R25. Administrative Services, Finance.
R25-6. Relocation Reimbursement.
R25-6-1. Purpose.

The purpose of this rule is to establish procedures for payment of relocation reimbursements to employees who move for career progression or to accept employment with the state.

R25-6-2. Authority.

This rule is established pursuant to Subsection 63A-3-103(1), which authorizes the Director of Finance to define fiscal procedures relating to approval and allocation of funds.

R25-6-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Career progression" means job advancement.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(6) "Relocation" means the distance between the employee's old residence and new job site must increase at least 50 miles over the distance between the old residence and the old job site.

(7) "Reimbursement" means money paid to compensate an employee for money spent.

R25-6-4. Approval of Relocation Reimbursement.

All relocation reimbursements require prior written approval of the department director or agency head.

R25-6-5. Eligible Employees.

(1) Relocation reimbursement costs shall be granted to employees who move due to an involuntary change in jobs.

(2) Relocation reimbursement costs may be granted to employees who move due to a voluntary change in jobs.

(3) Relocation reimbursement costs may be granted to new employees who are required by the employing agency to move to accept employment with the state.

(a) The amount of relocation costs to be reimbursed to new employees is a matter of negotiation between the department or agency and the employee, but shall be for only those categories of expenditures identified as reimbursable by Section R25-6-8 and shall not exceed those costs identified as reimbursable in Finance policy.

R25-6-6. Repayment of Reimbursement.

The employee shall agree in writing to repay any relocation expense if, within one year following the relocation, the employee terminates employment with the state or transfers to another department. Exceptions to repayment of the relocation expense must be approved in writing by the Director of Finance.

R25-6-7. Payment of Relocation Expenses.

(1) The employee makes all payments and then requests reimbursement from the state.

(2) The employee may receive an advance of up to 90 percent of the estimated cost of the moving company, the storage of goods, and/or the real estate fees.

R25-6-8. Reimbursable Categories of Expenditures.

(1) Based on Finance policy, costs reimbursable to an employee for relocation fall into the following broad categories:

(a) Mileage or common carrier expenses;

(b) Lodging and meal expenses;

(c) Costs of moving household goods and furniture; and

(d) Real estate expenses.

(2) The use of state equipment to move an employee or to pull a privately-owned trailer or trailer house is prohibited unless approved by the Director of Finance and the State Risk Manager.

R25-6-9. Maximum Reimbursement.

The maximum reimbursement for relocation costs may not exceed $10,000 unless approved in writing by the Director of Finance.

KEY: costs, finance, relocation benefits, reimbursements
July 2, 2002 63A-3-103
Notice of Continuation October 30, 1998

R25. Administrative Services, Finance.

R25-7. Travel-Related Reimbursements for State Employees.

R25-7-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.

(1) This rule is established pursuant to Section 63A-3-107, which authorizes the Division of Finance to adopt rules covering in-state and out-of-state travel.

(2) Senate Bill 1, Line Item 60 of the 2000 legislative session (2000 Utah Laws 344), as continued by House Bill 1, Item 57 of the 2001 legislative session (2001 Utah Laws 334), contains intent language directing that the mileage reimbursement rate authorized in Section R25-7-10 also be applied to legislative staff, the Judicial Branch and to the Utah System of Higher Education.

R25-7-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Boards" means policy boards, advisory boards, councils, or committees within state government.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Per diem" means an allowance paid daily.

(6) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(7) "Rate" means an amount of money.

(8) "Reimbursement" means money paid to compensate an employee for money spent.

(9) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5. Approvals.

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the department head or designee.

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is $30.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	$6.00
Lunch	$9.00
Dinner	$15.00
Total	$30.00

(b) The daily travel meal allowance for out-of-state travel is $38.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	$9.00
Lunch	$11.00
Dinner	$18.00
Total	$38.00

(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, and Atlanta), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to $50 per day.

(a) The traveler must be entitled to be reimbursed for all meals for the day in order to qualify for premium rates for a given day.

(b) The traveler must use the same method of reimbursement for an entire day.

(c) Actual meal cost includes tips.

(d) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the reasonable, actual meal cost, with original receipts.

(a) The traveler may combine the reimbursement methods during a trip; however, he must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is

determined by the time of day he leaves his home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:01-6:00	6:01-noon	12:01-6:00	6:01-midnight
*B, L, D	*L, D	*D	*no meals
In-State			
$30.00	$24.00	$15.00	$0
Out-of-State			
$38.00	$29.00	$18.00	$0

*B=Breakfast, L=Lunch, D=Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day he returns to his home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:01-6:00	6:01-noon	12:01-7:00	7:01-midnight
*no meals	*B	*B, L	*B, L, D
In-State			
$0	$6.00	$15.00	$30.00
Out-of-State			
$0	$9.00	$20.00	$38.00

*B=Breakfast, L=Lunch, D=Dinner

(7) An employee may be authorized by his Department Director or designee to receive a meal allowance when his destination is at least 100 miles from his home base and he does not stay overnight.

(a) Breakfast is paid when the employee leaves his home base before 6:01 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves his home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves his home base and returns after 7 p.m.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

R25-7-7. Meal Per Diem for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) Lodging is reimbursed for single occupancy only.

(2) For non-conference hotel in-state travel, where the department/traveler makes reservations through the State Travel Agency, the state will reimburse the actual cost up to $55 per night plus tax except in Moab, Cedar City, St. George, metropolitan Salt Lake City (Draper to Centerville), Ogden city, Park City, Tooele, Heber City, Midway, and Provo/Orem city. In these areas, the rates are:

(a) Moab, Cedar City, and St. George - $65 per night plus tax

(b) Metropolitan Salt Lake City (Draper to Centerville), Park City, Tooele, Heber City, and Midway - $68 per night plus tax

(c) Ogden city and Provo/Orem city - $63 per night plus tax

(3) The state will reimburse the actual cost per night plus tax for out-of-state travel where the department/traveler makes reservations through the State Travel Agency.

(4) The same rates apply for in-state travel for stays at a non-conference hotel where the department/traveler makes their own reservations.

(5) For out-of-state travel, the state will reimburse the actual cost up to $65 per night plus tax.

(6) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(7) For stays at a conference hotel, the state will reimburse the actual cost plus tax for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(8) A proper receipt for lodging accommodations must accompany each request for reimbursement.

(a) The tissue copy of the MasterCard Corporate charge receipt is not acceptable.

(b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of

person/persons staying at the motel/hotel, date of occupancy, amount and date paid, signature of agent, number in the party, and single or double occupancy.

(9) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) $20 per night with no receipts required or

(ii) Actual cost up to $30 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(10) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - $46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips and transportation costs.

(a) Tips for maid service, doormen, and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above $20.00 and for all airport parking.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) Parking at the Salt Lake City airport will be reimbursed at a maximum of the airport long-term parking rate with a receipt.

(3) Registration should be paid in advance on a state warrant.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when he arrives, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with him.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls made during stays of five nights or more.

(5) Allowances for personal telephone calls made while out of town on state business overnight will be based on the number of nights away from home.

(a) Four nights or less - actual amount up to $2.50 per night (documentation is not required for personal phone calls made during stays of four nights or less)

(b) Five to eleven nights - actual amount up to $20.00

(c) Twelve nights to thirty nights - actual amount up to $30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to $18.00 per week will be allowed for trips longer than seven days, beginning after the seventh night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of $5 per day will be allowed for travelers away in excess of six consecutive nights.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(d) In order to preserve insurance coverage, travelers must fly on tickets in their names only.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the airport long-term parking rate.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B.

(c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with prior approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 28 cents per mile, or 36 1/2 cents per mile if a state fleet vehicle is not available to the employee.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Exceptions must be approved in writing by the

Director of Finance.

(e) Mileage will be computed from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) The mileage rate is all-inclusive, and additional expenses such as parking and storage will not be allowed unless approved in writing by the Department Director.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if approved by the Department Director.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 28 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) An itinerary printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(c) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(d) These reimbursements are all-inclusive, and additional expenses such as parking and toll fees will not be allowed unless approved in writing by the Department Director.

(e) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(f) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Agency, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the travel agency must be approved in advance by the Department Director.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director that he is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, he must certify the existence of at least $500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that his insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least $500,000 for liability coverage.

(d) Reimbursement will be made at 50 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 16 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowance, state employees, transportation

July 2, 2002 63A-3-107

Notice of Continuation October 30, 1998 63A-3-106

2000 Utah Laws 344

2001 Utah Laws 334

2002 Utah Laws 277

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.

In addition to the terms defined in Section 63A-9-101, as used in Title 63A, Chapter 9, or these rules the following terms are defined.

(1) "Accident" means 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)" means 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" has the same meaning as provided in Section 63A-9-101(1)(a),(b), and (c).

(4) "Agency Motor Vehicle Policy (AMV)" means 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)"means any 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" means 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" means 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) "Capital only lease vehicle" means any 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.

(9) "Commute Use" means 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.

(10) "Compressed Natural Gas Vehicle (CNG)" means any vehicle that may be fueled with compressed natural gas.

(11) "Department" means the Department of Administrative Services.

(12) "Division" has the same meaning as provided by Section 63A-9-101(3).

(13) "Driving Privilege Review Board (DPRB)" means 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.

(14) "Emergency Vehicle" means 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.

(15) "Expansion vehicle" means any 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.

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

(17) "Feature" means any option or accessory that is available from the vehicle manufacturer.

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

(19) "Fleet Vehicle Advisory Committee" means the 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.

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

(21) "Fuel Network" means the state program that provides an infrastructure for fueling state vehicles.

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

(23) "Heavy-duty Vehicle" means any motor vehicle having a gross vehicle weight range (GVWR) greater than 8,500 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 8,500 pounds. Heavy-duty vehicles shall be tracked in DFO's fleet information system.

(24) "Light-duty Vehicle" means any motor vehicle having a gross vehicle weight rating (GVWR) of 8,500 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 8.500 pounds or less. Light-duty vehicles shall be tracked in DFO's fleet information system.

(25) "Miscellaneous Equipment" means 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.

(26) "Motor Pool" generally, means any vehicle that is made available to agencies for lease on a short-term basis.

(27) "Motor Vehicle" has the same meaning as provided by Section 63A-9-101(6)(a) and (b).

(28) "Motor Vehicle Review Committee (MVRC)" means the panel formed to advise the Division of Fleet Operations (DFO), as required by Subsection 63A-9-301(1). The duties of the MVRC are as specified in Section 63A-9-302.

(29) "Non-Preventable Accident" means 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.

(30) "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.

(31) "Other Equipment" means vehicles and equipment not specifically identified in other standard reporting categories.

(32) "Personal Use" means the use of a state vehicle to conduct an employee's personal affairs, not related to state business.

(33) "Preventable Accident" means any occurrence involving 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.

(34) "Preventive Maintenance (PM)" means vehicle services that are conducted at regular time intervals to deter mechanical breakdowns, including, but not limited to, lube, oil and filter changes.

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

(36) "Replacement cycle" means 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.

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

(38) "Service Level Agreement (SLA)" means 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.

(39) "State of Utah Fuel Card" means 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.

(40) "State vehicle" for the purposes of this rule, has the same meaning as provided by Subsection 63A-9-101(7).

(41) "Unique Motorized Equipment" (UME) means 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.

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

(43) "Vehicle Identification Number (VIN)" means 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.

(44) "Vendor" means any person offering sales or services for state vehicles, such as preventive maintenance or repair services.

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

R58. Agriculture and Food, Animal Industry.
R58-18. Elk Farming.
R58-18-1. Authority.

Regulations governing elk farming promulgated under authority of 4-39-106.

R58-18-2. Definitions.

In addition to the definitions found in Sections 4-1-8, 4-7-3, 4-24-2, 4-32-3 and 4-39-102, the following terms are defined for purposes of this rule:

(1) "Raised" as used in the act means any possession of domestic elk for any purpose other than hunting.

(2) "Separate location" as used in Subsection 4-39-203(5) means any facility that may be separated by two distinct perimeter fences, not more than 10 miles apart, owned by the same person.

(3) "Domestic elk" as used in this chapter, in addition to 4-39-102, means any elk which has been born inside of, and has spent its entire life within captivity.

(4) "Quarantine Facility" means a confined area where selected elk can be secured, contained and isolated from all other elk and livestock.

(5) "Secure Enclosure" means a perimeter fence or barrier that is so constructed as to prevent domestic elk from escaping into the wild or the ingress of native wildlife into the facility.

(6) "Elk" as used in this chapter means North American Wapiti or Cervus Elaphus Canadensis.

(7) "Affected herd" means a herd of Cervidae where an animal has been diagnosed with Chronic Wasting Disease (CWD) caused by protease resistant prion protein (PrP), and confirmed by means of an approved test, within the previous 5 years.

(8) "Trace Back Herd/Source Herd" means any herd of Cervidae where an animal affected with CWD has resided up to 36 months prior to death.

(9) "Trace Forward Herd" means any herd of Cervidae which has received animals that originated from a herd where CWD has been diagnosed, in the previous 36 months prior to the death of the affected (index) animal.

(10) "Adjacent Herd" means a herd of Cervidae occupying premises that border an affected herd, including herds separated by fences, roads or streams, herds occupying a premise where CWD was previously diagnosed, and herds that share the same license as the affected or source herd, even if separate records are maintained and no commingling has taken place.

(11) "Approved test" means approved tests for CWD surveillance shall be those laboratory or diagnostic tests accepted nationally by USDA and approved by the state veterinarian.

(12) "Herd of Origin" means the herd, which an imported animal has resided in, or does reside in, prior to importation.

(13) "Destination Herd" means the intended herd of residence, which will be occupied by the animal which is proposed for importation.

R58-18-3. Application and Licensing Process.

(1) Each applicant for a license shall submit a signed, complete, accurate and legible application on a department issued form.

(2) In addition to the application, a general plot plan should be submitted showing the location of the proposed farm in conjunction with roads, towns, etc. in the immediate area.

(3) A facility number shall be assigned to an elk farm at the time a completed application is received at the Department of Agriculture and Food building.

(4) A complete facility inspection and approval shall be conducted prior to the issuing of a license or entry of elk to any facility. This inspection shall be made by an approved Department of Agriculture and Food employee and Division of Wildlife Resource employee. It shall be the responsibility of the applicant to request this inspection at least 72 hours in advance.

(5) Upon receipt of an application, inspection and approval of the facility and completion of the facility approval form and receipt of the license fee, a license will be issued.

(6) All licenses expire on July 1st in the year following the year of issuance.

(7) Elk may enter into the facility only after a license is issued by the department and received by the applicant.

R58-18-4. License Renewal.

(1) Each elk farm must make renewal application to the department on the prescribed form no later than April 30th indicating its desire to continue as an elk farm. This application shall be accompanied by the required fee.

(2) Any license renewal application received after April 30th will have a late fee assessed.

(3) Any license received after July 1st is delinquent and any animals on the farm will be quarantined until due process of law against the current owner has occurred. This may result in revocation of the license, loss of the facility number, closure of the facility and or removal of the elk from the premise.

(4) Prior to renewal of the license, the facility will again be inspected by a Utah Department of Agriculture and Food employee. Documentation that all fencing and facility requirements are met as required.

(5) An inventory check will be completed of all elk on the premise, and a visual general health check of all animals will be made. Documentation showing that genetic purity has been maintained throughout the year is also required for annual license renewal.

(6) The licensee shall provide a copy of the inventory sheet to the inspector at the time of inspection.

R58-18-5. Facilities.

(1) All perimeter fences and gates shall meet the minimum standard as defined in Section 4-39-201.

(2) Internal handling facilities shall be capable of humanely restraining an individual animal for the applying or reading of any animal identification, the taking of blood or tissue samples, or conducting other required testing by an inspector or veterinarian. Any such restraint shall be properly constructed to protect inspection personnel while handling the animals. Minimum requirements include a working pen, an alley way and a restraining chute.

(3) The licensee shall provide an isolation or quarantine holding facility which is adequate to contain the animals and provide proper feed, water and other care necessary for the physical well being of the animal(s) for the period of time

necessary to separate the animal from other animals on the farm.

(4) Each location of a licensed facility with separate perimeter fences must have its own separate loading facility.

R58-18-6. Records.

(1) Licensed elk farms shall maintain accurate and legible office records showing the inventory of all elk on the facility. The inventory record of each animal shall include:

(a) Name and address of agent(s) which the elk was purchased from

(b) Identification number (tattoo or chip)

(c) Age

(d) Sex

(e) Date of purchase or birth

(f) Date of death or change of ownership

The inventory sheet may be one that is either provided by the department or may be a personal design of similar format.

(2) Any animal born on the property or transported into a facility must be added to the inventory sheet within seven days.

(3) Any elk purchased must be shown on the inventory sheet within 30 days after acquisition, including source.

R58-18-7. Genetic Purity.

(1) All animals entering Utah must have written evidence of genetic purity. Written evidence of genetic purity will include one of the following:

(a) Test charts from an approved lab that have run either a:

(i) Blood genetic purity test or

(ii) DNA genetic purity test.

(b) Registration papers from the North American Elk Breeders Association.

(c) Herd purity certification papers issued by another state agency.

(2) Genetic purity records must be kept on file and presented to the inspector at the time elk are brought into the state and also each year during the license renewal process.

(3) Any elk identified as having red deer genetic influence shall be destroyed, or immediately removed from the state.

R58-18-8. Acquisition of Elk.

(1) Only domesticated elk will be allowed to enter and be kept on any elk farm in Utah.

(2) All new elk brought into a facility shall be held in a quarantine facility until a livestock inspector has inspected the animal(s) to verify that all health, identification and genetic purity requirements have been met. New animals may not co-mingle with any elk already on the premise until this verification is completed by the livestock inspector.

R58-18-9. Identification.

(1) All elk shall be permanently identified with either a tattoo or micro chip.

(2) If the identification method chosen to use is the micro chip, a reader must be made available, by the owner, to the inspector at the time of any inspection to verify chip number. The chip shall be placed in the right ear.

(3) If tattooing is the chosen method of identification, each elk shall bear a tattoo number consisting of the following:

(a) UT (indicating Utah) followed by a number assigned by the department (indicating the facility number of the elk farm) and

(b) Any alphanumeric combination of letters or numbers consisting of not less than 3 digits, indicating the individual animal number herein referred to as the "ID number".

Example:

UTxxx

ID number (001)

(c) Each elk shall be tattooed on either the right peri-anal hairless area beside the tail or in the right ear.

(d) Each alphanumeric character must be at least 3/8 inch high.

(e) Each newly purchased elk will not need to be retattooed or chipped if they already have this type of identification.

(f) Any purchased elk not already identified shall be tattooed or chipped within 30 days after arriving on the farm.

(g) All calves must be tattooed within 15 days after weaning or in no case later than January 1st.

(4) In addition to one of the two above mentioned identification methods, each elk shall be identified by the official USDA ear tag or other ear tag approved by the director.

R58-18-10. Inspections.

(1) All facilities must be inspected within 60 days before a license or the renewal of an existing license is issued. It is the responsibility of the applicant to arrange for an appointment with the department for such inspection, giving the department ample time to respond to such a request.

(2) All elk must be inspected for inventory purposes within 60 days before a license renewal can be issued.

(3) All elk must be inspected when any change of ownership, moving out of state, leaving the facility, slaughter or selling of elk products, such as antlers, occurs except as indicated in (f) below.

(a) It is the responsibility of the licensee to arrange for any inspection with the local state livestock inspector.

(b) A minimum of 48 hours advance notice shall be given to the inspector.

(c) When inspected, the licensee or his representative shall make available such records as will certify ownership, genetic purity, and animal health.

(d) All elk to be inspected shall be properly contained in facilities adequate to confine each individual animal for proper inspection.

(e) Animals shall be inspected before being loaded or moved outside the facility.

(f) Animals moving from one perimeter fence to another within the facility may move directly from one site to another site without a brand inspection, but must be accompanied with a copy of the facility license.

(4) Any elk purchased or brought into the facility from an out-of-state source shall be inspected upon arrival at a licensed farm before being released into an area inhabited by other elk. All requirements of R58-18-10(3) above shall apply to the inspection of such animals.

(5) A Utah Brand Inspection Certificate shall accompany any shipment of elk or elk products, including velveted antlers,

which are to be moved from a Utah elk farm. Shed antlers are excluded from needing an inspection. Proof of ownership and proper health papers shall accompany all interstate movement of elk to a Utah destination.

(6) Proof of ownership may include:

(a) A brand inspection certificate issued by another state.

(b) A purchase invoice from a licensed public livestock market showing individual animal identification.

(c) Court orders.

(d) Registration papers showing individual animal identification.

(e) A duly executed bill (notarized) of sale.

R58-18-11. Health Rules.

(1) Prior to the importation of elk, whether by live animals, gametes, eggs, sperm or other genetic material into the State of Utah, the importing party must obtain an entry permit from the Utah State Veterinarians office. (801-538-7164)

(a) An entry permit number shall be issued only if the destination is licensed as an elk farm by the Utah Department of Agriculture and Food.

(b) The entry permit number for Utah shall be obtained by the local veterinarian conducting the official health inspection by contacting the Utah Department of Agriculture and Food permit desk at 80l-538-7164.

(2) All elk imported into Utah must be examined by an accredited veterinarian prior to importation and must be accompanied by a valid certificate of veterinary inspection, health certificate, certifying a disease free status.

(a) Minimum specific disease testing results or health statements must be included on the certificate of veterinary inspection.

(b) A negative tuberculosis test must be completed within 60 days prior to entry into the state. A retest is also optional at the discretion of the state veterinarian.

(c) If animals do not originate from a tuberculosis accredited, qualified or monitored herd, they may be imported only if accompanied by a certificate stating that such domestic cervidae have been classified negative to two official tuberculosis tests that were conducted not less than 90 days apart, that the second test was conducted within 60 days prior to the date of movement. The test eligible age is six months or older, or less than six months of age if not accompanied by a negative testing dam.

(d) All elk being imported shall test negative for brucellosis if six months of age or older, by at least two types of official USDA brucellosis tests, one of which shall be the rivanol test.

(e) The certificate of veterinary inspection must also include the following signed statement: "To the best of my knowledge the elk listed herein are not infected with Johne's Disease (Paratuberculosis), Chronic Wasting Disease or Malignant Catarrhal Fever and have never been east of the 100 degree meridian."

(f) The certificate of veterinary inspection shall also contain the name and address of the shipper and receiver, the number, sex, age and any individual identification on each animal.

(3) Additional disease testing may be required at the discretion of the state veterinarian prior to importation or when there is reason to believe other disease(s), or parasites are present, or that some other health concerns are present.

(4) Imported or existing elk may be required to be quarantined at an elk farm if the state veterinarian determines the need for and the length of such a quarantine.

(5) Any movement of elk outside a licensed elk farm shall comply with standards as provided in the document entitled: "Uniform Methods and Rules (UM and R)", as approved and published by the USDA. The documents, entitled: "Tuberculosis Eradication in Cervidae, Uniform Methods and Rules", the May 15, 1994 edition, and "Brucellosis Eradication, Uniform Methods and Rules", the May 6, 1992 edition as published by the USDA, are hereby incorporated by reference into this rule. These are the standards for tuberculosis and brucellosis eradication in domestic cervidae. Copies of the methods and rules are on file and available for public inspection at the Division of Animal Industry, Department of Agriculture and Food offices located at 350 North Redwood Road, Salt Lake City, Utah.

(6) Treatment of all elk for internal and external parasites is required within 30 days prior to entry.

(7) All elk imported into Utah must originate from a state or province, which requires that all suspected or confirmed cases of Chronic Wasting Disease (CWD), be reported to the State Veterinarian or regulatory authority. The state or province of origin must have the authority to quarantine source herds and herds affected with or exposed to CWD.

(8) Due to the potential risk of the spread of CWD, no live elk shall be imported into Utah until July 1, 2003. Following this period and based on the State Veterinarian's approval all elk imported into Utah shall originate from states, which have implemented a Program for Surveillance, Control, and Eradication of CWD in Domestic Elk. All elk imported to Utah must originate from herds that have been participating in a verified CWD surveillance program for a minimum of 5 years. Animals will be accepted for movement only if epidemiology based on vertical and horizontal transmission is in place.

(9) No elk originating from a CWD affected herd, trace back herd/source herd, trace forward herd, adjacent herd, or from an area considered to be endemic to CWD, may be imported to Utah.

(10) Elk semen, eggs, or gametes, require a Certificate of Veterinary Inspection verifying the individual source animal has been tested for genetic purity for Rocky Mountain Elk genes and certifying that it has never resided on a premise where Chronic Wasting Disease has been identified or traced. An import Entry Permit obtained by the issuing veterinarian must be listed on the Certificate of Veterinary Inspection. Permits may be obtained by calling 801-538-7164 during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday.

R58-18-12. Chronic Wasting Disease Surveillance.

(1) The owner, veterinarian, or inspector of any elk which is suspected or confirmed to be affected with Chronic Wasting Disease (CWD) in Utah is required to report that finding to the State Veterinarian.

(2) Each elk farm, licensed in Utah, shall be required to submit the brain stem (obex portion of the medulla) of any elk

over 16 months of age that dies or is otherwise slaughtered or destroyed, for testing for Chronic Wasting Disease (CWD) by an official test. The samples shall be collected by an accredited veterinarian, or an approved laboratory, or person trained and approved by the state veterinarian.

(3) Each hunting park, licensed in Utah, shall be required to submit the brain stem (obex portion of the medulla) of all elk over 16 months of age that die; or that are otherwise harvested, slaughtered, killed, or destroyed, for testing for Chronic Wasting Disease with an official test. The samples shall be collected by an accredited veterinarian, approved laboratory, or person trained and approved by the State Veterinarian.

(4) The CWD surveillance samples from elk residing on licensed elk farms and elk hunting parks shall be collected and preserved in formalin within 48 hours following the death of the animal, and submitted within 7 days, to a laboratory approved by the State Veterinarian. Training of approved personnel shall include collection, handling, shipping, and identification of specimens for submission.

(5) Laboratory fees and expenses incurred for collection and shipping of samples shall be the responsibility of the participating elk farm or hunting park.

(6) The disposition of CWD affected herds in Utah shall be determined by the State Veterinarian.

KEY: inspections
July 18, 2002 **4-39-106**
Notice of Continuation February 13, 2002

R151. Commerce, Administration.

R151-2. Government Records Access and Management Act Rule.

R151-2-1. Purpose and Authority.

This rule is made pursuant to Section 63-2-204, which allows agencies to specify where and to whom requests for access to records shall be directed; Subsection 63-2-904 (2), which allows an agency to specify at which levels certain requirements shall be undertaken; and Section 63-2-603, concerning requests to amend a record.

R151-2-2. Duties of Divisions within the Department.

Each division director shall comply with Section 63-2-903 and shall appoint a records officer to perform, or to assist in performing, the following functions:

(1) the duties set forth in Section 63-2-903; and

(2) responding to requests for access to division records.

R151-2-3. Requests for Access.

(1) Waiver of Written Requests: Notwithstanding Subsection 63-2-204 (1) requiring written requests for records, a division may at its discretion waive the requirement for a written request if the records requested are public, the records are readily accessible, and the request is filled promptly by allowing access or copying at the time the request is made.

(2) To whom directed: All requests for access to records shall be directed to the records officer of the particular division which the requester believes generated or possesses the records.

(3) Fees: A fee shall be charged for copies of records provided. That fee shall be established pursuant to Title 63, Chapter 38 and Subsection 63-2-203 (1). Fees must be paid at the time of the request or before the records are provided to the requester.

R151-2-4. Forms.

(1) 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, unless a division waives written requests.

(a) Form 2-204(1), "Request for Records", shall be used by all persons requesting records from the department or its divisions. 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.

(b) Form 2-206(2), "Certification by Requesting Governmental Entity", shall be used by another governmental entity requesting controlled or private records from a division or the department, pursuant to Subsection 63-2-206 (2). This form requires both the information to be provided in Form 2-204(1) and certain representations required from the governmental entity, if the information sought is not public.

(c) Form 2-206(5), "Disclosure and Agreement", shall be used 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 with those restrictions.

(2) The department or its divisions may use forms to respond to requests for records.

R151-2-5. Designation of Authorized Officers.

(1) The determinations or weighing of interests permitted or required under the following sections by a "governmental entity" or the "head of a governmental entity" shall be made by the division director which has custody or control of the records, or his designee:

(a) Subsection 63-2-201 (5) (b), which governs disclosure of certain private or protected records;

(b) Section 63-2-308, which governs business confidentiality claims;

(c) Subsection 63-2-202 (8), which governs disclosure for research purposes;

(d) Subsection 63-2-201 (10) (a), which governs intellectual property rights.

(2) The "chief administrative officer of the governmental entity" for purposes of appeals under Sections 63-2-401 and 63-2-603 shall be the Executive Director of the Department of Commerce or the Executive Director's designee.

R151-2-6. Designation of Requests to Amend Record.

Requests to amend a record under Section 63-2-603 are hereby designated as informal proceedings.

KEY: government documents, freedom of information, public records

July 2, 2002	**63-2-204**
Notice of Continuation April 15, 2002	**63-2-201(5)(b)**
	63-2-201(10)(a)
	63-2-202(8)
	63-2-308
	63-2-401
	63-2-603

R151. Commerce, Administration.
R151-3. Americans With Disabilities Act Rules.
R151-3-1. Authority and Purpose.

This rule is adopted pursuant to federal regulation (28 CFR 35.107) to provide procedures for the prompt and equitable resolution of complaints filed in accordance with 42 U.S.C. 12201. Title II of that federal statute provides no qualified individual with a disability, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination by this or any such entity. This rule also is adopted pursuant to Subsection 63-46a-3 (2).

R151-3-2. 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 the committee appointed or authorized by the governor to oversee the ADA coordinators of the various state agencies.

(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) "Department" means the Department of Commerce, its divisions, commissions or boards, or any other instrumentality of the department.

R151-3-3. Filing of Complaints.

(1) Any individual who believes the department has discriminated against him in violation of 42 U.S.C. 12201 or regulations thereunder may file a complaint with the department.

(2) 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.

(3) The complaint shall be filed with the department's ADA Coordinator in writing, or in another accessible format suitable to the individual.

(4) 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 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 by the individual; and

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

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

R151-3-4. Investigation of Complaint.

(1) The ADA Coordinator shall investigate each complaint received to the extent necessary to assure that all relevant facts are determined. This may include gathering all information listed in R151-3-3 (4) if it is not made available by the individual.

(2) When conducting the investigation and preparing a decision, the ADA Coordinator may consult the department's, or the state's legal, human resource, and budget staffs in determining what action, if any, should be recommended. Before making any decision that would involve the following, the ADA Coordinator shall consult with the ADA State Coordinating Committee:

(a) an expenditure of funds which is not absorbable within the department's budget and would require appropriation authority; or

(b) facility modifications; or

(c) reclassification or reallocation in grade.

R151-3-5. Issuance of Decision.

(1) Within 20 working days after receiving the complaint, the ADA Coordinator shall issue a decision in writing or other suitable format stating what action, if any, should be taken by the department on the complaint.

(2) If the ADA Coordinator is unable to reach a decision within 20 working days, he shall notify the individual in writing or other suitable format why the decision is being delayed and what additional time will be needed to reach a decision.

(3) Decisions shall include a statement of the individual's right of further appeal, if any.

R151-3-6. 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 in writing and filed with the executive director of the department, or his designee, other than the ADA Coordinator.

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

(4) The appeal shall describe in sufficient detail the reasons the individual believes the ADA Coordinator's decision was in error, incomplete, ambiguous, or otherwise improper, and the relief sought on appeal.

(5) The executive director or his designee shall issue a written decision stating the reasons for his conclusions and recommendations. Additional investigation may be conducted if necessary to clarify questions of fact. The executive director shall comply with the provisions of R151-3-4 (2) in reaching a decision.

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

(7) If the executive director or his designee is unable to reach a decision within ten working days, he shall notify the individual in writing or in another acceptable format why the decision is being delayed and the additional time needed to reach a decision.

R151-3-7. 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 under Section 63-2-304 until the ADA Coordinator or executive director issues the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private or controlled. All other information gathered as part of the complaint record shall be classified as private. Only the written decision of the ADA Coordinator or the executive director shall be public.

R151-3-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the provisions of the Utah Antidiscrimination Act; 28 CFR Subpart F, Part 35.170 et seq., 1991 edition, which governs Federal ALA Complaint Procedures or any other state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, physically handicapped persons*

1993 63-2-304

Notice of Continuation July 26, 2002 (2) 63-46a-3

R151. Commerce, Administration.

R151-46b. Department of Commerce Administrative Procedures Act Rules.

R151-46b-1. Title.

These rules are known as the "Department of Commerce Administrative Procedures Act Rules."

R151-46b-2. Definitions.

