17) Federal agencies, State agencies, counties, cities and towns that use outdoor advertising signs along the interstate or primary highway systems shall have a permit for each controlled sign as provided in the Act and these rules.

R933-2-5. Sign Changes, Repairs, and Maintenance.

(1) Sign changes or repairs, including those for signs in a commercial or industrial zone, are subject to the following requirements:

(a) The face of a controlled sign may be removed for maintenance and renovation or change of advertising copy using basically the same face material. The shape and size of advertising space may not be changed except as provided in these rules. Replacement of the sign face must be accomplished within a 60 day period from the date of its removal.

(b) A nonconforming sign with "Grandfather Status" may not be relocated, structurally altered, nor repositioned, including reversing the direction of the sign face.

(c) A conforming sign may be reshaped or modified as to height or size, or relocated upon proper written request, Form R-407, provided the change is in compliance with the Act and these rules. Any change shall be completed within 60 calendar days from the date of the approval of the request. A fee of $100 shall accompany the R-407 application to change the sign, in addition to any applicable fee under Subsection R933-2-4(14).

(d) A conforming sign that is damaged by vandals, storms, wind, or acts of nature can be re-erected or changed, or both, upon proper written request and approval on Form R-407.

(e) A nonconforming sign that is damaged but not destroyed by vandals or acts of nature may be repaired to the same size or shape upon proper written application and approval. Normal maintenance may be included in the repair, but no structural changes affecting the sign's value may be allowed. The sign may be purchased by the State if agreement is reached by the State and the sign owner. The compensation to the sign owner shall be the depreciated value of the sign immediately before damage, less cost of re-erection or repair.

(f) Repairs and ordinary maintenance may be made on conforming and nonconforming signs so long as repairs do not alter the basic advertising space or illumination, or change the material of the sign structure.

(g) Nonconforming signs destroyed by natural disaster are not eligible for compensation, unless at the time of destruction they have been appraised and committed for removal and the State has approved a purchase agreement.

(2) The following provisions govern maintenance:

(a) A legally permitted nonconforming sign may remain standing subject to the provisions of the Act and these rules so long as it is not changed, except for advertising copy, and is not purchased or condemned pursuant to law.

(b) Signs shall be properly maintained. Improper maintenance is considered:

(i) Paint faded or peeling extensively;

(ii) Message not visible or illegible;

(iii) Sheets or panels loose or sagging;

(iv) Structural supports leaning;

(v) Abandoned.

(c) A sign with any of the deficiencies listed in Subsection R933-2-5(2)(b) is not in a reasonable state of repair, is in violation of the law, and is subject to removal.

(d) The crossing of a right-of-way line of any State highway at other than an established access approach to erect or maintain a sign without the written permission of the Department, is unlawful.

R933-2-6. Commercial and Industrial Usage: Limitations in Zoned or Unzoned Areas.

(1) Controlled signs in zoned or unzoned industrial or commercial areas are subject to the following zoning and usage requirements:

(a) Commercial or industrial usage must be visible from a traveled portion of the highway and must be situated within 600 feet of the sign site, measured from the outer edge of the regularly used buildings, parking lot, storage or processing area of the activity.

(b) The sign site must be zoned commercial or industrial or be in an unzoned commercial or industrial area.

(2) Airport runways or parking or aircraft tie down areas are not zoned or unzoned commercial or industrial areas.

(3) Mining operations and related activities, including gravel pits are not zoned or unzoned commercial or industrial areas unless they are:

(a) Where the final and concentrated processing of mined or extracted minerals is effected; or

(b) Where the mined material which has been processed is regularly stored or held for sale or shipment.

(4) Farming or ranching areas or related dairy farm facilities, of whatever nature, are not zoned or unzoned commercial or industrial areas.

(5) Municipal or private golf courses or cemeteries are not zoned or unzoned commercial or industrial areas.

(6) A trailer or mobile home park, court, or facility does not qualify under Subsection 72-7-504(1)(d) or (e) regardless of the local zoning. An RV Park does not qualify under either of those subsections unless at least 3/4 of the total available trailer parking spaces are not occupied or reserved for rental on a month-to-month basis.

(7) Where an occupied residence is located along the highway right of way within 600 feet of a commercial or industrial activity, no controlled sign may be erected closer than 100 feet of the residence unless the owner of the residence expressly waives in writing the foregoing restriction. The waiver must be submitted with the permit application prior to the erection of a new sign.

(8) Where the width of the right of way in a commercial or industrial area is more than 300 feet, and there is commercial activity on only one side of the highway, that activity does not

qualify the opposite side of the highway as commercial or industrial usage for the purpose of erecting new outdoor advertising signs.

R933-2-7. Spacing For Permitted Signs.

(1) Spacing of permitted signs shall be as follows:

(a) Signs in unincorporated areas may not be spaced less than 500 feet apart on the interstate and federal-aid primary system, as measured parallel to the highway right of way. Any sign allowed to be erected in a highway service zone H-1 may not be less than 500 feet from an existing controlled sign adjacent to an interstate highway or primary highway except that signs may be erected less than 500 feet from each other if the sign faces on the same side of the interstate highway or limited access primary highway are not simultaneously visible.

(b) No sign may be erected more than 100 feet on the perpendicular from the edge of the right of way of an interstate or primary highway except where a non-controlled highway or railroad right of way runs contiguous and adjacent to the edge of the controlled highway. The 100-foot corridor shall then be measured from a point on the perpendicular not to exceed 200 feet from the edge of the right of way of the interstate or primary highway. In no case may the outer edge of the corridor exceed 350 feet from the controlled right of way.

(c) Any sign located within the controlled area of both the interstate system and a primary system must meet the spacing requirements of both highway systems.

(d) If a sign message may be read from two or more routes, one or more of which is a controlled route, the more stringent of applicable control requirements applies.

(2) Height Above Highway:

No new structure, including the sign face, may be more than 50 feet in height above the elevation of the edge of the traveled surface of the highway. Where local zoning requirements or ordinances are in effect, the stricter of any applicable zoning requirements or ordinances apply.

R933-2-8. Removal of Illegal Signs.

(1) Removal Costs: The cost for the removal by the Utah Department of Transportation of an illegal or abandoned sign shall be assessed jointly and severally against the sign owner, landowner, occupant of the land or other responsible person, or any combination thereof, in accordance with Section 72-7-508.

(2) Storage Charges: Illegal or abandoned signs that have been removed by the Department after proper notice to the sign and site owner or occupant of the land shall be stored at the nearest department shed. There shall be a charge of $25 per month levied as the storage charges. The storage charges shall be in addition to the costs of the removal of the illegal or abandoned sign.

(3) Redemption and Disposal: If the illegal or abandoned sign has not been claimed and redeemed within 30 days from the date of removal, notice to the sign owner, site owner, and occupant of the land shall be given. If the sign is not redeemed within 30 days thereafter, a designated Department official in the area in which the sign is stored shall proceed to dispose of the stored illegal or abandoned sign by either utilizing the material contained therein for Utah Department of Transportation maintenance purposes or destroying the sign. A statement of the sign disposal shall be made and filed with a designated person at the Department.

R933-2-9. Termination of Non-Conforming Use Status.

(1) The non-conforming use status of a controlled sign shall terminate under the following conditions:

(a) Failure of the sign owner to apply for a renewal permit on or before the date on which the permit expires;

(b) Structural alteration or change of the sign as to height, size, location or direction of sign face not constituting ordinary maintenance or a change of advertising matter;

(c) Destruction by storm, wind, act of nature, fire or vandalism;

(d) Abandonment;

(e) Failure to correct after receiving proper notice pursuant to Section 72-7-508, or failure to ask for a hearing after receiving proper notice pursuant to Section 72-7-508, or failure to file a written response as required by law, or failure to appeal from an adverse decision of the Department, or exhaustion of all legal remedies under Section 72-7-508.

(f) Purchase by the Department under Section 72-7-510.

(g) Acquisition at any time by the Department for highway construction.

R933-2-10. Conforming Sign Becoming Nonconforming -- Removal.

(1) Any legal conforming sign that becomes nonconforming after May 9, 1967, by reason of law or route classification, may not be required to be removed under the Utah Advertising Act until after the end of the fifth year after it had become nonconforming, except as otherwise provided for by law or contract.

R933-2-11. On-Premise Signs -- Illegal Status - Removal.

An on-premise sign loses its on-premise status when the business or activity it advertises has ceased to exist for a period of at least 12 months at the site of the sign, the sign is located within 1,000 feet of a controlled highway, and the message thereon is visible to the traveling public from that controlled highway. This sign may be removed at the expense of the sign owner or land owner or both without compensation to the sign or site owner as provided in Section 72-7-508 of the Act.

R933-2-12. Directional Signs.

(1) Directional signs shall conform to federal standards concerning the lighting, size, number, and spacing of the signs. There are no zoning or usage requirements for directional signs.

(2) The following standards apply only to directional signs that are erected and maintained adjacent to the interstate and federal-aid primary highway system, and that are visible from the main traveled way.

(a) A directional sign allowed under Sections 72-7-502 and 72-7-504 is subject to the following restrictions:

(i) No sign may exceed the following limits where all dimensions include border and trim, but exclude supports:

(A) Maximum area - 150 square feet;

(B) Maximum height - 20 feet;

(C) Maximum length - 20 feet.

(ii) A sign may be illuminated, subject to the following:

(A) Signs that are not effectively shielded so as to prevent light from being directed at any portion of the traveled way of an interstate or primary highway, or that cause glare or impair the vision of the driver of any motor vehicle, or that otherwise interfere with any driver's operation of a motor vehicle, are prohibited.

(B) No sign may be so illuminated as to obscure or interfere with the effectiveness of an official traffic sign, device, or signal.

(iii) Each location of a directional sign must be approved by the Department and is subject to the following restrictions:

(A) No directional sign may be located within 2,000 feet of an interchange or intersection at grade within the interstate system or other freeways or the primary system, measured from the nearest point of pavement widening at the exit from or entrance to the main traveled way.

(B) No directional sign may be located within 2,000 feet of a rest area, parkland, or scenic areas.

(C) Directional signs facing the same direction of travel shall be spaced no less than one mile apart.

(D) No more than one directional sign per activity facing the same direction of travel may be erected along a single route approaching the activity.

(E) Signs adjacent to the interstate or primary system shall be located within 15 air miles of the activity they advertise.

(iv) Any area of historical interest shall be approved by the Utah Historical Society before consideration for approval as an area for a directional sign.

(b) The following directional signs are prohibited:

(i) Signs advertising activities that are illegal under Federal or State law in effect at the location of those signs or activities;

(ii) Signs positioned in any manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or to obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic;

(iii) Signs erected or maintained upon trees or painted or drawn upon rocks, or other natural features;

(iv) Obsolete signs;

(v) Signs that are structurally unsafe or in disrepair;

(vi) Signs that contain or are illuminated by any flashing or moving light or animated by moving parts;

(vii) Signs located in rest areas, parklands, or scenic areas.

(3) Any directional sign erected or maintained under the Act and these rules may at any time be removed for cause upon order of the Department after notice and hearing, if requested and timely pursued, under Section 72-7-508.

R933-2-13. Official Signs.

(1) Prerequisites for erection and maintenance:

(a) Prior to erection of an official sign the public agency shall submit to the Department in the Region where the sign is to be located, a completed permit application form R-299 along with:

(i) Facsimile of the sign message to be erected;

(ii) Statement of the official duty or responsibility being performed;

(iii) Certified copy of the statute, resolution, or ordinance from the public body showing official action authorizing erection and maintenance of the sign.

(b) The sign must be erected off the highway right-of-way, owned and maintained by the public agency, and located within the zoning jurisdiction of the public agency.

(c) Standards, Criteria and Restrictions:

(i) Only information of general interest to the traveling public may be placed on an official sign. Commercial advertising of a particular service, product or facility is prohibited.

(ii) The sign must be within the zoning jurisdiction of the city, town, or other public agency designated by the sign.

(iii) No city, town or other subdivision of the State may erect or maintain more than one sign at each approach to the off-ramp, facing oncoming traffic at the nearest point of turn off to a city, town or other subdivision and in no event may more than two official signs, one for each direction of travel upon the controlled highway, be erected and maintained by or for the purpose of designating a city or town or other subdivision.

(iv) No official sign may be located within 2,000 feet of an interchange or intersection at grade along the interstate or primary highway system, measured from the nearest point of pavement widening at the exit from the main traveled way.

(v) No official sign may be so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal.

(vi) Signs that are not effectively shielded so as to prevent light from being directed at any portion of the traveled way of an interstate or primary highway, or that cause glare or impair the vision of the driver of any motor vehicle, or that otherwise interfere with any driver's operation of a motor vehicle, are prohibited.

(vii) No sign may be located within 500 feet of a rest area, parkland, cemetery, or scenic area or other official sign.

(viii) No sign may be erected at a site prohibited under local zoning. The stricter commercial and industrial zoning and usage requirements applicable to controlled outdoor advertising signs do not apply to official signs, though all other relevant rules apply.

(ix) No sign message may be altered without prior written approval by the department.

(x) Any official sign erected or maintained under the Act and these Rules may at any time be removed for cause and without compensation after notice and hearing, if required. The owner of any official sign shall remove the sign at its own cost and expense.

R933-2-14. Department Hearings.