In addition to the definitions in Title 63, Chapter 46b, Administrative Procedures Act, which apply to these rules:

(1) "Agency head" means the executive director of the department, the director of a division, or the administrative secretary of the committee, respectively, as used in context.

(2) "Applicant" means a person who submits an application.

(3) "Application" means a request for licensure, certification, registration, permit, or other right or authority granted by the department.

(4) "Committee" means the Committee of Consumer Services of the department.

(5) "Department" means the department, a division, or the committee, respectively or collectively, as used in context.

(6) "Division" means a division of the department.

(7) "Intervenor" means a person permitted to intervene in an adjudicative proceeding before the department.

(8) "Motion" means a request for any action or relief submitted to the presiding officer in an adjudicative proceeding.

(9) "Petition" means the charging document, typically incorporated by reference into a notice of agency action, setting forth a statement of jurisdiction, statement of allegations, statement of legal authority, and prayer for relief.

(10) "Pleadings" include the notice of agency action or request for agency action, any response filed thereto, the petition, motions, briefs or other documents filed by the parties to an adjudicative proceeding, any request for agency review or agency reconsideration, any response filed thereto, and any motions, briefs or other documents filed by the parties on agency review.

(11) "Record" means the record of a hearing in an adjudicative proceeding or the record of the entire adjudicative proceeding, as used in context.

R151-46b-3. Authority - Purpose.

These rules are adopted by the department under the authority of Subsection 63-46b-1(6) and Section 13-1-6 to define, clarify, or establish the procedures which govern adjudicative proceedings before the department.

R151-46b-4. Supplementing Provisions of Rule R151-46b.

Any provision of these rules may be supplemented by division or committee rules unless expressly prohibited by these rules.

R151-46b-5. General Provisions.

(1) Liberal Construction.

These rules shall be liberally construed to secure the just, speedy, and economical determination of all issues presented in adjudicative proceedings before the department.

(2) Deviation from Rules.

The presiding officer may permit or require a deviation from these rules upon a determination that compliance therewith is impractical or unnecessary.

(3) Utah Rules of Civil Procedure.

The Utah Rules of Civil Procedure and case law thereunder may be looked to as persuasive authority upon these rules, but shall not, except as otherwise provided by Title 63, Chapter 46b, Administrative Procedures Act, or by these rules, be considered controlling authority.

(4) Computation of Time.

(a) Periods of time prescribed or allowed by these rules, by any applicable statute or by an order of a presiding officer shall be computed as to exclude the first day of the act, event, or default from which the designated period of time begins to run. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon him and service is by mail, three days shall be added to the prescribed period.

(b) For good cause shown, the presiding officer may extend a time period under these rules on his own motion or upon application from either party.

(5) Extension of Time; Continuance of Hearing.

When a statute, or these rules, authorizes the presiding officer to extend a time period or grant a continuance of a hearing, the presiding officer shall consider the following factors, and such other factors as may be appropriate, in determining whether to grant such extension or continuance:

(a) whether there is good cause for granting the extension or continuance;

(b) the number of extensions or continuances the requesting party has already received;

(c) whether the extension or continuance will work a significant hardship upon the other party;

(d) whether the extension or continuance will be prejudicial to the health, safety or welfare of the public; and

(e) whether the other party objects to the extension or continuance.

(6) Conflict.

In the event of a conflict between these rules and any statutory provision, the statute shall govern.

(7) Necessity of Compliance with GRAMA.

To the extent that the Utah Government Records Access and Management Act ("GRAMA") would impose a restriction on the ability of a party to disclose any record which would otherwise have to be disclosed under these rules, such record shall not be disclosed except upon compliance with the requirements of that Act.

R151-46b-6. Representation of Parties.

(a) A party may be represented by counsel or may represent himself individually, or if not an individual, may represent itself through an officer or employee. For the purpose of this provision, the term "counsel" includes active members of

the Utah State Bar or active members of any other state bar.

(b) Counsel from a foreign licensing state shall submit a notice of appearance to the presiding officer along with a certificate of good standing from the foreign licensing state.

R151-46b-7. Pleadings.

(1) Docket Number and Title.

The department shall assign a docket number to each notice of agency action and request for agency action. The docket number shall consist of a letter code identifying the division or committee in which the matter originated (CORP-Corporations; CP-Consumer Protection; CCS-Committee of Consumer Services; DOPL-Occupational and Professional Licensing; RE-Real Estate, AP-Real Estate Appraisers; SEC-Securities), a numerical code indicating the year the matter arose, and another number indicating chronological position among notices of agency action or requests for agency action filed during the year. The department shall give each adjudicative proceeding a title which shall be in substantially the following form:

TABLE I

BEFORE THE (DIVISION/COMMITTEE)
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

In the Matter of	(Notice of Agency Action)
(the application,	(Request for Agency Action)
petition or license	
of John Doe)	No. AA-2000-001

(2) Content and Size of Pleadings.

Pleadings shall be double-spaced, typewritten and presented on standard 8 1/2 x 11 inch white paper. Pleadings shall contain a clear and concise statement of the allegations or facts relied upon as the basis for the pleading, together with an appropriate prayer for relief when relief is sought.

(3) Signing of Pleadings.

Pleadings shall be signed by the party or the party's representative and shall show the signer's address. The signature shall be deemed to be a certification that the signer has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

(4) Amendments to Pleadings.

A party may amend a pleading once as a matter of course at any time before a responsive pleading is served. Otherwise, a party may amend a pleading only by leave of the presiding officer or by written consent of the adverse party. Leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be longer, unless the presiding officer otherwise orders. Defects in a pleading which do not affect substantial rights of a party need not be amended and shall be disregarded.

(5) Response to a Notice of Agency Action.

(a) Formal Adjudicative Proceedings.

In accordance with Subsection 63-46b-3(2)(a)(vi), a respondent in a formal adjudicative proceeding shall file a response to the notice of agency action.

(b) Informal Adjudicative Proceedings.

(i) In accordance with Subsection 63-46b-5(1)(a), a respondent in an informal adjudicative proceeding may file, but is not required to file except as provided in Subsection (ii), a response to a notice of agency action.

(ii) The presiding officer may, upon a determination of good cause, require a person against whom an informal adjudicative proceeding has been initiated to submit a response by so ordering in the notice of agency action or the notice of receipt of request for agency action.

(c) Time Period for Filing a Response.

Unless a different date is established by law, rule, or by the presiding officer, a response to a notice of agency action or a notice of receipt of request for agency action shall be filed within 30 days of the mailing date of the notice.

(6) Motions.

(a) General. Any motion which is relevant to an adjudicative proceeding and is timely may be filed. All motions shall be filed in writing, unless the necessity for a motion arises at a hearing and could not have been anticipated prior to the hearing. Subsection 63-46b-1(4)(b) shall not be construed to prohibit a presiding officer from granting a timely motion to dismiss for failure to prosecute, failure to comply with these rules, failure to establish a claim upon which relief may be granted, or any other good cause basis.

(b) Time for Filing Motions to Dismiss.

Any motion to dismiss on a ground described in Rule 12(b)(1) through (7) of the Utah Rules of Civil Procedure shall be filed prior to filing a responsive pleading if such a pleading is permitted unless the presiding officer allows additional time upon a determination of good cause.

(c) Memoranda and Affidavits.

The presiding officer shall permit and may require memoranda and affidavits in support or contravention of a motion. Unless otherwise governed by a scheduling order issued by the presiding officer, any memorandum or affidavits in support of a motion shall be filed concurrently with the motion, any memorandum or affidavits in response to a motion shall be filed no later than ten days after service of the motion, and any final reply shall be filed no later than five days after service of the response.

(d) Oral Argument.

The presiding officer may permit or require oral argument on a motion.

R151-46b-8. Filing and Service.

(1) Filing.

Pleadings shall be filed with the division or committee in which the adjudicative proceeding is being conducted. If an administrative law judge is conducting part of the adjudicative proceeding, then the party shall cause a courtesy copy of such pleadings to be filed with the administrative law judge. The filing of discovery documents is governed by Subsection R151-46b-9(11)(a).

(2) Service.

Pleadings filed by the parties and documents issued by the presiding officer shall be served upon the parties to the adjudicative proceeding concurrently with the filing or issuance thereof. The party who files the pleading shall be responsible for service of the pleading. The presiding officer who issues a

document shall be responsible for service of the document.

(a) Service may be made upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the agent of the person being served. If a party is represented by an attorney, service may be made upon the attorney.

(b) Service may be accomplished by hand delivery or by mail to the last known address of the intended recipient.

(c) There shall appear on all documents required to be served a certificate of service in substantially the following form:

TABLE II

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the parties of record in this proceeding set forth below (by delivering a copy thereof in person) (by mailing a copy thereof, properly addressed by first class mail with postage prepaid, to):

(Name(s) of parties of record)
(Address(es))

Dated this (day) day of (month), (year).

(Signature)
(Title)

R151-46b-9. Discovery - Formal Proceedings Only.

This rule applies only to formal adjudicative proceedings. Discovery is prohibited in informal adjudicative proceedings.

(1) Scope of discovery.

(a) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.

(b) Subject to the provisions of Subsections R151-46b-9(1)(c) and R151-46b-9(3)(a), a party may obtain discovery of documents and tangible things otherwise discoverable under Subsection R151-46b-9(1)(a) and prepared in anticipation of litigation or for hearing by or for another party or by or for that party's representative, including his attorney, consultant, insurer or other agent, only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(c) Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of Subsection R151-46b-9(1)(a) and acquired or developed in anticipation of litigation or for hearing, may be obtained only through the disclosures required by Subsection R151-46b-9(3)(a).

(2) Disclosures Required By Initial Prehearing Order.

(a) Pursuant to the initial prehearing order issued in accordance with Subsection R151-46b-9(9)(c), the presiding officer may require each party to disclose:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, identifying the subjects of the information; and

(ii) a copy of, or a description by category and location of, and reasonable access to, all discoverable documents, data compilations, and tangible things which are in its possession, custody, or control and which support its claims or defenses.

(b) The order shall not require disclosure of expert testimony, which is governed by Subsection R151-46b-9(3)(a). The order also shall not require the disclosure of information regarding persons or things intended to be used solely for impeachment.

(c) The disclosures required by Subsection R151-46b-9(2)(a) shall be made within 14 days after the written initial prehearing order is issued unless that order provides otherwise. A party joined after the initial prehearing conference shall make these disclosures within 30 days after being served unless otherwise stipulated by the parties or ordered by the presiding officer. A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.

(3) Disclosures Otherwise Required.

(a) Expert Testimony.

A party shall disclose the name, address and telephone number of any person who may be called as an expert witness at the hearing.

(i) Except as otherwise stipulated by the parties or ordered by the presiding officer, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(ii) Unless otherwise stipulated by the parties or ordered by the presiding officer, the disclosures required by Subsection R151-46b-9(3)(a) shall be made within 30 days after the expiration of discovery as provided by Subsection R151-46b-9(7)(b) or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Subsection R151-46b-9(3)(a)(i), within 60 days after the disclosure made by the other party.

(b) Prehearing Disclosures.

In addition to the disclosures required pursuant to Subsection R151-46b-9(3)(a), a party shall disclose the following information regarding the evidence that it may present at trial other than solely for impeachment purposes:

(i) the name and, if not previously provided, the address and telephone number of each witness, including the general scope of their anticipated testimony, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(ii) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(iii) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

These disclosures shall be made at least 30 days before the hearing unless otherwise ordered by the presiding officer. A party may serve and file any objection to the use under Subsection R151-46b-9(13)(i) of a deposition designated by another party under Subsection R151-46b-9(3)(b)(ii) and any objection, together with the grounds therefor, as to the admissibility of materials identified under Subsection R151-46b-9(3)(b)(iii). Any such objections shall be made within 14 days after service of the disclosures required by Subsection R151-46b-9(3)(b) unless a different time is specified by the presiding officer. Objections not timely made under this Subsection, other than objections on grounds of relevancy, shall be deemed waived unless excused by the presiding officer for good cause shown.

(c) Form of Disclosures.

Unless otherwise stipulated by the parties or ordered by the presiding officer, all disclosures under Subsections R151-46b-9(2) through (3)(b) shall be made in writing, signed and served.

(4) Other Discovery Methods.

Parties may also obtain discovery by one or more of the following methods: depositions upon oral examination as provided in these rules, production of documents or things, permission to enter upon land or other property for inspection and other purposes, and physical and mental examinations.

(5) Limits on Use of Discovery.

The frequency and extent of use of the discovery methods set forth in Subsection R151-46b-9(4) shall be limited by the presiding officer if it is determined that:

(a) the discovery sought is unreasonably cumulative, duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(b) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(c) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The presiding officer may act on his own motion after reasonable notice or pursuant to a motion under Subsection R151-46b-9(6).

(6) Protective Orders.

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) that the discovery not be had;

(b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(d) the certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(e) that discovery be conducted with no one present except persons designated by the presiding officer;

(f) that a deposition after being sealed be opened only by order of the presiding officer;

(g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(7) Timing, Completion and Sequence of Discovery.

(a) A party may not use any of the discovery methods described in Subsection R151-46b-9(4) prior to the date that the disclosures required in the initial prehearing order are received unless otherwise stipulated by the parties or ordered by the presiding officer. If the initial prehearing order does not require the parties to make disclosures, then the parties may use those discovery methods at any time after the date of the initial prehearing conference.

(b) Unless otherwise stipulated by the parties or ordered by the presiding officer for good cause shown, all discovery, except for prehearing disclosures governed by Subsection R151-46b-9(3), shall be completed within 120 days after the date of the initial prehearing conference. Factors the presiding officer shall consider in determining whether a party has demonstrated good cause to shorten this time period include whether that party's interests will be prejudiced if the time period is not shortened, whether the relative simplicity or nonexistence of factual issues justifies a shortening of discovery time, and whether the health, safety or welfare of the public will be prejudiced if the time period is not shortened. Factors the presiding officer shall consider in determining whether a party has demonstrated good cause to extend this time period include, in addition to those set forth in R151-46b-5(5), whether the complexity of the case warrants additional discovery time, and whether that party has made reasonable and prudent use of the discovery time that has already been available to the party since the proceeding commenced.

(c) Unless the presiding officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, and except as otherwise provided by these rules, methods of discovery described in Subsection R151-46b-9(4) may be used in any sequence. The fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(8) Supplemented Disclosures and Amended Responses. A party who has made a disclosure under Subsections (2) or (3)

or responded to a request for discovery with a response that was complete when made shall supplement the disclosure or amend the response to include information thereafter acquired if ordered by the presiding officer or in the following circumstances:

(a) A party shall supplement at appropriate intervals disclosures under Subsections R151-46b-9(2) and (3) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under Subsection R151-46b-9(3)(a), the duty extends to information contained in the report, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Subsection R151-46b-9(3)(b) are due.

(b) A party shall amend a prior response to a request for production within a reasonable time after the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(9) Initial Prehearing Conference.

(a) The party initiating the adjudicative proceeding shall file a written request for the scheduling of an initial prehearing conference and provide a copy to the presiding officer within 10 days after the filing of the response to the notice of agency action or within 10 days after the filing of the request for agency action in a case commenced by such a request. The presiding officer shall contact the parties upon receiving that request for the scheduling of the conference and arrange for that conference to be held at the earliest feasible time. Nothing in this rule shall limit the ability of the presiding officer to contact the parties and schedule the conference on his own initiative.

(b) The conference may be conducted either in person or telephonically. All parties, or their counsel, shall participate in the conference. The conference shall include discussion of discovery, prehearing motions and other matters pertaining to the orderly management of the proceeding.

(c) During the initial prehearing conference, the presiding officer shall issue a verbal order regarding the following matters, and shall issue a written order to the same effect after the conference is concluded:

(i) scheduling any additional prehearing conferences;

(ii) setting a deadline for the filing of prehearing motions, including motions for summary judgment;

(iii) modifying, if appropriate, any of the deadlines for disclosures under Subsection R151-46b-9(3);

(iv) resolving any discovery issues;

(v) scheduling a tentative hearing date; and

(vi) dealing with any other matters appropriate in the circumstances of the case.

(d) A party joined after the initial prehearing conference is bound by the order issued as a result of that conference, unless the presiding officer orders on stipulation or motion a modification of that order. Any such stipulation or motion shall be filed within a reasonable time after joinder.

(10) Signing of Disclosures, Discovery Requests, Responses, and Objections.

(a) Every disclosure made pursuant to Subsections R151-46b-9(2) and (3) shall be signed by at least one attorney of record or by the party if not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it was made.

(b) Every request for discovery or any response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that he has read the request, response, or objection, and that to the best of his knowledge, information, and belief formed after a reasonable inquiry it is:

(i) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, and the importance of the issues at stake in the proceeding.

(c) If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

(11) Filing of Discovery Requests or Disclosures.

(a) Unless otherwise ordered by the presiding officer, a party shall not file any request for or response to discovery, but shall file only the original certificate of service stating that the request or response has been served on the other parties and the date of service. Unless otherwise ordered by the presiding officer, a party shall not file any of the disclosures required by the initial prehearing order pursuant to Subsection R151-46b-9(2) or any of the disclosures required by Subsection R151-46b-9(3)(a), but shall file only the original certificate of service stating that the disclosures have been served on the other parties and the date of service. Except as provided in Subsection R151-46b-9(13)(f)(i) or unless otherwise ordered by the presiding officer, depositions shall not be filed. A party shall file the disclosures required by Subsection R151-46b-9(3)(b) unless otherwise ordered by the presiding officer.

(b) A party filing a motion for a protective order or a motion for an order compelling discovery shall attach to the motion a copy of the request for discovery or the response which is at issue.

(12) Subpoenas.

(a) Every subpoena shall be issued by the presiding officer under the seal of the department or applicable division, shall state the title of the action, and shall command every person to whom it is directed to attend and give testimony at a hearing or deposition at a time and place therein specified. A subpoena may also command the person to whom it is directed to produce books, papers, or tangible things designated therein, and in the case of a subpoena for a deposition, to also permit inspection and copying of such items. A subpoena for a deposition must

limit its designation of such items to matters which properly fall within the scope of discoverable information as provided in Subsection R151-46b-9(1)(a). The presiding officer shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) Service of a subpoena upon a person named therein shall be accompanied by a tender of fees for one day's attendance and the mileage allowed by law.

(c) A subpoena commanding a person to appear at a hearing or a deposition being held in this state may be served at any place within this state. A person who resides in this state may be required to appear at a deposition only in the county where the person resides, or is employed, or transacts business in person, or at such other place as the presiding officer may order. A person who does not reside in this state may be required to appear at a deposition only in the county of this state where the person is served with a subpoena, or at such other place as the presiding officer may order.

(d) A subpoena commanding a person to appear at a deposition or to produce or allow the inspection of documents, tangible things or premises located outside this state shall be served in accordance with the requirements of the jurisdiction in which such service is made.

(e) Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, the presiding officer may:

(i) quash or modify the subpoena, if it is shown to be unreasonable and oppressive; or

(ii) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(f) In the case of subpoenas requiring the production of books, papers, or other tangible things at a deposition, the person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena a written objection to production, inspection or copying of any or all of the designated materials. If such objection is made, the party serving the subpoena shall not be entitled to production, inspection or copying of the materials except pursuant to a further order of the presiding officer who issued the subpoena.

(13) Depositions Upon Oral Examination: General provision; Persons who may be deposed.

Under the limited circumstances prescribed in this Subsection, a party may with leave of the presiding officer take the testimony by deposition upon oral examination of certain persons, including parties, who have knowledge of facts relevant to the claims or defenses of any party in the proceeding. The attendance of witnesses may be compelled by subpoena as provided in Subsection R151-46b-9(12). Depositions of expert witnesses shall not be permitted.

(a) Before a party may request leave to take a person's deposition, the party must first make diligent efforts to obtain discovery from that person by means of an informal interview. A party shall not be granted leave to take a deposition unless the party, upon motion, demonstrates to the satisfaction of the presiding officer that the person has knowledge of facts relevant to the claims or defenses of any party in the proceeding and:

(i) has refused a reasonable request by the moving party for an informal interview;

(ii) after having notice of at least two reasonable requests by that party for an informal interview, has failed to respond to those requests;

(iii) has refused to answer reasonable questions propounded to him by that party in an informal interview; or

(iv) will be unavailable to testify at the hearing.

In deciding whether to issue such an order, the presiding officer shall take into consideration the probative value which the testimony of that witness is likely to have in the proceeding. The burden of demonstrating the need for a deposition shall be upon the party requesting the deposition.

(b) Notice of Examination: General Requirements; Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(i) A party permitted to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to or included in the notice.

(ii) The parties may stipulate in writing or, upon motion, the presiding officer may order the testimony at a deposition be recorded by other than stenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at his own expense. Any objections under Subsection R151-46b-9(13)(c), any changes made by the witness, his signature identifying the deposition as his own or the statement of the officer that is required if the witness does not sign, as provided in this rule, and the certification of the officer required by Subsection R151-46b-9(13)(f), shall be set forth in a writing to accompany a deposition recorded by non-stenographic means.

(iii) The notice to a party deponent may be accompanied by a request made in compliance with Subsection R151-46b-9(14) for the production of documents and tangible things at the taking of the deposition.

(iv) A party may, in his notice and in a subpoena, name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude

taking a deposition by any other procedure authorized in these rules.

(v) The parties may stipulate in writing or, upon motion, the presiding officer may order a deposition be taken by telephone.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections.

Examination and cross-examination of witnesses may proceed as permitted at the hearing under the provisions of the Utah Administrative Procedures Act and the Utah Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with Subsection R151-46b-9(13)(b)(ii) of this rule. If requested by one of the parties, the testimony shall be transcribed. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answer verbatim.

(d) Motion to Terminate or Limit Examination.

At any time during the taking of the deposition, on motion of either a party or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition, as provided in Subsection R151-46b-9(6). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the presiding officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefore. The deposition may then be used as though signed, unless a motion to suppress is filed pursuant to Subsection R151-46b-9(13)(i)(c)(v) and the presiding officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(i) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the presiding officer, he shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly send the sealed transcript of the deposition to the attorney who arranged for the transcript to be made. If the party taking the deposition is not represented by an attorney, the transcript of the deposition shall be filed with the division or committee before which the proceeding is being held unless otherwise ordered by the presiding officer. An attorney receiving the transcript of the deposition shall store it under conditions that will protect it against loss, destruction, tampering or deterioration. The officer shall file, and serve upon all parties, a certificate indicating to whom he delivered the transcript, and the date he did so.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them, he may either offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, or offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to the original transcript of the deposition pending final disposition of the case.

(ii) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(i) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the presiding officer may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(ii) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the presiding officer may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(h) Persons Before Whom Depositions May Be Taken.

(i) Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the presiding officer in which the action is pending. A person

so appointed has power to administer oaths and take testimony.

(ii) In a foreign country, depositions may be taken:

(A) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States; or

(B) before a person commissioned by the presiding officer. The person so commissioned shall have the power, by virtue of his commission, to administer any necessary oath and take testimony. A commission shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission that the taking of the deposition in any other manner in impracticable or inconvenient; and a commission may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title.

(iii) No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the proceeding.

(i) Use of Depositions in Agency Adjudicative Proceedings.

(a) Use of Depositions.

At a hearing or upon argument of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(i) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Utah Rules of Evidence.

(ii) The deposition of either a party or anyone who, at the time of taking the deposition, was an officer, director, or managing agent, or a person designated under Subsection R151-46b-9(13)(b)(iv) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party, may be used by an adverse party for any purpose.

(iii) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds that:

(A) the witness is dead;

(B) the witness is at a greater distance than 100 miles from the place of hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition;

(C) the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(iv) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought, in fairness, to be considered with the part introduced, and any party may introduce any other parts.

All depositions lawfully taken and duly filed in any court or another agency of this state may be used as if originally taken in the pending proceeding. A deposition previously taken may also be used as permitted by the Utah Rules of Evidence.

(b) Objections to Admissibility.

Subject to the provisions of Subsection R151-46b-9(13)(i)(c), objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Errors and Irregularities in Depositions.

(i) All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(ii) Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(iii) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(iv) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(v) Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(14) Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.

(a) Scope.

Upon approval by the presiding officer, any party may serve on any other party a request:

(i) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form, or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Subsection R151-46b-9(1)(a) and which are in the possession, custody or control of the party upon whom the request is served; or

(ii) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or

any designated object or operation thereon, within the scope of Subsection R151-46b-9(1)(a).

(b) Procedure.

Before permitting a party to serve a request for production of documents, the presiding officer must first find that the party seeking such leave has demonstrated that the records he seeks have not already been provided to him in the initial disclosures submitted by another party. After approval by the presiding officer, the request may be served upon any party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 20 days after the service of the request. The presiding officer may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Subsection R151-46b-9(16) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(15) Physical and Mental Examination of Persons.

(a) Order for Examination.

When the mental or physical condition, including the blood group, of a party or of a person in the custody or under the legal control of a party is in controversy, the presiding officer may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or person by whom it is to be made.

(b) Report of Examining Physician.

(i) If requested by the party against whom an order is made under Subsection (a) of this rule or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery, the party causing the examination shall be entitled, upon request, to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The presiding officer on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report, the presiding officer may exclude his testimony if offered at the hearing.

(ii) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(iii) Subsection R151-46b-9(15)(b) applies to examination made by agreement of the parties unless the agreement expressly provides otherwise. Subsection R151-46b-9(15)(b) does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule.

(16) Motion to Compel Discovery; Sanctions for Failure to Make or Cooperate in Discovery.

(a) A party may request entry of an order compelling discovery as follows:

(i) If a party fails to make disclosures required by an initial prehearing order pursuant to R151-46b-9(2), or a party fails to make the disclosures required by R151-46b-9(3), or a deponent fails to answer a question propounded under Subsection R151-46b-9(13), or a corporation or other entity fails to make a designation under Subsection R151-46b-9(13)(b)(iv), or a party, in response to a request for inspection submitted under Subsection R151-46b-9(14), fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling such disclosures, or an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the presiding officer denies the motion in whole or in part, the presiding officer may make such protective order as he would have been empowered to make on a motion made pursuant to Subsection R151-46b-9(6).

(ii) For purposes of Subsection R151-46b-9(16)(a)(i), an evasive or incomplete answer is to be treated as a failure to answer.

(b) Discovery Sanctions.

(i) If a party or other person fails to comply with an order compelling discovery issued by the presiding officer, the department may seek enforcement of that order by seeking civil enforcement in the district court as provided in Section 63-46b-19.

(ii) If a party, an officer, director, or managing agent of a party or a person designated under Subsection R151-46b-9(13)(b)(iv) to testify on behalf of a party fails to obey an order or provide or permit discovery, including an order made under Subsection R151-46b-9(16)(a), the presiding officer may make such orders in regard to the failure as are just, including:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or

staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(iii) If a party fails to comply with an order under Subsection R151-46b-9(15)(a) requiring him to produce another for examination, the presiding officer may enter any order listed in paragraphs (A), (B), and (C) of Subsection R151-46b-9(16)(b)(ii) unless the party failing to comply shows that he is unable to produce such person for examination.

(iv) If a party, an officer, director, or managing agent of a party or a person designated under Subsection R151-46b-9(13)(b)(iv) to testify on behalf of a party fails to appear before the officer who is to take his deposition, after being served with a proper notice, fails to serve a written response to a request for inspection submitted under Subsection R151-46b-9(14), after proper service of the request, the presiding officer on motion may make such orders in regard to the failure as are just and may take any action authorized under paragraphs (A), (B) and (C) of Subsection R151-46b-9(16)(b)(ii). In lieu of any order or in addition thereto, the presiding officer shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the presiding officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in Subsection R151-46b-9(16) may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in Subsection R151-46b-9(6).

(v) The failure to comply with Subsections R151-46b-9(1) through R151-46b-9(15) or to honor any certification made under those rules may be found by the presiding officer to be a default under Section 63-46b-11.

R151-46b-10. Hearings.

(1) Hearings Required or Permitted.

A hearing shall be held in all adjudicative proceedings in which a hearing is:

(a) required by statute or rule and not waived by the parties; or

(b) permitted by statute or rule and timely requested.

(2) Time to Request Permissive Hearing.

A request for a hearing permitted by statute or rule must be received no later than:

(a) the time period for filing a response to a notice of agency action if a response is required or permitted;

(b) twenty days following the issuance of a notice of agency action if a response is not required or permitted; or

(c) the filing of the request for agency action.

(3) Scheduling of Hearings.

(a) The date, time, and place of a hearing shall be set forth in the notice of agency action or the notice of receipt of request for agency action, or, if not known at the time of the notice, in a separate notice of hearing.

(b) The presiding officer may, upon a determination of good cause, issue an order modifying the date, time, or place of a hearing.

(4) Hearings Open to Public; Exceptions.

(a) Any hearing in an adjudicative proceeding is open to the public unless closed by the presiding officer conducting the hearing, pursuant to Title 63, Chapter 46b, the Administrative Procedures Act, or by a presiding officer who is a public body, pursuant to Title 52, Chapter 4, the Open and Public Meetings Act.

(b) The deliberative process of an adjudicative proceeding is a quasi-judicial function exempt from the Open and Public Meetings Act. Deliberations are closed to the public.

(5) Bifurcation of Hearing.

The presiding officer, good cause appearing, may order a hearing bifurcated into a findings phase relative to the allegations set forth in the petition, and a sanctions phase, if required, based upon the findings.

(6) Order of Presentation in Hearings.

The order of presentation of evidence in hearings in formal adjudicative proceedings shall normally be as follows:

(a) opening statement of the party with the burden of proof;

(b) opening statement of the opposing party, unless the party reserves the opening statement until the presentation of its case-in-chief;

(c) case-in-chief of the party which has the burden of proof and cross examination of witnesses by opposing party;

(d) case-in-chief of the opposing party and cross examination of witnesses by the party with the burden of proof;

(e) rebuttal case by the party which has the burden of proof;

(f) surrebuttal case by the opposing party;

(g) further rebuttal or surrebuttal as permitted by the presiding officer;

(h) closing argument by the party which has the burden of proof;

(i) closing argument by the opposing party; and

(j) final argument by the party which has the burden of proof.

(7) Telephonic Testimony.

(a) Telephonic testimony is only permissible in a formal adjudicative proceeding upon the consent of the parties or if warranted by exigent circumstances. Normally, expenses which would be incurred by a party to produce in-person testimony do not constitute an exigent circumstance as to justify telephonic testimony in a formal adjudicative proceeding. Telephonic testimony is generally permissible in an informal proceeding upon the request of any party.

(b) When telephonic testimony is to be presented, the presiding officer shall require that the identity of any witness so testifying be established. The presiding officer shall also provide safeguards to assure the witness does not refer to documents improperly and to reduce the possibility the witness may be coached or influenced during their testimony.

(8) Standard of Proof.

The standard of proof in all proceedings under these rules, whether initiated by a notice of agency action or request for agency action, shall be a preponderance of the evidence.

(9) Burden of Proof.

The department has the burden of proof in any proceeding initiated by a notice of agency action. The party who seeks action from the department has the burden of proof in any proceeding initiated by a request for agency action.

(10) Default Procedures.

(a) Order entering the default of a party.

(i) The presiding officer may enter the default of a party in accordance with Section 63-46b-11, sua sponte or upon motion of a party.

(ii) A party filing a motion for entry of default shall also file an affidavit substantiating the grounds for the motion.

(iii) If the submissions establish a basis for entry of default, the presiding officer may enter the default without notice to the defaulting party or a hearing.

(b) Additional proceedings.

(i) Following the entry of default, the presiding officer may, sua sponte or upon motion of a party, conduct further proceedings and enter a final order based on the submissions filed without notice to or participation by the defaulting party when:

(A) the relief sought against the party is specifically set forth in the pleadings that were served upon that party;

(B) the factual allegations contained in those pleadings are supported by affidavit or by a verified petition; and

(C) those factual allegations, and applicable law, support the granting of the relief sought against that party.

(ii) In all other cases, the presiding officer shall not enter a final order without conducting a hearing in which the party seeking relief may submit proffers, evidence, or legal arguments in support of the relief it requests against the defaulting party. The hearing may be held without notice to or participation by the defaulting party if the pleadings served upon the defaulting party set forth the potential relief which could be obtained against such party.

(c) The order of default and the final order may be concurrently issued.

(11) Record of Hearing.

(a) Record Requirement.

The presiding officer shall cause a record to be made of all prehearing conferences and all hearings which are conducted.

(b) Record Methods.

(i) Formal Adjudicative Proceedings.

The presiding officer shall cause the record of a hearing in a formal adjudicative proceeding to be made by means of a certified shorthand reporter, unless the presiding officer determines it to be unnecessary or impracticable, in which case he shall cause the record to be made by means of an audio or video cassette recorder or other recording device.

(ii) Informal Adjudicative Proceedings.

The presiding officer may cause a record of a hearing in an informal adjudicative proceeding to be made by a method set forth in Subsection (i) or by minutes prepared or adopted by the presiding officer.

(c) Record Expense.

The hearing in an adjudicative proceeding shall be recorded at the expense of the agency.

(d) Transcription of Record.

(i) The record of a hearing is not required to be transcribed. However, a party may elect to have the record of a hearing transcribed by the reporter who reported the hearing or by a reporter approved by the presiding officer.

(ii) The party requesting the transcript shall bear the cost of the transcription.

(iii) The original transcript of a record of a hearing shall be filed with the presiding officer.

(12) Fees.

(a) Witness Fees.

Witnesses appearing upon the demand or at the request of a party shall be entitled to receive payment from that party in the amount of $18.50 for each day in attendance and, if traveling more than 50 miles to attend and return from the hearing, shall be entitled to receive 25 cents per mile for each mile thus actually and necessarily traveled. Any witness subpoenaed by a party other than the department may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, the witness shall not be required to appear.

(b) Interpreter and Translator Fees.

Interpreters and translators, including those skilled in foreign languages and communication with the deaf, shall be allowed such compensation for their services as the presiding officer may allow.

(c) Officers and Employees not Entitled to Fees - Exception.

No officer or employee of the United States, or of the State of Utah, or of any county, incorporated city or town within the State of Utah, shall receive any witness fee when testifying in an adjudicative proceeding unless the officer or employee is required to testify at a time other than during his normal working hours.

(d) Only One Fee Per Day Allowed.

No witness shall receive fees in more than one adjudicative proceeding on the same day.

R151-46b-11. Orders.

(1) Requirements.

All orders issued by a presiding officer shall comply with the requirements of Subsection 63-46b-5(1)(i) or Section 63-46b-10, respectively. In the case of default orders and orders issued subsequent to a default order, the requirements of Subsections 63-46b-5(1)(i)(iii) and (iv) and 63-46b-10(1)(e),(f) and (g) are satisfied if the order includes a notice of the right to seek to set aside the order as provided in Subsection 63-46b-11(3).

(2) Effective Date.

The effective date of the final order in an adjudicative proceeding shall be 30 days after the issuance thereof unless otherwise provided in the order.

(3) Clerical Mistakes.

Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the department on its own initiative or on the motion of any party and after such notice, if any, as the department orders. Such mistakes may be so corrected at any time prior to the docketing of a petition for judicial review or as governed by Rule 11(h) of the Utah Rules of Appellate Procedure.

R151-46b-12. Agency Review.

(1) Availability of Agency Review.

Except as otherwise provided in Subsection 63-46b-11(3)(c), an aggrieved party may obtain agency review of a final order by filing a request with the executive director of the

department within thirty days following the issuance of the order.

(2) When Agency Review Is Not Available.

Agency review is not available as to any order or decision entered by the Real Estate Appraiser Licensing and Certification Board, the Utah Motor Vehicle Franchise Board, the Utah Powersport Advisory Board and the Pete Suazo Utah Athletic Commission. However, agency reconsideration is available pursuant to R151-46b-13.

(3) Content of a Request for Agency Review - Transcript of Hearing - Service.

(a) The content of a request for agency review shall be in accordance with Subsection 63-46b-12(1)(b). The request for agency review shall include a copy of the order that is the subject of the request.

(b) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to appropriate legal authority and to the relevant portions of the record developed during the adjudicative proceeding.

(c) If a party challenges a finding of fact in the order subject to review, the party must demonstrate, based on the entire record, that the finding is not supported by substantial evidence. A party challenging the facts bears the burden to marshal or gather all of the evidence in support of a finding and to show that despite such evidence, the finding is not supported by substantial evidence. The failure to so marshal the evidence permits the executive director to accept a division's findings of fact as conclusive. A party challenging a legal conclusion must support the argument with citation to any relevant authority and also cite to those portions of the record that are relevant to that issue.

(d) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to such finding or conclusion to be prepared. When a request for agency review is filed under such circumstances, the party seeking review shall certify that a transcript has been ordered and shall notify the department when the transcript will be available for filing with the department. The party seeking agency review shall bear the cost of the transcript.

(e) A party seeking agency review shall, in the manner described in R151-46b-8, file and serve copies of the request for agency review, pleadings, and other submissions to the appropriate division whose order is challenged. If an attorney enters an appearance on behalf of the division, the party seeking agency review shall thereafter serve copies of relevant documents to the attorney.

(f) Failure to comply with this rule may result in dismissal of the request for agency review.

(4) Stay Pending Agency Review.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review. If a stay is not timely requested, the order subject to review shall take effect according to its terms.

(b) The division or committee that issued the order subject to review may oppose the request for a stay in writing within ten days from the date the stay is requested. Failure to oppose a timely request for a stay shall result in an order granting the stay unless the department determines that a stay would not be in the best interest of the public. The department may also enter an interim order granting a stay pending a decision on the motion for a stay.

(c) In determining whether to grant a request for a stay or a motion opposing that request, the department shall review the division's or committee's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare. The department may also issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(5) Memoranda.

(a) The department may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order entered by the department.

(b) When no transcript is necessary to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request. If a transcript is necessary to conduct agency review, any supporting memoranda shall be filed no later than 15 days after the filing of the transcript with the department.

(c) Any response to a request for agency review and any memoranda supporting that response shall be filed no later than 15 days from the filing of the request for agency review or no later than 15 days from the filing of any subsequent memoranda supporting that request. Any final reply memoranda shall be filed no later than five days after the filing of a response to the request for agency review.

(6) Oral Argument.

The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with agency review. The department may order or permit oral argument if the department determines such argument is warranted to assist in conducting agency review.

(7) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63-46b-16(4).

(8) Type of Relief.

The type of relief available on agency review shall be the same as the type of relief available on judicial review, as set forth in Subsection 63-46b-17(1)(b).

(9) Order on Review.

The order on review shall comply with the requirements of Subsection 63-46b-12(6).

R151-46b-13. Agency Reconsideration.

(1) Filing requirements for agency reconsideration.

(a) Before seeking judicial review of any order or decision entered by the Real Estate Appraiser Licensing and Certification Board, the Utah Motor Vehicle Franchise Board, the Utah Powersport Advisory Board and the Pete Suazo Utah Athletic Commission, an aggrieved party may file a petition for reconsideration by the relevant board or commission pursuant

to Section 63-46b-13.

(b) The request shall be signed by the party seeking reconsideration. Any response to the request for reconsideration shall be filed within ten days of the filing of the request for reconsideration. Responses relating to matters before the Real Estate Appraiser Licensing and Certification Board shall be filed with the Division of Real Estate. All other responses shall be filed with the executive director of the Department.

(2) Stay Pending Reconsideration.

Upon the timely filing of a request for reconsideration by the board, the effective date of the previously issued order or decision shall be suspended pending the completion of reconsideration.

(3) Order on reconsideration.

Any order on reconsideration constitutes final agency action for purposes of Section 63-46b-14. The order shall provide notice to any aggrieved party of any right to judicial review.

R151-46b-14. Exhaustion of Administrative Remedies.

(1) In accordance with Section 63-46b-14, an aggrieved party may seek judicial review of a final order only after exhausting all administrative remedies available.

(2) The order on review constitutes final agency action for purposes of Subsection 63-46b-14(1).

R151-46b-15. Stay and Other Temporary Remedies Pending Judicial Review.

(1) Unless otherwise provided by statute, a motion for a stay of an order or other temporary remedy during the pendency of judicial review shall include:

(a) a statement of the reasons for the relief requested;

(b) a statement of the facts relied upon;

(c) affidavits or other sworn statements if the facts are subject to dispute;

(d) relevant portions of the record of the adjudicative proceeding and agency review thereof;

(e) a memorandum of law identifying the issues to be presented on appeal and supporting the aggrieved party's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, remand for a new hearing, or relief from the order entered;

(f) clear and convincing evidence that if the requested stay or other temporary remedy is not granted, the aggrieved party will suffer irreparable injury;

(g) clear and convincing evidence that if the requested stay or other temporary remedy is granted, it will not substantially harm other parties to the proceeding; and

(h) clear and convincing evidence that if the requested stay or other temporary remedy is granted, the aggrieved party will not pose a significant danger to public health, safety and welfare.

(2) The executive director of the department may grant a motion for a stay of an order or other temporary remedy during the pendency of judicial review upon a showing by the aggrieved party that the requirements for such relief established in this rule are met.

R151-46b-16. Emergency Adjudicative Proceedings.

Unless otherwise provided by statute or rule:

(1) When a division commences an emergency adjudicative proceeding and issues an order in accordance with Section 63-46b-20 which results in a continued impairment of the affected party's rights or legal interests, the division that issued the emergency order shall schedule a hearing upon written request of the affected party to determine whether the emergency order should be affirmed, set aside, or modified based on the standards set forth in Section 63-46b-20. The hearing will be conducted in conformity with Section 63-46b-8.

(2) Upon request for a hearing pursuant to this rule, the Division will conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree to conduct the hearing at a later date. The Division shall have the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63-46b-20 have been met.

(3) Except as otherwise provided by statute, the division director or his designee shall select an individual or body of individuals to act as the presiding officer at the hearing. The presiding officer shall not include any individual who directly participated in issuing the emergency order.

(4) Within a reasonable time after the hearing, the presiding officer shall issue an order in accordance with the requirements of Section 63-46b-10. The order of the presiding officer shall be considered final agency action with respect to the emergency adjudicative proceeding and shall be subject to agency review in accordance with Section R151-46b-12.

R151-46b-17. Declaratory Orders.

(1) Filing of Petition for Declaratory Order.

A petition for the issuance of a declaratory order shall be filed with the agency head which has primary jurisdiction to enforce or implement the statute, rule, or order for which a declaratory order is sought. The petition shall set forth the question to be answered, the facts and circumstances related to the question, the statute, rule, or order to be applied to the question, and whether oral argument is sought in conjunction with the petition. The Petition shall comply with the requirements for pleadings set forth in Section R151-46b-7.

(2) Disposition of Petition.

Upon receipt of a petition for a declaratory order, the agency head shall issue a written order in accordance with Subsection 63-46b-21(6) or allow the petition to be denied in accordance with Subsection 63-46b-21(7).

(a) If the agency head issues a declaratory order declaring the applicability of the statute, rule, or order in question to the specified facts and circumstances set forth in the petition without setting the matter for an adjudicative proceeding, the order shall be based upon a review of the petition and oral argument upon the petition, if any; laws and rules applicable to the petition; records maintained by the agency; or any other relevant information reasonably available to the agency.

(b) If the agency head sets the matter for an adjudicative proceeding, a notice of adjudicative proceeding shall be issued in accordance with the requirements of Subsection 63-46b-3(2)(a), to the extent applicable.

(3) Classes of Circumstances in Which the Agency Will

Not Issue a Declaratory Order.

The following are defined as classes of circumstances in which the agency will not issue a declaratory order:

(a) questions involving circumstances set forth in Subsection 63-46b-21(3)(a)(ii) or (3)(b);

(b) questions which are not within the jurisdiction of the agency to address;

(c) questions which have already been adequately addressed by an agency in the form of an order;

(d) questions which can be adequately addressed by an agency in the form of informal advice;

(e) questions which are already clearly addressed by statute or rule and do not warrant a declaratory order;

(f) questions which are more properly addressed by statute or rule;

(g) questions which arise out of pending or anticipated litigation in a civil, criminal, or administrative forum which are more properly addressed by that forum; and

(h) questions which are irrelevant, insignificant, meaningless, or spurious.

(4) Agency Review.

The recipient of a declaratory order may request agency review pursuant to Section 63-46b-12 and these rules.

R151-46b-18. Record of an Adjudicative Proceeding.

(1) Definition.

The record of an adjudicative proceeding includes the pleadings and exhibits filed by the parties, the recording of any hearing under Subsection R151-46b-10(11), any transcript of a hearing, and orders or other documents issued by any presiding officer in the adjudicative proceeding or on agency review or reconsideration of the adjudicative proceeding.

(2) Retention.

The record of an adjudicative proceeding shall be retained by the department pursuant to Title 63, Chapter 2, the Government Records Access and Management Act ("GRAMA"). As used herein, "department" means the department, division or committee before whom the adjudicative proceeding was conducted.

(3) Classification.

The record of an adjudicative proceeding is classified as a "public record" except as otherwise classified by the department pursuant to GRAMA.

KEY: administrative procedures, government hearings
July 2, 2002 13-1-6
Notice of Continuation February 28, 2001 63-46b-1(6)

R156. Commerce, Occupational and Professional Licensing.
R156-11a. Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rules.
R156-11a-101. Title.

These rules are known as the "Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rules."

R156-11a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 11a, as used in Title 58, Chapters 1 and 11a or these rules:

(1) "Advanced pedicures", as used in Subsection 58-11a-102(27)(a)(i)(D), means cleaning, trimming and caring of the nail, cuticles, and calluses of the feet utilizing various equipment, instruments, implements as well as topical products and preparations.

(2) "BCA acid" means bicloroacetic acid.

(3) "Being engaged in the practice of esthetics", as used in Subsections 58-11a-302(7)(d)(iii) and (iv), means having been engaged in a scope of practice that includes at least 50% of the modalities listed in Subsection 58-11-102(25).

(4) "Being engaged in the practice of master esthetics", as used in Subsections 58-11a-302(8)(d)(iii) and (v), means having been engaged in a scope of practice that includes at least 50% of the modalities listed in Subsection 58-11a-102(27).

(5) "Body wraps", as used in Subsection 58-11a-102(27)(a)(i)(A), means body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity and promote the health of the skin and body.

(6) "Chemical exfoliation", as used in Subsection 58-11a-102(27)(a)(i)(C), means a resurfacing procedure performed with a chemical solution or product for the purpose of removing superficial layers of the epidermis to a point no deeper than the stratum corneum.

(7) "Dermabrasion or open dermabrasion" means the surgical application of a wire or diamond frieze by a physician to abrade the skin to the epidermis and possibly down to the papillary dermis.

(8) "Dermaplane" means the use of a scalpel or bladed instrument by a physician to shave the upper layers of the stratum corneum.

(9) "Equivalent number of credit hours" means:

(a) the following conversion table if on a semester basis:

(i) theory - 1 credit hour - 30 clock hours;

(ii) practice - 1 credit hour - 30 clock hours; and

(iii) clinical experience - 1 credit hour - 45 clock hours; and

(b) the following conversion table if on a quarter basis:

(i) theory - 1 credit hour - 20 clock hours;

(ii) practice - 1 credit hour - 20 clock hours; and

(iii) clinical experience - 1 credit hour - 30 clock hours.

(10) "Exfoliation" means the sloughing off of non-living skin cells by very superficial and non-invasive means.

(11) "Galvanic current" means a constant low-voltage direct current.

(12) "Health care practitioner" means a physician/surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or a physician assistant licensed under Title 58, Chapter 70, Physician Assistant Act.

(13) "Hydrotherapy", as used in Subsection 58-11a-102(27)(a)(i)(B), means the use of water for cosmetic purposes or beautification of the body.

(14) "Limited chemical exfoliation" means an extremely gentle chemical exfoliation.

(15) "Manipulating", as used in Subsection 58-11a-102(25)(a), means applying a light pressure by the hands to the skin.

(16) "Manual lymphatic massage", as used in Subsection 58-11a-102(25)(b), means a method using light pressure applied by manual or other means to the skin in specific maneuvers to promote drainage of the lymphatic fluid through the tissue.

(17) "Microdermabrasion", as used in Subsection 58-11a-102(27)(a)(i)(E), means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

(18) "Patch test" or "predisposition test" means applying a small amount of a chemical preparation to the skin of the arm or behind the ear to determine possible allergies of the client to the chemical preparation.

(19) "Supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter in the treatment of a patient of the health care practitioner while:

(a) the health care practitioner is physically located on the premises and is immediately available to care for the patient if complications arise; or

(b) the patient is physically located on the premises of the health care practitioner.

(20) "TCA acid" means trichloroacetic acid.

(21) "Unprofessional conduct" is further defined, in accordance with Subsection 58-1-203(5), in Section R156-11a-501.

R156-11a-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 11a.

R156-11a-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.

R156-11a-301. Change of Legal Entity.

In accordance with Section 58-11a-301, a school shall be required to submit a new application for licensure upon any change of legal entity status. The new legal entity may not engage in practice as a licensed school, pursuant to Subsections 58-11a-102(14), (15), (16), and (17), until the application is approved and a license issued.

R156-11a-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Section 58-11a-302, the various examination requirements for licensure are established as follows:

(1) Applicants for licensure as a cosmetologist/barber shall:

(a) pass the Utah Law and Rules Examination with a score of at least 75%;

(b)(i) pass the Utah Cosmetology/Barber Theory Exam with a score of at least 75%; or

(ii) pass the National-Interstate Council of State Boards of Cosmetology National examination with a passing score as established by the Council of State Boards of Cosmetology; and

(c)(i) pass the Utah Cosmetology/Barber Practical Exam or an equivalent exam as established by the Division in collaboration with the Board; or

(ii) have practiced as a licensed cosmetologist/barber in another state for a period of not less than 4,000 hours.

(2) Applicants for licensure as a cosmetologist/barber instructor shall pass the following:

(a) the Utah Cosmetologist/Barber Instructor Licensing Examination with a passing score of at least 75%; and

(b) the Utah Law and Rules Examination with a passing score of at least 75%.

(3) Applicants for licensure as an electrologist shall pass the following:

(a)(i) the National-Interstate Council of State Boards of Cosmetology Electrologist test with a passing score as established by the Council of State Boards of Cosmetology; or

(ii) the Utah Electrologist Theory Examination;

(b) the Utah Law and Rules Examination with a passing score of at least 75%; and

(c) the Utah Electrology Practical Examination.

(4) Applicants for licensure as an electrologist instructor shall pass the following:

(a) the Utah Electrologist Instructor Examination with a passing score of at least 75%; and

(b) the Utah Law and Rules Examination with a passing score of at least 75%.

(5) Applicants for licensure as an esthetician shall pass the following:

(a) if applying for licensure under Subsections 58-11a-302(7)(d)(i) or (ii):

(i) the Utah Law and Rules Examination with a passing score of at least 75%;

(ii) (A) the Utah Esthetics Theory Examination with a passing score of at least 75%; or

(B) the National-Interstate Council of State Board of Cosmetology National Esthetics examination with a passing score as established by the Council of State Boards of Cosmetology; and

(iii) the Utah Esthetics Practical Examination or an equivalent exam as established by the Division in collaboration with the Board;

(b) if applying for licensure under Subsections 58-11a-302(7)(d)(iii) or (iv), no examination is required; or

(c) if applying for licensure under Subsection 58-11a-302(7)(d)(v):

(i) the Utah Esthetics Theory Examination with a passing score of at least 75%; or

(ii) the National-Interstate Council of State Boards of Cosmetology National Esthetics examination with a passing score as established by the Council of State Boards of Cosmetology.

(6) Applicants for licensure as a master esthetician shall pass the following:

(a) if applying for licensure under Subsections 58-11a-302(8)(d)(i) or (ii):

(i) the Utah Law and Rules Examination with a passing score of at least 75%;

(ii) the Utah Master Esthetician Theory Examination with a passing score of at least 75%; and

(iii) the Utah Master Esthetician Practical Examination or an equivalent exam as established by the Division in collaboration with the Board;

(b) if applying for licensure under Subsections 58-11a-302(8)(d)(iii) or (iv), no examination is required; or

(c) if applying for licensure under Subsection 58-11a-302(8)(d)(v), the Utah Master Esthetician Theory Examination.

(7) Applicants for licensure as an esthetician instructor shall pass the following:

(a) the Utah Esthetician Instructor Examination with a passing score of at least 75%; and

(b) the Utah Law and Rules Examination with a passing score of at least 75%.

(8) Applicants for licensure as a Nail Technician shall pass the following:

(a) if applying for licensure under Subsections 58-11a-302(11)(d)(i) or (ii):

(i) the Utah Law and Rules Examination with a passing score of at least 75%;

(ii)(A) the Utah Nail Technician Theory Examination with a passing score of at least 75%; or

(B) the National-Interstate Council of State Boards of Cosmetology National Nail Technician Examination with a passing score as established by the Council of State Boards of Cosmetology; and

(iii) pass the Utah Nail Technician Practical Examination or an equivalent exam as established by the Division in collaboration with the Board;

(b) if applying for licensure under Subsections 58-11a-302(11)(d)(iii) or (iv), no examination is required; or

(c) if applying for licensure under Subsection 58-11a-302(11)(d)(v):

(i) the Utah Nail Technician Theory Examination with a passing score of at least 75%; or

(ii) the National-Interstate Council of State Boards of Cosmetology National Nail Technician Examination with a passing score as established by the Council of State Boards of Cosmetology.

(9) Applicants for licensure as a nail technician instructor shall pass the following:

(a) the Utah Nail Technician Instructor Examination with a passing score of at least 75%; and

(b) the Utah Law and Rules Examination with a passing score of at least 75%.

R156-11a-302b. Deadline for Making Application under Grandfather Clause.

Applicants for licensure under the grandfather provisions in Subsections 58-11a-302(7)(d)(iii), (iv), and (v); (8)(d)(iii), (iv), and (v); and (11)(d)(iii), (iv), and (v) must apply for

licensure on or before December 31, 2001. Thereafter, all applicants must meet all requirements for initial licensure including those established in Subsections 58-11a-302(7)(d)(i) and (ii), 58-11a-302(8)(d)(i) and (ii) or 58-11a-302(11)(d)(i) and (ii), respectively.

R156-11a-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 and certificates under Title 58, Chapter 11a is established by rule in Section R156-1-308.

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

R156-11a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to provide direct supervision of an apprentice, a student attending a cosmetology/barber, esthetics, electrology, or nail technology school, or a student instructor;

(2) failing to obtain accreditation as a cosmetology/barber, esthetics, electrology, or nail technology school in accordance with the requirements of Section R156-11a-601;

(3) failing to maintain accreditation as a cosmetology/barber, esthetics, electrology or nail technology school after having been approved for accreditation;

(4) failing to comply with the standards of accreditation applicable to cosmetology/barber, esthetics, electrology, or nail technology schools;

(5) failing to provide adequate instruction or training as applicable to a student of a cosmetology/barber, esthetics, electrology, or nail technology school or in an approved cosmetology/barber, esthetics, or nail technology apprenticeship;

(6) failing to comply with Title 26, Utah Health Code;

(7) failing to comply with the apprenticeship requirements applicable to cosmetologist/barber, esthetician, master esthetician, or nail technician apprenticeships as set forth in Sections R156-11a-801 through R156-11a-805;

(8) failing to comply with the standards for curriculums applicable to cosmetology/barber, esthetics, electrology, or nail technology schools as set forth in Sections R156-11a-701 through R156-11a-704;

(9) using any device classified by the Food and Drug Administration as a medical device without the supervision of a licensed health care practitioner acting in the scope of the licensee's practice;

(10) performing services within the scope of practice as a master esthetician without having been adequately trained to perform such services;

(11) violating any standard established in Sections R156-11a-601 through R156-11a-612;

(12) as a nail technician, using methyl methacrylate;

(13) performing a procedure while the licensee has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease; and

(14) performing a procedure on a client who has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease.

R156-11a-601. Standards for Accreditation.

In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv) 58-11a-302(10(c)(iv), and 58-11a-302(13)(c)(iv), the accreditation standards for a cosmetology/barber school, an electrology school, an esthetics school, and a nail technology school include:

(1) Each school shall be required to become accredited by:

(a) the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS); or

(b) other accrediting commissions recognized by the Utah Board of Regents for post secondary schools.

(2) Each school shall maintain and keep the accreditation current.

(3) A new school shall:

(a) submit an application for candidate status for accreditation to an accrediting commission within one month of receiving licensure from the Division as a cosmetology/barber school, an electrology school, an esthetics school, or a nail technology school and shall provide evidence of receiving candidate status from the accrediting commission to the Division within 12 months of the date the school was licensed;

(b) register with the Utah Board of Regents pursuant to Subsection 53B-5-105(1)(e); and

(c) comply with all applicable accreditation standards during the pendency of its application for accreditation status.

(4) The school shall have 24 months following the date of receiving candidate status to be approved for accreditation.

(5) A licensee who fails to obtain or maintain accreditation status, as required herein, shall immediately surrender to the Division its license as a school. Failure to do so shall constitute a basis for immediate revocation of licensure in accordance with Section 63-46b-20.

R156-11a-602. Standards for the Physical Facility.

In accordance with Subsections 58-11a-302(3)(c)(iii), 58-11a-302(6)(c)(iii), 58-11a-302(10)(c)(iii) and 58-11a-302(13)(c)(iii), the standards for the physical facility of a cosmetology/barber school, an electrology school, an esthetics school, and a nail technology school shall include:

(1) the governing standards established by the accreditation commission; and

(2) whether or not addressed in the governing standards, each facility shall have the following available:

(a) enough of each type of training equipment so that each student has an equal opportunity to be properly trained;

(b) laundry facilities to maintain sanitation and sterilization; and

(c) appropriate amounts of clean towels, sheets, linen, sponges, headbands, compresses, robes, drapes and other necessary linens for each student's and client's use.

R156-11a-603. Standards for a Student Kit.

(1) In accordance with Subsection 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(10(c)(iv), and 58-11a-302(13)(c)(iv), cosmetology/barber, electrology, esthetics, and nail technology schools shall provide a list of all basic kit supplies needed by each student.

(2) The basic kit may be supplied by the school or purchased independently by the student.

R156-11a-604. Standards for Prohibition Against Operation as a Salon.

(1) In accordance with Subsection 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11-302(10)(c)(iv), and 58-11a-302(13)(c)(iv), when a professional salon and a school are under the same ownership or otherwise associated, separate operation of the salon and the school is required.

(2) If the salon and the school are located in the same building, separate entrances and visitor reception areas are required. The salon and the school shall also use separate public information releases, advertisements and names.

R156-11a-605. Standards for Protection of Students.

In accordance with Subsections 58-11a-302(3)(c)(iii) and (iv), 58-11a-302(6)(c)(iii) and (iv), 58-11a-302(10)(c)(iii) and (iv), 58-11a-302(13)(c)(iii) and (iv), standards for the protection of students shall include the following:

(1) In the event a school ceases to operate for any reason, the school shall notify the division within 15 days by registered or certified mail and shall name a trustee who will be responsible to maintain the student records. Upon request, the trustee shall provide information such as accumulated student hours and dates of attendance.

(2) Schools shall not use students to perform maintenance, janitorial or remodeling work such as scrubbing floor, walls or toilets, cleaning windows, waxing floors, painting, decorating, or performing any outside work on the grounds or building. Students may be required to clean up after themselves and to perform or participate in daily cleanup of work areas, including the floor space, shampoo bowls, laundering of towels and linen and other general cleanup duties that are related to the performance of client services.

(3) Schools shall not require students to sell products applicable to their industry as a condition to graduate, but may provide instruction in product sales techniques as part of their curriculums.

(4) Schools shall keep a daily written record of student attendance.

(5) Schools shall not be permitted to remove hours earned by a student. If a student is late for class, the school may require the student to retake the class before giving credit for the class.

R156-11a-606. Standards for Protection of Schools.

In accordance with Subsection 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(10)(c)(iv), and 58-11a-302(13)(c)(iv), standards for the protection of cosmetology/barber, electrology, esthetics, and nail technology schools shall include:

(1) Schools shall not be required to release documentation of hours earned to a student until the student has paid the tuition or fees owed to the school as provided in the terms of the contract.

(2) Schools may accept transfer students. Schools shall determine the amount of hours to be accepted toward graduation based upon an evaluation of the student's level of training.

R156-11a-607. Standards for a Written Contract.

(1) In accordance with Subsection 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(10)(c)(iv), and 58-11a-302(13)(c)(iv), cosmetology/barber, electrology, esthetics, and nail technology schools shall complete a written contract with each student prior to admission.

(2) Each contract shall contain, as a minimum:

(a) the current status of the school's accreditation;

(b) rules of conduct;

(c) attendance requirements;

(d) provisions for make up work;

(e) grounds for probation, suspension or dismissal; and

(f) a detailed fee schedule which shall include the student's financial responsibility upon voluntarily leaving the school or upon being suspended from the school.

(3) The school shall maintain on file a copy of the contract for each student and shall provide a copy of the contract to the division upon request.

R156-11a-608. Standards for Staff Requirements of Schools.

In accordance with Subsection 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv, 58-11a-302(10)(c)(iv), and 58-11a-302(13)(c)(iv), the staff requirement for cosmetology/barber, electrology, esthetics and nail technology school shall include:

(1) Schools shall be required to have, as a minimum, one licensed instructor for every 20 students, or fraction thereof, attending a practical session, and one licensed instructor for any group attending a theory session. Special guest speakers shall not reduce the number of licensed instructors required to be present.

(2) Schools may give credit for special workshops, training seminars, and competitions, or may invite special guest speakers who are not licensed in accordance with Section 58-11a-302, to provide instruction or give practical demonstrations to supplement the curriculum as long as a licensed instructor from the school is present.

(3) Student instructors shall not be counted as part of the instructor staff.

R156-11a-609. Standards for Instructors.

(1) In accordance with Subsections 58-11a-302(2)(c)(iv), 58-11a-302(5)(c)(iv), 58-11a-302(9)(c)(iv), and 58-11a-302(12)(c)(iv), cosmetology/barber, electrology, esthetics, and nail technology instructors may only teach in those areas for which they have received training and are qualified to teach.

(2) In accordance with Subsection 58-11a-102(21)(b), an individual licensed as a cosmetology/barbering instructor may teach esthetics in a licensed cosmetology/barber school or an approved cosmetology/barber apprenticeship, provided the individual can demonstrate the same experience as required in Subsection 58-11a-302(9)(e).

(3) An instructor may only teach the use of a mechanical or electrical apparatus for which the instructor is trained and qualified.

R156-11a-610. Standards for the Use of Acids.

In accordance with Subsections 58-11a-102(25)(c), 58-11a-102(27)(i)(C) and 58-11a-501(17), the standards for the use of any acid or concentration of acids, shall be:

(1) The use of any acid or acid solution which would exfoliate the skin below the stratum corneum, including those listed in Subsections (3) and (4), is prohibited unless used under the supervision of a licensed health care practitioner.

(2) The following acids are prohibited unless used under the supervision of a licensed health care practitioner:

(a) phenol;

(b) trichloroacetic acid;

(c) bichloroacetic acid;

(d) resorcinol, except as provided in Subsection (4)(b); and

(e) any acid in any concentration level that requires a prescription.

(3) Limited chemical exfoliation for an esthetician does not include the mixing and combining of skin exfoliation products or services, but does include:

(a) alpha hydroxy acids of 30% or less, with a pH of not less than 3.0; and

(b) salicylic acid of 20% with a pH of not less than 3.0.

(4) Chemical exfoliation for a master esthetician includes using:

(a) those acids allowed for an esthetician;

(b) modified jessner solution on the face and the tissue immediately adjacent to the jaw line;

(c) alpha hydroxy acids with a pH of not less than 1.0 and at a concentration of 50% must include partially neutralized acids, and any acid above the concentration of 50% is prohibited;

(d) beta hydroxy acids with a concentration of not more that 30%; and

(e) vitamin based acids.

(5) A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion within the previous seven days.

(6)(a) A licensee shall prepare and maintain current documentation of the licensee's cumulative experience in chemical exfoliation, including:

(i) courses of instruction;

(ii) specialized training;

(iii) on-the-job experience; and

(iv) the approximate percentage that chemical exfoliation represents in the licensee's overall business.

(b) A licensee shall provide the documentation required by Subsection (6)(a) to the division upon request.

(7) A licensee may not use an acid or perform a chemical exfoliation for which the licensee is not competent to use or perform through training and experience and as documented in accordance with Subsection (6).

(8) Only commercially available products utilized in accordance with manufacturers' instructions may be used for chemical exfoliation purposes.

(9) A patch test shall be administered to each client prior to beginning any chemical exfoliation series.

R156-11a-611. Standards for Approval of Mechanical or Electrical Apparatus.

In accordance with Subsection 58-11a-102(27)(a)(i)(F)(II), the standards for approval of mechanical or electrical apparatus shall be:

(1) No mechanical or electrical apparatus that is considered a prescription medical device by the FDA may be used by a licensee, unless such use is completed under the supervision of a licensed health care practitioner acting within the scope of the licensee's license.

(2) Dermaplane procedures, dermabrasion procedures, blades, knives, lancets, and any tools that invade the skin or living cells are prohibited except for:

(a) advanced pedicures; and

(b) extraction of impurities from the skin.

(3) The use of any procedure in which human tissue is cut or altered by mechanical or energy form, including electrical or laser energy or ionizing radiation, is prohibited for all individuals licensed under this chapter unless under the supervision of a licensed health care practitioner acting within the scope of the licensee's license.