Any hearing regarding the legality of a sign shall be held in the region where the sign is located, and shall be held in accordance with the Act, and in accordance with the Utah Administrative Procedures Act and Rule R907-1 unless specifically stated otherwise in a governing statute.

R933-2-15. Special Permits for Olympic Pageants.

Notwithstanding rules in R930-6 regarding the one-week validity of special advertising permits, UDOT may allow political subdivisions and governmental entities to place Olympic pageantry along the right-of-way for more than one week. Unless an Olympic-pageantry permit specifically provides for an earlier expiration date, it expires automatically on April

2, 2002. All pageantry must be removed by the expiration date and the right-of-way must be returned to its previous condition. Other rules regarding right-of-way encroachments and the granting of permits apply. Additionally, nothing in this rule limits UDOT's discretion to grant a permit for Olympic pageantry, or attach conditions to such a grant. No application for an Olympic-pageantry permit will be accepted after April 2, 2002.

KEY: signs
July 9, 2001 Title 72, Chapter 7, Part 5
Notice of Continuation January 22, 2002

R933. Transportation, Preconstruction, Right of Way Acquisition.

R933-3. Relocation or Modification of Existing Authorized Access Openings or Granting New Access Openings on Limited Access Highways.

R933-3-1. Authority.

The provisions of this rule are authorized by grants for rulemaking authority Utah Code Ann. Sections 72-1-201 and 72-7-102.

R933-3-2. Purpose.

To establish a procedure for allowing and establishing new or existing highways as limited access facilities, for the elimination of intersections and for the right to access restricted facilities.

R933-3-3. Definition.

Limited-access facility shall be defined as in Section 72-1-102.

R933-3-4. When Access is Controlled.

(1) Limited access control for classified principal arterial highways other than the interstate system and expressways shall be obtained in all rural areas and in urban areas if the highway is being constructed on new alignment or if the existing highway is in sparsely developed areas where control is desirable and economically feasible. Control in urban areas on existing alignment shall not be allowed unless approved by the Utah Transportation Commission.

(2) In addition to the limited access control of principal arterial highways, a limited mileage of high volume minor arterial highways may justify limited access control, especially on new alignment and if adjacent to a freeway interchange. Except for minor arterial highways adjacent to a freeway interchange, control shall not be established if the road is less than one mile in length. Access, if desirable and economically feasible, shall be determined on an individual basis and is subject to approval of Utah Transportation Commission.

(3) Under limited access control, the following limitations shall apply:

(a) The maximum feasible and economic access control shall always be obtained.

(b) On bypasses of cities and towns, all property access shall be prohibited except where the bypass is in a low population town with little or no business and inadequate public crossroads for property access.

(c) On other than bypass roads, a maximum of five accesses per mile on each side of the highway may be granted. Unless justified under this rule, accesses to property shall only be granted opposite to each other.

(d) Where any one property has access to another public road or roads, no access shall be given closer than 1/2 mile from the public road nor shall any two granted accesses be closer than 1/2 mile with the following exception: Where the proposed project involves reconstruction on or near an existing highway where a home, business or other property development is located and lack of direct access to a home, business or other property development would involve excessive property damage and added construction costs, in which case access openings may be provided within the other stated limitations.

(e) No property access shall be closer than 500 feet from another property or public road access.

(f) In order to eliminate public road access, study shall be made in conjunction with local authorities as to feasibility of dead ending or rerouting of intersecting roads.

(g) The maximum size of private access openings shall be 16 feet for residences, 30 feet for farms or other areas where large equipment is used, and 50 feet for commercial and industrial areas.

(4) Exceptions to the above limitations shall only be made if a careful appraisal reveals extensive damage or if needed frontage roads would involve excessive right of way costs or, in canyons, excessive construction costs. Detailed reports of costs and justification for variance shall be prepared and submitted to the assistant director for approval.

R933-3-5. Designation of Access Location.

(1) The Utah Department of Transportation Right of Way Division shall conduct a study and prepare detailed right of way maps, to be used by the Utah Transportation Commission to make final access location determination. The study shall include the location of and justification for current access openings and property owners shall be contacted to determine development plans for the property. The Right of Way Division shall prepare cost estimates for proposed and alternate access locations. The Utah Transportation Commission shall make final access location determination.

(2) The access openings granted shall be accurately described in the property deed and shown on right of way maps and roadway construction plans.

(3) After execution of the deeds, no change shall be made in the access location or additional access openings granted except as provided below.

(4) If a portion of a property which has no access to the highway is later sold, the department has no obligation to grant an access to the property and if inquiries are made, a prospective buyer should be definitely so advised.

R933-3-6. Revision of Access Openings.

(1) If a property owner desires to change location or size of an access opening, after execution of the deed, a written request shall be submitted to the department giving location of desired change and its justification. Changes shall comply with the limitations as to spacing in the limited access control policy.

(2) The region director, in cooperation with the engineer for safety, shall determine if the change in location will cause any adverse safety or other traffic operational effects and submit a report with recommendations to the assistant director.

(3) If the change is approved by the assistant director and on federal-aid roads by the Federal Highway Administration, new deeds shall be prepared and executed and all maps corrected.

(4) The property owner shall pay for all costs involved in closing or modifying an existing access opening.

R933-3-7. New Access Openings.

(1) Only in cases where significant public benefit will result will new access openings be granted. Access rights are

purchased and are considered an asset, the same as purchased property, and can be disposed of the same as real property. Any additional access will not be considered if not in compliance with this rule.

(2) The request shall be submitted by the property owner or public agency in writing to the department, detail as to public benefit and other justifications.

(3) Before granting an opening, safety and other operational features shall be investigated by the region director and the engineer for safety and a written report and recommendations made.

(4) If the access opening is granted, the appreciation of the private property involved shall be determined by an appraisal from the Right of Way Division.

(5) Based on the findings, the executive director of transportation shall make a decision on the request. On federal-aid roads, concurrence of the Federal Highway Administration shall be obtained if the access opening is recommended by the executive director of transportation.

(6) If the access opening is approved and is to serve private property, the property owner shall pay the department for property appreciation, resulting from the department's relinquishment of the access, as determined by the executive director and the Federal Highway Administration.

(7) On the federal-aid roads the property owner shall also pay all costs for construction of gates, approaches and any other incidental construction costs involved.

(8) The deed shall be executed describing the access opening and all maps and plans shall be revised. This procedure applies to roads constructed with federal-aid funds, which will remain on a federal-aid system and be transferred to local authorities.

(9) Requests for modification of access control shall be forwarded with recommendations to the Utah Department of Transportation by the local authority.

R933-3-8. Document Responsibility.

(1) The Right of Way Section shall prepare submittals, documents and maps to the Federal Highway Administration. The deeds shall be prepared by the region. The Right of Way Division will be responsible for all plan corrections.

(2) Federal Highway Administration's approval is required if construction of the road was a federal-aid project though the right of way was nonparticipating.

R933-3-9. Enforcement of Access Control.

(1) Highways with limited access control should be marked by the department with public property plates on fences at sufficient intervals to clearly indicate to maintenance personnel the limits of access control.

(2) The station foreman shall be responsible for surveillance of these sections of fence as to any activity in modifying existing access openings or construction of new openings. Any modifications to an access opening shall be immediately reported to the region director. The region director shall designate personnel to contact the property owner and require the owner to repair, remove or replace any fence damaged and also remove any roadway approach material placed.

KEY: limited access highways

1990	**72-1-102**
Notice of Continuation January 22, 2002	**72-1-201**
	27-12-114
	72-7-102

R933. Transportation, Preconstruction, Right-of-Way Acquisition.

R933-4. Bus Shelters and Bus Benches.

R933-4-1. Authority.

The provisions of this rule are authorized under Sections 72-7-102 through 72-7-104.

R933-4-2. Definitions.

(1) "ADA" means the Americans with Disabilities Act.

(2) "Advertisement or advertising" means a printed or painted sign encouraging or promoting the purchase or use of goods or services, but does not include campaign posters or signs or other signs or advertisements prohibited by law, including these rules.

(3) "Bus Benches" means any type of bench that is located at a designated bus stop accepted as such by the Utah Department of Transportation, used to aid in the loading and unloading of passengers for the convenience of passengers of public transportation systems.

(4) "Bus shelter" means a shelter located at a designated bus stop accepted as such by the Utah Department of Transportation, used to aid in the loading and unloading of passengers for the convenience of passengers of public transportation systems.

(5) "Clear Zone" as defined under "AASHTO Roadside Design Guide".

(6) "UDOT" means Utah Department of Transportation.

R933-4-3. Purpose.

The purpose of this rule is to authorize bus shelters and bus benches at officially recognized bus stops accepted as such by UDOT and within the limits of these rules, on UDOT rights-of-way and for the benefit of the public, also allowing certain specified incidental advertising benefits to the provider of the bus shelter or bench.

R933-4-4. Permitting and Conditions for Valid Permits.

Bus shelters or benches, including those on which commercial advertisements are placed, may be erected and maintained on the state rights-of-way of public roads subject to the following conditions and requirements:

(1) Any person wishing to erect and maintain a bus shelter or bench on the state right-of-way of a public road shall apply to UDOT for a license. As a condition of the issuance of the license, UDOT must approve the bus shelter building or bench plans and the location of the bus shelter or bench on the right-of-way, provided, however, that such approval is subject to any and all restrictions imposed by Title 23 United States Code and 23 CFR relating to the federal-aid system and the Utah Outdoor Advertising Act and Rules, except as specifically otherwise provided herein. The initial license fee is $200 for a five-year period. Licenses are renewable thereafter, at a cost of $25 per year for a five-year period.

(2) If the bus shelter or bench is to be located on a street, road, or right-of-way of a county or municipality, the respective county or municipality also must approve the erection and maintenance of the bus shelter or bench, and for that purpose, a copy of the application to the respective county or municipality and permit shall be provided to UDOT as part of the application for a license.

(3) An applicant to UDOT for a license hereunder shall include as part of the application a written statement signed by each owner of property abutting the proposed bus shelter or bench site who is required to be notified under subsection (11) of this section, acknowledging receipt of the notice and opportunity to comment provided for under that subsection, or copy of the notice together with a receipt evidencing the notice was sent to such owner by certified mail together with a declaration under oath affirming that a bone fide attempt to obtain the signed written statement was made.

(4) A copy of the application for a bus shelter or bench license shall be provided also to any public transit agency or authority providing the public transportation of persons to be served by the bus shelter or bench, for all bus shelters or benches on routes of that agency or authority for its approval or rejection of proposed locations. The sequence of applications shall be first, the transit agency or authority; second, the municipality; and third, the state.

(5) As a condition of issuing a license for the erection of a bus shelter or bench on the state right-of-way of a public road, UDOT shall require that the bus shelter or bench will be properly maintained and that its location will meet minimum setback requirements as follows:

(a) Where a curb and gutter are present, there shall be a minimum of four feet clearance from the face of the curb to any portion of the bus shelter or bench;

(b) Where no curb or gutter is present, the front of the bus shelter or bench shall be at least ten feet from the edge of the main traveled roadway located outside of the clear zone;

(c) UDOT may provide a schedule of other safety requirements consistent with law.

(6) A map of the municipality or county, or both, showing the proposed bus shelter or bench locations shall accompany the application.

(7) A plan shall be prepared for each bus shelter or bench location. The plan should be drawn to an approximate scale and the scale indicated on the sketch plan. The plan, as a minimum, shall include a written description of the location and the assigned shelter or bench number. The shelter or bench position shall be shown on the plan with dimensions shown from the closest edge of the shelter or bench to roadway or curb, plus dimensions to the nearest intersecting street. The road characteristics shall be shown on the plan. Other pertinent existing features such as sidewalks, utility poles, large trees, and signs shall be shown as necessary. The existing right-of-way line shall be shown when available and if required.

(8) Each applicant must provide a performance bond, letter of escrow, or other satisfactory security to assure that the authorized work is accomplished in accordance with the approved permit. Any letter of escrow or other satisfactory security must be from a bank which is located in Utah. A bond may be underwritten by a surety company located outside Utah if it is countersigned by a Utah resident agent of that surety company. This security must be described on the appropriate UDOT form and the amount will be based on the number of shelters or benches being licensed, the amount per shelter or bench to be $500.

The bond will be released only after all work has been

satisfactorily completed for all bus shelter or bench locations covered under the license. The applicant shall notify the appropriate UDOT Region Permit Office when all work is completed for the shelter or bench installations covered by the license. If all work on the right-of-way has been completed as per license requirements, the UDOT permit officer will perform a final inspection. The bond shall be held during the life of the shelter or bench to secure compliance with this rule.

(9) Notwithstanding any other provision of law that may be less restrictive, no bus shelter or bench may be erected and maintained less than 150 feet from another bus shelter or off-premise outdoor advertising sign.

(10) A bus shelter less than 20 feet long may have advertising only on one end of the shelter, on which end an advertising face may be placed on both sides. If a bus shelter of 20 feet or longer is approved by the department, which in the interest of the traveling public it may choose to approve, the shelter may have advertising on both ends, on each of which an advertising face may be placed on both sides. Each advertising face, regardless of the length of the shelter, is limited to no more than 72 inches by 60 inches, with no more than one advertisement per face. No bus shelter may exceed a height of ten feet.

(11) A bus bench may advertise on both sides of the back rest, but may not exceed 2 feet high by 8 feet long.

(12) The license applicant shall notify the abutting property owner by certified mail of the proposed shelter or bench location and any proposed advertising, and provide an opportunity to comment.

(13) A transit bus shelter or bench shall not infringe upon or obstruct any sidewalk, bike path, pedestrian path, driveway, drainage structure or ditch, etc. without adding or allowing adequate passage, which meet ADA requirements.

(14) Prior to permitting the installation of the shelter or bench, any impacted utility companies and municipalities must be notified by the license applicant to determine location of utilities and prevent conflicts. A license to erect and maintain a bus shelter is subject to any pre-existing utility license or right.

(15) All shelter utility connections must be approved by the appropriate city or county agency.

(16) Flashing lights on a transit bus shelter are prohibited. All lights shall be placed or shielded so they do not interfere with motorists on the roadway.

(17) Sides and internal dividers in transit bus shelters shall be constructed of structurally sound materials and provide visibility of waiting passengers to passing traffic and pedestrians. All transparent materials shall be shatter proof. No shelter may be located in such a manner, or be constructed of such materials, as to adversely affect sight distance at any intersection or obstruct the view of traffic signs or other traffic control devices.

(18) Transit bus shelters must be securely attached to their foundations and must provide for a clear opening between the structure and foundation to facilitate cleaning and preclude the accumulation of debris.

(19) Transit bus shelters or benches may not be located within five feet of any fire hydrant or handicapped parking space.

(20) Each bus shelter or bench shall have placed on it a number unique to that location at least two inches by two inches in size, placed at a location on the shelter that renders the sign number visible from the street. The telephone number of the applicant or person to contact regarding the shelter or bench and the area immediately around the shelter, or both, shall be appropriately displayed on the shelter.

(21) Licenses are valid for a five-year, all permits to be renewed before July 1.

(22) A license lapses unless construction is completed within 90 days of the date of the license.

(23) Any bus shelter or bench erected and maintained on the right-of-way of a public road in violation of this rule or in violation of the conditions of the license issued by UDOT may be ordered removed by UDOT.

(24) If such a bus shelter or bench is not removed by its owner within 30 days after its owner has been issued a written order of removal by UDOT, the department may cause the bus shelter or bench to be removed and submit a statement of expenses incurred in the removal to the owner of the bus shelter or bench. If payment or arrangement to make payment is not made within 60 days after the receipt of such statement, UDOT may institute legal proceedings for collection. When a bus shelter or bench is located on a county or municipal street, road, or right-of-way, UDOT may delegate its powers under this rule to the respective county or municipality, and the respective county or municipality shall cooperate with and assist UDOT in enforcing the conditions of licenses issued by UDOT pursuant to the provisions of this section.

(25) The person to whom a license has been issued for the erection and maintenance of a bus shelter or bench on the right-of-way of a public road shall at all times assume all risks for the bus shelter or bench and shall indemnify and hold harmless the State of Utah, the Utah Department of Transportation, and any county or municipality against all losses or damages resulting solely from the existence of the bus shelter or bench.

(26) All future bus shelter or bench additions must be licensed separately and a bond obtained for the number of bus shelters or benches to be included in the succeeding license. The same data and information will be required for each separate bus shelter or bench license application.

(27) Any existing bus shelter or bench located on UDOT rights-of-way in violation of law is declared to be a public nuisance, and its removal may be ordered by the department.

(28) All construction, maintenance and operational activities shall be the sole responsibility of the licensee.

R933-4-5. Alteration or Termination in Public Interest.

If UDOT determines that the bus shelters or benches do not serve the public interest, the department may terminate the privilege of maintaining bus shelters or benches, and the prior erection or maintenance of shelters or benches pursuant to rule shall not require continued allowance of shelters or benches or compensation to the provider of the shelters or benches.

R933-4-6. Relocation of Bus Shelters or Benches.

If road construction, maintenance or repair requires displacement of a bus shelter or bench and relocation is allowed, such shall be accomplished at the expense of the owner of the bus shelter or bench. Prior to any relocation of any bus shelter

or bench, Licensee shall submit an application for review to UDOT for approval.

KEY: buses, bus benches, bus shelters*, right-of-way
April 18, 2001 72-7-102
Notice of Continuation January 22, 2002 through
72-7-104

R986. Workforce Services, Employment Development.
R986-100. Employment Support Programs.
R986-100-101. Authority.

(1) The legal authority for these rules and for the Department of Workforce Services to carry out its responsibilities is found in Sections 35A-1-104 and 35A-3-103.

(2) If any applicable federal law or regulation conflicts with these rules, the federal law or regulation is controlling.

R986-100-102. Scope.

(1) These rules establish standards for the administration of the following programs:

(a) Food Stamps
(b) Family Employment Program (FEP)
(c) Family Employment Program Two Parent (FEPTP)
(d) Refugee Resettlement Program (RRP)
(e) Working Toward Employment (WTE)
(f) General Assistance (GA)
(g) Child Care Assistance (CC)
(h) Emergency Assistance Program (EA)
(i) Adoption Assistance Program (AA)

(2) The rules in the 100 section (R986-100 et seq.) apply to all programs listed above. Additional rules which apply to each specific program can be found in the section number assigned for that program. Nothing in R986 et seq. is intended to apply to Unemployment Insurance.

R986-100-103. Acronyms.

The following acronyms are used throughout these rules:

(1) "AA" Adoption Assistance Program
(2) "ALJ" Administrative Law Judge
(3) "CC" Child Care Assistance
(4) "CFR" Code of Federal Regulations
(5) "DCFS" Division of Children and Family Services
(6) "DWS" Department of Workforce Services
(7) "EA" Emergency Assistance Program
(8) "FEP" Family Employment Program
(9) "FEPTP" Family Employment Program Two Parent
(10) "GA" General Assistance
(11) "INA" Immigration and Nationality Act
(12) "INS" Immigration and Naturalization Service
(13) "IPV" intentional program violation
(14) "IRCA" Immigration Reform and Control Act
(15) "ORS" Office of Recovery Service, Utah State Department of Human Services
(16) "PRWORA" the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
(17) "PL" Public Law as enacted the United States Congress
(18) "RRP" Refugee Resettlement Program
(19) "SNB" Standard Needs Budget
(20) "SSA" Social Security Administration
(21) "SSDI" Social Security Disability Insurance
(22) "SSI" Supplemental Security Insurance
(23) "SSN" Social Security Number
(24) "UCA" Utah Code Annotated
(25) "UI" Unemployment Compensation Insurance
(26) "VA" US Department of Veteran Affairs
(27) "WTE" Working Toward Employment Program
(28) "WIA" Workforce Investment Act

R986-100-104. Definitions of Terms Used in These Rules.

In addition to the definitions of terms found in 35A Chapter 3, the following definitions apply to programs listed in R986-100-102:

(1) "Applicant" means any person requesting assistance under any program in Section 102 above.

(2) "Assistance" means "public assistance"

(3) "Certification period" is the period of time for which public assistance is presumptively approved. At the end of the certification period, the client must cooperate with the Department in providing any additional information needed to continue assistance for another certification period. The length of the certification period may vary between clients and programs depending on circumstances.

(4) "Client" means an applicant for, or recipient of, public assistance services or payments, administered by the Department.

(5) "Confidential information" means information that has limited access as provided under the provisions of UCA 63-2-201 or 7 CFR 272.1. The name of a person who has disclosed information about the household without the household's knowledge is confidential and cannot be released. If the person disclosing the information states in writing that his or her name and the information may be disclosed, it is no longer considered confidential.

(6) "Department" means the Department of Workforce Services.

(7) "Education or training" means:

(a) basic remedial education;
(b) adult education;
(c) high school education;
(d) education to obtain the equivalent of a high school diploma;
(e) education to learn English as a second language;
(f) applied technology training;
(g) employment skills training;
(h) on-the-job training; or
(i) post high school education.

(8) "Full-time education or training" means education or training attended on a full-time basis as defined by the institution attended.

(9) "Employment plan" consists of two parts, a participation agreement and an employment plan. Together they constitute a written agreement between the Department and a client that describes the requirements for continued eligibility for financial assistance and the result if an obligation is not fulfilled.

(10) "Executive Director" means the Executive Director of the Department of Workforce Services.

(11) "Financial assistance" or "cash assistance" means payments, other than for food stamps, child care or medical care, to an eligible individual or household under FEP, FEPTP, RRP, GA, or WTE and which is intended to provide for the individual's or household's basic needs.

(12) "Household assistance unit" means a group of individuals who are living together or who are considered to be living together, and for whom assistance is requested or issued.

For all programs except Food Stamps and CC, the individuals included in the household assistance unit must be related to each other as described in R986-200-205.

(13) "Income match" means accessing information about an applicant's or client's income from a source authorized by law. This includes State and Federal sources.

(14) "Local office" means the Employment Center which serves the geographical area in which the client resides.

(15) "Material change" means anything that might affect household eligibility, participation levels or the level of any assistance payment including a change in household composition, eligibility, assets and/or income.

(16) "Minor child" is a child under the age of 18, or under 19 years of age and in school full time and expected to complete his or her educational program prior to turning 19, and who has not been emancipated either by a lawful marriage or court order.

(17) "Parent" means all natural, adoptive, and step parents.

(18) "Public assistance" means:

(a) services or benefits provided under UCA 35A Chapter 3, Employment Support Act;

(b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

(c) foster care maintenance payments provided with the General Fund or under Title IV-E of the Social Security Act;

(d) food stamps; and

(e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

(19) "Recipient" means any individual receiving assistance under any of the programs listed in Section 102.

(20) "Standard needs budget" is determined by the Department based on a survey of basic living expenses.

R986-100-105. Availability of Program Manuals.

(1) Program manuals for all programs are available for examination or review upon request at each local office. The manuals are also available on the Department's Internet web site. If an interested party cannot obtain a copy from the web site, a copy will be provided by the Department upon request. Reasonable costs of copying may be assessed if more than 10 pages are requested.

(2) For the Food Stamp Program, copies of additional information available to the public, including records, regulations, plans, policy memos, and procedures, are available for examination upon request by members of the public, during office hours, at the Department's administrative offices, as provided in 7 CFR 272.1(d)(1) (1999).

R986-100-106. Residency Requirements.

(1) To be eligible for assistance for any program listed in R986-100-102, a client must be living in Utah voluntarily and not for a temporary purpose. There is no requirement that the client have a fixed place of residence. An individual is not eligible for public assistance in Utah if they are receiving public assistance in another State.

(2) The Department may require that a household live in the area served by the local office in which they apply.

(3) Individuals are not eligible if they are:

(a) in the custody of the criminal justice system;

(b) residents of a facility administered by the criminal justice system;

(c) residents of a nursing home;

(d) hospitalized; or

(e) residents in an institution.

(4) Individuals who reside in a temporary shelter, including shelters for battered women and children, for a limited period of time are eligible for public assistance if they meet the other eligibility requirements.

(5) Residents of a substance abuse or mental health facility may be eligible if they meet all other eligibility requirements. To be eligible for Food Stamps, the substance abuse or mental health facility must be an approved facility. Approval is given by the Department. The Department does not approve group homes. Approved facilities must notify the Department and give a "change report form" to a client when the client leaves the facility and tell the client to return it to the local office. The change report form serves to notify the Department that the client no longer lives in the approved facility.

R986-100-107. Client Rights.

(1) A client may apply or reapply at any time for any program listed in R986-100-102 by completing and signing an application and turning it in at the local office.

(2) If a client needs help to apply, help will be given by the local office staff.

(3) No individual will be discriminated against because of race, color, national origin, sex, religion or disability.

(4) A client's home will not be entered without permission.

(5) Advance notice will be given if the client must be visited at home outside Department working hours.

(6) A client may request an agency conference to reconcile any dispute which may exist with the Department.

(7) Information about a client obtained by the Department will be safeguarded.

(8) If the client is physically or mentally incapable or has demonstrated an inability to manage funds, the Department may make payment to a protective payee.

R986-100-108. Safeguarding and Release of Information.

(1) All information obtained on specific clients, whether kept in the case file, in the computer system, maintained by the Department, the state, or somewhere else, is safeguarded in accordance with the provisions of Sections 63-2-101 through 63-2-909 and 7 CFR 272.1(c) and 7 CFR 272.8 and PRWORA (1996) Title VIII, Section 837.

(2) General statistical information may be released if it does not identify a specific client. This includes information obtained by the Department from another source. Information obtained from the federal government for purposes of income match can never be released.

R986-100-109. Release of Information to the Client or the Client's Representative.

(1) Information obtained by the Department from any source, which would identify the individual, will not be released without the individual's consent or, if the individual is a minor, the consent of his or her parent or guardian.

(2) A client may request, review and/or be provided with

copies of anything in the case record unless it is confidential. This includes any records kept on the computer, in the file, or somewhere else.

(3) Information that may be released to the client may be released to persons other than the client with written permission from the client.

(4) All requests for information must include:

(a) the date the request is made;

(b) the name of the person who will receive the information;

(c) a description of the specific information requested including the time period covered by the request; and

(d) the signature of the client.

(5) The first 10 pages will be copied without cost to the client. If the client requests copies of more than 10 pages, the Department will charge an appropriate fee for the copies in accordance with Department policy which will not be more than the cost to the Department for making copies.

(6) The original case file will only be removed from the office as provided in R986-100-110(6) and cannot be given to the client.

(7) Information that is not released to the client because it is confidential, cannot be used at a hearing or to close, deny or reduce assistance.