(4) To be approved, a microdermabrasion machine must meet the following criteria:

(a) specifically labeled for cosmetic or esthetic purposes;

(b) closed-loop vacuum system that uses a tissue retention device; and

(c) the normal and customary use of the machine does not result in the removal of the epidermis beyond the stratum corneum.

R156-11a-612. Standards for Disclosure.

(1) In accordance with Subsections 58-11a-102(25)(c) and (27)(i)(C), a licensee acting within the licensee's scope of practice shall inform a client of the following before applying a chemical exfoliant or using a microdermabrasion machine:

(a) that the procedure may only be performed for cosmetic and not medical purposes, unless the licensee is working under the supervision of a licensed health care practitioner, who is working within the scope of the practitioner's license; and

(b) the benefits and risks of the procedure.

R156-11a-701. Curriculum for Electrology Schools.

In accordance with Subsection 58-11a-302(6)(c)(iv), the curriculum for an electrology school shall consist of 500 hours of instruction in the following subject areas:

(1) Introduction as follows:

(a) history of electrology; and

(b) overview of curriculum.

(2) Basic Science and Anatomy as follows:

(a) medical definitions and diagnosis;

(b) prescription drugs affecting hair growth; and

(e) contraindications.

(3) Histology;

(4) Trichology;

(5) Endocrinology;

(6) Dermatology;

(7) Neurology as follows:

(a) anesthetics, including over-the-counter and prescription; and

(c) carpal tunnel syndrome.

(8) Angiology

(9) Psychology as follows:

(a) aesthetic/cosmetic electrolysis; and

(b) gender dysphoric clients.

(10) Practical Analysis as follows:

(a) evaluating the characteristics of skin;
(b) evaluating the characteristics of hair growth;
(c) needle/probe types, features and selection;
(d) insertions, considerations and accuracy; and
(e) one and two handed techniques.
(11) Infection and Disease Control as follows:
(a) pathogenic bacteria and non bacterial causes;
(b) American Electrology Association (AEA) infection control standards;
(c) aseptic techniques and sanitary procedures;
(d) sterilization methods and procedures; and
(e) health risks to the electrologist.
(12) Principles of Electricity and Equipment as follows:
(a) currents, measurement and classification;
(b) FDA Class 1 needle type epilating equipment;
(c) FDA Class 3 hair removal devices; and
(d) laser technologies for temporary hair removal prohibited unless performed under the supervision of a licensed health care profession; and
(e) epilator operation and care.
(13) Modalities for Needle Type Electrolysis as follows:
(a) galvanic multi needle technique;
(b) thermolysis manual technique;
(c) thermolysis flash technique; and
(d) blend and progressive epilation technique.
(14) Clinical Procedures as follows:
(a) consultation;
(b) health/medical history;
(c) pre and post treatment skin care;
(d) normal healing skin effects;
(e) tissue injury and complications;
(f) treating ingrown hairs;
(g) face and body treatment;
(h) evaluation of treatments/regrowth;
(i) positioning and draping; and
(j) stress and relaxation techniques.
(15) Developing a practice and business management as follows:
(a) professional associations;
(b) ethics;
(c) legal issues including:
(i) malpractice liability;
(ii) regulatory agencies; and
(iii) tax laws;
(d) public relations; and
(e) advertising.
(16) State Board Exams Review; and
(17) Elective Topics.

R156-11a-702. Curriculum for Esthetics School - Esthetician Programs.

In accordance with Subsection 58-11a-302(10)(c)(iv), the curriculum for an esthetics school esthetician program shall consist of 600 hours of instruction in the following subject areas:
(1) manual lymphatic massage of the face and neck;
(2) temporary removal of superfluous hair;
(3) treatment of the skin;
(4) packs and masks;
(5) analysis of the skin;
(6) application of make-up;
(7) application of false eyelashes;
(8) arching of the eyebrows;
(9) tinting of the eyelashes and eyebrows;
(10) history and theory of skin care;
(11) electronic facials;
(12) first aid;
(13) chemistry of cosmetics;
(14) skin treatments with and without machines;
(15) anatomy and physiology;
(16) sanitation, decontamination, and infection control;
(17) waxing;
(18) pedicures;
(19) aromatherapy;
(20) limited chemical exfoliation;
(21) other related topics; and
(22) state laws and rules.

R156-11a-703. Curriculum for Esthetics School – Master Esthetician Programs.

In accordance with Subsection 58-11a-302(10)(c)(iv), the curriculum for an esthetics school master esthetician program shall consist of 1,200 hours of instruction, 600 of which consisting of the curriculum for an esthetician program, the remaining 600 of which is in the following subject areas:
(1) introduction consisting of:
(a) history of master esthetics; and
(b) overview of curriculum;
(2) bacteriology, hygiene, sanitation, and sterilization techniques;
(3) the immune system, skin disorders, and the prevention of infectious disease;
(4) essentials of chemistry and advanced cosmetic chemistry;
(5) the skin and the aging process, including damage to the skin;
(6) lymphatic massage by manual and other means;
(7) advanced anatomy, physiology, and histology of the skin;
(8) body wrapping, including procedures, product ingredients, and contra-indications;
(9) advanced pedicures;
(10) hydrotherapy;
(11) advanced waxing and temporary hair removal;
(12) chemical exfoliation, including pre-exfoliation consultation, post-exfoliation treatments and reactions;
(13) cardio pulmonary resuscitation (CPR) training;
(14) advanced aromatherapy;
(15) sanding and microdermabrasion, including training in the use of:
(a) electrical devices which use high-frequency current in the treatment of the skin, including:
(i) a device equipped with a brush to cleanse the skin;
(ii) an electrical device which uses galvanic current for the treatment of the skin;
(iii) a device which applies a mixture of steam and ozone to the skin; and
(iv) a device which is used to spray water and other liquids

on the skin, and to stimulate circulation in the skin; and

(b) any mechanical device for the care and treatment of the skin which is approved by the division in collaboration with the board; and

(16) other esthetic preparations or procedures.

R156-11a-704. Curriculum for Nail Technology Schools.

In accordance with Subsection 58-11a-302(6)(c)(iv), the curriculum for a nail technology school shall consist of 200 hours of instruction in the following subject areas:

(1) safety and sanitation, including salon safety, bacteriology, and sterilization;

(2) artificial nail techniques, including wraps, tips, gel, sculptured acrylic nail, nail art, and mechanical techniques;

(3) cosmetic chemistry;

(4) pedicuring including massage of the lower leg and foot;

(5) anatomy and physiology;

(6) nail and the disorders of nail;

(7) skin and the disorders of the skin;

(8) first aid;

(9) theory of basic manicuring with hand and arm massage;

(10) professional ethics/salon management/state laws; and

(11) elective topics.

R156-11a-705. Curriculum for Cosmetology/Barber Schools.

In accordance with Subsection 58-11a-302(3)(c)(iv), the curriculum for a cosmetology/barber school shall consist of 2,000 hours of instruction, 600 of which consisting of the curriculum for an esthetics school esthetician program; 200 of which consisting of the curriculum for a nail technology school; and the remaining 1,200 of which in the following subject areas:

(1) introduction consisting of:

(a) history of cosmetology/barbering; and

(b) overview of curriculum;

(2) professional image, including professional ethics and salon management;

(3) bacteriology, sanitation and sterilization, safety, and diseases and disorders;

(4) decontamination, infection control, and salon safety;

(5) properties of the hair and scalp;

(6) draping;

(7) shampooing, rinsing, and conditioning;

(8) haircutting, including men and women;

(9) hairstyling, including wet and thermal;

(10) permanent waving;

(11) hair coloring;

(12) chemical hair relaxing;

(13) thermal hair straightening;

(14) wigs and artificial hair;

(15) first aid;

(16) anatomy and physiology;

(17) chemistry for cosmetology/barbering;

(18) professional ethics and salon management;

(19) electricity and light therapy;

(20) implements, tools, and equipment for cosmetology and barbering;

(21) shaving;

(22) clipper variations;

(23) razor cutting for men;

(24) mustache and beard design;

(25) licensing laws and rules; and

(26) elective topics.

R156-11a-801. Approved Cosmetologist/Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved cosmetology/barber apprenticeship shall include the following:

(1) The supervisor shall have only one apprentice at a time.

(2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

(3) The supervisor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of cosmetology/barber texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The supervisor shall provide training and technical instruction of 2,500 hours using the curriculum defined in Section R156-11a-705.

(7) The supervisor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-705.

(9) Hours obtained while enrolled in a cosmetology/barber school shall not be used to satisfy the required 2,500 hours of apprentice training.

R156-11a-802. Approved Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(2), the requirements for an approved esthetician apprenticeship shall include:

(1) The supervisor shall have no more than two apprentices at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The supervisor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of esthetics texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The supervisor shall provide training and technical

instruction of 800 hours using the curriculum defined in Section R156-11a-702.

(7) The supervisor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours required in technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-702.

(9) Hours obtained while enrolled in an esthetics school shall not be used to satisfy the required 800 hours of apprentice training.

R156-11a-803. Approved Master Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(3), the requirements for an approved master esthetician apprenticeship shall include:

(1) The supervisor shall have no more than two apprentices at a time.

(2) The apprentice shall be licensed as an esthetician.

(3) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(4) The supervisor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(5) A complete set of esthetics texts shall be available to the apprentice.

(6) An apprentice may be compensated for services performed.

(7) The supervisor shall provide training and technical instruction of 1,500 hours using the curriculum defined in Section R156-11a-703:

(8) The supervisor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(9) An apprentice may not perform work on the public until the apprentice has received at least 10% of the required hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-703.

(10) Hours obtained while enrolled in an esthetics school shall not be used to satisfy the required 1,500 hours of apprentice training.

R156-11a-804. Approved Nail Technician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(4), the requirements for an approved nail technician apprenticeship shall include:

(1) The supervisor shall have no more than two apprentices at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The supervisor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of nail technician texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The supervisor shall provide training and technical instruction of 250 hours using the curriculum defined in Section R156-11a-704.

(7) The supervisor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-704.

(9) Hours obtained while enrolled in a nail technology school shall not be used to satisfy the required 250 hours of apprentice training.

R156-11a-805. Conflicts of Interest.

An apprentice instructor may not be an employee of an apprentice or be involved in any relationship with an apprentice or others that would interfere with the instructor's ability to teach and train the apprentice.

R156-11a-901. On the Job Training Internship.

In accordance with Subsection 58-11a-304(8), students enrolled in a licensed cosmetology/barber school may participate in an on the job training internship if they meet the following requirements:

(1) The on the job training intern must have completed at least 1000 hours of the training contracted for with a cosmetology/barber school, of which 400 hours shall be clinical hours.

(2) There shall be a conspicuous sign near the work station of the on the job training intern stating "Intern in Training".

(3) A licensed cosmetology/barber supervisor shall supervise only one on the job training intern at a time.

(4) An on the job training intern, while working under the direct supervision of a licensed cosmetologist/barber, may perform the following procedures:

(a) draping;

(b) shampooing;

(c) roller setting;

(d) blow drying styling;

(e) applying color;

(f) removing color by rinsing and shampooing;

(g) removing permanent chemicals;

(h) removing permanent rods;

(i) removing rollers;

(j) applying temporary rinses, reconditioners, and rebuilders;

(k) acting as receptionists;

(l) doing retail sales;

(m) sanitizing the salon;

(o) doing inventory and ordering supplies; and

(p) handing equipment to the cosmetologist/barber supervisor.

(5) The cosmetologist/barber supervisor must have in their possession a letter, which must be updated on a quarterly basis, from the school where the on the job training intern is enrolled stating that the on the job training intern is currently in good standing at the school and is complying with school requirements.

(6) Credit toward graduation for work as an on the job training intern will not be allowed.

KEY: cosmetologists/barbers, estheticians, electrologists, nail technicians

September 17, 2001 58-11a-101

Notice of Continuation July 11, 2002 58-1-106(1) 58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-16a. Optometry Practice Act Rules.
R156-16a-101. Title.

These rules are known as the "Optometry Practice Act Rules".

R156-16a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 16a, as used in Title 58, Chapters 1 and 16a or these rules:

(1) "Verbal order" as used in Subsection 58-16a-102(3)(a), means that the attending optometrist ordered the contact lens prescription by telephone, or that an individual acting under the supervision and direction of the attending optometrist ordered the contact lens prescription by telephone.

R156-16a-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 16a.

R156-16a-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.

R156-16a-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsection 58-16a-302(1)(e), the course of study satisfactory to the division and the board shall consist of:

(1) 100 clock hours of General and Ocular Pharmacology in a recognized accredited optometry school; and

(2) one of the following courses in Emergency Medical Care:

(a) Cardiopulmonary Resuscitation (CPR); or

(b) Basic Life Support (BCLS).

R156-16a-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-16a-302(1)(f), the examinations which must be successfully passed by applicants for licensure as an optometrist are:

(1) the National Board of Examiners in Optometry examinations to include the following sections:

(a) Part I (Basic Science);

(b) Part II (Clinical Science);

(c) Part III (Patient Care); and

(d) The Treatment and Management of Ocular Disease (TMOD).

R156-16a-302c. Licensure by Endorsement.

In accordance with Subsection 58-16a-302(2)(b), optometry practice that is "consistent with the legal practice of optometry in this state" means that the licensed optometrist has lawfully engaged in therapeutic optometry for not less than 3200 hours in the past two years.

R156-16a-304. Continuing Education.

In accordance with Section 58-16a-304, the standards for the 30 hours of qualified continuing professional education are the following.

(1) With the exception of Subsection (2), only courses approved by the Council on Optometric Professional Education (COPE) or optometry related courses approved by the Council on Medical Education will be accepted.

(2) A maximum of two hours of continuing professional education will be accepted for courses in certification or recertification in cardiopulmonary resuscitation (CPR) or Basic Life Support (BCLS).

(3) Qualified continuing professional education hours for licensees who have not been licensed for the entire two year renewal cycle will be prorated from the date of licensure.

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

(5) Hours in excess of the 30 hours obtained in one renewal cycle cannot be transferred to the next renewal cycle.

(6) A licensee who has a serious health problem or who has left the United States for an extended period of time which may prevent the licensee from being able to comply with the professional education requirements established under this section may be excused from completing some or all of the requirements established under this section by submitting a written request to the Division and receiving Division approval.

R156-16a-307. Licenses Held on Effective Date - Scope of Practice Defined.

(1) In accordance with Section 58-16a-307, the scope of practice for an individual holding a current license as an optometrist without certification on May 5, 1997 is clarified as follows.

(a) An optometrist without certification:

(i) shall not engage in the treatment of eye disease or injury, the administration or prescribing of diagnostic or therapeutic prescription drugs, or over the counter medicines, the removal of any foreign body from the eye, or treatment of any condition of the eye except those which can be corrected by the use of lenses, prisms, contact lenses, or ocular exercises; and

(ii) may use, dispense, or recommend over-the-counter contact lens solutions.

(iii) upon finding any eye disease or injury requiring therapeutic treatment, shall refer the patient to a qualified practitioner.

(2) In accordance with Section 58-16a-307, the scope of practice for an individual holding a current license as an optometrist with diagnostic certification on May 5, 1997 is clarified as follows.

(a) An optometrist with diagnostic certification:

(i) shall not engage in the treatment of eye disease or injury, the administration or prescribing of therapeutic prescription drugs, or therapeutic over the counter medicines, the removal of any foreign body from the eye, or treatment of any condition of the eye except those which can be corrected by the use of lenses, prisms, contact lenses, or ocular exercises;

(ii) may use, dispense, or recommend over-the-counter contact lens solutions;

(iii) may administer diagnostic prescription drugs or over the counter medicines to include the categories of anesthetics,

myotics, mydriatrics, or cyclopegics; and

(iv) upon finding any eye disease or injury requiring therapeutic treatment, shall refer the patient to a qualified practitioner.

(3) In accordance with Section 58-16a-307, the scope of practice for an individual holding a current license as an optometrist with therapeutic certification on May 5, 1997 shall be consistent with the scope of practice set forth in Section 58-16a-601.

R156-16a-502. Unprofessional Conduct.

In addition to Title 58, Chapters 1 and 16a, and in accordance with Subsection 58-1-203(5), unprofessional conduct is further defined to include:

(1) engaging in optometry beyond the scope of practice pursuant to Section R156-16a-307 and Section 58-16a-601.

KEY: optometrists, licensing

May 17, 2001	**58-16a-101**
Notice of Continuation July 23, 2002	**58-1-106(1) 58-1-202(1)**

R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rules.
R156-22-101. Title.

These rules are known as the "Professional Engineers and Professional Land Surveyors Licensing Act Rules".

R156-22-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 22, as used in Title 58, Chapters 1 and 22, or these rules:

(1) "Complete and final" as used in Section 58-22-603 means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision" as used in Subsection 58-22-102(10) means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee, subordinate, associate, or drafter of a licensee" as used in Subsections 58-22-102(16), 58-22-603(1)(b) and these rules means one or more individuals not licensed under this chapter, who are working for, with, or providing professional engineering, professional structural engineering, or professional land surveying services directly to and under the supervision of a person licensed under this chapter.

(4) "Engineering surveys" as used in Subsection 58-22-102(9) include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Recognized jurisdiction" as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any state, district or territory of the United States, or any foreign country who issues licenses for professional engineers, professional structural engineers, or professional land surveyors, and whose licensure requirements include:

(a) Professional Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Engineering Credentials Evaluation International and four years of full time engineering experience under supervision of one or more licensed engineers; or eight years of full time engineering experience under supervision of one or more licensed professional engineers; and

(ii) passing the NCEES Principles and Practice of Engineering Examination (PE) or passing a professional engineering examination that is substantially equivalent to the NCEES Principles and Practice of Engineering Examination.

(b) Professional Structural Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Engineering Credentials Evaluation International (ECEI) and four years of full time engineering experience under supervision of one or more licensed engineers; or eight years of full time engineering experience under supervision of one or more licensed professional engineers;

(ii) passing a NCEES Principles and Practice of Engineering (PE) Examination;

(iii) passing the NCEES Structural I and II Examination or passing a professional engineering examination that is substantially equivalent to the NCEES Structural I and II Examination; and

(iv) three years of licensed experience in professional structural engineering.

(c) Professional Land Surveyor.

(i) a two or four year degree in land surveying or equivalent education as determined by the Engineering Credentials Evaluation International (ECEI) and four years of full time land surveying experience under supervision of one or more licensed professional land surveyors; or eight years of full time land surveying experience under supervision of one or more licensed professional land surveyors; and

(ii) passing the NCEES Principles and Practice of Land Surveying Examination (PLS) or passing a professional land surveying examination that is substantially equivalent to the NCEES Principles and Practice of Land Surveying Examination.

(6) "Responsible charge" by a principal as used in Subsections 58-22-102(7) and 58-22-305(7)(a) means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

(7) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

(8) "Under the direction of the licensee" as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

(9) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-22-601.

R156-22-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 22.

R156-22-104. Organization - Relationship to Rule R156-1.

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

R156-22-201. Engineering Program Criteria.

In accordance with Subsections 58-22-302(1)(d) and 58-22-302(2)(d), the engineering program criteria is established as one of the following:

(1) The bachelors or post graduate engineering program shall be accredited by EAC/ABET or the Canadian Engineering

Accrediting Board (CEAB).

(2) The post graduate engineering degree, when not accredited by EAC/ABET or CEAB, shall be earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET or CEAB in the same specific engineering discipline as the earned post graduate degree.

(3) If the degree was earned in a foreign country, the engineering curriculum shall be determined to be equivalent to a EAC/ABET accredited program by the Engineering Credentials Evaluation International. Only deficiencies in course work in the humanities, social sciences and liberal arts noted by the credentials evaluation may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the division in collaboration with the board.

R156-22-202. Qualifying Experience for Licensure as a Professional Engineer.

(1) In accordance with Subsection 58-22-302(1)(e), an applicant for licensure as a professional engineer shall comply with one or more of the following qualifying experience requirements:

(a) Submit verification of qualifying experience from one or more licensed professional engineers who have provided supervision or who have personal knowledge of the applicant's knowledge, ability, and competence to practice professional engineering documenting completion of a minimum of four calendar years of qualifying experience in professional engineering approved by the division in collaboration with the board in accordance with the following:

(i) Up to one year of qualifying experience may be obtained while enrolled in an engineering program meeting the criteria set forth in Section R156-22-201.

(ii) Unlimited qualifying experience may be obtained after meeting the education requirements.

(iii) A maximum of three of the four years of qualifying experience may be approved by the board for persons who complete one or more of the following:

(A) A maximum of three years of qualifying experience may be granted for teaching advanced engineering subjects in a college or university offering an engineering curriculum accredited by EAC\ABET.

(B) A maximum of three years of qualifying experience may be granted for conducting research in a college or university offering an engineering curriculum accredited by EAC/ABET.

(C) A maximum of one year of qualifying experience may be granted for completion of a masters degree in engineering provided that both the earned bachelors and masters degree in engineering meet the program criteria set forth in Section R156-22-201.

(D) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in engineering provided that both the earned bachelors or masters degree and doctorate degree in engineering meet the program criteria set forth in Section R156-22-201; or

(b) Submit documentation of two years of licensed experience in a recognized jurisdiction as a professional engineer.

(2) An applicant who was unsuccessful in obtaining licensure by experience before July 1, 1996, but who passed the NCEES Fundamentals of Engineering Examination and completed four years of qualifying experience before July 1, 1996, and who thereafter completes the education requirements in Section R156-22-201, may receive credit for the qualifying experience obtained before July 1, 1996 regardless of the requirements of Subsection (1).

(3) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(4) Full or part time employment, research, or teaching for periods of time less than ten weeks in length will not be considered as qualifying experience.

R156-22-203. Experience Requirements for Licensure as a Professional Structural Engineer.

(1) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit verification of professional structural engineering experience from one or more licensed professional engineers or professional structural engineers who have personal knowledge of the applicant's knowledge, ability and competence to practice professional structural engineering, which experience is in addition to the qualifying experience required for licensure as a professional engineer.

(2) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(a) structural design of any building or structure two stories and more, or 45 feet in height, designed in Uniform Building Code (UBC) seismic zones 2, 3, or 4;

(b) structural design for a major seismic retrofit/rehabilitation of an existing building or structure in UBC seismic zones 2, 3, or 4; or

(c) structural design of any other structure of comparable structural complexity.

(3) Professional structural engineering experience shall include structural design in all of the following areas:

(a) use of three of the following four materials as they relate to the design, rehabilitation or investigation of buildings or structures:

(i) steel;

(ii) concrete;

(iii) wood; or

(iv) masonry;

(b) selection of framing systems including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(c) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(d) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(e) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(f) application of the local, state and federal code

requirements as they relate to design loads, materials, and detailing.

R156-22-204. Examination Requirements for Licensure as a Professional Engineer.

(1) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

(a) the NCEES Fundamentals of Engineering (FE) Examination with a passing score as established by the NCEES;

(b) the NCEES Principles and Practice of Engineering (PE) Examination with a passing score as established by the NCEES in one of the following disciplines:

(i) agriculture, chemical, civil, control systems, electrical, environmental, fire protection, industrial, manufacturing, mechanical, metallurgical, mining/mineral, nuclear, and petroleum; or

(ii) the NCEES Structural I examination; and

(c) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(2) An applicant must have successfully completed the qualifying experience requirements set forth in Section R156-22-202, and have successfully completed the education requirements set forth in Section R156-22-201, and make application before being eligible to sit for the NCEES PE examination.

(3) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.

R156-22-205. Examination Requirements for Licensure as a Professional Structural Engineer.

(1) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are defined, clarified, or established as the following:

(a) the NCEES Fundamentals of Engineering Examination (FE) with a passing score as established by the NCEES;

(b) a NCEES Principles and Practice (PE) Examination with a passing score as established by the NCEES;

(c) the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES or the 16 hour California Structural Examination with a passing score as established by the California engineering board; and

(d) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(2) An applicant must have successfully completed the experience requirements set forth in Subsection R156-22-203(2) and make application before being eligible to sit for the NCEES Structural I and/or II examinations.

R156-22-301. Equivalent Land Surveying Program for Licensure as a Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(d), an equivalent land surveying program for licensure as a professional land surveyor is defined as an earned bachelors or masters degree from a curriculum related to land surveying and completion of a minimum of 22 semester hours or 32 quarter hours of course work in land surveying which shall include the following courses:

(a) successful completion of a minimum of one course in each of the following content areas:

(i) boundary law;

(ii) writing legal descriptions;

(iii) public land survey system;

(iv) surveying field techniques; and

(b) the remainder of the 22 semester hours or 32 quarter hours may be made up of successful completion of courses from the following content areas:

(i) photogrammetry;

(ii) studies in land records or land record systems;

(iii) survey instrumentation;

(iv) global positioning systems;

(v) geodesy;

(vi) control systems;

(vii) land development;

(viii) drafting, not to exceed six semester hours or eight quarter hours; and

(ix) algebra, geometry, trigonometry, not to exceed six semester hours or eight quarter hours.

R156-22-302. Qualifying Experience for Licensure as a Professional Land Surveyor.

(1) In accordance with Subsections 58-22-302(3)(e) and (f), an applicant for licensure as a professional land surveyor shall comply with one or more of the following qualifying experience requirements:

(a) Submit verification of qualifying experience from one or more licensed professional land surveyors who have provided supervision or who have personal knowledge of the applicant's knowledge, ability, field experience and competence to practice professional land surveying in accordance with the following:

(i) Applicants who have met the education requirements in Subsection 58-22-302(3)(d) shall document four years of qualifying experience in land surveying which experience may be obtained before, during or after completing the education requirements for licensure.

(ii) Applicants who did not complete the education requirements in Subsection 58-22-302(3)(d) shall document eight years of qualifying experience in land surveying; or

(b) Submit documentation of two years of licensed experience in a recognized jurisdiction as a professional land surveyor.

(2) The four years of qualifying experience required in R156-22-302(1)(a)(i) and four of the eight years required in R156-22-302(1)(a)(ii) shall comply with the following:

(a) Two years of experience should be specific to field surveying with actual "hands on" surveying, including all of the following:

(i) operation of various instrumentation;

(ii) review and understanding of plan and plat data;

(iii) public land survey systems;

(iv) calculations;

(v) traverse;

(vi) staking procedures;

(vii) field notes and manipulation of various forms of data encountered in horizontal and vertical studies; and

(b) Two years of experience should be specific to office surveying, including all of the following:

(i) drafting (includes computer plots and layout);

(ii) reduction of notes and field survey data;

(iii) research of public records;

(iv) preparation and evaluation of legal descriptions; and

(v) preparation of survey related drawings, plats and record of survey maps.

(3) The remaining four years or two years of qualifying experience required in R156-22-302(1)(a)(ii) shall include any aspects of the practice of land surveying under the supervision of a licensed professional land surveyor in accordance with Subsection 58-22-102(16).

(4) Full or part time employment for periods of time less than ten weeks in length will not be considered as qualifying experience.

R156-22-303. Examination Requirements for Licensure as a Professional Land Surveyor.

(1) In accordance with Subsection 58-22-302(3)(g), the examination requirements for licensure as a professional land surveyor are established as the following:

(a) the NCEES Fundamentals of Land Surveying (FLS) Examination with a passing score as established by the NCEES;

(b) the NCEES Principles and Practice of Land Surveying (PLS) Examination with a passing score as established by the NCEES; and

(c) the Utah Local Practice Examination with a passing score of at least 75.

(2) An applicant must have successfully completed the qualifying experience requirements set forth in Subsections R156-22-301 an 302 and make application before being eligible to sit for the NCEES PLS examination.

R156-22-303. Examination Requirements for Licensure as a Professional Land Surveyor.

(1) In accordance with Subsection 58-22-302(3)(g), the examination requirements for licensure as a professional land surveyor are established as the following:

(a) the NCEES Fundamentals of Land Surveying ("FLS") Examination with a passing score as established by the NCEES;

(b) the NCEES Principles and Practice of Land Surveying ("PPLS") Examination with a passing score as established by the NCEES; and

(c) the Utah Local Practice Examination with a passing score of at least 75.

(2) Beginning May 1, 2002, an applicant must have successfully completed the education and qualifying experience requirements set forth in Subsections R156-22-301 and 302 and make application before being eligible to sit for the NCEES PPLS examination.

R156-22-401. Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(1) An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Section R156-22-204 except that the board may waive one or more of the following examinations under the following conditions:

(a) the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;

(b) the NCEES PE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for 20 years preceding the date of the license application, and who was not required to pass the NCEES PE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(2) An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Section R156-22-205 except that the board may waive the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(3) An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Section R156-22-303 except that the board may waive either the NCEES FLS Examination or the NCEES PLS Examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FLS Examination or the PLS Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-501. Continuing Education for Professional Land Surveyors.

In accordance with Subsections 58-22-303(2) and 58-22-304(1), the qualifying continuing professional education standards for professional land surveyors are established as follows:

(1) During each two year period commencing on January 1 of each even numbered year, a licensed professional land surveyor shall be required to complete not less than 24 hours of qualified professional education directly related to the licensee's professional practice.

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

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a professional land surveyor;

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

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

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

(e) have associated with it a competent method of

registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(4) Credit for qualified continuing professional education shall be recognized in accordance with the following:

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

(b) a maximum of 12 hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of land surveying;

(c) a maximum of four hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of professional land surveying and submitted for publication;

(d) a maximum of six hours per two year period may be recognized for active professional practice of land surveying; and

(e) a maximum of six hours per two year period may be recognized for active membership in any state, national or international organization for the development and improvement of the profession of land surveying.

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

(6) If a licensee exceeds the 24 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 12 hours of qualified continuing professional education into the next two year period.

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

R156-22-601. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of construction plans to be complete and final; or

(b) to a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise responsible charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Model Rules of Professional Conduct" of the National Council of Examiners for Engineering and Surveying (NCEES), 1997, which is hereby incorporated by reference.

R156-22-701. Seal Requirements.

(1) In accordance with Section 58-22-601, all final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(a) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(b) Each seal shall include the licensee's name, license number, "State of Utah", and "Professional Engineer", "Licensed Professional Engineer", "Registered Professional Engineer", "Certified Structural Engineer", "Structural Engineer", "Licensed Professional Structural Engineer", "Professional Structural Engineer", "Land Surveyor", "Professional Land Surveyor", "Licensed Professional Land Surveyor" or "Licensed Land Surveyor", as appropriate.

(c) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(d) Each original set of final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(e) A seal may be a wet stamp, embossed, or electronically produced.

(f) Copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.

(2) A person who qualifies for and uses the title of professional engineer intern is not permitted to use a seal.

KEY: engineers, surveyors, professional land surveyors, professional engineers

August 1, 2002 58-22-101

Notice of Continuation January 27, 1998 58-1-106(1) 58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-26a. Certified Public Accountant Licensing Act Rules.
R156-26a-101. Title.

These rules are known as the "Certified Public Accountant Licensing Act Rules".

R156-26a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 26a, as defined or used in these rules:

(1) "Administering organization" means an organization approved by the Division of Occupational and Professional Licensing and the Utah Board of Accountancy which will administer peer reviews in the Peer Review Program.

(2) "AICPA" means American Institute of Certified Public Accountants.

(3) "Incidental to regular practice" as defined in Subsection 58-26a-305(1)(a) is further defined to mean:

(a) An individual or a firm licensed as a certified public accountant or equivalent designation in any other state, district, or territory of the United States or any foreign country may perform services in this state for a client whose principal office or residence is located outside of this state as long as the services are incidental to primary services being performed outside of this state for that client.

(b) An individual or firm licensed in another jurisdiction, as incidental to their practice in such other jurisdiction, may advertise in this state that their services are available by any means including, but not limited to television, radio, newspaper, magazine or Internet advertising provided such representations are not false, misleading or deceptive; and provided that such individual or firm does not establish a CPA/Client relationship to perform services requiring a CPA license or CPA firm registration with any individual, business or other legal entity having its principal office or residence in this state without first obtaining a CPA license and CPA firm registration in this state.

(c) Incidental to regular practice in another jurisdiction includes a licensed CPA or equivalent designation continuing a CPA/Client relationship with an individual which originated while the client's residence was located outside of this state but thereafter the client moved their residence to this state.

(4) "Qualified continuing professional education (CPE)" as used in these rules means continuing education that meets the standards set forth in Section R156-26a-303b.

(5) "Standard setting bodies" means the Financial Accounting Standards Board, the Government Accounting Standards Board, the American Institute of Certified Public Accountants, the Securities and Exchange Commission, and the Federal Accounting Standards Advisory Board and other generally recognized standard setting bodies.

(6) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 26a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-26a-501.

(7) "Year of review" means the calendar year during which a quality review is to be conducted.

R156-26a-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 26a.

R156-26a-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.

R156-26a-201. Advisory Peer Committees Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(6), the Education Advisory Committee to the Utah Board of Accountancy consisting of one full-time faculty from each college or university in Utah which has an accredited program as set forth in Section R156-26a-302a, a majority of which committee are to be licensed CPAs.

(a) The Education Advisory Committee shall be appointed and serve in accordance with Section R156-1-204.

(b) The duties and responsibilities of the Education Advisory Committee shall include assisting the division in collaboration with the board in their duties, functions, and responsibilities defined in Section 58-1-202 as follows:

(i) reviewing an applicant's transcript of credits to determine satisfactory completion of the education requirements prior to approving the applicant to take the qualifying examination and advising the board as to the acceptability of an educational institution.

(c) The committee shall consider the following when advising the board of the acceptability of the educational institution:

(i) the institution's accreditation, the acceptability by other state licensing boards, faculty qualifications and other educational resources.

(2) There is created in accordance with Subsection 58-1-203(6), the Peer Review Committee to the Utah Board of Accountancy consisting of not more than ten licensed CPAs.

(a) The committee shall be appointed and serve in accordance with Section R156-1-204.

(b) The duties and responsibilities of the Peer Review Committee shall include administration of peer reviews in which the Division is the administering organization and shall include:

(i) considering and accepting the results of peer reviews and requiring corrective action of firms with significant deficiencies noted in the review process;

(ii) evaluating compliance of CPE programs;

(iii) performing random audits to determine compliance with the CPE requirements and the standards for CPE programs;

(iv) reviewing complaints and recommending whether certain acts, practices or omissions violate the ethical standards of the profession;

(v) providing technical assistance to the division; and

(vi) serving as expert witnesses at administrative hearings.

R156-26a-302a. Qualifications for CPA Licensure - Education Requirements.

The education requirements for CPA licensure in Subsection 58-26a-302(1)(d) are defined, clarified, or established as follows:

(1) An applicant shall submit transcripts showing completion of course work consisting of a minimum of 150 semester hours (225 quarter hours) as follows:

(a) a graduate or undergraduate program within an institution whose business or accounting education program is

accredited by the American Assembly of Collegiate Schools of Business (AACSB), or the Association of Collegiate Business Schools and Programs (ACBSP), from which the applicant received one of the following:

(i) a graduate degree in accounting;

(ii) a graduate degree in business including not less than:

(A) 24 semester hours (36 quarter hours) in upper division accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting; or

(B) 15 semester hours (23 quarter hours) graduate level accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting; or

(C) an equivalent combination of graduate and upper division accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting with one hour of graduate level course work being equivalent to 1.6 hours of upper division course work; or

(iii) a baccalaureate degree in business or accounting and 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree which includes not less than:

(A) 16 semester hours (24 quarter hours) in upper division accounting courses, which when combined with the accounting courses listed in Subsection (B) below, have at least one course with a minimum of two semester hours (three quarter hours) each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(B) eight semester hours (12 quarter hours) in graduate level accounting courses, which when combined with the accounting courses listed in Subsection (A) above, have at least one course each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(C) 12 semester hours (18 quarter hours) in upper division non-accounting business courses;

(D) 12 semester hours (18 quarter hours) in graduate level business or accounting courses; and

(E) 10 semester hours (15 quarter hours) of either graduate or upper division accounting or business courses.

(b) a graduate or undergraduate program from an institution accredited by the Northwest Association of Schools and Colleges, Commission on Colleges, or the North Central Association of Colleges and Schools, Commission on Institutions of Higher Education, or an equivalent accrediting institution from which the applicant received a baccalaureate or graduate degree with not less than:

(i) 30 semester hours (45 quarter hours) in business or related courses providing a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) business law;

(B) computers;

(C) economics;

(D) ethics;

(E) finance;

(F) statistics and quantitative methods;

(G) written and oral communications; and

(H) business administration such as marketing, production, management, policy or organizational behavior;

(ii) 24 semester hours (36 quarter hours) in upper division accounting courses with a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) auditing;

(B) finance;

(C) managerial or cost;

(D) systems; and

(E) taxes; and

(iii) 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree of additional business related course work including not less than:

(A) eight semester hours (12 quarter hours) in graduate accounting courses;

(B) 12 semester hours (18 quarter hours) in graduate accounting or graduate business courses; and

(C) 10 semester hours (15 quarter hours) of additional business related hours shall be taken in upper division undergraduate or graduate level courses.

(2) The division in collaboration with the board or the education subcommittee of the board may make a written finding for cause that a particular accredited institution or program is not acceptable.

(3) The Division in collaboration with the board or the education subcommittee of the board may accept education of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 1994 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

R156-26a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(7) and 58-1-301(3), the experience requirements for licensure in Section 58-26a-302 are clarified, or supplemented as follows:

(1) The Division in collaboration with the board may accept experience of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 1994 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

R156-26a-302d. Qualifications for Licensure - Examinations.

(1) The Division in collaboration with the board may accept testing of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA)

verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 1994 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

R156-26a-303a. Renewal Requirements - Peer Review.

(1) General.

In accordance with Subsections 58-1-308(3)(b) and 58-26a-303(2)(b), there is created a peer review requirement as a condition for renewal of licenses issued under the Certified Public Accountant Licensing Act, providing for review of the work products of licensees and firms.

(a) The purpose of the program is to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard setting bodies. The program shall emphasize education and may include other remedial actions determined appropriate where a firm's work product and services do not comply with established professional standards. In the event a firm is unwilling or unable to comply with established standards, or intentionally disregards professional standards so as to warrant disciplinary action, the administering organization shall refer the matter to the division and shall consult with the division regarding appropriate action to protect the public interest.

(2) Scheduling of the Peer Review.

(a) A firm's initial peer review shall be assigned a due date to require that the initial review be started no later than 18 months after the date of the issuance of its initial report as defined in Subsection 58-26a-102(16).

(b) Not less than once in each three years a firm engaged in the practice of public accounting shall undergo, at its own expense, a peer review commensurate in scope with its practice.

(c) The administering organization will assign the year of review. A firm enrolled in a practice monitoring program which is administered by the American Institute of Certified Public Accountants (AICPA) will use the year of review assigned by the AICPA. The firm will notify the administering organization of the deadlines set by the AICPA.

(d) A peer review number will be assigned by the administering organization. The firm is required to provide this number and its registration number assigned by the division to all licensees employed by the firm. Licensees will be required to include these numbers with their application for renewal of a license to practice public accounting.

(3) Selection of a Peer Reviewer.

A firm scheduled for peer review shall engage a reviewer qualified to conduct the peer review.

(4) Qualifications of a Peer Reviewer.

(a) Peer reviewers must provide evidence of one of the two following minimum qualifications to the administering organization:

(i) acceptance as a peer reviewer by the AICPA; or

(ii) compliance with the qualifications required by the AICPA to qualify as a peer reviewer.

(b) Peer reviewers must be licensed or hold a permit to practice as a CPA in the state of Utah or another state or jurisdiction of the United States.

(c) The administering organization will approve reviewers for those reviews not administered by the AICPA.

(5) Conduct of Peer Review. Peer review shall be conducted as follows:

(a) Standards for review: Peer reviews shall be conducted according to the "Standards for Performing and Reporting on Peer Reviews" promulgated by the AICPA, effective October 5, 1998 as amended, are hereby incorporated by reference and adopted as the minimum standards for quality reviews of all firms. This section shall not require any firm or licensee to become a member of AICPA or any administering organization.

(6) Procedures in Case of Substandard Review, a Modified or Adverse Report or repeat findings.

(a) If the administering organization finds that a peer review was not performed in accordance with these rules or the peer review results in a modified or adverse report or in repeat findings, the Peer Review Committee may require remedial action to assure that the review or performance of the CPA or CPA firm being reviewed meets the objectives of the peer review program.

(7) Review of Multi-State Firms.

(a) With respect to a multi-state firm, the Division may accept a peer review based solely upon work conducted outside of this state as satisfying the requirement to undergo peer review under these rules, if:

(i) the peer review is conducted during the year scheduled or rescheduled under R156-26a-303a(2);

(ii) the peer review is performed in accordance with requirements equivalent to those of this state;

(iii) the peer review:

(A) studies, evaluates and reports on the quality control system of the firm as a whole in the case of on-site reviews, or;

(B) results in an evaluation and report on selected engagements in the case of off-site reviews;

(iv) the firm's internal inspection procedures require that the firm's personnel from another office outside the state perform the inspection of the office located in this state not less than once in each three year period; and

(v) at the conclusion of the peer review, the peer reviewer issues a report equivalent to that required by R156-26a-303a(6).

(b) A multi-state firm not granted approval under R156-26a-303a(8)(a) shall undergo a peer review pursuant to these rules which shall comply with R156-26a-303a(8)(a) of the multi-state firm within this state.

(c) A multi-state firm seeking approval under R156-26a-303a(8)(a) shall submit an application to the administering organization by February 1 of the year of review establishing that the peer review it proposes to undergo meets all of the requirements of R156-26a-303a(5).

(d) A multi-state firm shall submit the peer review report it receives to the Utah administering organization as required by R156-26a-303a(6) within 30 days of acceptance.

(8) Exemption.

(a) A firm which does not perform services as set out in R156-26a-303a(5)(b) or (c) is exempt from peer review and shall notify the Division of Occupational and Professional Licensing of the exemption at the time of renewal of its

registration. A firm which begins providing these services must commence a peer review within 18 months of the date of the issuance of its initial report as defined in Subsection 58-26a-102(16).

(9) Mergers, Combinations, Dissolutions or Separations.

(a) Mergers or combinations: In the event that two or more firms are merged or sold and combined, the surviving firm shall retain the year of review of the largest firm.

(b) Dissolutions or separations: In the event that a firm is divided, the new firms shall retain the year of review of the former firm. In the event that this period is less than 12 months, a new year shall be assigned so that the review occurs after 12 months of operation.

(c) Upon application to the administering organization and a showing of hardship caused solely by compliance with R156-26a-303a(10)(a) or (b), the Division may authorize a change in a firm's year of review.

(10) Extension.

(a) If the firm can demonstrate that the time established for the conduct of a peer review will create an unreasonable hardship upon the firm, the Division may approve an extension not to exceed 180 days from the date the peer review was originally scheduled. A request for extension shall be addressed in writing by the firm to the Division with a copy to the administering organization responsible for administration of that firm's peer review. The written request for extension must be received by the Division and the administering organization not less than 30 days prior to the date of scheduled review or the request will not be considered. The Division shall inform the administering organization of the approval of any extension.

(11) Retention of Documents Relating to Peer Reviews.

(a) All documentation necessary to establish that each peer review was performed in conformity with peer review standards adopted by the board, including the peer review working papers, the peer review report, comment letters and related correspondence indicating the firm's concurrence or nonconcurrence, and any proposed remedial actions and related implementation shall be maintained.

(b) The documents described in R156-26a-303a(12)(a) shall be retained for a period of time corresponding to the designated retention period of the relevant administering organization. In no event shall the retention period be less than 90 days.

(12) Costs and Fees for Peer Review.

(a) All costs associated with firm-on-firm reviews will be negotiated between the firm and the reviewer and paid directly to the reviewer. All costs associated with committee assigned review team (CART) reviews will be set by the administering organization. The administering organization will collect the fees associated with CART reviews and pay the reviewer.

(b) All costs associated with the administration of the review process, including the administering organization and the PROC, will be paid from fees charged to the firms. The fees will be collected by the administering organization. The schedule of fees will be included in the administering organization's proposal. The fee schedule will specify how much is to be paid each year and will be based on the firm size.

(13) Peer Review Administered by the Division of Occupational and Professional Licensing.

(a) Any firms not participating in a peer review program administered by an administering organization approved by the Division will be administered by the division.

(14) All financial statements, working papers, or other documents reviewed are confidential. Access to those documents shall be limited to being made available, upon request, to the Peer Review Committee or the technical reviewer for purposes of assuring that peer reviews are performed according to professional standards.

R156-26a-303b. Renewal and Reinstatement Requirements - Continuing Professional Education (CPE).

(1) Standards for programs which qualify. Qualified continuing professional education must be current and relevant to the practice of accountancy and maintain or increase the licensee's competence and shall meet the following standards:

(a) an outline of the program shall be prepared in advance and retained by the program sponsor for four years from the date of the program;

(b) the program developers and instructors shall be qualified in content and teaching methods used to develop and teach the subjects covered;

(c) the program shall clearly identify learning objectives and specify the level of knowledge participants should have in order to participate in the program;

(d) the program shall be reviewed or evaluated by a qualified person other than the developer or instructor to ensure compliance with these standards and evidence of such review shall be available upon request;

(e) the program sponsors shall have an effective means for evaluating the performance of the program including whether the standards described herein have been met;

(f) participants shall be informed in advance of objectives, prerequisites, prior education or experience levels needed, program content, nature and extent of advance preparation, teaching method to be used, recommended or approved continuing professional education hours allowed for credit, and any relevant administrative policies necessary to obtain the maximum benefit of the program and encourage participation only by individuals with appropriate education or experience;

(g) the program sponsor shall maintain a record of registration and attendance for four years from the date of the program;

(h) the number of participants and physical facilities shall be consistent with the teaching method specified;

(i) Subjects which qualify. The program and material provided to participants shall be sufficient to meet the program objectives and be current, relevant and technically accurate for the approved subjects which qualify under this section. These include:

(i) Accounting and Auditing;

(ii) Taxation;

(iii) Management Advisory Services;

(iv) Information Technology;

(v) Communication Arts;

(vi) Mathematics, Statistics, Probability and Quantitative Analysis;

(vii) Economics;

(viii) Business Law and Litigation Support;

(ix) Functional Fields of Business:

(A) Finance;

(B) Production;

(C) Marketing;

(D) Personnel Relations, Development and Management;

(E) Business Management and Organizations;

(F) Social Environment of Business;

(G) Specialized Areas of Industry such as Film Industry, Real Estate, Farming;

(j) Program Sponsorship. A program may be sponsored by one of the following, provided that all standards are met:

(i) professional development programs of recognized national and state accounting organizations;

(ii) technical sessions at meetings of recognized national and state accounting organizations and their chapters;

(iii) formal organized in-firm educational programs;

(iv) programs of other state or nationally recognized non-profit or educational organizations including colleges and universities; and

(v) any other program that complies with the standards of this section;

(k) Continuing Education Credit Hours. Qualifying continuing education programs must be at least 50 minutes in length. Continuing education credits will be determined based on the total number of minutes of formal presentations, supervised practice or supervised study time divided by 50 minutes. The resulting credit hours will be rounded down to the nearest whole number. No fractional credit hours will be granted. For example, a program that lasts from 8:00 a.m. until 12:00 noon with two 15 to 20 minute breaks would qualify for four CPE credits;

(i) Accredited University or College Credits.

(A) Each semester hour credit shall equal 15 hours toward the requirement. A quarter hour shall equal ten hours;

(B) Non-credit short courses or other individual study programs which require registration and provide evidence of satisfactory completion will qualify;

(ii) Self Study or Correspondence Courses. Formal correspondence or other individual study programs which require registration, provide evidence of satisfactory completion including test results, and are susceptible to verification of satisfaction of the Standards for Programs Which Qualify noted above will qualify. The CPA Board or CPE committee or the Approved CPE Registry will determine if number of credit hours recommended is equivalent to the hours as determined under Subsection (1)(l).

(l) Instructor CPE Credit. Instructors of programs meeting the standards under this section will be granted two hours of CPE credit for each hour of instruction time for the first class taught on a particular topic which meets the criteria of this rule, not to exceed 24 hours for any one topic. No credit is given for class subjects which have been previously taught by the instructor. The maximum credit for teaching and preparation cannot exceed 50% (or 40 hours) of the CPE requirement;

(m) Authors of published books and articles may apply to have CPE credit granted in an amount to be determined by the board upon review of the book or article. The maximum credit for books or articles cannot exceed 25% of the CPE requirement; and

(n) Programs or Activities Which Do Not Qualify. The following activities do not satisfy the standards for programs of this section and are not eligible for satisfaction of CPE requirements:

(i) personal study: personal study includes reading professional journals and publications, studying and researching matters such as tax code revisions, practicing software programs on a computer and watching video movies of a conference; and

(ii) committee meetings, dinner and luncheon meetings, firm meetings or other activities that do not meet the standards outlined in this section.

(2) Reporting Requirements. Each licensee applying for license renewal shall report, by January 31 of each even numbered year, qualified continuing professional education hours completed for the preceding two calendar years. Each person applying for license reinstatement shall file a report at the time of application.

(a) Such report shall be by means of one of the following:

(i) certification from an approved continuing professional education registry of the hours of qualified continuing education completed; or

(ii) a report to the Division for review and approval of continuing professional education.

(b) It is the responsibility of the applicant or licensee to demonstrate to the Division that the applicant or licensee successfully completed all CPE reported and meets the requirements of Subsection (1) or that the CPE has been approved by an approved continuing professional education registry and that reported courses maintained or increased the professional competence of the applicant or licensee.

(3) Continuing Professional Education Registry. To obtain approval as a continuing professional education registry, an organization shall:

(a) be a professional association primarily consisting of individuals licensed as certified public accountants;

(b) be organized and in good standing according to the laws of the state;

(c) enter into a written agreement with the Division under which the organization agrees to:

(i) review and approve only those programs which meet the standards set forth under Subsection (1);

(ii) publish and disseminate to their members or other CPAs on request, listings of continuing professional education programs which meet the standards and are approved for qualified continuing professional education credit;

(iii) maintain accurate records of qualified continuing professional education completed by each of its registrants and provide each of its registrants with a certificate on a timely basis to permit the registrant to file that certificate with the registrant's application to the division for renewal or reinstatement of his license as a certified public accountant. The certificate shall contain the name of the instructor, the date of the program, location of the program, title of the program, the name of the sponsor, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, and the number of CPE hours granted; and

(iv) make records of approved of qualified continuing professional education programs and records of qualified continuing professional education completed by registrants

available for audit by representatives of the division, the board or peer advisory committees of the board.

(4) Fees. A registry may charge a reasonable fee to registrants for services provided for approval of courses. Sponsors of approved courses may charge a lower fee to members of the sponsoring association for participation as a registrant than it charges to non-members of the association.

(5) Other CPE requirements and failure to complete CPE requirements.

(a) Interim Licensure CPE requirements. Those individuals who become licensed or certified between renewal periods shall be required to complete CPE based upon ten hours per calendar quarter for the remaining quarters of the reporting period.

(b) Carry Forward Provision. A licensee who completes more than 80 hours of CPE during the two year reporting period may carry forward up to 40 hours to the next succeeding reporting period. Carry forward credits may not be used to satisfy the 20 hour minimum annual CPE requirement.

(c) Failure to comply with CPE requirements.

(i) Failure to meet the 80 hour requirement. An individual holding a current Utah license who fails to complete the required 80 hours of CPE by the reporting deadline will not be allowed to renew their license unless they complete and report to the division at least 30 days prior to their expiration date two times the number of CPE hours the license holder was short for the reporting period (penalty hours). The penalty hours shall not be considered to satisfy in whole or part any of the CPE hours required for subsequent renewal of the license.

(ii) Failure to meet the 20 hour minimum per year requirement. An individual who fails to complete the 20 hour minimum per calendar year requirement will not be allowed to renew their license unless they complete and report to the division at least 30 days prior to their expiration date, the AICPA Ethics Self-Study Examination and the Utah Law and Rules Examination with passing scores required for initial licensure. CPE credit will not be given for completion of this requirement.

(iii) Non-Qualifying or Disqualified CPE hours. An individual who reports nonqualifying hours or who has hours disqualified by the Utah Board of Accountancy shall not be allowed to renew their license unless they complete and report to the division, within 60 days of receiving notification by the division of their shortage, the relevant requirement under R156-26-303b(6)(c)(i) or (ii).

(iv) Waiver for Medical Reasons. A licensee may request the board to waive the requirements or grant an extension for continuing professional education on the basis that the licensee was not able to complete the continuing professional education due to medical or related conditions confirmed by a qualified health care provider. Such medical confirmation shall include the beginning and ending dates during which the medical condition would have prevented the licensee from completing the continuing professional education, the extent of the medical condition and the effect that the medical condition had upon the ability of the licensee to continue to engage in the practice of accountancy. The board in determining whether the waiver is appropriate shall consider whether or not the licensee continued to be engaged in the practice of accountancy practice on a full or part time basis during the period specified by the medical confirmation.

R156-26a-303c. Renewal Cycle.

In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 26a is established by rule in Section R156-1-308.

R156-26a-303d. Renewal Procedures.

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

R156-26a-305. Use of Certified Public Accountant (CPA) Title.

An individual who has a current CPA license issued by any other state may use the title or designation "Certified Public Accountant" but may only practice public accountancy in the state of Utah if currently licensed in the state of Utah or if performing public accountancy which is incidental to regular practice in another state as defined in Subsection 58-26a-305(1) and as further clarified in R156-26a-102(4).

R156-26a-307. Reinstatement of Licenses.

(1) An individual having held a Utah license which has expired for failure to renew for nonpayment of fees, or an individual applying for reinstatement from emeritus status, may be relicensed upon satisfactory completion of:

(a) submission of an application on forms supplied by the division which shall contain information as to why the person allowed their license to lapse;

(b) 80 hours of acceptable CPE, completed within the 12 months preceding the submission of an application for reinstatement, which shall include a minimum of 16 hours in accounting or auditing or both and shall include successful completion of the AICPA Ethics Self-Study Examination and the Utah Law and Rules Examination with a minimum score of at least the minimum score required for initial licensure. Successful completion of the two examinations will count as eight hours of CPE towards the 80 hour requirement.

(i) The requirements in Subsection R156-26-307(1)(b) are waived if the reinstatement applicant has not been practicing within the state of Utah since the expiration of the license being reinstated, the reinstatement applicant has continuously since the expiration been licensed and practicing in another state and the reinstatement applicant demonstrates that the applicant has met all the CPE requirements that would have been applicable in the state of Utah during the time the license was expired in the state of Utah.

(ii) The requirements in Subsection R156-26a-307(1)(b) are waived, if the applicant failed to renew because of inadvertent failure to pay the renewal fees, to sign application documents, or to meet similar technical application requirements and the application for reinstatement is filed with the Division within 24 months after expiration date of the license and at time of application for reinstatement the applicant demonstrates by proof of attendance at acceptable CPE courses that at all times the applicant was in full compliance with the CPE requirements.

(2) A licensee who reinstates their license must obtain ten hours of CPE per full calendar quarter remaining in the current CPE reporting period after reinstatement is granted.

(3) The number of hours required to reinstate the license shall not be considered to satisfy in whole or part any of the 80 hours of CPE required for subsequent renewal of the license.

R156-26a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) a licensee willfully failing to comply with continuing professional education or fraudulently reporting continuing professional education; or

(2) commission of an act or omission that fails to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Code of Professional Conduct" of the American Institute of Certified Public Accountants (AICPA) as adopted January 12, 1998, as amended, January 14, 1992 and October 28, 1997, which is hereby incorporated by reference.

KEY: accountants, licensing, peer review
July 3, 2002 58-26a-101
Notice of Continuation April 15, 2002 58-1-106(1)
58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-38. Residence Lien Restriction and Lien Recovery Fund Rules.
R156-38-101. Title.

These rules are known as the "Residence Lien Restriction and Lien Recovery Fund Act Rules."

R156-38-102. Definitions.

In addition to the definitions in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing, which shall apply to these rules, as used in these rules:

(1) "Claimant" means a person who submits an application or claim for payment from the fund.

(2) "Construction project", as used in Subsection 38-11-203(4), means all qualified services related to the written contract required by Subsection 38-11-204(3)(a).

(3) "Contracting entity" means an original contractor, a factory built housing retailer, or a real estate developer that contracts with a homeowner.

(4) "Homeowner" means the owner of an owner-occupied residence.

(5) "Necessary party" includes the division, on behalf of the fund, and the claimant.

(6) "Owner", as defined in Subsection 38-11-102(15), does not include any person or developer who builds residences that are offered for sale to the public.

(7) "Permissive party" includes a licensee or qualified beneficiary who will be required to reimburse the fund if a claimant's claim is paid from the fund.

(8) "Qualified services", as used in Subsection 38-11-102(18) do not include:

(a) services provided by the claimant to cure a breach of the contract between the claimant and the nonpaying party; or

(b) services provided by the claimant under a warranty or similar arrangement.

R156-38-103a. Authority - Purpose - Organization.

(1) These rules are adopted by the division under the authority of Section 38-11-103 to enable the division to administer Title 38, Chapter 11, the Residence Lien Restriction and Lien Recovery Fund Act.

(2) The organization of these rules is patterned after the organization of Title 38, Chapter 11.

R156-38-103b. Duties, Functions, and Responsibilities of the Division.

The duties, functions and responsibilities of the division with respect to the administration of Title 38, Chapter 11, shall, to the extent applicable and not in conflict with the Act or these rules, be in accordance with Section 58-1-106.

R156-38-104. Board.

Board meetings shall comply with the requirements set forth in Section R156-1-204.

R156-38-105. Adjudicative Proceedings.

(1) The classification of adjudicative proceedings initiated under Title 38, Chapter 11 is set forth at Sections R156-46b-201 and R156-46b-202.

(2) The identity and role of presiding officers for adjudicative proceedings initiated under Title 38, Chapter 11, is set forth in Sections 58-1-109 and R156-1-109.

(3) Issuance of investigative subpoenas under Title 38, Chapter 11 shall be in accordance with Subsection R156-1-110.

(4) Adjudicative proceedings initiated under Title 38, Chapter 11, shall be conducted in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act, and Rules R151-46b and R156-46b, Utah Administrative Procedures Act Rules for the Department of Commerce and the Division of Occupational and Professional Licensing, respectively, except as otherwise provided by Title 38, Chapter 11 or these rules.

(5) Claims shall be filed with the division and served upon all necessary and permissive parties.

(6) Service of claims or other pleadings by mail to a qualified beneficiary of the fund addressed to the address shown on the division's records with a certificate of service as required by R151-46b-8, shall constitute proper service. It shall be the responsibility of each registrant to maintain a current address with the division.

(7) A permissive party is required to file a response to a claim against the fund within 30 days of notification by the division of the filing of the claim, to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim.

(8)(a) For informal claims, findings of fact and conclusions of law entered by a civil court or state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication in an adjudicative proceeding to adjudicate the claim.

(b) For formal claims, a claim or issue resolved by a prior judgment, order, findings of fact, or conclusions of law entered in by a civil court or a state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication with respect to the parties to the judgment, order, findings of fact, or conclusions of law.

(9) A party to the adjudication of a claim against the fund may be granted a stay of the adjudicative proceeding during the pendency of a judicial appeal of a judgment entered by a civil court or the administrative or judicial appeal of an order entered by an administrative agency provided:

(a) the administrative or judicial appeal is directly related to the adjudication of the claim; and

(b) the request for the stay of proceedings is filed with the presiding officer conducting the adjudicative proceeding and concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

(10)(a) A written notice of denial of claim shall be provided to a claimant who submits a complete application if the division determines that the claim does not meet the requirements for payment.

(b) A written notice of incomplete application and conditional denial of claim shall be provided to a claimant who submits an incomplete application. The notice shall advise the claimant that the application is incomplete and that the application is denied, unless the claimant corrects the

deficiencies within the time period specified in the notice and the claim otherwise meets all qualification for payment.

R156-38-108. Notification of Rights under Title 38, Chapter 11.

(1) A notice in substantially the following form shall prominently appear in an easy-to-read type style and size in every contract between an original contractor and homeowner and in every notice of intent to hold and claim lien filed under Section 38-1-7 against a homeowner or against an owner-occupied residence:

"X. PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if and only if the following conditions are satisfied:

(1) the owner entered into a written contract an original contractor, a factory built housing retailer, or a real estate developer;

(2) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and

(3) the owner paid in full the original contractor, factory built housing retailer, or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract."

R156-38-109. Format for Form Affidavit and Motion.

The form affidavit and motion required under Subsection 38-1-11(4) shall be prepared by the Office of the Attorney General after consultation with the director. The form shall be an answer, affidavit, and motion for summary judgment that is clearly written and easy to understand. The form shall solicit all necessary information to determine if a homeowner is entitled to the defense provided for in Section 38-11-107.

R156-38-202a. Initial Assessment Procedures.

(1) The initial assessment shall be a flat or identical assessment levied against all qualified beneficiaries to create the fund.

(2) The amount of the initial assessment shall be established by the division and board in accordance with the procedures for a "new program" under Subsection 63-38-3.2(5).

R156-38-202b. Special Assessment Procedures.

(1) Special assessments shall take into consideration the claims history against the fund.

(2) The amount of special assessments shall be established by the division and board in accordance with the procedures set forth in Subsection 38-11-206(1).

R156-38-203. Limitation on Payment of Claims.

(1) Claims may be paid prior to the pro-rata adjustment required by Subsection 38-11-203(4)(b) if, based upon an evaluation of the notices of commencement of action filed with respect to an owner-occupied residence or the total claim filings on an owner-occupied residence, the division determines that a pro-rata payment will likely not be required.

(2) If any claims have been paid before the division determines a pro-rata payment will likely be required, the division will notify the claimants of the likely adjustment and that the claimants will be required to reimburse the division when the final pro-rata amounts are determined.

R156-38-204a. Claims Against the Fund by Nonlaborers - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the written contract between the homeowner and the contracting entity; or

(b) a copy of a civil judgment containing a finding that the homeowner entered into a written contract in compliance the requirements of Subsection 38-11-204(3)(a);

(2)(a) if the claim involves an original contractor, documentation issued by the division that the original contractor is licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(b) if the contracting entity is a real estate developer:

(i) credible evidence that the contracting entity had an ownership interest in the property;

(ii) a copy of the contract between the contracting entity and the contractor that built the residence or other credible evidence showing the existence of such a contract and setting forth a description of the services provided to the contracting entity by the contractor; and

(iii) credible evidence that the real estate developer offered the residence for sale to the public;

(3) one of the following:

(a) an affidavit from the contracting entity acknowledging that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract;

(b) a copy of a civil judgment containing a finding that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; or

(c) documentation that the claimant has been prevented from satisfying Subsections (a) and (b), together with credible evidence establishing that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract;

(4) one or more of the following as required:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against a contracting entity or subcontractor as described in Subsection 38-11-204(3)(c) to recover monies owed for qualified services performed on the owner-occupied residence, filed within 180 days from the date the claimant last provided qualified services; or

(b) a copy of the Notice of Commencement of Action filed with the division; or

(c) documentation that a bankruptcy filing by the contracting entity or subcontractor prevented claimant from

satisfying Subsections (a) and (b);

(5) one of the following:

(a) a copy of a civil judgment entered in favor of claimant against the contracting entity or subcontractor containing a finding that the contracting entity or subcontractor failed to pay the claimant pursuant to their contract with the claimant and any amendments to the contract; or

(b) documentation that a bankruptcy filing by the contracting entity or subcontractor prevented the claimant from obtaining such a civil judgment, together with credible evidence establishing that the contracting entity or subcontractor failed to pay the claimant pursuant to their contract with the claimant and any amendments to the contract;

(6) one or more of the following as required:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of claimant and a copy of the return of service of the supplemental order indicating either that service was accomplished on the contracting entity or subcontractor or that said contracting entity or subcontractor could not be located or served;

(b) a writ of execution issued if any assets are identified through the supplemental order or other process, which have sufficient value to reasonably justify the expenditure of costs and legal fees which would be incurred in preparing, issuing, and serving execution papers and in holding an execution sale; or

(c) documentation that a bankruptcy filing or other action by the contracting entity or subcontractor prevented the claimant from satisfying Subparagraphs (a) and (b);

(7) certification that the claimant is not entitled to reimbursement from any other person at the time the claim is filed and that the claimant will immediately notify the presiding officer if the claimant becomes entitled to reimbursement from any other person after the date the claim is filed; and

(8) one of the following:

(a) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16);

(b) a copy of a civil judgment containing a finding that the homeowner is an owner as defined by Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16); or

(c) documentation that the claimant has been prevented from obtaining an owner-occupied residence affidavit together with credible evidence establishing that the homeowner is an owner as defined by Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16).

(9) one or more of the following:

(a) a copy of invoices setting forth a description of, the performance dates of, and the value of the qualified services claimed;

(b) a copy of a civil judgment containing a finding setting forth a description of, the performance dates of, and the value of the qualified services claimed; or

(c) credible evidence setting forth a description of, the performance dates of, and the value of the qualified services claimed.

(10) In claims in which the presiding officer determines that the claimant has made a reasonable but unsuccessful effort to produce all documentation specified under this rule to satisfy any requirement to recover from the fund, the presiding officer may elect to accept the evidence submitted by the claimant if the requirements to recover from the fund can be established by that evidence.