(8) Requests for information which is intended to be used for a commercial or political reason will be denied.

R986-100-110. Release of Information Other Than at the Request of the Client.

(1) Information obtained from or about a client will not be published or open to public inspection in any manner which would reveal the client's identity unless there has been a criminal conviction against the client for fraud in obtaining public assistance. In that instance, the Department will only provide information available in the public record on the criminal charge.

(2) Any information obtained by the Department pursuant to an application for or payment of public assistance may not be used in any court or admitted into evidence in an action or proceeding, except:

(a) in an action or proceeding arising out of the client's receipt of public assistance, including fraudulently obtaining or retaining public assistance, or any attempt to fraudulently obtain public assistance; or

(b) where obtained pursuant to a court order.

(3) If the case file, or any information about a client in the possession of the Department, is subpoenaed by an outside source, legal counsel for the Department will ask the court to quash the subpoena or take such action as legal counsel deems appropriate.

(4) Information obtained by the Department from the client or any other source, except information obtained from an income match, may be disclosed to:

(a) an employee of the Department in the performance of the employee's duties unless prohibited by law;

(b) an employee of a governmental agency that is specifically identified and authorized by federal or State law to receive the information;

(c) an employee of a governmental agency to the extent the information will aid in the detection or avoidance of duplicate, inconsistent, or fraudulent claims against public assistance programs, or the recovery of overpayments of public assistance funds;

(d) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or to aid a felony criminal investigation except no information regarding a client receiving food stamps can be provided under this paragraph;

(e) to a law enforcement officer when the client is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation or when the client has information which will assist a law enforcement officer in locating or apprehending an individual who is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation and the officer is acting in his official capacity. The only information under this paragraph which can be released on a client receiving food stamps is the client's address, SSN and photographic identification;

(f) to a law enforcement official, upon written request, for the purpose of investigating an alleged violation of the Food Stamp Act 7 USCA 2011 or any regulation promulgated pursuant to the Act. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person being investigated. Under this paragraph, the Department can release to the law enforcement official, more than just the client's address, SSN and photo identification;

(g) an educational institution, or other governmental entity engaged in programs providing financial assistance or federal needs-based assistance, job training, child welfare or protective services, foster care or adoption assistance programs, and to individuals or other agencies or organizations who, at the request of the Department, are coordinating services and evaluating the effectiveness of those services;

(h) to certify receipt of assistance for an employer to get a tax credit; or

(i) information necessary to complete any audit or review of expenditures in connection with a Department public assistance program. Any information provided under this part will be safeguarded by the individual or agency receiving the information and will only be used for the purpose expressed in its release.

(5) Any information released under paragraph (4) above can only be released if the Department receives assurances that:

(a) the information being released will only be used for the purposes stated when authorizing the release; and

(b) the agency making the request has rules for safeguarding the information which are at least as restrictive as the rules followed by the Department and that those rules will be adhered to.

(6) Case records or files will not removed from the local office except by court order, or at the request of the Department's Information Disclosure Officer, the Department's Quality Control office, or ORS.

(7) In an emergency, as determined to exist by the Department's Information Disclosure Officer, information may be released to persons other than the client before permission is

obtained.

(8) For clients receiving CC, the Department may provide the following information to the child care provider identified by the client as the provider:

(a) the date on which the CC payment was issued by the Department; and

(b) the amount of the check issued by the Department.

(9) Taxpayer requests to view public assistance payrolls will be denied.

R986-100-111. How to Apply For Assistance.

(1) To be eligible for assistance, a client must complete and sign an application for assistance.

(2) The application is not complete until the applicant has provided complete and correct information and verification as requested by the Department so eligibility can be determined or re-established at the time of review at the end of the certification period. The client must agree to provide correct and complete information to the Department at all times to remain eligible. This includes:

(a) property or other assets owned by all individuals included in the household unit;

(b) insurance owned by any member of the immediate family;

(c) income available to all individuals included in the household unit;

(d) a verified SSN for each household member receiving assistance. If any household member does not have an SSN, the client must provide proof that the number has been applied for. If a client fails to provide a SSN without good cause, or if the application for an SSN is denied for a reason that would not be disqualifying, assistance will not be provided for that household member. Good cause in this paragraph means the client has made every effort to comply. Good cause does not mean illness, lack of transportation or temporary absence because the SSA makes provisions for mail-in applications in lieu of applying in person. Good cause must be established each month for continued benefits;

(e) the identity of all individuals who are living in the household regardless of whether they are considered to be in the household assistance unit or not;

(f) proof of relationship for all dependent children in the household. Proof of relationship is not needed for food stamps or child care; and

(g) a release of information, if requested, which would allow the Department to obtain information from otherwise protected sources when the information requested is necessary to establish eligibility or compliance with program requirements.

(3) All clients, including those not required to participate in an employment plan, will be provided with information about applicable program opportunities and supportive services.

R986-100-112. Assistance Cannot Be Paid for Periods Prior to Date of Application.

(1) Assistance payments for any program listed in Section 102 above cannot be made for any time period prior to the day on which the application for assistance was received by the Department.

(2) If an application for assistance is received after the first day of the month, and the client is eligible to receive assistance, payment for the first month is prorated from the date of the application.

(3) If additional verifying information is needed to complete an application, it must be provided within 30 days of the date the application was received. If the client is at fault in not providing the information within 30 days, the first day the client can be eligible is the day on which the verification was received by the Department.

(4) If the verification is not received within 60 days of the date the application was received by the Department, a new application is required and assistance payments cannot be made for periods prior to the date the new application is received. (5) If an application for assistance was denied and no appeal taken within 90 days, or a decision unfavorable to the client was rendered on appeal, assistance cannot be claimed, requested, or paid for that time period.

R986-100-113. A Client Must Inform the Department of All Material Changes.

(1) A client must report all material changes which might affect household eligibility to the local office within 10 days of the day the change becomes known. A material change is any change which might affect eligibility and includes:

(a) change in income source, both unearned and earned;

(b) change of more than $25 in gross monthly unearned income;

(c) change in employment status including a change from full time to part time or from part time to full time and/or a change in wage rate, salary or income from employment;

(d) change in household size or marital status;

(e) change in residence and resulting change in shelter costs;

(f) gain of a licensed vehicle;

(g) change in available assets including an unlicensed vehicle. Under this paragraph (g), for food stamps a client need only report a change in cash on hand, stocks, bonds, and money in a bank account or savings institution which reach or exceed a total of $2,000;

(h) change in the legal obligation to pay child support; and

(i) for all programs except food stamps, changes of more than $25 in total allowable deductions.

(2) Most changes which result in an increase of assistance will become effective the month following the month in which the report of the change was made. If verification is necessary, verification and changes will be made in the month following the month in which verification was received. If the change is to add a person to the household, the person will be added effective on the date reported, provided necessary verification is received within 30 days of the change. If verification is received after 30 days, the increase will be made effective the date verification was received.

R986-100-114. A Client's Continuing Obligation to Provide Verification and Information.

(1) A client who is eligible for assistance must provide additional verification and information, which may affect household eligibility or ongoing eligibility, after the application is approved if requested by the Department.

(2) The client must provide information to determine if eligibility was appropriately established and if payments made under these rules were appropriate. This information may be requested by an employee of the Department or a person authorized to obtain the information under contract with the Department such as an employee of ORS.

R986-100-115. Underpayment Due to an Error on the Part of the Department.

(1) If it is determined that a client was entitled to assistance but, due to an error on the part of the Department, assistance was not paid, the Department will correct its error and make retroactive payment.

(2) If a client receives assistance payments and it is later discovered that due to Department error the assistance payment should have been made at a higher level than the client actually received, retroactive payment will be made to correct the Department's error.

(3) If the client's public assistance was terminated due to the error, the client will be notified and assistance, plus any retroactive payments, will commence immediately.

(4) An underpayment found to have been made within the last 12 calendar months may be corrected and issued to the client. Errors which resulted in an underpayment which were made more than 12 months prior to the date of the discovery of the error are not subject to a retroactive payment.

(5) Retroactive payment under this section cannot be made for any month prior to the date on which the application for assistance was completed.

(6) The client must not have been at fault in the creation of the error.

R986-100-116. Overpayments of Public Assistance.

(1) A client is responsible for repaying any overpayment of public assistance regardless of who was at fault in creating the overpayment.

(2) All suspected overpayments will be referred by the Department to ORS.

(3) Underpayments may be offset against overpayments.

(4) If a change is not reported as required by R986-100-113 it may result in an overpayment.

R986-100-117. Disqualification For Fraud (intentional program violations or IPVs).

(1) Any person who obtains, or attempts to obtain, public assistance from any of the programs listed in R986-100-102 or otherwise intentionally breaches any program rule either personally or through a representative is guilty of an intentional program violation (IPV). Acts which constitute an IPV include but are not limited to:

(a) knowingly making false or misleading statements;

(b) misrepresenting, concealing, or withholding facts or information;

(c) posing as someone else;

(d) not reporting the receipt of a public assistance payment the individual knew or should have known they were not eligible to receive;

(e) not reporting a material change within 10 days after the change occurs in accordance with these rules; and

(f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

(2) An IPV occurs when a person commits any of the above acts in an attempt to obtain, maintain, increase or prevent the decrease or termination of any public assistance payment(s).

(3) If the Department suspects any person of having committed an IPV, the Department will refer the matter to ORS for a determination. If ORS determines the person has committed an IPV, ORS will notify the Department and refer the matter for criminal prosecution if appropriate.

(4) When the Department receives notice from ORS or a court that fraud or an IPV has occurred, the client is disqualified from receiving assistance of the same type for the following time periods:

(a) one year for the first IPV;

(b) two years for the second IPV; and

(c) permanently for the third IPV.

(5) The disqualification period begins the month after the month in which the Department receives notification of the IPV.

(6) Disqualifications run consecutively. If an individual is disqualified for a second IPV before the expiration of the one year disqualification for the first IPV, the two year disqualification period does not begin to run on the second IPV until the expiration of the first disqualification period.

(7) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.

(8) If an individual has been disqualified in another state, the disqualification period for the IPV in that State will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other State count toward determining the length of disqualification in Utah.

(9) Upon notice from ORS that an IPV disqualification is in effect, the Department will notify the client. The disqualification period begins the month after notification from ORS and in consecutive months until the disqualification period has expired.

(10) Nothing in these rules is intended to limit or prevent a criminal prosecution for fraud based on the same facts used to determine the IPV.

R986-100-118. Additional Penalty for a Client Who Intentionally Misrepresents Residence.

A person who has been convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence in order to receive assistance simultaneously from two or more states is disqualified from receiving assistance for any and all programs listed in R986-100-102 above, for a period of 10 years. This applies even if Utah was not one of the states involved in the original fraudulent misrepresentation.

R986-100-119. Reporting Possible Child Abuse or Neglect.

When a Department employee has reason to believe that a

child has been subjected to abuse or neglect, it shall be reported under the provisions of Section 62A-4a-401 et seq.

R986-100-120. Discrimination Complaints.

(1) Complaints of discrimination can be made in person, by phone, or in writing to the local office, the Office of the Executive Director or the Director's designee, the Department's Equal Opportunity Officer, or the appropriate Federal agency.

(2) Complaints shall be resolved and responded to as quickly as possible.

(3) A record of complaints will be maintained by the local office including the response to the complaint.

(4) If a complaint is made to the local office, a copy of the complaint together with a copy of the written response will be sent to the Office of the Executive Director or the Director's designee.

(5) Discrimination complaints pertaining to the Food Stamp Program will also be sent to the Secretary of Agriculture or the Administrator of Food and Nutrition Service, Washington, D.C., 20250 in accordance with the provisions of 7 CFR 272.6 (1999).

R986-100-121. Agency Conferences.

(1) Agency conferences are used to resolve disputes between the client and Department staff.

(2) Clients or Department staff may request an agency conference at any time to resolve a dispute regarding a denial or reduction of assistance.

(3) Clients may have an authorized representative attend the agency conference.

(4) An agency conference will be attended by the client's employment counselor and the counselor's supervisor unless the client or the supervisor request that the employment counselor not attend the conference.

(5) If an agency conference has previously been held on the same dispute, the Department may decline to hold the requested conference if, in the judgment of the employment counselor's supervisor, it will not result in the resolution of the dispute.

(6) If the Department requests the agency conference and the client fails to respond, attend or otherwise cooperate in this process, documentation in the case file of attempts by the staff to follow these steps will be considered as compliance with the requirement to attempt to resolve the dispute.

(7) An agency conference may be held after a client has made a request for hearing in an effort to resolve the dispute. If so, the client must be notified that failure to participate or failure to resolve the dispute at the agency conference will not affect the client's right to proceed with the hearing.

R986-100-122. Advance Notice of Department Action.

(1) Except as provided in (2) below, clients will be notified in writing when a decision concerning eligibility, amount of assistance payment or action on the part of the Department which affects the client's eligibility or amount of assistance has been made. Notice will be sent prior to the effective date of any action to reduce or terminate assistance payments.

(2) Advance notice is not required when:

(a) the client requests in writing that the case be closed;

(b) the client has been admitted to an institution under governmental administrative supervision;

(c) the client has been placed in skilled nursing care, intermediate care, or long-term hospitalization;

(d) the client's whereabouts are unknown and mail sent to the client has been returned by the Post Office with no forwarding address;

(e) it has been determined the client is receiving public assistance in another State;

(f) a child in the household has been removed from the home by court order or by voluntary relinquishment;

(g) a special allowance provided for a specific period is ended and the client was informed in writing at the time the allowance began that it would terminate at the end of the specified period;

(h) an individual in the household has been disqualified from assistance because of an intentional program violation;

(i) the Department has received factual information confirming the death of a client or payee if there is no other relative able to serve as a new payee;

(j) the client's certification period has expired;

(k) the action to terminate assistance is based on the expiration of the time limits imposed by the program;

(l) the client has provided information to the Department, or the Department has information obtained from another source, that the client is not eligible or that payment should be reduced or terminated; or

(m) the Department determines that the client willfully withheld information.

(3) For food stamp recipients and recipients of assistance under R986-300, no action will be taken until 10 days after notice was sent unless one of the exceptions in (2)(a) through (k) above apply.

R986-100-123. The Right To a Hearing and How to Request a Hearing.

(1) A client has the right to a review of an adverse Department action by requesting a hearing.

(2) A client must request a hearing in writing or orally within 90 days of the date of the action with which the client disagrees. Any oral request for a hearing will be reduced to writing by the Department and the client will be requested to sign the request.

(3) Only a clear expression by the client to the effect that the client wants an opportunity to present his or her case is required.

(4) The request for a hearing can be made at the local office or the Division of Adjudication.

(5) If the client disagrees with the level of food stamp benefits paid or payable, the client can request a hearing within the certification period, even if that is longer than 90 days.

(6) If a request for restoration of lost food stamp benefits is made within one year of the loss of benefits a client may request a hearing within 90 days of the date of the denial of restoration.

(7) If the appeal involves an overpayment, the portion of the appeal which involves an overpayment will be referred to ORS.

R986-100-124. How Hearings Are Conducted.

(1) Hearings are held at the state level and not at the local level.

(2) Where not inconsistent with federal law or regulation governing hearing procedure, the Department will follow the Utah Administrative Procedures Act.

(3) Hearings for all programs listed in R986-100-102 are declared to be informal.

(4) Hearings are conducted by an ALJ in the Division of Adjudication.

(5) Hearings may be conducted by telephone at the option of the ALJ.

R986-100-125. When a Client Needs an Interpreter at the Hearing.

(1) If a client notifies the Department that an interpreter is needed at the time the request for hearing is made, the Department will arrange for an interpreter at no cost to the client.

(2) If an interpreter is needed at the hearing by a client or the client's witness(es), the client may arrange for an interpreter to be present at the hearing who is an adult with fluent ability to understand and speak English and the language of the person testifying, or notify the Division of Adjudication at the time the appeal is filed that assistance is required in arranging for an interpreter.

R986-100-126. Procedure For Use of an Interpreter.

(1) The ALJ will be assured that the interpreter:

(a) understands the English language; and

(b) understands the language of the client or witness for whom the interpreter will interpret.

(2) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(3) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

(4) The interpreter will be instructed to translate to the client the explanation of the hearing procedures as provided by the ALJ.

R986-100-127. Notice of Hearing.

(1) All interested parties will be notified by mail at least 10 days prior to the hearing.

(2) Advance written notice of the hearing can be waived if the client and Department agree.

(3) The notice shall contain:

(a) the time, date, and place, or conditions of the hearing. If the hearing is to be by telephone, the notice will provide the number for the client to call and a notice that the client can call the number collect;

(b) the legal issues or reason for the hearing;

(c) the consequences of not appearing;

(d) the procedures and limitations for requesting rescheduling; and

(e) notification that the client can examine the case file prior to the hearing.

(4) If a client has designated a person or professional organization as the client's agent, notice of the hearing will be sent to that agent. It will be considered that the client has been given notice when notice is sent to the agent.

(5) When a new issue arises during the hearing or under other unusual circumstances, advance written notice may be waived, if the Department and the client agree, after a full verbal explanation of the issues and potential results.

(6) The client must notify any representatives, including counsel and witnesses, of the time and place of the hearing and make necessary arrangements for their participation.

(7) The notice of hearing will be translated, either in writing or verbally, for certain clients participating in the RRP program in accordance with RRP regulations.

R986-100-128. Hearing Procedure.

(1) Hearings are not open to the public.

(2) A client may be represented at the hearing. The client may also invite friends or relatives to attend as space permits.

(3) Representatives from the Department or other state agencies may be present.

(4) All hearings will be conducted informally and in such manner as to protect the rights of the parties. The hearing may be recorded.

(5) All issues relevant to the appeal, except overpayment if any, will be considered and decided upon.

(6) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(7) All parties may testify, present evidence or comment on the issues.

(8) All testimony of the parties and witnesses will be given under oath or affirmation.

(9) Any party to an appeal will be given an adequate opportunity to be heard and present any pertinent evidence of probative value and to know and rebut by cross-examination or otherwise any other evidence submitted.

(10) The ALJ will direct the order of testimony and rule on the admissibility of evidence.

(11) Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence including hearsay, may be accepted and will be given its proper weight.

(12) Official records of the Department, including reports submitted in connection with any program administered by the Department or other State agency may be included in the record.

(13) The ALJ may request the presentation of and may take such additional evidence as the ALJ deems necessary.

(14) The parties, with consent of the ALJ, may stipulate to the facts involved. The ALJ may decide the issues on the basis of such facts or may set the matter for hearing and take such further evidence as deemed necessary to determine the issues.

(15) The ALJ may require portions of the evidence be transcribed as necessary for rendering a decision.

(16) Unless the client requests a continuance, the decision of the ALJ will be issued within 60 days of the date on which the client requests a hearing.

(17) A decision of the ALJ which results in a reversal of the Department decision shall be complied with within 10 days of the issuance of the decision.

R986-100-129. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue or reopen a hearing on the ALJ's own motion or on the motion of the client or the Department.

(2) A party who is unable to proceed with or participate in the hearing on the date or time scheduled, must request that the hearing be rescheduled to another day or time.

(a) The request for rescheduling must be made prior to the hearing.

(b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case.

(c) The party who requests rescheduling must show a reasonable reason for the request.

(d) More than one request to reschedule will not normally be granted.

(3) The rescheduled hearing must be held within 30 days of the original hearing date.

R986-100-130. Failure to Appear For or Participate In a Hearing.

If one of the parties fails to appear at or participate in the hearing, either in person or through a representative, the ALJ will, unless a continuance or rescheduling has been requested, issue a decision based on the available evidence.

R986-100-131. Reopening the Hearing After the Hearing Has Been Concluded.

(1) Any party who fails to participate personally or by authorized representative at a hearing may request that the hearing be reopened.

(2) If the request is made by a client prior to the ALJ issuing a decision or within 10 days of the issuance of the decision, the request to reopen will be granted if it is the first time the client has been granted a request to reopen for failure to participate.

(3) If the client requests reopening more than 10 days after the decision of the ALJ has been issued, or the client has already been granted a reopening on one or more occasions, the decision can be set aside and the hearing reopened only if:

(a) the request is made in writing; and

(b) the client shows good cause for not participating; and

(c) the client shows good cause for not requesting reopening within 10 days.

(4) If the request to reopen for failure to participate is made by the Department, the request will only be considered if it is in writing and establishes good cause for failure to participate. A request made by the Department more than 10 days after the decision will not be granted.

(5) If a request for reopening is not granted, the ALJ will issue a decision denying the request to reopen. A copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review.

R986-100-132. What Constitutes Good Cause for Failure to Participate in the Hearing.

(1) Failure to report as instructed at the time and place of the scheduled hearing is the equivalent of failing to participate, even if the party reports at another time or place. In such circumstances the party must request that the hearing be reopened.

(2) Good cause for failing to participate in a hearing may not include such things as:

(a) failure to read and follow instructions on the notice of hearing;

(b) failure to arrange personal circumstances such as transportation or child care;

(c) failure to arrange for receipt or distribution of mail;

(d) failure to delegate responsibility for participation in the hearing; or

(e) forgetfulness.

R986-100-133. Canceling an Appeal and Hearing.

When a client notifies the Division of Adjudication or the ALJ that the client wants to cancel the hearing and not proceed with the appeal, a decision dismissing the appeal will be issued. This decision will have the effect of upholding the Department decision. The client will have 30 days in which to reinstate the appeal by filing a written request for reinstatement with the Division of Adjudication.

R986-100-134. Payments of Assistance Pending the Hearing.

(1) A client is entitled to receive continued assistance pending a hearing contesting a Department decision to reduce or terminate food stamps, RRP, FEPTP, or FEP financial assistance if the client's request for a hearing is received no later than 10 days after the reduction, denial, or termination became effective. The assistance will continue unless the certification period expires until a decision is issued by the ALJ. If the certification period expires while the hearing or decision is pending, assistance will be terminated. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason unless a hearing is requested on the new action.

(2) If the client can show good cause for not requesting the hearing within 10 days of the action, assistance may be continued if the client can show good cause for failing to file in a timely fashion. Good cause in this paragraph means that the client made every effort to comply. Because the Department allows a client to request a hearing by telephone or mail, good cause does not mean illness, lack of transportation or temporary absence.

(3) A client can request that payment of assistance not be continued pending a hearing but the request must be in writing.

(4) If payments are continued pending a hearing, the client is responsible for any overpayment in the event of an adverse decision.

(5) If the decision of the ALJ is adverse to the client, the client is not eligible for continued assistance pending any appeal of that decision.

(6) If a decision favorable to the client is rendered after a hearing, and payments were not made pending the decision, retroactive payment will be paid back to the date of the adverse action if the client is otherwise eligible.

(7) A client's CC subsidy or financial assistance payments under GA or WTE will not continue during the hearing process regardless of when the appeal is filed.

(8) Financial assistance under the RRP will not extend for longer than the eight-month time limit for that program under any circumstances.

(9) Clients receiving financial assistance under the FEPTP program must continue to participate to receive financial assistance during the hearing process.

(10) Financial assistance under the FEPTP program will not extend for longer than the seven-month time limit for that program under any circumstance.

(11) Assistance is not allowed pending a hearing from a denial of an application for assistance.

R986-100-135. Further Appeal From the Decision of the ALJ.

Either party has the option of appealing the decision of the ALJ to either the Executive Director or designee or to the District Court. Either appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ.

KEY: employment support procedures
February 1, 2002 **35A-3-101 et seq.**
35A-3-301 et seq.
35A-3-401 et seq.

R986. Workforce Services, Employment Development.
R986-200. Family Employment Program.
R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA. Utah is required to file a "State Plan" to obtain the funding. A copy of the State Plan is available at Department administrative offices. The regulations contained in 45 CFR 260 through 45 CFR 265 (1999) are also applicable and incorporated herein by reference.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

R986-200-202. Family Employment Program (FEP).

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with only one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least $500 per month.

(3) If a household has two parents, and at least one parent is incapacitated, the parent claiming incapacity must verify that incapacity in one of the following ways:

(a) receipt of disability benefits from SSA;

(b) 100 percent disabled by VA; or

(c) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a doctor of osteopathy; or

(iii) a licensed/certified psychologist.

(4) Incapacity means not capable of earning $500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or client must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the client requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

(8) If a household unit is eligible under both FEP and FEPTP, payment will be made under FEP.

R986-200-203. Citizenship and Alienage Requirements.

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

(a) who is paroled into the United States under section 212(d)(5) of the INA for at least one year; or

(b) who is admitted as a refugee under section 207 of the INA; or

(c) who is granted asylum under section 208 of the INA; or

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401; or

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461; or

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA; or

(g) who is lawfully admitted for permanent residence under the INA, or

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA; or

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c).

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the INS, of immigration status.

R986-200-204. Eligibility Requirements.

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements in R986-100 and of income, assets, and participation.

(3) Persons who are fleeing to avoid prosecution of a

felony are ineligible for financial assistance.

R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents and stepparents, unless expressly excluded below, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged. If the parents have a solemnized marriage at the time of birth, relationship is established;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included;

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household. If assistance is requested for the former stepchildren, the rules for specified relative apply;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(4) In situations where there are children in the home for which there is court ordered joint custody, the Department will determine if the children should be included in the household assistance unit based on the actual circumstances and not on the order. If financial assistance is allowed, the joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

R986-200-206. Participation Requirements.

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and

(c) assisting ORS in good faith to:

(i) establish the paternity of all minor children; and

(ii) establish and enforce child support obligations.

(d) obtaining any and all other sources of income. If any household member is or appears to be eligible for UI or SSA benefits, Workers Compensation, VA benefits or any other benefits or forms of assistance, the Department will refer the client to the appropriate agency and the individual must apply

for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. If the client is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined.

(2) Parents who have been determined to be ineligible to be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

R986-200-207. Participation in Child Support Enforcement.

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and step children even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

(a) reaches age 18; or

(b) is 18 years old and enrolled in high school during the normal and expected year of graduation; or

(c) is emancipated by marriage or court order; or

(d) is a member of the armed forces of the United States; or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(a) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(b) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(8) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(9) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(10) Upon notification from ORS that the client is not cooperating, the Department will commence conciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the conciliation process, financial assistance will be terminated.

(11) Termination of financial assistance for non cooperation is immediate, without a two month reduction period outlined in conciliation, if:

(a) the client is a specified relative who is not included in the household assistance unit; or

(b) the client is a parent receiving SSI benefits; or

(c) the client is participating in FEPTP.