(11) A separate claim must be filed for each residence and a separate filing fee must be paid for each claim.

R156-38-204b. Format for Notice of Commencement of Action.

The Notice of Commencement required under Subsection R156-38-204a(5)(b) shall be in substantially the following format:

TABLE I

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

John Doe, Plaintiff	:	Notice of Commencement of Action
-vs-	:	NCA No.
Richard Roe, Defendant	:	

Notice is hereby provided of the filing of Case No. (number) on (date) before (Court).

Brief explanation of nature of case:

Address of defendant:

Name and address of potential fund claimant:

Name and address of original contractor, subcontractor, real estate developer, and/or factory built housing retailer described in Subsection 38-11-204(3)(c):

For each owner-occupied residence included in the civil action:

Name and address of the owner of the owner-occupied residence;

Street address of the owner-occupied residence;

Amount of damages sought against the owner-occupied residence;

Last date qualified services were provided for the owner-occupied residence by the potential fund claimant:

Signature of Claimant or claimant's representative

Date of signature

R156-38-204c. Claims Against the Fund by Laborers - Supporting Documents.

(1) The following supporting documents shall, at a minimum, accompany each laborer claim for recovery from the fund:

(a) one of the following:

(i) a copy of a wage claim assignment filed with the Industrial Commission of the Utah Labor Division for the amount of the claim, together with all supporting documents submitted in conjunction therewith; or

(ii) a copy of an action filed by claimant against claimant's employer to recover wages owed;

(b) one of the following:

(i) a copy of a final administrative order for payment issued by the Industrial Commission of Utah Labor Division containing a finding that the claimant is an employee and that the claimant has not been paid wages due for work performed at the site of construction on an owner-occupied residence;

(ii) a copy of a civil judgment entered in favor of claimant against the employer containing a finding that the employer failed to pay the claimant wages due for work performed at the site of construction on an owner-occupied residence; or

(iii) a copy of a bankruptcy filing by the employer which prevented the entry of an order or a judgment against the employer;

(c) one of the following:

(i) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16);

(ii) a copy of a civil judgment containing a finding that the homeowner is an owner as defined by Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16); or

(iii) documentation that the claimant has been prevented from obtaining an owner-occupied residence affidavit together with independent evidence establishing that the owner is an owner as defined by Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16).

(2) When a laborer makes claim on multiple residences as a result of a single incident of non-payment by the same employer, the division must require payment of at least one application fee required under Section 38-11-204(1)(b) and at least one registration fee required under Subsection 38-11-204(7), but may waive additional application and registration fees for claims for the additional residences, where no legitimate purpose would be served by requiring separate filings.

R156-38-204d. Calculation of Costs, Attorney Fees and Interest for Payable Claims.

(1) Payment for qualified services, costs, and interest shall be made as specified in Section 38-11-203.

(2) When a claimant requests payment of multiple claims supported by a single judgment or other common documentation and the judgment or documentation does not differentiate costs and attorney fees by owner-occupied residence, the amount of costs and attorney fees shall be allocated among the related claims using the following formula: (Qualified services attributable to the owner-occupied residence divided by Total qualified services awarded as judgment principal or total documented qualified services) x Total costs or total attorney fees.

(3) For claims determined by the division to be payable from the fund, the division shall order payment of attorney fees in an aggregate amount not exceeding the following:

(a) If a civil judgment awards a specific dollar amount for attorney fees, the division shall order payment as ordered in the civil judgment, to the extent that the attorney fees are attributable to the owner-occupied residence at issue in the claim.

(b) Otherwise, the division shall order payment of reasonable attorney fees, documented according to the provisions of Rule 4-505, Utah Code of Judicial Administration, subject to the following limitations:

(i) if the payable amount of qualified services is $3,000 or less, not more than 33% of the value of the qualified services and not exceeding $750;

(ii) if the payable amount of qualified services is greater than $3,000 and $10,000 or less, not more than 25% of the value of qualified services and not exceeding $2,000; or

(iii) if the payable amount of qualified services is greater than $10,000, attorney fees in an amount of not more than 20% of the value of qualified services and not exceeding $7,000.

(iv) The above limits may be waived by the director in those unique claims where manifest injustice would otherwise result. The burden is on the claimant to demonstrate manifest injustice.

(4)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, post-judgment costs shall be limited to those costs allowable by a district court, such as costs of service, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, total costs shall be limited to those costs that would have been allowable by the district court had judgment been entered, such as, but not limited to, costs of services, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

R156-38-301a. Contractor Registration as a Qualified Beneficiary - All License Classifications Required to Register Unless Specifically Exempted - Exempted Classifications.

(1) All license classifications of contractors are determined to be regularly engaged in providing qualified services for purposes of automatic registration as a qualified beneficiary, as set forth in Subsections 38-11-301(1) and (2), with the exception of the following license classifications:

TABLE II

Primary Classification Number	Subclassification Number	Classification
E100		General Engineering Contractor
	S211	Boiler Installation Contractor
	S213	Industrial Piping Contractor
	S262	Granite and Pressure Grouting Contractor
S320		Steel Erection Contractor
	S321	Steel Reinforcing Contractor
	S322	Metal Building Erection Contractor

	S323	Structural Stud Erection Contractor
S340		Sheet Metal Contractor
S360		Refrigeration Contractor
S440		Sign Installation Contractor
	S441	Non Electrical Outdoor Advertising Sign Contractor
S450		Mechanical Insulation Contractor
S470		Petroleum System Contractor
S480		Piers and Foundations Contractor
I101		General Engineering Trades Instructor
I102		General Building Trades Instructor
I103		General Electrical Trades Instructor
I104		General Plumbing Trades Instructor
I105		General Mechanical Trades Instructor

(2) Any person holding a license requiring registration in the fund that is on inactive status on the assessment date of any special assessment of the fund, shall be exempt from payment of that specific assessment and any assessment made during the time the license remains on inactive status and the licensee does not engage in the licensed occupation or profession.

(3) Before a licensee on inactive status, who would otherwise be required to pay an assessment, can be reinstated to an active status, the licensee must pay:

(a) the initial assessment of $195 assessed July 1, 1995, if that assessment has never been paid by that licensee; and

(b) the most recent special assessment immediately preceding the date on which the license is reinstated to active status.

R156-38-301b. Event Necessitating Registration - Name Change by Qualified Beneficiary - Reorganization of Registrant's Business Type - Transferability of Registration.

(1) Any change in entity status by a registrant requires registration with the Fund by the new or surviving entity before that entity is a qualified beneficiary.

(2) The following constitute a change of entity status for purposes of Subsection (1):

(a) creation of a new legal entity as a successor or related-party entity of the registrant;

(b) change from one form of legal entity to another by the registrant; or

(c) merger or other similar transaction wherein the existing registrant is acquired by or assumed into another entity and no longer conducts business as its own legal entity.

(3) A qualified beneficiary registrant shall notify the division in writing of a name change within 30 days of the change becoming effective. The notice shall provide the following:

(a) the qualified beneficiary's prior name;

(b) the qualified beneficiary's new name;

(c) the qualified beneficiary's registration number; and

(d) proof of registration with the Division of Corporations and Commercial Code as required by state law.

(4) A registration shall not be transferred, lent, borrowed, sold, exchanged for consideration, assigned, or made available for use by any entity other than the registrant for any reason.

(5) A claimant shall not be considered a qualified beneficiary registrant merely by virtue of owning an entity that is a qualified beneficiary.

R156-38-302. Renewal and Reinstatement Procedures.

(1) Renewal notices required in connection with a special assessment shall be mailed to each registrant at least 30 days prior to the expiration date for the existing registration established in the renewal notice. Unless the registrant pays the special assessment by the expiration date shown on the renewal notice, the registrant's registration in the fund automatically expires on the expiration date.

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

(3) Renewal notices shall specify the amount of the special assessment, the application requirement, and other renewal requirements, if any; shall require that each registrant document or certify that the registrant meets the renewal requirements; and shall advise the registrant of the consequences of failing to renew a registration.

(4) Renewal notices shall specify a renewal application due date no later than the expiration date for the existing registration.

(5) Renewal applications must be received by the division in its ordinary course of business on or before the renewal application due date in order to be processed as a renewal application. Late applications will be processed as reinstatement applications.

(6) A registrant whose registration has expired may have the registration reinstated by complying with the requirements and procedures specified in Subsection 38-11-302(5).

R156-38-401. Requirements for a Letter of Credit and/or Evidence of a Cash Deposit as Alternate Security for Mechanics' Lien.

To qualify as alternate security under Section 38-1-28 "evidence of a cash deposit" must be an account at a federally insured depository institution that is pledged to the protected party and is payable to the protected party upon the occurrence of specified conditions in a written agreement.

KEY: licensing, contractors, liens

July 3, 2002	**38-11-101**
Notice of Continuation April 6, 2000	**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) "School" means a Utah school district, applied technology college, or accredited college.

(7) "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(16).

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(15).

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 Waste 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, conduit or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, data or communications. Included are the excavation, cabling, horizontal boring, 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 laminate floors 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 licensure as a contractor or a construction trades instructor shall pass the following examinations as a condition precedent to licensure as a contractor or a construction trades instructor:

(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 within the past 10 years a minimum of four years full-time related experience as an employee of a licensed or exempt contractor, two years of which shall be in a supervisory or managerial position under the direct supervision of a licensed or exempt E100, B100 or R100 contractor, or its substantial equivalent if from another state. The supervisory experience shall be in the classification for which application is being made, or its substantial equivalent, or have been a qualifier for a licensed contractor under any

construction classification for a minimum of four years. A person holding a four year bachelors degree or a two year associates 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 within the past 10 years a minimum of four years of full-time related experience as an employee of a licensed or exempt contractor.

(3) An applicant for contractor classifications not listed in Subsections (1) and (2) above shall have within the past 10 years a minimum of two years of full-time related experience as an employee of a licensed or exempt contractor.

(4) An applicant for construction trades instructor classifications shall have the same experience as required for the appropriate contractor, electrician, or plumber classification or classifications for the construction trade or trades they are instructing. Experience under a construction trades instructor classification is not qualifying experience for a contractors license.

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 journeyman or master electrician or a residential journeyman or 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.

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-302e. Additional Requirements for Construction Trades Instructor Classifications.

In accordance with Subsection 58-55-302(1)(f), the following additional requirements for licensure are established:

(1) Any school that provides instruction to students by building houses for sale to the public is required to become a Utah licensed contractor with a B100 General Building Contractor or R100 Residential and Small Commercial Building Contractor classification or both.

(2) Any school that provides instruction to students by building houses for sale to the public is also required to be licensed in the appropriate instructor classification.

(a) Before being licensed in a construction trades instructor classification, the school shall submit the name of an individual person who acts as the qualifier in each of the construction trades instructor classifications in accordance with Section R156-55a-304. The applicant for licensure as a construction trades instructor shall:

(i) provide evidence that the qualifier has passed the required examinations established in Section R156-55a-302a; and

(ii) provide evidence that the qualifier meets the experience requirement established in Subsection R156-55a-302b(4).

(3) Each individual employed by a school licensed as a construction trades instructor and working with students on a job site shall meet any teacher certification, or other teacher requirements imposed by the school district or college, and be qualified to teach the construction trades instructor classification as determined by the qualifier.

R156-55a-304. Construction Trades Instructor License Qualifiers.

In accordance with Subsection 58-55-302(1)(f), the contractor license qualifier requirements in Section 58-55-304 shall also apply to construction trades instructors.

R156-55a-306a. Financial Responsibility - Questionnaire and Aggregate Bonding Limit.

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

(1) An applicant may demonstrate financial responsibility by either submitting the questionnaire 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 - Division Audit - 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-308a. Operating Standards for Schools or Colleges Licensed as Contractors.

(1) Each school licensed as a B100 General Building Contractor or a R100 Residential and Small Commercial Contractor or both shall obtain all required building permits for homes built for resale to the public as part of an educational training program.

(2) Each employee that works as an instructor for a school licensed as a construction trades instructor shall:

(a) have on their person a school photo ID card with the trade they are authorized to teach printed on the card; and

(b) if instructing in the plumbing or electrical trades, they shall also carry on their person their Utah journeyman or residential journeyman plumber license or Utah journeyman, residential journeyman, master, or residential master electrician license.

(3) Each school licensed as a construction trades instructor shall not allow any teacher or student to work on any portion of the project subcontracted to a licensed contractor unless the teacher or student are lawful employees of the subcontractor.

R156-55a-308b. Natural Gas Technician Certification.

(1) In accordance with Subsection 58-55-308(1), the scope of practice defined in Subsection 58-55-308(2)(a) requiring certification is further defined as the installation, modifications, repair or replacement of the gas piping, combustion air vents, exhaust venting system or derating of gas input for altitude of a residential or commercial gas appliance.

(2) An approved training program shall include the following course content:

(a) general gas appliance installation codes;

(b) venting requirements;

(c) combustion air requirements;

(d) gas line sizing codes;

(e) gas line approved materials requirements;

(f) gas line installation codes; and

(g) methods of derating gas appliances for elevation.

(3) In accordance with Subsection 58-55-308(2)(c)(i), the following programs are approved to provide natural gas technician training, and to issue certificates or documentation of exemption from certification:

(a) Federal Bureau of Apprenticeship Training;

(b) Utah college apprenticeship program; and

(c) Trade union apprenticeship program.

(4) In accordance with Subsection 58-55-308(2)(e), the approved programs set forth in paragraphs (2)(b) and (2)(c) herein shall require program participants to pass the Rocky Mountain Gas Association Gas Appliance Installers Certification Exam or approved equivalent exams established or adopted by a training program, with a minimum passing score of 80%.

(5) In accordance with Subsection 58-55-308(2)(e), a person who has not completed an approved training program, but has passed the Rocky Mountain Gas Association Gas Exam or approved equivalent exam established or adopted by an approved training program, with a minimum passing score of 80%, or the Utah Journeyman Plumber Exam, with a minimum passing score of 70%, shall be exempt from the certification requirement set forth in Subsection 58-55-308(2)(c)(i).

(6) Content of certificates of completion. An approved program shall issue a certificate, including a wallet certificate, to persons who successfully complete their training program containing the following information:

(a) name of the program provider;

(b) name of the approved program;

(c) name of the certificate holder;

(d) the date the certification was completed; and

(e) signature of an authorized representative of the program provider.

(7) Documentation of exemption from registration. The following shall constitute documentation of exemption from certification:

(a) certification of completion of training issued by the Federal Bureau of Apprenticeship Training;

(b) current Utah journeyman plumber license; or

(c) certification from the Rocky Mountain Gas Association or approved equivalent exam which shall include the following:

(i) name of the association, school, union, or other organization who administered the exam;

(ii) name of the person who passed the exam;

(iii) name of the exam;

(iv) the date the exam was passed; and

(v) signature of an authorized representative of the test administrator.

(8) Each person engaged in the scope of practice defined in Subsection 58-55-308(2)(a) and as further defined in Subsection (1) herein, shall carry in their possession documentation of certification or exemption.

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.

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

July 16, 2002	**58-1-106(1)**
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	58-55-101
	58-55-308(1)
	58-55-102(34)

R156. Commerce, Occupational and Professional Licensing.
R156-56. Utah Uniform Building Standard Act Rules.
R156-56-101. Title.

These rules are known as the "Utah Uniform Building Standard Act Rules".

R156-56-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 55 and 56, as used in Title 58, Chapter 56 or these rules:

(1) "Building permit" means, for the purpose of determining the building permit surcharge under Subsection 58-56-9(4), a warrant, license or authorization to build or construct a building or structure or any part thereof.

(2) "Building permit fee" means, for the purpose of determining the building permit surcharge under Subsection 58-56-9(4), fees assessed by an agency of the state or political subdivision of the state for the issuance of permits for construction, alteration, remodeling, and repair and installation including building, electrical, mechanical and plumbing components.

(3) "Employed by a local regulator, state regulator or compliance agency" means, with respect to Subsection 58-56-9(1), the hiring of services of a qualified inspector whether by an employer/employee relationship, an independent contractor relationship, a fee-for-service relationship or any other lawful arrangement under which the regulating agency purchases the services of a qualified inspector.

(4) "Inspector" means a person employed by a local regulator, state regulator or compliance agency for the purpose of inspecting building, electrical, plumbing or mechanical construction, alteration, remodeling, repair or installation in accordance with the codes adopted under these rules and taking appropriate action based upon the findings made during inspection.

(5) "Permanently affixed to real property" means a manufactured home or mobile home which has complied with all of the provisions of Section 59-2-602 at the date possession of the manufactured home or mobile home is changed from the dealer to the purchaser.

(6) "Refuses to establish a method of appeal" means with respect to Subsection 58-56-8(3), that a compliance agency does not in fact adopt a formal written method of appealing uniform building standard matters in accordance with generally recognized standards of due process; or, that the compliance agency does not convene an appeals board and render a decision in the matter within ninety days from the date on which the appeal is properly filed with the compliance agency.

(7) "Uniform Building Standards" means the codes identified in Section R156-56-701 and as amended under these rules.

(8) "Unprofessional conduct" as defined in Title 58, Chapter 1 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-56-502.

R156-56-103. Authority.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 56.

R156-56-104. Organization - Relationship to Rule R156-1.

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

R156-56-105. Board of Appeals.

If the commission is required to act as an appeals board in accordance with the provisions of Subsection 58-56-8(3), the following shall regulate the convening and conduct of the special appeals board:

(1) If a compliance agency refuses to establish a method of appeal regarding a uniform building standard issue, the appealing party may petition the commission to act as the board of appeals.

(2) The person making the appeal shall file the request to convene the commission as an appeals board in accordance with the requirements for a request for agency action, as set forth in Subsection 63-46b-3(3)(a) and Section R151-46b-7. A request by other means shall not be considered. Any request received by the commission or division by any other means shall be returned to the appellant with appropriate instructions.

(3) A copy of the final written decision of the compliance agency interpreting or applying a code which is the subject of the dispute shall be submitted as an attachment to the request. If the person making the appeal requests, but does not timely receive a final written decision, the person shall submit an affidavit to this effect in lieu of the final written decision.

(4) The request shall be filed with the division no later than 30 days following the issuance of the disputed written decision by the compliance agency.

(5) The compliance agency shall file a written response to the request not later than 20 days after the filing of the request. The request and response shall be provided to the commission in advance of any hearing in order to properly frame the disputed issues.

(6) Except with regard to the time period specified in Subsection (7), the time periods specified in this section may, upon a showing of good cause, be modified by the presiding officer conducting the proceeding.

(7) The commission shall convene as an appeals board within 45 days after a request is properly filed.

(8) Upon the convening of the commission as an appeals board, the board members shall review the issue to be considered to determine if a member of the board has a conflict of interest which would preclude the member from fairly hearing and deciding the issue. If it is determined that a conflict does exist, the member shall be excused from participating in the proceedings.

(9) The hearing shall be a formal hearing held in accordance with the Utah Administrative Procedures Act, Title 63, Chapter 46b.

(10) Decisions relating to the application and interpretation of the code made by a compliance agency board of appeals shall be binding for the specific individual case and shall not require commission approval.

R156-56-106. Fees.

In accordance with Subsection 58-56-9(4), on April 30, July 31, October 31 and January 31 of each year, each agency of the state and each political subdivision of the state which

assesses a building permit fee shall file with the division a report of building fees and surcharge for the immediately preceding calendar quarter; and, shall remit 80% of the amount of the surcharge to have been assessed to the division.

R156-56-201. Building Inspector Licensing Board.

In accordance with Section 58-56-8.5, the board shall be as follows:

(1) one member licensed as a Combination Inspector;

(2) one member licensed as an Inspector who is qualified in the electrical code;

(3) one member licensed as an Inspector who is qualified in the plumbing code;

(4) one member licensed as an Inspector who is qualified in the mechanical code; and

(5) one member shall be from the general public.

R156-56-202. Advisory Peer Committees Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(6) and 58-56-5(10)(e), the following committees as advisory peer committees to the Uniform Building Codes Commission:

(a) the Education Advisory Committee consisting of seven members;

(b) the Plumbing and Health Advisory Committee consisting of nine members;

(c) the Structural Advisory Committee consisting of seven members;

(d) the Architectural Advisory Committee consisting of seven members;

(e) the Fire Protection Advisory Committee consisting of five members;

(i) This committee shall join together with the Fire Advisory and Code Analysis Committee of the Utah Fire Prevention Board to form the Unified Code Analysis Council.

(ii) The Unified Code Analysis Council shall meet as directed by the Utah Fire Prevention Board or as directed by the Uniform Building Code Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

(iii) The Unified Code Analysis Council shall select one of its 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.

(iv) The chair or vice chair shall report to the Utah Fire Prevention Board or Uniform Building Code Commission recommendations of the council with regard to the review of fire and building codes.

(f) the Mechanical Advisory Committee consisting of seven members; and

(g) the Electrical Advisory Committee consisting of seven members.

(2) The committees shall be appointed and serve in accordance with Section R156-1-205. The membership of each committee shall be made up of individuals who have direct knowledge or involvement in the area of code involved in the title of that committee.

(3) The duties and responsibilities of the committees shall include:

(a) review of requests for amendments to the adopted codes as assigned to each committee by the division with the collaboration of the commission; and

(b) submission of recommendations concerning the requests for amendment.

R156-56-301. Reserved.

Reserved.

R156-56-302. Licensure of Inspectors.

In accordance with Subsection 58-56-9(1), the licensee classifications, scope of work, qualifications for licensure, and application for license are established as follows:

(1) License Classifications. Each inspector employed by a local regulator, state regulator, compliance agency, or private agency providing inspection services to a regulator or compliance agency, shall qualify for licensure and be licensed by the division in one of the following classifications:

(a) Combination Inspector; or

(b) Limited Inspector.

(2) Scope of Work. The scope of work permitted under each inspector classification is as follows:

(a) Combination Inspector.

(i) Inspect the components of any building, structure or work for which a standard is provided in the specific edition of the codes adopted under these rules or amendments to these codes as included in these rules.

(ii) Determine whether the construction, alteration, remodeling, repair or installation of all components of any building, structure or work is in compliance with the adopted codes.

(iii) After determination of compliance or noncompliance with the adopted codes take appropriate action as is provided in the aforesaid codes.

(b) Limited Inspector.

(i) A Limited Inspector may only conduct activities under Subsections (ii), (iii) or (iv) for which the Limited Inspector has maintained current certificates under the adopted codes as provided under Subsections R156-56-302(3)(b) and R156-56-302(2)(c)(ii).

(ii) Subject to the limitations of Subsection (i), inspect the components of any building, structure or work for which a standard is provided in the specific edition of the codes adopted under these rules or amendments to these codes as included in these rules.

(iii) Subject to the limitations under Subsection (i), determine whether the construction, alteration, remodeling, repair or installation of components of any building, structure or work is in compliance with the adopted codes.

(iv) Subject to the limitations under Subsection (i), after determination of compliance or noncompliance with the adopted codes, take appropriate action as is provided in the adopted codes.

(c) Transitional Provisions.

(i) A license issued to an inspector trainee which license is active at the time of this rule change shall remain effective

throughout the term of the original license and shall have authority as specified under the prior rules in effect on July 1, 1999. Thereafter, all persons must qualify for licensure under these rules.

(ii) An inspector granted a license as a Building Inspector I, Electrical Inspector I, Plumbing Inspector I, Mechanical Inspector I, Combination Inspector II - Limited Commercial Combination, Combination Inspector III, Building Inspector III, Electrical Inspector III, Plumbing Inspector III or Mechanical Inspector III under the prior rules, which license is active at the time of this rule change, shall be issued a replacement license as a Limited Inspector.

(iii) The state administered examinations upon which prior licenses were granted or upon which new limited inspector licenses may be granted shall be considered as current certification until two years after a national organization offers certification as a residential building inspector, residential electrical inspector, residential plumbing inspector or residential mechanical inspector for codes adopted under these rules. After the state administered examinations are no longer considered current certification, licenses may not be granted or renewed unless the person has obtained current certificates issued by a national organization.

(3) Qualifications for Licensure. The qualifications for licensure for each inspector classification are as follows:

(a) Combination Inspector.

Has passed the examination for and maintained as current the following national certifications for codes adopted under these rules:

(i) the "Building Inspector Certification" issued by the International Conference of Building Officials;

(ii) the "Electrical Inspector Certification" issued by the International Conference of Building Officials or the "General Electrical Certification" issued by the International Association of Electrical Inspectors;

(iii) the "Plumbing Inspector Certification" issued by the International Conference of Building Officials, International Code Council or the International Association of Plumbing and Mechanical Officials or the "Commercial Plumbing Inspector Certification" issued by the International Code Council or International Association of Plumbing and Mechanical Officials; and

(iv) the "Mechanical Inspector Certification" issued by the International Conference of Building Officials or the "Commercial Mechanical Inspector Certification" issued by the International Association of Plumbing and Mechanical Officials.

(b) Limited Inspector.

Has passed the examination for and maintained as current one or more of the following national certifications for codes adopted under these rules:

(i) the "Building Inspector Certification" issued by the International Conference of Building Officials;

(ii) the "Electrical Inspector Certification" issued by the International Conference of Building Officials or the "General Electrical Certification" issued by the International Association of Electrical Inspectors;

(iii) the "Plumbing Inspector Certification" issued by the International Conference of Building Officials, International Code Council or the International Association of Plumbing and Mechanical Officials or the "Commercial Plumbing Inspector Certification" issued by the International Code Council or International Association of Plumbing and Mechanical Officials;

(iv) the "Mechanical Inspector Certification" issued by the International Conference of Building Officials or the "Commercial Mechanical Inspector Certification" issued by the International Association of Plumbing and Mechanical Officials;

(v) the "Combination Dwelling Inspector Certification" issued by the International Conference of Building Officials;

(vi) the "Limited Commercial Combination Certification" issued by the International Conference of Building Officials;

(vii) the "Residential Building Inspector Certification" issued by the International Conference of Building Officials;

(viii) the "Residential Electrical Inspector Certification" issued by the International Conference of Building Officials;

(ix) the "Residential Plumbing Inspector Certification" issued by the International Conference of Building Officials; or

(x) the "Residential Mechanical Inspector Certification" issued by the International Conference of Building Officials.

(4) Application for License.

(a) An applicant for licensure shall:

(i) submit an application in a form prescribed by the division; and

(ii) pay a fee determined by the department pursuant to Section 63-38-3.2.

R156-56-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year cycle applicable to licenses under Title 58, Chapter 56 is established by rule in Section R156-1-308.

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

R156-56-501. Reserved.

Reserved.

R156-56-502. Unprofessional Conduct - Building Inspectors.

"Unprofessional conduct" includes:

(1) knowingly failing to inspect or issue correction notices for code violations which when left uncorrected would constitute a hazard to the public health and safety and knowingly failing to require that correction notices are complied with;

(2) the use of alcohol or the illegal use of drugs while performing duties as a building inspector or at any time to the extent that the inspector is physically or mentally impaired and unable to effectively perform the duties of an inspector;

(3) gross negligence in the performance of official duties as an inspector;

(4) failure to supervise an inspector trainee for which an inspector assumes responsibility in accordance with these rules or in a manner to ensure the public health, safety and welfare;

(5) the personal use of information or knowingly revealing information to unauthorized persons when that information has been obtained by the inspector as a result of their employment, work, or position as an inspector;

(6) unlawful acts or acts which are clearly unethical under generally recognized standards of conduct of an inspector;

(7) engaging in fraud or knowingly misrepresenting a fact relating to the performance of duties and responsibilities as an inspector;

(8) knowingly failing to require that all plans, specifications, drawings, documents and reports be stamped by architects, professional engineers or both as established by law;

(9) knowingly failing to report to the Division any act or omission of a licensee under Title 58, Chapter 55, which when left uncorrected constitutes a hazard to the public health and safety;

(10) knowingly failing to report to the Division unlicensed practice by persons performing services who are required by law to be licensed under Title 58, Chapter 55;

(11) approval of work which materially varies from approved documents that have been stamped by an architect, professional engineer or both unless authorized by the licensed architect, professional engineer or both; and

(12) failing to produce verification of current licensure and current certifications for the codes adopted under these rules upon the request of the Division, any compliance agency, or any contractor or property owner whose work is being inspected.

R156-56-601. Modular Unit Construction and Set-up.

Modular construction and set-up shall be as set forth in accordance with the following:

(1) Construction shall be in accordance with the building standards accepted by the state pursuant to Section 58-56-4.

(2) The inspection of the construction, modification of or set-up of a modular unit shall be the responsibility of the local regulator; however, nothing in these rules shall preclude the local regulator from entering into an agreement with another qualified person for the inspection of the unit(s) in the manufacturing facility.

R156-56-602. Factory Built Housing Dealer Bonds.

(1) Pursuant to the provisions of Subsection 58-56-16(2)(c), a factory built housing dealer shall provide a registration bond issued by a surety acceptable to the Division in the amount of $50,000. An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, current revision, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies".

(2) The coverage of the registration bond shall include losses which may occur as the result of the factory built housing dealer's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 56.

R156-56-701. Specific Editions of Uniform Building Standards.

(1) In accordance with Subsection 58-56-4(3), and subject to the limitations contained in Subsection (5), (6), and (7), the following codes are hereby incorporated by reference and adopted as the construction standards to be applied to building construction, alteration, remodeling and repair and in the regulation of building construction, alteration, remodeling and repair in the state:

(a) the 2000 edition of the International Building Code (IBC) as modified by Chapter 11 and Chapter 16 of the 2001 edition of the Supplement to the International Building Code, promulgated by the International Code Council, and amendments adopted under these rules together with standards incorporated into the IBC by reference, including but not limited to, the 2000 edition of the International Energy Conservation Code (IECC) promulgated by the International Code Council and the 2000 edition of the International Residential Code (IRC) promulgated by the International Code Council shall become effective on January 1, 2002;

(b) the 1999 edition of the National Electrical Code (NEC) promulgated by the National Fire Protection Association, to become effective January 1, 2000;

(c) the 2000 edition of the International Plumbing Code (IPC) promulgated by the International Code Council and amendments adopted under these rules in Section R156-56-707 shall become effective on January 1, 2001;

(d) the 2000 edition of the International Mechanical Code (IMC) together with all applicable standards set forth in the 2000 International Fuel Gas Code (IFGC) (formerly included as part of the IMC) and amendments adopted under these rules in Section R156-56-708 shall become effective on January 1, 2002;

(e) subject to the provisions of Subsection (4), the Federal Manufactured Housing Construction and Safety Standards Act (HUD Code) as promulgated by the Department of Housing and Urban Development and published in the Federal Register as set forth in 24 CFR parts 3280 and 3282 as revised April 1, 1990; and

(f) subject to the provisions of Subsection (4), the 1994 edition of NCSBCS A225.1 Manufactured Home Installations promulgated by the National Conference of States on Building Codes and Standards (NCSBCS).

(2) Amendments adopted by rule to prior editions of the Uniform Building Standards shall remain in effect until specifically amended or repealed.

(3) The manufacturer, dealer or homeowner shall be permitted to design for unusual installation of a manufactured home not provided for in the manufacturer's standard installation instruction or NCSBCS/ANSI 225.1, Manufactured Home Installations, provided the design is approved in writing by a professional engineer or architect licensed in Utah. Guidelines for Manufactured Housing Installation as promulgated by the International Conference of Building Officials may be used as a reference guide.

(4) Pursuant to the Federal Manufactured Home Construction and Safety Standards Section 604(d), a manufactured home may be installed in the state of Utah which does not meet the local snow load requirements as specified in Subsection R156-56-704; however all such homes which fail to meet the standards of Subsection R156-56-704 shall have a protective structure built over the home which meets the International Building Code and the snow load requirements under Subsection R156-56-704.

(5) To the extent that the building codes adopted under Subsection (1) establish local administrative functions or establish a method of appeal which pursuant to Section 58-56-8 are designated to be established by the compliance agency, such

provisions are not included in the codes adopted hereunder but authority over such provisions are reserved to the compliance agency to establish such provisions.

(6) To the extent that the building codes adopted under Subsection (1) establish provisions, standards or references to other codes which by state statutes are designated to be established or administered by other state agencies or local city, town or county jurisdictions, such provisions are not included in the codes adopted herein but authority over such provisions are reserved to the agency or local government having authority over such provisions. Provisions excluded under this Subsection include but are not limited to:

(a) the International Property Maintenance Code;

(b) the International Private Sewage Disposal Code, authority over which would be reserved to the Department of Health and the Department of Environmental Quality;

(c) the International Fire Code which pursuant to Section 58-3-7 authority is reserved to the Utah Fire Prevention Board; and

(d) day care provisions which are in conflict with the Child Care Licensing Act, authority over which is designated to the Utah Department of Health.

(7) To the extent that the codes adopted under Subsection (1) establish provisions that exceed the authority granted to the Division, under the Utah Uniform Building Standards Act, to adopt codes or amendments to such codes by rulemaking procedures, such provisions, to the extent such authority is exceeded, are not included in the codes adopted.