(12) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(13) A specified relative, illegal alien, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

R986-200-208. Good Cause for Not Cooperating With ORS.

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a written request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

(i) birth certificates;

(ii) medical records;

(iii) Department records;

(iv) records from another state or federal agency;

(v) court records;

(vi) law enforcement records; or

(vii) if no other evidence is available, through sworn statements from people who have personal knowledge of the circumstances. The statements must substantiate and support the client's account and credibility.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency;

(D) law enforcement records; or

(E) if no other evidence is available, through sworn statements from people who have personal knowledge of the circumstances. The statements must substantiate and support the client's account and credibility.

(5) When the claim of good cause for not cooperating, is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

(a) the client's present emotional health and history;

(b) the intensity and probable duration of the resulting impairment;

(c) the degree of cooperation required; and

(d) the extent of involvement of the child in the action to be taken by ORS.

(6) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(7) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(8) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(9) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(10) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(11) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(12) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

R986-200-209. Participation in Obtaining an Assessment.

(1) Within 20 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-200-210. Requirements of an Employment Plan.

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

(a) an expected outcome;

(b) an anticipated completion date;

(c) the number of participation hours agreed upon per

week; and

(d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

(i) promptly register for work and commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the Department on:

(A) how much time was spent in job search activities;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of each activity in the employment plan in order to stay eligible for financial assistance.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

R986-200-211. Education and Training As Part of an Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36 month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension; and

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24 month limit is prudent because other employment, education, or training options do not enable the family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate in full time work activities. Full time work activities is defined as at least part time education or training and 80 hours or more of work per month with a combined minimum of 30 hours work, education, training, and/or job search of 30 hours per week.

(5) Graduate work can never be approved or supported as part of an employment plan.

R986-200-212. Conciliation and Termination of Financial Assistance for Failure to Comply.

If a client who is required to participate in an employment plan consistently fails to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts conciliation through the following three-step process:

(1) In step one, the employment counselor will attempt to

discuss compliance with the client and explore solutions. If compliance is not resolved the counselor will move to the second step.

(2) In step two, the employment counselor will request a meeting with the client, the employment counselor, the counselor's supervisor and any other Department or allied entity representatives, if appropriate, who might assist in encouraging participation. If a resolution cannot be reached, the household assistance unit's financial assistance payment will be reduced by $100 per month. If the client does not attend the meeting, the meeting will be held in the client's absence. As soon as the client makes a good faith effort to comply, the $100 reduction will cease.

(3) In step three, the employment counselor will continue to attempt a face to face meeting between the client and appropriate Department and allied entity representatives, if appropriate, to prevent the termination of financial assistance. If after two months the client continues to show a failure to make a good faith effort to participate, financial assistance will terminate.

(a) The two month reduction in assistance must be consecutive. If a client's assistance is reduced for one month and then the client agrees and demonstrates a willingness to participate to the maximum extent possible, assistance is restored at the full amount. If the client later stops participating to the maximum extent possible, the client's assistance must be reduced for two additional consecutive months before a termination can occur.

(b) The two month reduction must immediately precede the termination. If the client's assistance was reduced during months other than the two months immediately prior to the termination, those months do not satisfy the requirements of this rule.

(c) If a client's assistance has been reduced for failure to participate, and the client then agrees to participate within the same month, the Department may restore the $100. Any month in which the $100 was restored will not count toward the two month reduction period necessary to terminate assistance.

(d) If a client has demonstrated a pattern and practice of having assistance reduced, agreeing to participate and having the reduction restored, but failing to follow through so that another period of reduction results, the Department may continue the reduction even if the client agrees to participate until such time as the client demonstrates a genuine willingness to participate.

(4) Termination of assistance for non-participation is immediate without a two month reduction of assistance for:

(a) a dependent child age 16 or older if that child is not attending school; or

(b) a parent on FEPTP.

(5) If financial assistance has been terminated for failure to participate and the client reapplies for financial assistance, the client must successfully complete a trial participation period of no longer than two weeks before the client is eligible for financial assistance. The trial participation period may be waived only if the client has cured all previous participation issues prior to re-application.

R986-200-213. Financial Assistance for a Minor Parent.

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known; or

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home; or

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

R986-200-214. Assistance for Specified Relatives.

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepparents;

(d) stepbrothers and stepsisters;

(e) aunts and uncles;

(f) first cousins;

(g) first cousins once removed;

(h) nephews and nieces;

(i) people of prior generations as designated by the prefix grand, great, great-great, or great-great-great;

(j) a natural parent whose parental rights were terminated by court order;

(k) brothers and sisters by legal adoption;

(l) the spouse of any person listed above;

(m) the former spouse of any person listed above;

(n) persons who meet any of the above relationships by means of a step relationship even if the marriage has been terminated; and

(o) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated.

(2) The Department shall require compliance with Section 30-1-4.5

(3) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

(a) Both parents must be absent from the home where the child lives; and

(b) The child must be currently living with, and not just visiting, the specified relative; and

(c) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(d) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(4) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(5) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(6) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(7) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(8) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

R986-200-215. Family Employment Program Two Parent Household (FEPTP).

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) One parent must participate 40 hours per week, as defined in the employment plan. That parent is referred to as the primary parent. The primary parent does not need to be the primary wage earner of the household. The primary parent must spend:

(a) 32 hours a week in paid employment and/or work experience and training. At least 16 hours of those 32 hours must be spent at a community work site or in paid employment. If the primary parent is under age 25 and has not completed high school or an equivalent course of education, time spent in educational activities to obtain a high school degree or its equivalent can count toward the minimum 16-hour work requirement. Training is limited to short term skills training, job search training, or adult education; and

(b) eight hours a week participating in job search activities. The Department may reduce the number of hours spent in job search activities if it is determined the parent has explored all local employment options. This would not reduce the total requirement of 40 hours of participation.

(4) The other parent is required to participate 20 hours per week as defined in the employment plan, unless there is good cause for not participating. Participation consists of a combination of paid employment, community work, job search, adult education, and skills training.

(5) Participation requirements for refugee parents can include English language instruction (English for Speakers of Other Languages (ESOL aka ESL) or refugee social adjustment services or targeted assistance activities or all three. English language instruction must be provided concurrently with, and not sequential to employment or employment related services.

(6) Participation may be excused only for the following reasons:

(a) Illness. Verification of illness will be required for an illness of more than three days, and may be required for periods of three days or less; or

(b) good cause as determined by the Department. Good cause may include such things as death or grave illness in the immediate family, unusual child care problems, or transportation problems.

(7) The parents cannot share the participation requirements, but the Department may agree to change the assignments at the end of a participation period.

(8) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by the primary parent. The base amount of assistance is equal to the FEP payment for the household size. The base FEP payment is then prorated based on the number of hours which the primary parent participated up to a maximum of 40 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(9) If it is determinated by the employment counselor that one of the parents has failed to participate to the maximum extent possible:

(a) if it is the primary parent, assistance for the entire household unit will terminate immediately. There is no two month period of reduction of assistance; or

(b) if it is the other parent, that parent will be disqualified from the assistance unit. The disqualified parent's income and assets will still be counted for eligibility, but that parent will not

be counted for determining the financial assistance payment.

(10) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP. However, if the client requests a hearing within 10 days of the termination, payment of financial assistance based on participation can continue during the hearing process as provided in R986-100-134.

(11) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for other assistance or benefits to which they might be entitled.

R986-200-216. Diversion.

"Diversion" means a one-time FEP payment that may equal up to a maximum of three months of financial assistance pursuant to Section 35A-3-303. A diversion payment may be available under the following conditions:

(1) The household unit must demonstrate a need for financial assistance to pay for housing or substantial and unforseen expenses or work related expenses which cannot be met with current or anticipated resources.

(2) The expectation must be that within the diversion period the family will be employed or have other specific means of self support.

(3) The household unit must appear to meet all eligibility criteria for a FEP financial assistance payment based on the client's declaration and the best judgement of the employment counselor. Documentation of identity of parent(s) and SSN for all household members will be required. The client is required to provide additional verification necessary to establish eligibility if requested by the Department.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions and expectations.

(5) The diversion payment may not exceed three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating the appropriate diversion payment amount.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made and the client later decides to reapply for financial assistance within three months of the date of the original application, the initial application date will be used and the amount of the diversion payment previously issued will be prorated over the three months and subtracted from the payment(s) for which the household unit is eligible.

(9) The diversion program is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

R986-200-217. Time Limits.

(1) Except as provided in R986-212-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when the family received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien;

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997; and

(d) months when the family received diversion assistance beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed; or

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits.

R986-200-218. Exceptions to the Time Limit.

Exceptions to the time limit may be allowed on a month by month basis for up to 20 percent of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA; or

(ii) receipt of VA Disability benefits based on the parent being 100 percent disabled; or

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Worker's Compensation benefits; or

(v) a medical statement completed by a medical doctor, or doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from

engaging in work activities capable of generating income of at least $500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least $500 a month. Substance abuse is considered the same as mental health condition; or

(b) is under age 19 through the month of their nineteenth birthday; or

(c) is currently engaged in an approved full-time job preparation, educational or training activity which the parent was expected to complete but completion within the 36 months was not possible through no fault of the parent. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved; or

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay; or

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an extension under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An extension under this section can never be for longer than the delay in services; or

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment; or

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Proof, consisting of a medical statement from a medical doctor, doctor of osteopathy, licensed clinical social worker or licensed psychologist, is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the client will be required in the home to care for the dependent, and

(iv) whether the client is required to be in the home full-time or part-time.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) being forced as the specified relative of a dependent child to engage in nonconsensual sexual acts or activities;

(e) threats of, or attempts at, physical or sexual abuse;

(f) mental abuse which includes stalking and harassment; or

(g) neglect or deprivation of medical care.

(3) An exception to the time limit can be granted for a maximum of an additional 24 months if:

(a) during the previous month, the parent client was employed for no less than 80 hours; and

(b) during at least six of the previous 24 months, the parent client was employed for no less than 80 hours a month.

(c) If, at the end of the 24-month extension, the parent client qualifies for an extension under Sections (1) or (2) of this rule, an additional extension can be granted under the provisions of those sections.

(4) All clients receiving an extension must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection of establishment and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions listed above. Both parents need not meet the same exception.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons in Subsections (1)(c),(d),(e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including Food Stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185 percent of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which

result from the crisis; and

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis; and

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities; and

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of $300 for rent on April 1 and requests an additional EA payment of $200 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed $300 per family for one month's rent payment or $500 per family for one month's mortgage payment, and $200 for one month's utilities payment.

R986-200-220. Mentors.

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

(a) develop life skills;

(b) implement an employment plan; or

(c) obtain services and support from:

(i) the volunteer mentor;

(ii) the Department; or

(iii) civic organizations.

R986-200-230. Assets Counted in Determining Eligibility.

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, and trailer homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

(a) Reasonable action would not be successful in making the asset available; or

(b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed $2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home and its contents, unless any single item of personal property has a value over $1,000, then only that item is counted toward the $2,000 limit;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) Water rights attached to the home property are exempt;

(4) a maximum of $8,000 equity value of one vehicle. The entire equity value of one vehicle equipped to transport a disabled individual is exempt from the asset limit even if the vehicle has a value in excess of $8,000;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) For refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of $1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the $1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at $1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of $1,500. Any amount over $1,500 is considered an asset;

(15) Any interest which is accrued on an exempt burial

contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

R986-200-232. Considerations in Evaluating Real Property.

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

R986-200-233. Considerations in Evaluating Household Assets.

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in accordance with R986-200-243.

R986-200-234. Income Counted in Determining Eligibility.

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed below.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

R986-200-235. Unearned Income.

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment Insurance;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions or gifts over $30 per quarter from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income; or

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed $30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Income to tribal members derived from privately

owned land is not exempt;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of $30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

R986-200-236. Earned Income.

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, including payments from Job Corps and Americorps living allowances, except Americorp/Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) severance pay, including the cash out of vacation, holiday, and sick pay;

(h) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(i) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry;

(j) training incentive payments and work allowances; and

(k) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

R986-200-237. Lump Sum Payments.

(1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, and gifts. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.

(2) The following lump sum payments are not counted as income or assets:

(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and

(b) insurance settlements for destroyed exempt property when used to replace that property.

(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.

(4) The net lump sum is the portion of the lump sum that is remaining after deducting:

(a) legal fees expended in the effort to make the lump sum available;

(b) payments for past medical bills if the lump sum was intended to cover those expenses; and

(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.

(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

R986-200-238. How to Calculate Income.

(1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.

(2) The methods used for estimating income are:

(a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and

(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.

(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.

(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

R986-200-239. How to Determine the Amount of the Financial Assistance Payment.

(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185 percent of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185 percent of the SNB, the following deductions are allowed:

(a) a work expense allowance of $100 for each person in the household unit who is employed;

(b) a dependent care deduction as described in (3) below;

(c) child support paid by a household member if legally owed to someone not included in the household; and

(d) fifty percent of the remaining earned income, after the deductions in (a), (b) and (c) above, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100 percent of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100 percent of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household was not eligible for the 50 percent deduction under paragraph (2)(d) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the State Legislature and available at all Department offices.

R986-200-240. Additional Payments Available Under Certain Circumstances.