R156-56-702. Commission Override of the Division.

(1) In the event that the director of the division rules contrary to the recommendation of the commission with respect to the provisions of Subsection 58-56-7(8), the director shall present his action and the basis for that action at the commission's next meeting or at a special meeting called by either the division or the commission.

(2) The commission may override the division's action by a two-thirds vote which equals eight votes.

(3) In the event of a vacancy on the commission, a vote of a minimum of two-thirds of the existing commissioners must be obtained to override the division.

R156-56-703. Code Amendments.

In accordance with Subsection 58-56-7(1), the procedure and manner under which requests for amendments to codes shall be filed with the division and recommended or declined for adoption are as follows:

(1) All requests for amendments to any of the uniform building standards shall be submitted to the division on forms specifically prepared by the division for that purpose.

(2) The processing of requests for code amendments shall be in accordance with division policies and procedures.

R156-56-704. Statewide Amendments to the IBC.

The following are adopted as amendments to the IBC to be applicable statewide:

(1) All references to the International Electrical Code are deleted and replaced with the National Electrical Code adopted under Subsection R156-56-701(1)(b).

(2) Section 101.4.1 is deleted and replaced with the following:

101.4.1 Electrical. The provisions of the National Electrical Code (NEC) shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

(3) In Section 202, the following definition is added:

ASSISTED LIVING FACILITY. See Section 308.1.1.

(4) Section 302.3.3 is deleted and replaced with the following:

302.3.3 Separated uses. Each portion of the building shall be individually classified as to use and shall be considered separated from other occupancies when completely separated from adjacent areas by fire barrier walls or horizontal assemblies or both having a fire-resistance rating determined in accordance with this sections.

302.3.3.1 All occupancies. Each fire area shall be separated from other occupancies in other fire areas in accordance with Table 302.3.3 based on the occupancy in the fire areas, and shall comply with the height limitations based on the use of that space and the type of construction classification. In each story the building area shall be such that the sum or the ratios of the floor area of each use divided by the allowable area for each use shall not exceed 1.

Exceptions for R-3 and U Groups:

1. The private garage shall be separated from the residence and its attic area by means of materials approved for one-hour fire resistive construction applied to the garage side. Door openings between the garage and the residence shall be equipped with either solid wood doors not less than 1 3/8 inches (35 mm) thick or doors in compliance with Section 714.2.3. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted.

2. Ducts in the private garage and ducts penetrating the walls or ceilings separating the dwelling from the garage shall be constructed of a minimum No. 26 gage (.48 mm) sheet steel and shall have no openings into the garage.

3. A separation is not required between a Group R-3 and Group U carport provided the carport is entirely open on two or more sides and there are not enclosed spaces above.

Where the building is equipped throughout with an automatic sprinkler system, the fire resistance ratings in Table 302.3.3 shall be reduced by one hour but not to less than one hour and to not less than that required for floor construction according to the type of construction. The one hour reduction shall not apply to fire area separations when H-1, H-2, H-3, or I-2 occupancies are included in the areas being separated.

Table 302.3.3 is deleted and replaced with:

Table 302.3.3, entitled "Required Separation of Occupancies", dated January 1, 2002, published by the Department of Commerce, Division of Occupational and Professional Licensing is hereby adopted and incorporated by reference. Table 302.3.3 identifies what type of separation of occupancies requirements are mandated in various types of property use classifications.

(5) Section 305.2 is deleted and replaced with the following:

305.2 Day care. The building or structure, or portion

thereof, for educational, supervision, child day care centers, or personal care services of more than four children shall be classified as a Group E occupancy. See Section 419 for special requirements for Group E child day care centers.

Exception: Areas used for child day care purposes with a Residential Certificate, Family License or Family Group License may be located in a Group R-2 or R-3 occupancy as provided in Section 310.1 and as applicable in Section 101.2.

Child day care centers providing care for more than 100 children 2 1/2 years or less of age shall be classified as Group I-4.

(6) In Section 308 the following definitions are added:

308.1.1 Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

TYPE 1 ASSISTED LIVING FACILITY. A residential facility that provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

TYPE 2 ASSISTED LIVING FACILITY. A residential facility that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent.

SEMI-INDEPENDENT. A person who is:

A. Physically disabled but able to direct his or her own care; or

B. Cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

(7) Section 308.2 is deleted and replaced with the following:

308.2 Group I-1. This occupancy shall include a building or part thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following: residential board and care facilities, type 1 assisted living facilities, half-way houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug centers and convalescent facilities. A facility such as the above with five or fewer persons shall be classified as a Group R-3. A facility such as above, housing at least six and not more than 16 persons, shall be classified as a Group R-4.

(8) Section 308.3 is deleted and replaced with the following:

308.3 Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of more than three persons who are not capable of self-preservation. This group shall include, but not be limited to the following: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals, detoxification facilities, 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 as defined in 308.1.1 with at least six and not more than sixteen residents shall be classified as a Group I-1 facility.

(9) Section 308.3.1 is deleted and replaced with the following:

308.3.1 Child care facility. A child care facility that provides care on a 24 hour basis to more than four children 2 1/2 years of age or less shall be classified as Group I-2.

(10) Section 308.5 is deleted and replaced with the following:

308.5 Group I-4, day care facilities. This group shall include buildings and structures occupied by persons of any age who receive custodial care less than 24 hours by individuals other than parents or guardians, relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for. A facility such as the above with four or fewer persons shall be classified as an R-3. Places of worship during religious functions and Group E child day care centers are not included.

(11) Section 308.5.2 is deleted and replaced with the following:

308.5.2 Child care facility. A facility that provides supervision and personal care on less than a 24 hour basis for more than 100 children 2 1/2 years of age or less shall be classified as Group I-4.

(12) In Section 310.1 the R-3 section is deleted and replaced with the following:

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2 or I and where buildings do not contain more than two dwelling units, or adult and child care facilities that provide accommodations for four or fewer persons of any age for less than 24 hours. Areas used for day care purposes may be located in a Residential Group, R-3 occupancy provided the building substantially complies with the requirements for a dwelling unit and under all of the following conditions:

1. Compliance with the Utah Administrative Code, R710-8, Day Care Rules, as enacted under the authority of the Utah Fire Prevention Board.

2. Use is approved by the State Department of Health, as enacted under the authority of the Utah Child Care Licensing Act, UCA, Sections 26-39-101 through 26-39-110, and in any of the following categories:

a. Utah Administrative Code, R430-50, Residential Certificate Child Care Standards.

b. Utah Administrative Code, R430-90, Licensed Family Child Care.

3. Compliance with all zoning regulations of the local regulator.

(13) A new section 310.4 is added as follows:

310.4 Floor-level exit signs. Where exit signs are required by section 1003.2.10.1, additional approved exit signs that are internally or externally illuminated, photoluminescent or self-luminous, shall be provided in all corridors serving guest rooms of R-1 occupancies. The bottom of such signs shall not be less than 6 inches (152 mm) nor more than 8 inches (203 mm) above the floor level and shall indicate the path of exit travel. For exit and exit access doors, the sign shall be on the door or adjacent to the door with the closest edge of the sign with 8 inches (203 mm) of the door frame.

(14) In section 403.10.1.1 the exception is deleted.

(15) A new section 419 is added as follows:

Section 419 Group E Child Day Care Centers. Group E child day care centers shall comply with Section 419.

419.1 Location at grade. Group E child day care centers shall be located at the level of exit discharge.

Exception: Child day care spaces for children over the age of 24 months may be located on the second floor of buildings equipped with automatic fire protection throughout and an automatic fire alarm system.

419.2 Egress. All Group E child day care spaces with an occupant load of 10 or more shall have a second means of egress. If the second means of egress is not an exit door leading directly to the exterior, the room shall have an emergency escape and rescue window complying with Section 1009.

(16) Section 706.3.5 is deleted and replaced with the following:

706.3.5 Separation of mixed occupancies. Where the provisions of Section 302.3.3 are applicable, the fire barrier separating mixed occupancies shall have a fire-resistance rating of not less than that indicated in Section 302.3.3 based on the occupancies being separated.

(17) A new Section 706.3.6 is added as follows:

706.3.6. Single occupancy fire areas. The fire barrier separating a single occupancy into different fire areas shall have a fire resistance rating of not less than that indicated in Table 706.3.6.

TABLE 706.3.6
FIRE-RESISTANCE RATING REQUIREMENTS
FOR FIRE BARRIER ASSEMBLIES BETWEEN
FIRE AREAS

OCCUPANCY GROUP	FIRE-RESISTANCE RATING (IN HOURS)
H-1, H-2	4
F-1, H-3, S-1	3
A, B, E, F-2, H-4, H-5, I M, R, S-2	2
U	1

(18) Section 710.3 is deleted and replaced with the following:

710.3 Fire-resistance rating. The fire-resistance rating of floor and roof assemblies shall not be less than that required by the building type of construction. Where the floor assembly separates mixed occupancies, the assembly shall have a fire-resistance rating of not less than that required in Section 302.3.3 based on the occupancies being separated. Where the floor assembly separates a single occupancy into different fire areas, the assembly shall have a fire-resistance rating of not less than that required by Section 706.3.6. Floor assemblies separating dwelling units or guestrooms shall be a minimum of 1-hour fire-resistance-rated construction.

Exception: Dwelling unit and guestroom separations in buildings of Type IIB, IIIB and VB construction shall have fire-resistance ratings of not less than 1/2 hour in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

(19) In Section 902, the definition for record drawings is deleted and replaced with the following:

RECORD DRAWINGS. Drawings ("as builts") that document all aspects of a fire protection system as installed.

(20) Section 903.2.5 is deleted and replaced with the following:

903.2.5 Group I. An automatic 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.

(21) Section 903.2.9 Group R-4 is deleted and replaced with the following:

An automatic 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.

Exception: Buildings not more than 4,500 gross square feet and not containing more than 16 residents, provided that building is equipped throughout with a fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

(22) Section 905.5.3 is deleted and replaced with the following:

905.5.3 Class II system 1-inch hose. A minimum 1-inch (25.4 mm) hose shall be permitted to be used for hose stations in light-hazard occupancies where investigated and listed for this service and where approved by the code official.

(23) In section 1002, the definition for exit discharge is deleted and replaced with the following:

EXIT DISCHARGE. That portion of a means of egress system between the termination of an exit and a public way or safe dispersal area.

(24) In section 1003.2.12.1 the exception is deleted and replaced with the following:

Exceptions:

1. For occupancies in Group R-3 and within individual dwelling units in occupancies in Group R-2, as applicable in Section 101.2, guards whose top rail serves as a handrail shall have a height not less than 34 inches (864 mm)and not more than 38 inches (965 mm) measured vertically from the leading edge of the stair tread nosing.

2. For occupancies in Group R-3 and within individual dwelling units in occupancies in Group R-2, as applicable in section 101.2, guards shall form a protective barrier not less than 36 inches (914 mm).

(25) Section 1003.2.12.2 is deleted and replaced with the following:

1003.2.12.2 Opening limitations. Open guards shall have balusters or ornamental patterns such that a 4-inch-diameter (102 mm) sphere cannot pass through any opening up to a height of 34 inches (864 mm). From a height of 34 inches (864 mm) to 42 inches (1067 mm) above the adjacent walking surface, a sphere 8 inches (203 mm) in diameter shall not pass. For occupancies in Group R-3 and within individual dwelling units in occupancies in Group R-2, as applicable in Section 101.2, required guards shall not be constructed with horizontal rails or other ornamental pattern that results in a ladder effect.

Exceptions:

1. The triangular openings formed by the riser, tread and bottom rail at the open side of a stairway shall be of a maximum size such that a sphere of 6 inches (152 mm) in diameter cannot pass through the opening.

2. At elevated walking surfaces for access to and use of electrical, mechanical, or plumbing systems or equipment, guards shall have balusters or be of solid materials such that a sphere with a diameter of 21 inches (533 mm) cannot pass through any opening.

3. In occupancies in Group I-3, F, H or S, balusters, horizontal intermediate rails or other construction shall not permit a sphere with a diameter of 21 inches (533 mm) to pass through any opening.

4. In assembly seating areas, guards at the end of aisles where they terminate at a fascia of boxes, balconies, and galleries shall have balusters or ornamental patterns such that a 4-inch-diameter (102 mm) sphere cannot pass through any opening up to a height of 26 inches (660 mm). From a height of 26 inches (660 mm) to 42 inches (1067 mm) above the adjacent walking surfaces, a sphere 8 inches (203 mm) in diameter shall not pass.

(26) Section 1003.3.3.3, Exception #5 is deleted and replaced with the following:

5. In occupancies in Group R-3, as applicable in Section 101.2, within dwelling units in occupancies in Group R-2, as applicable in Section 101.2, and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, the maximum riser height shall be 8 inches (203 mm) and the minimum tread depth shall be 9 inches (229 mm). The riser height shall be measured vertically between leading edges of the adjacent treads. The tread depth shall be measured horizontally between the vertical planes of the foremost projection of the adjacent treads and at a right angle to the tread's leading edge. The walking surface of the treads and landings of a stairway shall be sloped no steeper than one unit vertical in 48 units horizontal (2-percent slope). The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

(27) Section 1003.3.3.11 Exemption #4 is deleted and replaced with the following:

4. R315.1 Handrails. Handrails shall be provided on at least one side of stairways consisting of four or more risers. Handrails shall have a minimum height of 34 inches (864 mm) and a maximum height of 38 inches (965 mm) measured vertically from the nosing of the treads. All required handrails shall be continuous the full length of the stairs from a point directly above the top riser to a point directly above the lowest riser of the stairway. The ends of the handrail shall be returned into a wall or shall terminate in newel post or safety terminals. A minimum clear space of 1 1/2 inches (38 mm) shall be provided between the wall and the handrail.

(28) Section 1003.3.3.11.3 is amended to include the following exception at the end of the section:

Exception. Non-circular handrails serving an individual unit in a Group R-1, Group R-2 or Group R-3 occupancy shall be permitted to have a maximum cross sectional dimension of 3.25 inches (83 mm) measured 2 inches (51 mm) down from the top of the crown. Such handrail is required to have an indention on both sides between 0.625 inch (16 mm) and 1.5 inches (38 mm) down from the top or crown of the cross section. The indentation shall be a minimum of 0.25 inch (6 mm) deep on each side and shall be at least 0.5 (13 mm) high. Edges within the handgrip shall have a minimum radius of 0.0625 inch (2 mm). The handrail surface shall be smooth with no cusps so as to avoid catching clothing or skin.

(29) In Section 1004.3.2.5 Exception 2 is deleted.

(30) New sections 1006.2.3, 1006.2.3.1 and 1006.2.3.2 are added as follows:

1006.2.3 Safe dispersal areas. Where approved by the code official, the exit discharge is permitted to lead to a safe dispersal area on the same property as the structure being discharged. The proximity and size of such safe dispersal area shall be based on such factors as the occupant load served, the mobility of occupants, the type of construction of the building, the fire protection systems installed in the building, the height of the building and the degree of hazard of the occupancy. In any case, the entire safe dispersal area shall be located not less than 50 feet (15 420 mm) from the structure served.

1006.2.3.1 School ground fences and gates. School grounds shall be permitted to be fenced and gates therein equipped with locks, provided safe dispersal areas are located between the school and fence with the entire dispersal area no less than 50 feet (15 420mm) from school buildings. Safe dispersal area capacity shall be determined by providing a minimum of 3 square feet (0.28 m^2) of net clear area per occupant.

1006.2.3.2 Reviewing stands, grandstands and bleachers. Safe dispersal areas serving reviewing stands, grandstands and bleachers shall accommodate a number of persons equal to the total capacity of the stand or building served. Safe dispersal area capacity shall be determined by providing a minimum of 3 square feet (0.28 m^2) of net clear area per occupant.

(31) Section 1207.2 is deleted and replaced with the following:

1207.2 Minimum ceiling heights. Occupiable spaces, habitable spaces and corridors shall have a ceiling height of not less than 7 feet 6 inches (2286 mm). Rooms in one- and two-family dwellings, bathrooms, toilet rooms, kitchens, storage rooms and laundry rooms shall be permitted to have a ceiling height of not less than 7 feet (2134 mm).

Exceptions:

1. In one- and two-family dwellings, beams or girders spaced not more than 4 feet (1219 mm) on center or projecting not more than 6 inches (152 mm) below the required ceiling height.

2. Basement rooms without habitable spaces in one- and two-family dwellings having a ceiling height of not less than 6 feet 8 inches (2033mm) with not less than 6 feet 4 inches (1932 mm) of clear height under beams, girders, ducts and similar obstructions.

3. If any room in a building has a sloping ceiling, the prescribed ceiling height for the room is required in one-half the area thereof. Any portion of the room measuring less than 5 feet (1524 mm) from the finished floor to the finished ceiling shall not be included in any computation of the minimum area thereof.

4. Mezzanines constructed in accordance with Section 505.1.

(32) Section 1207.3 is deleted and replaced with the following:

1207.3 Room area. Every dwelling unit shall have at least one room that shall have not less than 120 square feet (11.2 m^2) of net floor area. Other habitable rooms shall have a net floor area of not less than 70 square feet (6.5 $m^{2)}$.

Exception: Every kitchen in a one- and two-family dwelling shall have not less than 50 square feet 4.64 m^2) of gross floor area.

(33) Section 1207.4 subparagraph 1 is deleted and replaced with the following:

1. The unit shall have a living room of not less than 165 square feet (15.3 m) of floor area. An additional 100 square feet (9.3 m) of floor area shall be provided for each occupant of such unit in excess of two.

(34) Section 1604.5, footnote "c" is added to Table 1604.5 Classification of Buildings and Other Structures for Importance Factors:

c. For determining "W" per sections 1616.4.1, 1617.4.1, 1617.5.1, or 1618.4, the Snow Factor I, may be taken as 1.0.

(35) In Section 1605.2.1, the formula shown as "$f_2 = 0.2$ for other roof configurations" is deleted and replaced with the following:

$f_2 = 0.20 + .025(A-5)$ for other configurations where roof snow load exceeds 30 psf

$f_2 = 0$ for roof snow loads of 30 psf (1.44kN/m^2) or less.

Where A = Elevation above sea level at the location of the structure (ft/1000).

(36) In Section 1605.3.1 and section 1605.3.2, Exception number 2 in each section is deleted and replaced with the following:

Flat roof snow loads of 30 pounds per square foot (1.44 kNm^2) or less need not be combined with seismic loads. Where flat roofs exceed 30 pounds per square foot (1.44 kNm^2), the snow loads may be reduced in accordance with the following in load combinations including both snow and seismic loads.

$W_s = (0.20 + 0.025(A-5))P_f$

Where

W_s = Weight of snow to be included, psf

A = Elevation above sea level at the location of the structure (ft/1000)

P_f = Design roof snow load, psf

(37) Section 1608.1 is deleted and replaced with the following:

Except as modified in section 1608.1.1, design snow loads shall be determined in accordance with Section 7 of ASCE 7, but the design roof load shall not be less than that determined by Section 1607.

(38) Section 1608.1.1 is added as follows:

1608.1.1 Utah Snow Loads. The ground snow load, P_g, to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula: $P_g = (P_o^2 + S^2(A-A_o)^2)^{0.5}$ for A greater than A_o, and $P_g = P_o$ for A less than or equal to A_o.

WHERE

P_g = Ground snow load at a given elevation (psf)

P_o = Base ground snow load (psf) from Table No. 1608.1.1(a)

S = Change in ground snow load with elevation (psf/100 ft.) From Table No. 1608.1.1(a)

A = Elevation above sea level at the site (ft./1000)

A_o = Base ground snow elevation from Table 1608.1.1(a) (ft./1000)

The building official may round the roof snow load to the nearest 5 psf. The ground snow load, P_g, may be adjusted by the building official when a licensed engineer or architect submits data substantiating the adjustments. A record of such action together with the substantiating data shall be provided to the division for a permanent record.

The building official may also directly adopt roof snow loads in accordance with Table 1608.1.1(b), provided the site is no more than 100 ft. higher than the listed elevation.

Where the minimum roof live load in accordance with section 1607.11 is greater than the design roof snow load, such roof live load shall be used for design, however, it shall not be reduced to a load lower than the design roof snow load. Drifting need not be considered for roof snow loads less than 20 psf.

(39) Table 1608.1.1(a) and Table 1608.1.1(b) are added as follows:

TABLE NO. 1608.1.1(a)
STATE OF UTAH - REGIONAL SNOW LOAD FACTORS

COUNTY	P_o	S	A_o
Beaver	43	63	6.2
Box Elder	43	63	5.2
Cache	50	63	4.5
Carbon	43	63	5.2
Daggett	43	63	6.5
Davis	43	63	4.5
Duchesne	43	63	6.5
Emery	43	63	6.0
Garfield	43	63	6.0
Grand	36	63	6.5
Iron	43	63	5.8
Juab	43	63	5.2
Kane	36	63	5.7
Millard	43	63	5.3
Morgan	57	63	4.5
Piute	43	63	6.2
Rich	57	63	4.1
Salt Lake	43	63	4.5
San Juan	43	63	6.5
Sanpete	43	63	5.2
Sevier	43	63	6.0
Summit	86	63	5.0
Tooele	43	63	4.5
Uintah	43	63	7.0
Utah	43	63	4.5
Wasatch	86	63	5.0
Washington	29	63	6.0
Wayne	36	63	6.5
Weber	43	63	4.5

TABLE NO. 1608.1.1(b)
RECOMMENDED SNOW LOADS FOR SELECTED UTAH CITIES AND TOWNS

		Roof Snow Load (PSF)	Ground Snow Load (PSF)
Beaver County			
Beaver	5920 ft.	43	62
Box Elder County			
Brigham City	4300 ft.	30	43
Tremonton	4290 ft.	30	43
Cache County			

Logan	4530 ft.	35	50
Smithfield	4595 ft.	35	50
Carbon County			
Price	5550 ft.	30	43
Daggett County			
Manila	5377 ft.	30	43
Davis County			
Bountiful	4300 ft.	30	43
Farmington	4270 ft.	30	43
Layton	4400 ft.	30	43
Fruit Heights	4500 ft.	40	57
Duchesne County			
Duchesne	5510 ft.	30	43
Roosevelt	5104 ft.	30	43
Emery County			
Castledale	5660 ft.	30	43
Green River	4070 ft.	25	36
Garfield County			
Panguitch	6600 ft.	30	43
Grand County			
Moab	3965 ft.	25	36
Iron County			
Cedar City	5831 ft.	30	43
Juab County			
Nephi	5130 ft.	30	43
Kane County			
Kanab	5000 ft.	25	36
Millard County			
Millard	5000 ft.	30	43
Delta	4623 ft.	30	43
Morgan County			
Morgan	5064 ft.	40	57
Piute County			
Piute	5996 ft.	30	43
Rich County			
Woodruff	6315 ft.	40	57
Salt Lake County			
Murray	4325 ft.	30	43
Salt Lake City	4300 ft.	30	43
Sandy	4500 ft.	30	43
West Jordan	4375 ft.	30	43
West Valley	4250 ft.	30	43
San Juan County			
Blanding	6200 ft.	30	43
Monticello	6820 ft.	35	50
Sanpete County			
Fairview	6750 ft.	35	50
Mt. Pleasant	5900 ft.	30	43
Manti	5740 ft.	30	43
Ephraim	5540 ft.	30	43
Gunnison	5145 ft.	30	43
Sevier County			
Salina	5130 ft.	30	43
Richfield	5270 ft.	30	43
Summit County			
Coalville	5600 ft.	60	86
Kamas	6500 ft.	70	100
Park City	6400 ft.	85	121
Summit Park	7200 ft.	90	128
Tooele County			
Tooele	5100 ft.	30	43
Uintah County			
Vernal	5280 ft.	30	43
Utah County			
American Fork	4500 ft.	30	43
Orem	4650 ft.	30	43
Pleasant Grove	5000 ft.	30	43
Provo	5000 ft.	30	43
Spanish Fork	4720 ft.	30	43
Wasatch County			
Heber	5630 ft.	60	86
Washington County			
Central	5209 ft.	25	36
Dameron	4550 ft.	25	36
Leeds	3460 ft.	20	29
Rockville	3700 ft.	25	36
Santa Clara	2850 ft.	15 (1)	21
St. George	2750 ft.	15 (1)	21
Wayne County			
Loa	7080 ft.	30	43
Hanksville	4308 ft.	25	36
Weber County			
North Ogden	4500 ft.	40	57
Ogden	4350 ft.	30	43

NOTES

(1) The IBC requires a minimum live load - See 1607.11.2.

(40) Section 1608.2 is deleted and replaced with the following:

1608.2 Ground Snow Loads. The ground snow loads to be used in determining the design snow loads for roofs in states other than Utah are given in Figure 1608.2 for the contiguous United States and Table 1608.2 for Alaska. Site-specific case studies shall be made in areas designated CS in figure 1608.2. Ground snow loads for sites at elevations above the limits indicated in Figure 1608.2 and for all sites within the CS areas shall be approved. Ground snow load determination for such sites shall be based on an extreme value statistical analysis of data available in the vicinity of the site using a value with a 2-percent annual probability of being exceeded (50-year mean recurrence interval). Snow loads are zero for Hawaii, except in mountainous regions as approved by the building official.

(41) Section 1614.2 is deleted and replaced with the following:

1614.2 Change in Occupancy. When a change of occupancy results in a structure being reclassified to a higher Seismic Use Group, or when such change of occupancy results in a design occupant load increase of 100% or more, the structure shall conform to the seismic requirements for a new structure.

Exceptions:

1. This is not required if the design occupant load increase is less than 25 persons and the Seismic Use Group does not change.

2. Specific detailing provisions required for a new structure are not required to be met where it can be shown an equivalent level of performance and seismic safety contemplated for a new structure is obtained. Such analysis shall consider the regularity, overstrength, redundancy and ductility of the structure within the context of the specific detailing provided. Alternatively, the building official may allow the structure to be upgraded in accordance with the latest edition of the "Guidelines for Seismic Rehabilitation of Existing Buildings" or another nationally recognized standard for retrofit of existing buildings.

(42) In Section 1616.4.1, Definition of W, Item 4 is deleted and replaced with the following:

4. Roof snow loads of 30 psf or less need not be included. Where the roof snow load exceeds 30 psf, the snow load shall be included, but may be adjusted in accordance with the following formula: $W_s = (0.20 + 0.025(A-5))P_f$

WHERE:

W_s = Weight of snow to be included in seismic calculation;

A = Elevation above sea level at the location of the structure (ft/1000)

P_f = Design roof snow load, psf

For the purposes of this section, snow load shall be assumed uniform on the roof footprint without including the effects of drift or sliding.

(43) In Section 1617.2.2, the fourth definition of r_{maxi} is deleted and replaced with the following:

=For shear walls, r_{maxi} shall be taken as the maximum value of the product of the shear in the wall or wall pier and $10/1_w$ ($3.3/1_w$for SI), divided by the story shear, where l_w is the length of the wall or wall pier in feet (m). The ratio $10/1_w$ need not be taken greater than 1.0 for buildings of light frame construction.

(44) In Section 1617.4.1, Definition of W, Item 4 is deleted and replaced with the following:

4. Roof snow loads to be included shall be as outlined in section 1616.4.1, Definition of W, Item 4, as amended.

(45) In Section 1617.5.1, Definition of W, Item 4 is deleted and replaced with the following:

4. Roof snow loads to be included shall be as outlined in section 1616.4.1, Definition of W, Item 4, as amended.

(46) In Section 1618.4, Definition of W, Item 4 is deleted and replaced with the following:

4. Roof snow loads to be included shall be as outlined in section 1616.4.1, Definition of W, Item 4, as amended.

(47) Section 1805.5 is deleted and replaced with the following:

1805.5 Foundation walls. Concrete and masonry foundation walls shall be designed in accordance with Chapter 19 or 21. Foundation walls that are laterally supported at the top and bottom and within the parameters of Tables 1805.5(1) through 1805.5(4) are permitted to be designed and constructed in accordance with Sections 1805.5.1 through 1805.5.4 and 1805.5.8 through 1805.5.8.2. Concrete foundation walls may also be constructed in accordance with Section 1805.5.9.

(48) New sections 1805.5.8, 1805.5.8.1 1805.5.8.2 and 1805.5.9 are added as follows:

1805.5.8 Seismic requirements. Tables 1805.5(1) through 1805.5(4) shall be subject to the following limitations based on the seismic design category assigned to the structure as defined in Section 1616.

1805.5.8.1 Seismic requirements for concrete foundation walls. Concrete foundation walls constructed using Tables 1805.5(1) through 1805.5(4) shall be subject to the following:

1. Seismic Design Category A and B. Provide two No. 5 bars around window and door openings. Such bars shall extend at least 24 inches (610 mm) beyond the corners of the openings.

2. Seismic Design Category C. Tables shall not be used except as permitted for plain concrete members in Section 1910.4.

3. Seismic Design Categories D, E and F. Tables shall not be used except as allowed for plain concrete members in ACI 318, Section 22.10.

1805.5.8.2. Seismic requirements for masonry foundation walls. Masonry foundation walls constructed using Tables 1805.5(1) through 1805.5(4) shall be subject to the following:

1. Seismic Design Category A and B. No additional seismic requirements.

2. Seismic Design Category C. The requirements of Section 2106.4 shall apply.

3. Seismic Design Category D. The requirements of Section 2106.5 shall apply.

4. Seismic Design Categories E and F. The requirements of Section 2106.6 shall apply.

1805.5.9 Empirical foundation design. Group R, Division 3 Occupancies three stories or less in height, and Group U Occupancies, which are constructed in accordance with Section 2308, or with other methods employing repetitive wood-frame construction or repetitive cold-formed steel structural member construction, shall be permitted to have concrete foundations constructed in accordance with Table 1805.5.9.

(49) Table 1805.5.9 is added as follows:

TABLE 1805.5.9
Empirical Foundation Walls (1,8)

Max. Height	2' (610 mm)	4' (1219 mm)	6' (1829 mm)	8' (2438 mm)	9' (2743 mm)	Over 9' (2743 mm)
Top Edge Support	None	None	Floor or roof dia-phragm(6)	Same as 6'	Same as 6'	Engi-neering required
Minimum Thickness	6"	6"	8"	8"	8"	Same as above
Vertical Steel(2)	Note (5)	#4 @ 32"	#4 @ 24"	#4 @ 24"	#4 @ 16"	Same as above
Horizontal Steel(3)	2-#4 Bars	4-#4 Bars	5-#4 Bars	6-#4 Bars	7-#4 Bars	Same as above
Steel at Openings(4)	2-#4 Bars above; 1-#4 Bar each side 1-#4 Bar below	2-#4 Bars above; 1-#4 Bar each side 1-#4 Bar below	2-#4 Bars above; 1-#4 Bar each side 1-#4 Bar below	2-#4 Bars above; 1-#4 Bar each side 1-#4 Bar below	2-#4 Bars above; 1-#4 Bar each side 1-#4 Bar below	Same as above
Max. Lintel Length	2' (610mm)	3' (914mm)	6' (1829mm)	6' (1829mm)	6' (1829mm)	Same as above
Min. Lintel Depth	2" for each ft. of opening width; Min. 6"	Same as 2'	Same as 2'	Same as 2'	Same as 2'	Same as above

Notes:

(1) Based on 3,000 psi (20.6 Mpa) concrete and 60,000 psi (414 Mpa) reinforcing steel.

(2) To be placed in the center of the wall, and extend from the footing to within three inches (76 mm) of the top of the wall; dowels of #4 bars to match vertical steel placement shall be provided in the footing, extending 24 inches (610 mm) into the foundation wall.

(3) One bar shall be located in the top four inches (102 mm), one bar in the bottom four inches (102 mm) and the other bars equally spaced between. Such bar placement satisfies the requirements of Section 1805.9. Corner reinforcing shall be provided so as to lap 24 inches (610 mm).

(4) Bars shall be placed within two inches (51 mm) of the openings and extend 24 inches (610 mm) beyond the edge of the opening; vertical bars may terminate three inches (76 mm) from the top of the concrete.

(5) Dowels of #4 bar at 32 inches on center shall be provided in the footing, extending 18 inches (457 mm) into the foundation wall.

(6) Diaphragm shall conform to the requirements of Section 2308.

(7) Footing shall be a minimum of nine inches thick by 20 inches wide.

(8) Soil backfill shall be soil classification types GW, GP, SW, or PS, per Table 1610.1. Soil shall be submerged or saturated in groundwater.

(50) A new section 2902.1.1 is added as follows:

2902.1.1 Unisex toilets and bath fixtures. Fixtures located within unisex toilet and bathing rooms complying with section 2902 are permitted to be included in determining the minimum number of fixtures for assembly and mercantile occupancies.