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive $40 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) public and private internships of at least 24 hours a week;

(b) full-time attendance in an education or employment training program;

(c) employment of 20 hours or more a week in addition to attending school or training; or

(d) employment with gross earnings of at least $500 per month.

(2) An additional payment of $15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or

education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of $300, to pay for burial costs not paid for by the county.

R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100 percent of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100 percent of the SNB, the total household income is divided by the household size calculated under paragraph (2) above. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100 percent of the SNB for a group with the following members:

(i) the parents or stepparents living in the home;

(ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

R986-200-243. Counting the Income of Sponsors of Eligible Aliens.

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) The income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20 percent from the total earned income of the sponsor and the sponsor's spouse up to a maximum of $175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100 percent of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined

as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

KEY: family employment program
February 1, 2002 35A-3-301 et seq.

R986. Workforce Services, Employment Development.
R986-400. General Assistance and Working Toward Employment.
R986-400-401. Authority for General Assistance (GA) and Applicable Rules.

(1) The Department provides GA financial assistance pursuant to Section 35A-3-401, et seq. as funding permits.

(2) Rule R986-100 applies to GA.

(3) Applicable provisions of R986-200 apply to GA except as noted in this rule.

(4) The citizenship and alienage requirements of the Food Stamp Program apply to GA.

R986-400-402. General Provisions.

(1) GA provides temporary financial assistance to single persons without dependent children and married couples without dependent children who are unemployable due to a physical or mental health condition.

(2) Unemployable is defined to mean the individual is not capable of earning $500 per month. The incapacity must be expected to last 30 days or more.

(3) Drug addiction and/or alcoholism alone is insufficient to prove the unemployable requirement for GA as defined in Public Law 104-121.

(4) For a married couple living together only one must meet the unemployable criteria. The spouse who is employable will be required to meet the work requirements of WTE unless the spouse can provide medical proof that he or she is needed at home to care for the unemployable spouse. Medical proof, consisting of a medical statement from a medical doctor, doctor of osteopathy, or licensed psychologist, is required. The medical statement must include all of the following:

(a) the diagnosis of the spouse's condition;

(b) the recommended treatment needed or being received for the condition;

(c) the length of time the client will be required in the home to care for the spouse; and

(d) whether the client is required to be in the home full time or part time.

(5) GA is only available to a client who is at least 18 years old or legally or factually emancipated. Factual emancipation means the client has lived independently from his or her parents or guardians and has been economically self-supporting for at least six consecutive months, and the client's parents have refused financial support.

(6) A client claiming factual emancipation must cooperate with the Department in locating his or her parents. The parents, once located, will be contacted by the Department. If the parents continue to refuse to support the client, a referral will be made to ORS to enforce the parents' child support obligations.

(7) A person eligible for Bureau of Indian Affairs assistance is not eligible for GA financial assistance.

R986-400-403. Proof of Unemployability.

(1) An applicant must provide current medical evidence that he or she is not capable of working and earning $500 per month due to a physical or mental health condition and that the condition is expected to last at least 30 days from onset. Evidence consists of a statement from a medical doctor, a doctor of osteopathy, a licensed psychologist, the Utah Medical Assistance Program, or another agency involved in disability determination, such as VA or the State Office of Rehabilitation.

(2) An applicant must cooperate in the obtaining of a second opinion if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the client requests the second opinion.

(3) If the illness or incapacity is expected to last longer than 12 months, the client must apply for SSDI/SSI benefits.

(4) Full-time or part-time participation in post-high school education or training is considered evidence of employability rendering the client ineligible for GA financial assistance unless the Department directs the client to participate in short term skills training as part of a client's employment plan. Short term skills training is defined as a course of study which an otherwise unemployable client can complete within 12 months and which is expected to lead to employability. If the client is not directed to participate in short term skills training in the employment plan, the client must report any voluntary participation in an education or training program to his or her employment counselor.

R986-400-404. Participation Requirements.

(1) The client and spouse must participate, to the maximum extent possible, in an assessment and an employment plan as provided in R986-200. The only education or training supported by an employment plan for GA recipients is short term skills training as described in R986-400-403.

(2) The employment plan must include obtaining appropriate medical or mental health treatment, or both, to overcome the limitations preventing the client from becoming employable.

(3) A client must accept any and all offers of appropriate employment as determined by the Department. "Appropriate employment" means employment that pays a wage which meets or exceeds the applicable federal or state minimum wage law and has daily and weekly hours customary to the occupation. If the minimum wage laws do not apply, the wage must equal what is normally paid for similar work and in no case less than three-fourths of the minimum wage rate. The employment is not appropriate employment if the client is unable, due to physical or mental limitations, to perform the work.

(4) A client is exempt from the requirements of paragraphs (1) and (2) of this section if the client has been approved for SSI, is waiting for the first check, and has signed an "Agreement to Repay Interim Assistance" Form.

(5) A client must cooperate in obtaining any and all other sources of income to which the client may be entitled including, but not limited to UI, SSI/SSDI, VA Benefits, and Worker's Compensation.

R986-400-405. Interim Aid for SSI Applicants.

(1) A client who has applied for SSI benefits may be provided with GA financial assistance pending a determination on the application for SSI. To be eligible under this paragraph, the client must sign an "Agreement to Repay Interim Assistance" form and agree to reimburse, or allow SSA to

reimburse, the Department for any and all GA financial assistance advanced pending a determination from SSA.

(2) Financial assistance will be immediately terminated without advance notice when SSA issues a payment or if the client fails to cooperate to the maximum extent possible in pursuing the application which includes cooperating fully with SSA and providing all necessary documentation to insure receipt of SSI benefits.

(3) A client must fully cooperate in prosecuting an appeal of an SSI denial at least to the Social Security ALJ level. If the ALJ issues an unfavorable decision, the client is not eligible for financial assistance unless an unrelated physical or mental health condition develops and is verified.

R986-400-406. Lien Agreement for Workers Compensation Applicants.

(1) A client who has applied and appears eligible for Workers Compensation benefits may be provided with GA financial assistance pending a determination on the application for Workers Compensation. To be eligible under this paragraph, the client must sign a "Repayment of General Assistance and Lien Agreement" form and agree to reimburse the Department, or allow the Department to recover, from either the insurance carrier or the employer, the GA financial assistance paid to the client pending the determination on the Workers Compensation claim.

(2) If the Workers Compensation insurance carrier or the employer denies the claim for benefits, the client must file and cooperate to the maximum extent possible in pursuing a claim through the Labor Commission.

R986-400-407. Failure to Comply with the Requirements of an Employment Plan.

(1) If a client fails to comply with the requirements of the employment plan without good cause, financial assistance will be terminated immediately. Good cause under this paragraph means verified illness, extraordinary transportation problems, or extraordinary circumstances as determined by the employment counselor.

(2) If a client's financial assistance has been terminated under this section, the client is not eligible for further assistance as follows:

(a) the first time financial assistance is terminated, the client must reapply and participate to the maximum extent possible in all of the required activities of the employment plan;

(b) the second time financial assistance is terminated, the client will be ineligible for financial assistance for a minimum of one month and can only become eligible again upon completing a new application and participating to the maximum extent possible in the required employment activity; and

(c) the third time financial assistance is terminated, the client will be ineligible for a minimum of six months and can only become eligible again upon completing a new application and actively participating in the required employment activity.

R986-400-408. Income and Assets Limits and Amount of Assistance.

(1) The provisions of R986-200 are used for determining asset and income eligibility except the income and assets of an SSI recipient living in the household are counted if that individual is legally responsible for the client.

(2) An individual receiving SSI is not eligible for GA. This ineligibility includes persons whose SSI is in suspense status, as defined by 20 CFR Part 416.1321 through 416.1330.

(3) The financial assistance payment level is set by the Department and available for review at all Department local offices.

R986-400-409. Time Limits.

(1) An individual cannot receive GA financial assistance for more than 24 months out of any 60-month period. Months which count toward the 24-month limit include any and all months during which a client received a full or partial financial assistance payment beginning with the month of March, 1998.

(2) There are no exceptions or extensions to the time limit.

(3) Advanced written notice for termination of GA financial assistance due to time limits is not required.

R986-400-410. GA Medical Assistance.

(1) A client who is eligible for GA financial assistance is eligible for the Utah Medical Assistance Program (UMAP) and need not complete a separate application for UMAP.

(2) The Department may use funds as available to reimburse UMAP for treatment of a client's documented medical condition which is not covered by UMAP, if the treatment is likely to resolve the medical condition and allow the client to become employable.

R986-400-411. GA for Transient Individuals.

A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

R986-400-451. Authority for Working Toward Employment (WTE) and Other Applicable Rules.

(1) The Department provides WTE financial assistance pursuant to Section 35A-3-401 et seq. as funding permits.

(2) Rule R986-100 applies to WTE.

(3) Applicable provisions of R986-200 apply to WTE except as noted in this rule.

(4) The citizenship and alienage requirements of the Food Stamp Program apply to WTE.

R986-400-452. General Provisions.

(1) Working Toward Employment (WTE) provides financial assistance on a short term basis to single persons without dependent children and married couples without dependent children who are unemployable because they lack employment skills.

(2) At least one household member must be at least 18 years old or legally or factually emancipated. Factual emancipation is defined in R986-400-402.

(3) As a condition of eligibility, a client claiming factual emancipation must cooperate with the Department in locating his or her parents. The parents, once located, will be contacted by the Department. If the parents continue to refuse to support the client, a referral will be made to ORS to enforce the parents'

child support obligations.

(4) All clients must cooperate in obtaining any and all other benefits or sources of income to which the client may be entitled except that a client who has applied for SSI benefits is ineligible for WTE. If a client applies for SSI, WTE financial assistance is terminated.

(5) A person eligible for Bureau of Indian Affairs assistance is not eligible for WTE financial assistance.

(6) If an applicant appears to be eligible for the Refugee Resettlement Program (RRP) the applicant must comply with the requirements of RRP and will be paid out of funds for that program. If found eligible for RRP, the applicant is ineligible for WTE.

R986-400-453. Participation Requirements.

(1) All applicants and spouses must participate in an assessment and an employment plan as found in R986-200. In addition to the requirements of an employment plan as found in R986-200-210, a client must, as a condition of receipt of financial assistance, register for work and accept any and all offers of appropriate employment, as determined by the Department. Appropriate employment is defined in R986-400-404.

(2) The employment plan of each recipient of WTE financial assistance must contain the requirement that the client participate 40 hours per week. The client must spend those hours in the same activities described for a primary parent under FEPTP as found in R986-200-215(3). Married couples cannot share the performance requirements and each client must participate a minimum of 40 hours per week.

(3) Participation may be excused only if the client can:

(a) verify illness; or

(b) show other good cause as determined by the Department. Good cause may include, but is not limited to, such things as death or grave illness in the immediate family or extraordinary transportation problems.

R986-400-454. Failure to Comply with the Requirements of an Employment Plan.

(1) If a client fails to comply with the requirements of the employment plan without good cause, financial assistance will be terminated immediately. Good cause under this paragraph means verified illness, lack of transportation, or extraordinary circumstances as determined by the employment counselor.

(2) Advanced notice of termination is not required.

(3) If there are two clients in the household and only one client fails to comply, financial assistance for both will be terminated.

(4) Once a client or household's financial assistance has been terminated for failure to comply with the employment plan, the client is not eligible for further assistance as follows:

(a) the first time financial assistance is terminated, the client or couple must reapply and actively participate in all of the required activities of the employment plan;

(b) the second time financial assistance is terminated, the client or couple will be ineligible for financial assistance for a minimum of one month and can only become eligible again upon completing a new application and actively participating in the required employment activity;

(c) the third time financial assistance is terminated, the client will be ineligible for a minimum of six months and can only become eligible again upon completing a new application and actively participating in the required employment activity.

R986-400-455. Income and Assets Limits and Calculation of Assistance Payment.

(1) Income and asset determination and limits are the same as for FEP found in R986-200.

(2) The amount of financial assistance available for payment to a client is based on the number of hours of participation. Payment is made twice per month and only after proof of participation. The base amount of assistance is equal to the GA financial assistance payment for the household size. The base GA payment is then prorated based on the number of hours of participation for each household member, up to a maximum of 40 hours of participation per household member per week. In no event can the financial assistance payment per month for a WTE household be more than for the same size household receiving financial assistance under GA. Payment of financial assistance cannot be made for any period during which the client does not participate.

(3) The base GA financial assistance payment level is determined by the State Legislature and available upon request.

(4) Each WTE household member will receive the sum of $45 per month regardless of participation. This sum is intended to be used for participation expenses.

R986-400-456. Time Limits.

(1) An individual cannot receive WTE financial assistance for more than seven months out of any 18-month period.

(2) In addition to the seven months out of any 18-month period time limit, there is a 24-month life time limit for WTE financial assistance.

(3) Months which count toward the seven month time limit and the 24-month limit include any and all months during which a client received a full or partial financial assistance payment.

(4) There are no exceptions or extensions to the time limit.

(5) If WTE financial assistance is terminated due to the time limit, advanced written notice is not required.

KEY: general assistance, working toward employment
February 1, 2002 35A-3-401
35A-3-402

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children age 13 to 18 years if the child is:

(i) physically or mentally incapable of self-care as determined by a medical doctor, doctor of osteopathy or licensed or certified psychologist; and/or

(ii) under court supervision.

(5) The children receiving care do not need to meet the citizenship or alienage requirements of R986-200-203. The parent, guardian or specified relative does need to meet those requirements.

(6) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" means a child identified by the Department of Human Services, Division of Services to People with Disabilities or other entity as determined by the Department, as having a physical or mental disability requiring special child care services.

(7) The amount of CC might not cover the entire cost of care.

(8) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(9) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(10) Neither the Department nor the state of Utah are liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC.

(12) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the re-certification forms are signed and returned to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) In addition to the requirements for reporting other material changes that might affect eligibility, outlined in R986-100-113, a client is responsible for reporting a change in the client's need for child care, a change in the client's child care provider, and a change in the amount a provider charges for child care, to the Department within 10 days of the change.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days the decrease will be made effective beginning the next month and sums received in the month in which the change was reported will not be treated as an overpayment. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) Any client receiving any type of CC who is not receiving full court ordered child support must cooperate with ORS in obtaining child support from the absent parent. Child support payments received by the client count as unearned income. If a client's case was closed for failure to cooperate with ORS it cannot be reopened until ORS notifies the Department that the client is cooperating.

(9) All clients receiving CC must cooperate in good faith with the Department in establishing paternity unless there is good cause for not cooperating.

(10) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform the provider that further information is needed before

payment can be determined.

(11) The Department may also release general information to a provider regarding the status of or a delay in the payment of CC.

R986-700-704. Establishment of Paternity.

(1) If ORS notifies the Department that a client is not cooperating with the establishment of paternity, the client may appeal to a Department ALJ by following the procedures for hearings set forth in R986-100.

(2) The ALJ will make a determination on the question of whether or not the client is making a good faith effort to cooperate based on the same criteria ORS uses in FEP cases.

(3) The procedure and rules for establishing good cause for not cooperating in the establishment of paternity are the same as in R986-200. If the client appeals both a good faith determination and alleges good cause for not cooperating, the ALJ will join the two issues together and make a decision on the questions of good faith and good cause at the same hearing.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

(a) licensed and accredited providers:

(i) licensed homes;

(ii) licensed family group homes; and

(iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers; or

(ii) related to the client and/or the child. Related in this paragraph is as defined in R986-700-706(3).

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) All clients who were receiving child care prior to January 1, 2001, will be granted a grace period in which to find an eligible provider. The length of the grace period will be determined by the Department but in no event will it extend later than June 30, 2001.

(3) If a new client has a provider who is providing child care at the time the client applies for child care assistance or has provided child care in the past and has an established relationship with the child(ren), but the provider is not currently eligible, the client may receive child care assistance for a period not to exceed three months if the provider is willing to become an eligible provider and actively pursues eligibility.

(4) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides; or

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care; or

(d) if the provider lives in an area where the Department of Health lacks jurisdiction, which includes tribal lands, to provide licensing or certification; or

(e) in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(5) If an exception is granted under paragraph (4) above, the exception will be reviewed at the client's next review date to determine if an exception is still appropriate.

(6) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and physically and mentally capable of providing care to children;

(b) the provider's home is equipped with hot and cold running water, toilet facilities, and is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors and fire extinguishers on all floors of the house where children are provided care;

(d) there are no individuals residing in the home who have felony criminal convictions, or misdemeanor convictions which are offenses against a person, or have been subject to a substantiated finding of child abuse or neglect by the Utah Department of Human Services, Division of Child and Family Services or a court;

(e) there is a telephone in operating condition with a list of emergency numbers located next to the phone which includes the phone numbers for poison control and for the parents of each child in care;

(f) food will be provided to the child in care of sufficient amount and nutritional value to provide the average daily nutrient intake required. Food supplies will be maintained to prevent spoilage or contamination. Any allergies will be noted and care given to ensure that the child in care is protected from exposure to those items; and

(g) the child in care will be immunized as required by the Utah Immunization Act and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(7) The following providers are not eligible for receipt of a CC payment:

(a) a member of household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state; and

(h) a provider who has committed fraud as a provider, as determined by ORS or by a court.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the State of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) The Department will pay related providers at the exempt rate regardless of whether or not the provider has a certificate or license. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, uncles, or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand, great, great-great, or great-great-great.

(4) The provider is entitled to know the date on which payment for CC was made to the parent and the amount of the payment.

(5) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received. Provider case records will be maintained according to Office of Licensing standards.

R986-700-707. Subsidy Deduction.

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent must pay the amount of the subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

R986-700-708. FEP, and Diversion CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

(3) Diversion CC is available for clients who have received a diversion payment from FEP. There is no subsidy deduction for the months covered by the FEP diversion payment. If the client is working a minimum of 15 hours per week in the two months immediately following the period covered by the diversion payment, the client is not subject to a subsidy deduction until the third month after the period covered by the diversion payment.

R986-700-709. Employment Support (EC) CC.

(1) Parents who are not eligible for FEP CC or Diversion CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC.

(a) If the household has only one parent, the parent must be employed a minimum of 15 hours per week.

(b) If the family has two parents, CC can be provided if:

(i) one parent is employed a minimum of 35 hours per week and the other parent is employed a minimum of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(ii) one parent is employed and the other parent cannot work or provide child care because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The individual claiming incapacity must provide proof, by way of a report signed by a medical doctor, doctor of osteopath or licensed/certified psychologist, which states that:

(A) the parent cannot work; and

(B) the incapacity prevents the parent from caring for a child; and

(C) the incapacity is expected to last at least 30 days.

(2) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. If the prevailing community standard is below minimum wage, the employed parent client must make at least the prevailing community standard.

(3) If a parent was receiving FEP or FEPTP, and their financial assistance was terminated due to increased income, and the parent is otherwise eligible for ES CC, the subsidy deduction will not be taken for the two months immediately following the termination of FEP or FEPTP, provided the client works a minimum of 15 hours per week. The third month following termination of FEP or FEPTP CC is subject to the subsidy deduction.

R986-700-710. Income and Asset Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income and assets must be counted to establish eligibility, except a specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income and assets of the specified relatives in the household must be counted;

(b) what is counted as income and assets except one automobile is exempt for each household member participating in work and/or training if it is needed for employment, used for transportation to and from that work and/or training or if the client is living in the automobile. The asset limit for ES CC is $8,000 after allowable deductions; and

(c) how to estimate income.

(2) The following income deductions are the only

deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, 56 percent of the state median income.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

R985-700-711. CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) Child care will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree in a marketable occupation.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate.

(9) In a two-parent family receiving CC for education or training activities, the monthly CC subsidy cannot exceed the established monthly local market rates.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship, income, and asset eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

(5) When a homeless family presents a referral from a recognized agency, the Department will, if possible, schedule the application interview within three working days of the date of the application.

R986-700-713. Amount of CC Payment.

(1) CC will be paid at the lower of the following levels:

(a) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(b) the rate established by the provider for services; or

(c) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

(2) An enhanced CC payment is available to clients who are participating more than 172 hours per month. The enhanced subsidy cannot exceed $100 more than the maximum monthly local market rate for the type of provider used by the client and in no event can an enhanced subsidy payment exceed the accredited center rate for infant care. A two-parent family receiving CC for education or training activities is not eligible for the enhanced CC subsidy.

R986-700-714. CC Payment Method.

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name. The check is mailed to the client. In the event of an emergency, a payment up to a maximum of $125 can be made on the Horizon card. Emergency payments can only be made where a parent is in danger of not being able to obtain necessary child care if the parent is required to wait until the two party check can be issued.

(2) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(3) The Department is authorized to stop payment on a CC check without prior notice to the client if:

(a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with

the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(4) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible.

(2) If the Department has reason to believe that a CC overpayment has occurred, a referral for collection will be made to ORS.

(3) If ORS determines that the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be disqualified from further receipt of CC:

(a) for a period of one year for the first occurrence of fraud;

(b) for a period of two years for the second occurrence of fraud; and

(c) for life for the third occurrence of fraud.

(4) If a client receives an overpayment but was not at fault in creating the overpayment, the client will be responsible for repayment but there is no disqualification or ineligibility period.

(5) If ORS determines that the client was at fault in the creation of an overpayment for any reason other than fraud in paragraph (3) above, the client will be given an opportunity to repay the overpayment without a disqualification or ineligibility period for the first occurrence. If there is a second fault overpayment for reasons other than fraud in (3) above and the first overpayment has not been paid off, the client will be ineligible for CC until both overpayments have been satisfied. If the second overpayment occurred after the first overpayment was repaid in full, the second overpayment will not result in disqualification or ineligibility.

(6) If the client does not cooperate with ORS in its investigation or collection efforts, the Department will terminate CC upon notification from ORS that the client is not cooperating.

(7) These disqualification and ineligibility periods are in lieu of, and not in addition to, the disqualification periods found in R986-100-117.

(8) If the Department has reason to believe an overpayment has occurred, a referral to ORS has been made, and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined by ORS.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled. For example: A client enrolled for 10 hours of classes each week may not receive more than 10 hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

(6) On a case-by-case basis, the Department may fund child care for children with disabilities at a higher rate if the needs of the child and provider necessitate. To qualify for the higher rate DSPD or another Department approved entity must first determine that the child care provider has additional ongoing costs in caring for the child. The Department may set different income eligibility criteria for clients with children determined to need consideration under this paragraph. The income eligibility rate is available at all Employment Centers.

KEY: child care
February 1, 2002 35A-3-310

R986. Workforce Services, Employment Development.
R986-900. Food Stamps.
R986-900-901. Authority for Food Stamps and Applicable Rules.

(1) Food stamps provide assistance to eligible individuals in accordance with the requirements found in: The Food Stamp Act of 1977 as amended (7 USC 2011 et seq); 7 CFR 271 through 7 CFR 283; and PRWORA and its amendments. The complete text of all applicable federal laws and regulations can be found at the United States Department of Agriculture web site at: http://www.fns.usda.gov/fsp/. Federal regulations are also available at most public libraries, on the Internet at: http://access.gpo.gov/nara/cfr/waisidx_00/7cfrv4_00.html, at the Department of Workforce Services, Division of Employment Development, Appeals Division 2nd Floor, 140 E 300 S, Salt Lake City UT, 84145; or at the Division of Administrative Rules, 4120 State Office Building, Salt Lake City UT, 84114. The state maintains a policy manual describing the benefits and eligibility requirements for receipt of food stamps. The policy manual is available at all Department offices. The provisions of 7 CFR 271 through 7 CFR 283 (2000) are incorporated herein by reference.

(2) The provisions of R986-100 apply to food stamps except where specifically noted in that rule.

R986-900-902. Options and Waivers.

The Department administers the food stamp program in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply at the local office which serves the area in which they reside.

(d) The Department has opted to adopt a standard utility allowance (SUA) for utilities. The standard utility allowance is updated annually and is available upon request from the Department. The Department allows clients to choose between using the SUA or actual utility expenses as a deduction from income when determining the food stamp benefit amount. The household must choose between using the SUA or actual expense at the time of application. The household may change from one to the other only at the time of recertification or if the household moves to a different place of residence.

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients so that the client is able to use food stamp benefits at a participating restaurant.

(f) The state has opted to provide food stamp benefits through the use of an electronic benefit transfer system known as the Horizon Card.

(g) The Department counts diversion payments in the food stamp allotment calculation.

(h) The Department has opted to exempt individuals from mandatory participation in Food Stamp Employment and Training activities in counties that have been designated as Labor Surplus Areas by the Department of Labor. These counties change each year based on Department of Labor statistics and a list of counties is available from the Department. They are the same counties as referenced in subsection (2)(a) below.

(i) The Department has opted to use Utah's TANF vehicle allowance rules in conjunction with the Food Stamp Program vehicle allowance regulations at 7 CFR 273.8, as authorized by Pub. L. No. 106-387 of the Agriculture Appropriations Act 2001, Food Stamp Act of 1977, 7 USC 2014.

(j) The Department has opted to count all of an ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses as provided in 7 CFR 273.11(c)(3)(ii)(A).

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) Certain Utah counties have been granted a waiver which exempts ABAWDs from the work requirements of Section 824 of PRWORA. The counties granted this waiver change each year based on Department of Labor statistics. A list of counties granted this waiver is available from the Department.

(b) If a client fails to appear for the scheduled face-to-face interview required by 7 CFR 273.2 (e)(3), the Department is not required to attempt to schedule another interview unless the client contacts the Department and requests another interview. If the client misses two scheduled interviews and does not express an interest in pursing the application, the application can be denied without waiting until the 30th day as required by 7 CFR 273(g)(3).

(c) If a client does not provide initial verification as requested within ten days of the interview, the Department can deny the household's application at the expiration of the ten days and is not required to wait until the 30th day following the date of application.

(d) The Department is not required to conduct a face-to-face interview for each recertification period as required by 7 CFR 273.14(b)(3)(i), provided that at least one face-to-face interview, in conjunction with recertification, is conducted each year.

(e) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status. A client is required to report any change in unearned income over $25 or a change in the source of unearned income.

(f) The Department uses a combined Notice of Expiration and Shortened Recertification Form. Notice of Expiration is required in 7 CFR 273.14(b)(1)(i). The Recertification Form is found under 7 CFR 273.14(b)(2)(i).

(g) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for food stamps.

(h) FEP and FEPTP clients may opt to have their food stamp benefits paid as cash. This waiver will expire on December 31, 2000.

(i) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

(j) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

KEY: food stamps, public assistance
February 1, 2002 35A-3-103