(51) A new section 2306.1.4 is added as follows:

2306.1.4 The allowable stress increase of 1.15 for snow load, shown in Table 2.3.2, Load Duration Factors, C_d, of the National Design Specifications, shall not be utilized at elevations above 5,000 feet (1524 M).

(52) Section 2308.6 is deleted and replaced with the following:

2308.6 Foundation plates or sills. Foundations and footings shall be as specified in Chapter 18. Foundation plates or sills resting on concrete or masonry foundations shall comply with Section 2304.3.1 and shall be bolted or anchored by one of the following:

1. Foundation plates or sill shall be bolted or anchored to the foundation with not less than 1/2 inch (12.7 mm) diameter steel bolts or approved anchors. Bolts shall be embedded at least 7 inches (178 mm) into concrete or masonry, and spaced not more than 6 feet (1829 mm) apart. There shall be a minimum of two bolts or anchor straps per piece with one bolt or anchor strap located not more than 12 inches (305 mm) or less than 4 inches (102 mm) from each end of each piece.

2. Foundation plates or sills shall be bolted or anchored to the foundation with not less than 1/2 inch (12.7 mm) diameter steel bolts or approved anchors. Bolts shall be embedded at least 7 inches (178 mm) into concrete or masonry, and spaced not more than 32 inches (816 mm) apart. There shall be a minimum of two bolts or anchor straps per piece located not less than 4 inches (102 mm) from each end of each piece.

A properly sized nut and washer shall be tightened on each bolt to the plate.

(53) Section 3006.5 Shunt Trip, the following exception is added:

Exception: Hydraulic elevators and roped hydraulic elevators with a rise of 50 feet or less.

(54) A new section 3402.5 is added as follows:

3402.5 Parapets and other appendages. Building constructed prior to 1975 with parapet walls, cornices, spires, towers, tanks, signs, statuary and other appendages shall have such appendages evaluated by a licensed engineer to determine resistance to design loads specified in this code when said building is undergoing reroofing, or alteration of or repair to said feature.

EXCEPTION: Group R-3 an U occupancies.

Original Plans and/or structural calculations may be utilized to demonstrate that the parapet or appendages are structurally adequate. When found to be deficient because of design or deteriorated condition, the engineer shall prepare specific recommendations to anchor, brace, reinforce or remove the deficient feature.

The maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F. If the required parapet height exceeds this maximum height, a bracing system designed using the coefficients specified in Table 1621.2 shall support the top of the parapet. When positive diaphragm connections are absent, tension roof anchors shall be added. Approved alternative methods of equivalent strength will be considered when accompanied by engineer sealed drawings, details and calculations.

(55) Section 3408.1 is deleted and replaced with the following:

3408.1 Scope: The provision of sections 3408.2 through 3408.5 apply to maintenance, change of occupancy, additions and alterations to existing buildings, including those identified as historic buildings.

Exceptions:

1. When maintenance, additions or alteration occur, Type B dwelling units required by section 1107.5.4 are not required to be provided in existing buildings and facilities.

2. When a change of occupancy in a building or portion of a building results in multiple dwelling units as determined in section 1107.5.4, not less than 20 percent of the dwelling units shall be Type B dwelling units. These dwelling units may be located on any floor of the building provided with an accessible route. Two percent, but not less than one, of the dwelling units shall be Type A dwelling units.

(56) Referenced standards number 1557-91 under ASTM in chapter 35 is deleted and replaced with the following:

TABLE

Standard Number	Title	Code Section
D1557-91 E01	Laboratory Compaction Characteristics of soil using Modified Effort	1508.15.2 K1.1.2, K1.7.5

(57) A new appendix K, Grading, is added as follows:

APPENDIX K - GRADING

K1.1 GENERAL

K1.1.1 Scope. The provisions of this chapter apply to grading, excavation and earthwork construction, including fills and embankments. Where conflicts occur between the technical requirements of this chapter and the soils report, the soils report shall govern.

K1.1.2 Standards. The following standards of quality shall apply:

1. ASTM D1557-91 E01, Test Method for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lb/ft).

K1.2 DEFINITIONS

K1.2.1 Definitions. For the purposes of this appendix chapter, the terms, phrases and words listed in this section and their derivatives shall have the indicated meanings.

BENCH. A relatively level step excavated into earth

material on which fill is to be placed.

COMPACTION. The densification of a fill by mechanical means.

CUT. See Excavation.

DOWN DRAIN. A device for collecting water from a swale or ditch located on or above a slope, and safely delivering it to an approved drainage facility.

EROSION. The wearing away of the ground surface as a result of the movement of wind, water or ice.

EXCAVATION. The removal of earth material by artificial means, also referred to as a cut.

FILL. Deposition of earth materials by artificial means.

GRADE. The vertical location of the ground surface.

GRADE, EXISTING. The grade prior to grading.

GRADE, FINISHED. The grade of the site at the conclusion of all grading efforts.

GRADING. An excavation or fill or combination thereof.

KEY. A compacted fill placed in a trench excavated in earth material beneath the toe of a slope.

SLOPE. An inclined surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

TERRACE. A relatively level step constructed in the face of a graded slope for drainage and maintenance purposes.

K1.3 PERMITS REQUIRED

K1.3.1 Permits required. Except as exempted in Section K1.3.2, no grading shall be performed without first having obtained a permit therefor from the building official. A grading permit does not include the construction of retaining walls or other structures.

K1.3.2 Exemptions. A grading permit shall not be required for the following:

1. Grading in an isolated, self-contained area, provided there is no danger to the public, and that such grading will not adversely affect adjoining properties.

2. Excavation for construction of a structure permitted under this code.

3. Cemetery graves.

4. Refuse disposal sites controlled by other regulations.

5. Excavations for wells, or trenches for utilities.

6. Mining, quarrying, excavating, processing or stockpiling rock, sand, gravel, aggregate or clay controlled by other regulations, provided such operations do not affect the lateral support of, or significantly increase stresses in, soil on adjoining properties.

7. Exploratory excavations performed under the direction of a registered design professional for the sole purpose of preparing a soils report.

Exemption from the permit requirements of this appendix shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. The listed exemptions shall not apply to areas located in a floodway or floodplain regulated under Appendix G.

K1.4 PERMIT APPLICATION AND SUBMITTALS

K1.4.1 Submittal requirements. In addition to the provisions of Section 105.3, the applicant shall state the estimated quantities of excavation and fill.

K1.4.2 Site plan requirements. In addition to the provisions of Section 106, a grading plan shall show the existing grade and finished grade in contour intervals of sufficient clarity to indicate the nature and extent of the work and show in detail that it complies with the requirements of this code. The plans shall show the existing grade on adjoining properties in sufficient detail to identify how grade changes will conform to the requirements of this code.

K1.4.3 Soils report. A soils report prepared by registered design professionals shall be provided which shall identify the nature and distribution of existing soils; conclusions and recommendations for grading procedures; soil design criteria for any structures or embankments required to accomplish the proposed grading; and, where necessary, slope stability studies, and recommendations and conclusions regarding site geology.

Exception: A soils report is not required where the building official determines that the nature of the work applied for is such that a report is not necessary.

K1.4.4 Liquefaction study. For sites with mapped maximum considered earthquake spectral response accelerations at short period (S_s) greater than 0.5g as determined by Section 1615, a study of the liquefaction potential of the site shall be provided, and the recommendations incorporated in the plans.

Exception: A liquefaction study is not required where the building official determines from established local data that the liquefaction potential is low.

K1.5 INSPECTIONS

K.1.5.1 General. Inspections shall be governed by Section 109 of this code.

K1.5.2 Special inspections. The special inspection requirements of Section 1704.7 shall apply to work performed under a grading permit where required by the building official.

K1.6 EXCAVATIONS

K1.6.1 Maximum slope. The slope of cut surfaces shall be no steeper than is safe for the intended use, and shall be no steeper than 2 horizontal to 1 vertical (50%) unless the applicant furnishes a soils report justifying a steeper slope.

Exceptions:

1. A cut surface may be at a slope of 1.5 horizontal to 1 vertical (67%) provided that all the following are met:

(a) it is not intended to support structures or surcharges;

(b) it is adequately protected against erosion;

(c) it is no more than 8 feet (2438 mm) in height; and

(d) it is approved by the building official.

2. A cut surface in bedrock shall be permitted to be at a slope of 1 horizontal to 1 vertical (100%)

K1.7 FILLS

K1.7.1 General. Unless otherwise recommended in the soils report, fills shall conform to provisions of this section.

K1.7.2 Surface preparation. The ground surface shall be prepared to receive fill by removing vegetation, topsoil and other unsuitable materials, and scarifying the ground to provide a bond with the fill material.

K1.7.3 Benching. Where existing grade is at a slope steeper than 5 horizontal to 1 vertical (20%) and the depth of the fill exceeds five feet (1524 mm) benching shall be provided in accordance with Figure K1.7.3 dated July 1, 2001, published by State and Local Building Codes Amendments, Department of Commerce, Division of Occupational and Professional Licensing, which is hereby adopted and incorporated by reference. A key shall be provided which is at least 10 feet

(3048 mm) in width and two feet (610 mm) in depth.

K1.7.4 Fill material. Fill material shall not include organic, frozen or other deleterious materials. No rock or similar irreducible material greater than 12 inches (305mm) in any dimension shall be included in fills.

K1.7.5 Compaction. All fill material shall be compacted to 90% of maximum density as determined by ASTM D1557, Modified Proctor, in lifts not exceeding 12 inches (305 mm) in depth.

K1.7.6 Maximum slope. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes steeper than 2 horizontal to 1 vertical (50%) shall be justified by soils reports or engineering data.

K1.8 SETBACKS

K1.8.1 General. Cut and fill slopes shall be set back from the property lines in accordance with this section. Setback dimensions shall be measured perpendicular to the property line and shall be as shown in Figure K1.8.1, dated July 1, 2001, published by State and Local Building Codes Amendments, Department of Commerce, Division of Occupational and Professional Licensing, which is hereby adopted and incorporated by reference. unless substantiating data is submitted justifying reduced setbacks.

K1.8.2 Top of slope. The setback at the top of a cut slope shall not be less than that shown in Figure K1.8.1, or than is required to accommodate any required interceptor drains, whichever is greater.

K1.8.3 Slope protection. Where required to protect adjacent properties at the toe of a slope from adverse effects of the grading, additional protection, approved by the building official, shall be included. Such protection may include but shall not be limited to:

1. Setbacks greater than those required by Figure K1.8.1.
2. Provisions for retaining walls or similar construction.
3. Erosion protection of the fill slopes.
4. Provision for the control of surface waters.

K1.9 DRAINAGE AND TERRACING

K1.9.1 General. Unless otherwise recommended by a registered design professional, drainage facilities and terracing shall be provided in accordance with the requirements of this section.

Exception: Drainage facilities and terracing need not be provided where the ground slope is not steeper than 3 horizontal to 1 vertical (33%).

K1.9.2 Terraces. Terraces at least six feet (1829 mm) in width shall be established at not more than 30-foot (9144 mm) vertical intervals on all cut or fill slopes to control surface drainage and debris. Suitable access shall be provided to allow for cleaning and maintenance.

Where more than two terraces are required, one terrace, located at approximately mid-height, shall be at least 12 feet (3658 mm) in width.

Swales or ditches shall be provided on terraces. They shall have a minimum gradient of 20 horizontal to 1 vertical (5%) and shall be paved with concrete not less than three inches (76 mm) in thickness, or with other materials suitable to the application. They shall have a minimum depth of 12 inches (305 mm) and a minimum width of five feet (1524 mm).

A single run of swale or ditch shall not collect runoff from a tributary area exceeding 13,500 square feet (1256 m^2) (projected) without discharging into a down drain.

K1.9.3 Interceptor drains. Interceptor drains shall be installed along the top of cut slopes receiving drainage from a tributary width greater than 40 feet, measured horizontally. They shall have a minimum depth of one foot (305 mm) and a minimum width of three feet (915 mm). The slope shall be approved by the building official, but shall not be less than 50 horizontal to 1 vertical (2%). The drain shall be paved with concrete not less than three inches (76 mm) in thickness, or by other materials suitable to the application. Discharge from the drain shall be accomplished in a manner to prevent erosion and shall be approved by the building official.

K1.9.4 Drainage across property lines. Drainage across property lines shall not exceed that which existed prior to grading. Excess or concentrated drainage shall be contained on site or directed to an approved drainage facility. Erosion of the ground in the area of discharge shall be prevented by installation of non-erosive down drains or other devices.

K1.10 EROSION CONTROL

K1.10.1 General. The faces of cut and fill slopes shall be prepared and maintained to control erosion. This control shall be permitted to consist of effective planting.

Exception: Erosion control measures need not be provided on cut slopes not subject to erosion due to the erosion-resistant character of the materials.

Erosion control for the slopes shall be installed as soon as practicable and prior to calling for final inspection.

K1.10.2 Other devices. Where necessary, check dams, cribbing, riprap or other devices or methods shall be employed to control erosion and provide safety.

R156-56-705. Local Amendments to the IBC.

The following are adopted as amendments to the IBC to be applicable to the following jurisdictions:

(1) City of Farmington:

Section 903.2.16 is adopted as follows:

903.2.16 Group R, Division 3 Occupancies. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when any of the following conditions are present:

1. The structure is over two stories high, as defined by the building code;

2. The nearest point of structure is more than 150 feet from the public way;

3. The total floor area of all stories is over 5,000 square feet (excluding from the calculation the area of the basement and/or garage); or

4. The structure is located on a street constructed after March 1, 2000 that has a gradient over 12% and, during fire department response, access to the structure will be gained by using such street. (If the access is intended to be from a direction where the steep gradient is not used, as determined by the Chief, this criteria shall not apply).

Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves or in enclosed attic spaces, unless required by the Chief.

(2) City of North Salt Lake

Section 903.2.16 is adopted as follows:

903.2.16 Group R, Division 3 Occupancies. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when the following condition is present:

1. The structure is over 6,200 square feet.

Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves, or in enclosed attic spaces, unless required by the fire chief.

(3) Park City Corporation:

Section 903.2 is deleted and replaced with the following:

903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the location described in this section.

All new construction having more than 6,000 square feet on any one floor, except R-3 occupancy.

All new construction having more than two (2) stories, except R-3 occupancy.

All new construction having three (3) or more dwelling units, including units rented or leased, and including condominiums or other separate ownership.

All new construction in the Historic Commercial Business zone district, regardless of occupancy.

All new construction and buildings in the General Commercial zone district where there are side yard setbacks or where one or more side yard setbacks is less than two and one half (2.5) feet per story of height.

All existing building within the Historic District Commercial Business zone.

In Section 1505.1, the following is added as footnote d:

d. Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE
WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

Appendix C is adopted.

R156-56-706. Statewide Amendments to the NEC.

The following are adopted as amendments to the NEC to be applicable statewide:

(1) Section 250-104(b) is deleted and replaced with the following:

Section 250-104(b) Metal Gas Piping. Each above ground portion of a gas piping system upstream from the equipment shutoff valve shall be electrically continuous and bonded to the grounding electrode system.

The bonding jumper shall be sized in accordance with Table 250-122 using the rating of the circuit that may energize the piping. The equipment grounding conductor for the circuit that may energize the piping shall be permitted to serve as the bonding means. Where the circuit that may energize the piping cannot be identified or where the bonding jumper is exposed to physical damage, the minimum size bonding jumper shall be No. 8 solid copper.

R156-56-707. Statewide Amendments to the IPC.

The following are adopted as amendments to the IPC to be applicable statewide:

(1) In Section 202, the definition for "Backflow Backpressure, Low Head" is deleted in its entirety.

(2) In Section 202, the definition for "Backsiphonage" is deleted and replaced with the following:

Backsiphonage. The backflow of potentially contaminated, polluted or used water into the potable water system as a result of the pressure in the potable water system falling below atmospheric pressure of the plumbing fixtures, pools, tanks or vats connected to the potable water distribution piping.

(3) In Section 202, the following definition is added:

Certified Backflow Preventer Assembly Tester. A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Subsection 19-4-104(4), Utah Code Ann. (1953), as amended.

(4) In Section 202, the definition for "Cross Connection" is deleted and replaced with the following:

Cross Connection. Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems (see "Backflow").

(5) In Section 202, the following definition is added:

Heat Exchanger (Potable Water). A device to transfer heat between two physically separated fluids (liquid or steam), one of which is potable water.

(6) In Section 202, the definition for "Potable Water" is deleted and replaced with the following:

Potable Water. Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Titles 19-4 and 19-5, Utah Code Ann. (1953), as amended and the regulations of the public health authority having jurisdiction.

(7) In Section 202, the definition for "Water Heater" is deleted and replaced with the following:

Water Heater. A closed vessel in which water is heated by the combustion of fuels or electricity and is withdrawn for use external to the system at pressures not exceeding 160 psig (1100 kPa (gage)), including the apparatus by which heat is generated, and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit (99 degrees Celsius).

(8) Section 305.10 is added as follows:

Section 305.10 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

(9) Section 312.9 is deleted in its entirety and replaced with the following:

312.9 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and Reduced Pressure Detector Assembly, and the spring loaded check valve assembly described in Section 608.16.4.

(10) A new section 403.7 is added as follows:

403.7 Hand sink location. Hand sinks in commercial food establishments shall be located accessible to food preparation areas, food service areas, dishwashing areas, and toilet rooms in accordance with Rule R392-100, Utah Administrative Code. Hand sinks in child care facilities shall be installed in accordance with R430-100-21, Utah Administrative Code.

(11) Section 412.5 is added as follows:

412.5 Public toilet rooms. All public toilet rooms shall be equipped with at least one of the following:

1. one floor drain with a wall mounted hose bibb;

2. one floor drain with a deep seal trap; or

3. at least one emergency floor drain with trap primer.

(12) Section 418.1 is deleted and replaced with the following:

418.1 Approval. Sinks shall conform to ANSI Z124.6, ASME A112.19.1, ASME A112.19.2, ASME A112.19.3, ASME A112.19.4, ASME A112.19.9, CSA B45.1, CSA B45.2, CSA B45.3, CSA B45.4 or NSF 2.

(13) Section 502.4 is deleted in its entirety.

(14) Section 502.6 is deleted and replaced with the following:

502.6 Water Heater Seismic Bracing. Water heaters shall be anchored or strapped in the upper third of the appliance to resist a horizontal force equal to one third the operating weight of the water heater, acting in any horizontal direction, or in accordance with the appliance manufacturers recommendations.

(15) Section 504.6.2 is deleted and replaced with the following:

504.6.2 Material. Relief valve discharge piping shall be of those materials listed in Section 605.5 or shall be tested, rated and approved for such use in accordance with ASME A112.4.1. Piping from safety pan drains shall be of those material listed in Table 605.5 and Table 701.1.

(16) Section 504.7.1 is amended as follows:

The measurement of "3/4 inch" in the last sentence of the paragraph is replaced with the measurement "1 1/2 inch".

(17) Section 602.3 is deleted and replaced with the following:

602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1, 73-3-3, and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction. The source shall supply sufficient quantity of water to comply with the requirements of this chapter.

(18) Sections 602.3.1, 602.3.2, 602.3.3, 602.3.4, 602.3.5 and 602.3.5.1 are deleted in their entirety.

(19) Section 604.4.1 is added as follows:

604.4.1 Metering faucets. Self closing or metering faucets shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(20) Section 606.2 is deleted and replaced with the following:

606.2 Location of shutoff valves. Shutoff valves shall be installed in the following locations:

1. On the fixture supply to each plumbing fixture.

Exceptions:

A. bath tubs and showers.

B. in individual guest rooms that are provided with unit shutoff valves in hotels, motels, boarding houses and similar occupancies.

2. On the water supply pipe to each appliance or mechanical equipment.

(21) Section 606.5 is deleted and replaced with the following:

606.5 Water pressure booster systems. Water pressure booster systems shall be provided as required by Section 606.5.1 through 606.5.11.

(22) Section 606.5.11 is added as follows:

606.5.11 Prohibited installation. In no case shall a booster pump be allowed that will lower the pressure in the public main to less than 20 psi.

(23) In Section 608.1, the following sentence is added at the end of the paragraph:

Connection without an air gap between potable water piping and sewer-connected waste shall not exist under any condition.

(24) Table 608.1 is deleted and replaced with the following:

TABLE 608.1
General Methods of Protection

Assembly (applicable standard)	Degree of Hazard	Application	Installation Criteria
Air Gap (ASME A112.1.2)	High or Low	Backsiphonage	See Table 608.15.1
Reduced Pressure Principle Backflow Preventer (AWWA C511, USC-FCCCHR, ASSE 1013 CSA CNA/CSA-B64.4) and Reduced Pressure Detector Assembly (ASSE 1047, USC-FCCCHR)	High or Low	Backpressure or Backsiphonage 1/2" - 16"	a. The bottom of each RP assembly shall be a minimum of 12 inches above the ground or floor. b. RP assemblies shall NOT be installed in a pit. c. The relief valve on each RP assembly shall not be directly connected to any waste disposal line, including sanitary sewer, storm drains,

			or vents. d. The assembly shall be installed in a horizontal position only unless listed or approved for vertical installation.
Double Check Backflow Prevention Assembly (AWWA C510, USC-FCCCHR, ASSE 1015) Double Check Detector Assembly Backflow Preventer (ASSE 1048, USC-FCCCHR)	Low	Backpressure or Backsiphonage 1/2" - 16"	a. If installed in a pit, the DC assembly shall be installed with a minimum of 12 inches of clearance between all sides of the vault including the floor and roof or ceiling with adequate room for testing and maintenance. b. Shall be installed in a horizontal position unless listed or approved for vertical installation.
Pressure Vacuum Breaker Assembly (ASSE 1020, USC-FCCCHR)	High or Low	Backsiphonage 1/2" - 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.
Spill Resistant Vacuum Breaker (ASSE 1056, USC-FCCCHR)	High or Low	Backsiphonage 1/4" - 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.
Atmospheric Vacuum Breaker	High or Low	Backsiphonage	a. Shall not be installed in an area that could be subjected to backpressure or back drainage (ASSE 1001 USC-FCCCHR, CSA CAN/CSA-B64.1.1 conditions. b. Shall not be installed where it may be subjected to continuous pressure for more than 12 consecutive hours at any time. c. Shall be installed a minimum of six inches above all downstream piping and the highest point of use. d. Shall be installed on the discharge (downstream) side of any valves. e. The AVB shall be installed in a vertical position only.
General Installation Criteria			The assembly owner, when necessary, shall provide devices or structures to facilitate testing, repair, and/or maintenance and to insure the safety of the backflow technician. Assemblies shall not be installed more than five feet off the floor unless a permanent platform is installed. The body of the assembly shall not be closer than 12 inches to any wall, ceiling or incumbrance, and shall be accessible for testing, repair and/or maintenance. In cold climates, assemblies shall be protected from freezing by a means acceptable to the code official. Assemblies shall be maintained as an intact assembly.

(25) Table 608.1.1 is added as follows:

TABLE 608.1.1
Specialty Backflow Devices for low hazard use only

Device	Degree of Hazard	Application	Applicable Standard
Antisiphon-type Water Closet Flush Tank Ball Cock	Low	Backsiphonage	ASSE 1002 CSA CAN/ CSA-B125
Dual check valve Backflow Preventer	Low	Backsiphonage or Backpressure 1/4" - 1"	ASSE 1024
Backflow Preventer with Intermediate Atmospheric Vent	Low Residential Boiler	Backsiphonage or Backpressure 1/4" - 3/4"	ASSE 1012 CSA CAN/ CSA-B64.3
Dual check valve type Backflow Preventer for Carbonated Beverage Dispensers/Post Mix Type	Low	Backsiphonage or Backpressure 1/4" - 3/8"	ASSE 1032
Hose-connection Vacuum Breaker	Low	Backsiphonage 1/2", 3/4", 1"	ASSE 1011 CSA CAN/ CSA-B64.2
Vacuum Breaker Wall Hydrants, Frost-resistant, Automatic Draining Type	Low	Backsiphonage 3/4", 1"	ASSE 1019 CSA CAN/ CSA-B64.2.2
Laboratory Faucet Backflow Preventer	Low	Backsiphonage	ASSE 1035 CSA CAN/ CSA-B64.7
Hose Connection Backflow Preventer	Low	Backsiphonage 1/2" - 1"	ASSE 1052

Installation Guidelines: The above specialty devices shall be installed in accordance with their listing and the manufacturer's instructions and the specific provisions of this chapter.

(26) In Section 608.3.1, the following sentence is added at the end of the paragraph:

All piping and hoses shall be installed below the atmospheric vacuum breaker.

(27) Section 608.7 is deleted in its entirety.

(28) In Section 608.8, the following sentence is added at the end of the paragraph:

In addition each nonpotable water outlet shall be labeled with the words "CAUTION: UNSAFE WATER, DO NOT DRINK".

(29) In Section 608.11, the following sentence is added at the end of the paragraph:

The coating shall conform to NSF Standard 61 and application of the coating shall comply with the manufacturers instructions.

(30) Section 608.13.3 is deleted and replaced with the following:

608.13.3 Backflow preventer with intermediate atmospheric vent. Backflow preventers with intermediate atmospheric vents shall conform to ASSE 1012 or CAS CAN/CAS-B64.3. These devices shall be permitted to be installed on residential boilers only where subject to continuous pressure conditions. The relief opening shall discharge by air gap and shall be prevented from being submerged.

(31) Section 608.13.4 is deleted in its entirety.

(32) Section 608.15.3 is deleted and replaced with the following:

608.15.3 Protection by a backflow preventer with intermediate atmospheric vent. Opening and outlets to residential boilers only shall be protected by a backflow preventer with an intermediate atmospheric vent.

(33) Section 608.15.4 is deleted and replaced with the following:

608.15.4 Protection by a vacuum breaker. Openings and outlets shall be protected by atmospheric-type or pressure-type vacuum breakers. The critical level of the atmospheric vacuum breaker shall be set a minimum of 6 inches (152 mm) above the flood level rim of the fixture or device. The critical level of the pressure vacuum breaker shall be set a minimum of 12 inches (304 mm) above the flood level rim of the fixture or device. Ball cocks shall be set in accordance with Section 425.3.1. Vacuum breakers shall not be installed under exhaust hoods or similar locations that will contain toxic fumes or vapors. Pipe-applied vacuum breakers shall be installed not less than 6 inches (152 mm) above the flood level rim of the fixture, receptor or device served. No valves shall be installed downstream of the atmospheric vacuum breaker.

(34) In Section 608.15.4.2, the following is added at the end of the paragraph:

In climates where freezing temperatures occur, a listed, self-draining frost proof hose bibb with an integral backflow preventer shall be used.

(35) Section 608.16.1 is deleted and replaced with the following:

608.16.1 Beverage dispensers. Potable water supply to carbonators shall be protected by a vented dual check valve meeting ASSE Standard 1022 and installed according to the requirements of this chapter.

(36) In Section 608.16.2, the first sentence of the paragraph is deleted and replaced as follows:

608.16.2 The potable water supply to the residential boiler shall be equipped with a backflow preventer with an intermediate atmospheric vent complying with ASSE 1012 or CSA CAN/CSA B64.3.

(37) Section 608.16.3 is deleted and replaced with the following:

608.16.3 Heat exchangers. Heat exchangers shall be separated from potable water by double-wall construction. An air gap open to the atmosphere shall be provided between the two walls.

Exceptions:

1. Single wall heat exchangers shall be permitted when all of the following conditions are met:

a. Utilize a heat transfer medium of potable water or contains only substances which are recognized as safe by the United States Food and Drug Administration (FDA);

b. The pressure of the heat transfer medium is maintained less than the normal minimum operating pressure of the potable water system; and

c. The equipment is permanently labeled to indicate only additives recognized as safe by the FDA shall be used.

2. Steam systems that comply with paragraph 1 above.

3. Approved listed electrical drinking water coolers.

(38) Section 608.16.4 is deleted and replaced with the

following:

Section 608.16.4 Connections to automatic fire sprinkler systems and standpipe systems. The potable water supply to automatic fire sprinkler and standpipe systems shall be protected against backflow by an alarm check valve and spring loaded check valve assembly as shown on the diagram entitled "Riser Detail", dated July 1, 1999, published by State and Local Building Codes Amendments, Department of Commerce, Division of Occupational and Professional Licensing, which is hereby adopted and incorporated by reference.

EXCEPTIONS:

1. When systems are installed as a portion of the water distribution system in accordance with the requirements of this code and are not provided with a fire department connection, isolation of the water supply system shall not be required.

2. Isolation of the water distribution system is not required for deluge, preaction or dry pipe systems.

3. When the sprinkler supply line is less than four inches in diameter and a resilient seated spring loaded single check valve, approved and testable for back flow prevention is not available, then an alternate, approved for fire sprinkler system use, spring loaded check valve is allowed.

(39) Section 608.16.4.1 is deleted and replaced with the following:

Section 608.16.4.1 Additives or nonpotable source. Where systems contain chemical additives or antifreeze, or where systems are connected to a nonpotable secondary water supply, the potable water supply shall be protected against backflow by a reduced pressure principle backflow preventor. Where chemical additives or antifreeze are added to only a portion of an automatic fire sprinkler or standpipe system, the reduced pressure principle backflow preventer shall be permitted to be located so as to isolate that portion of the system.

Exception:

1. For systems that use antifreeze only consisting of strictly pure glycerine (C.P. or U.S.P. 96.5 percent grade) or propylene glycol, equipment specified in Section 608.16.4 shall be used.

(40) Section 608.16.4.2 is added as follows:

Section 608.16.4.2 Testing Procedures. The testing procedures are as follows:

1. The check valves are to be tested by a currently certified Class II Backflow Technician in accordance with Rule R309-302 available from the Department of Environmental Quality.

2. All other mechanical devices attached to or part of a class I or class II fire sprinkler system shall be tested by a licensed fire sprinkler contractor.

(41) Section 608.16.6 is deleted and replaced with the following:

608.16.6 Connections to lawn irrigation systems. The potable water supply to lawn irrigation systems shall be protected against backflow by an atmospheric-type vacuum breaker, a pressure-type vacuum breaker, a double check valve backflow preventer or a reduced pressure principle backflow preventer. A valve shall not be installed downstream from an atmospheric vacuum breaker. Where chemicals are introduced into the system, the potable water supply shall be protected against backflow by a reduced pressure principle backflow preventer.

(42) Section 608.16.7 is deleted and replaced with the following:

608.16.7 Chemical dispensers. Where chemical dispensers connect to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

(43) Section 608.16.8 is deleted and replaced with the following:

608.16.8 Portable cleaning equipment. Where the portable cleaning equipment connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2 or Section 608.13.8.

(44) Section 608.16.9 is deleted and replaced with the following:

608.16.9 Dental pump equipment or water syringe. Where dental pumping equipment or water syringes connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

(45) Section 608.16.10 is added as follows:

608.16.10 Automatic and coin operated car washes. The water supply to an automatic or coin operated car wash shall be protected in accordance with Section 608.13.1 or Section 608.13.2.

(46) Section 608.17 is deleted in its entirety.

(47) Section 701.2 is deleted and replaced with the following:

701.2 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann., (1953), as amended; or an approved private sewage disposal system in accordance with Rule R317-5501 through R317-513 and Rule R317-5, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

(48) Section 802.1.1 is deleted and replaced with the following:

802.1.1 Food handling. Equipment and fixtures utilized for the storage, preparation and handling of food shall discharge through an indirect waste pipe by means of an air gap.

Exception: This requirement shall not apply to dishwashing machines and dishwashing sinks. If used for dishwashing and food preparation, a minimum of one compartment of the dishwashing sink shall be drained through an indirect waste pipe by means of an air gap or an air break.

(49) Section 802.3 is amended as follows:

The term "waste receptors" in the last sentence of the paragraph is replaced with the term "floor sinks".

(50) Section 802.3.2 is deleted in its entirety and replaced with the following:

802.3.2 Open hub waste receptors. Waste receptors for clear water waste shall be permitted in the form of a hub or pipe extending not more than 1/2 inch above a water impervious floor and are not required to have a strainer.

(51) In Section 904.6, the following sentence is added at the end of the paragraph:

Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

(52) In Section 905.4, the following sentence is added at the end of the paragraph:

Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when installed in accordance with Sections 702.2, 905.2 and 905.3 and provided with a wall clean out.

(53) Section 1002.4.1 is added as follows:

1002.4.1 Emergency floor drains. Each emergency floor drain shall be installed with a trap seal primer. Trap seal primer shall conform to ASSE 1018 or ASSE 1044.

(54) Section 1003.3.5 is added as follows:

1003.3.5 Grease trap restriction. Unless specifically required or permitted by the code official, no food waste grinder or dishwasher shall be connected to or discharge into any grease trap.

(55) Section 1104.2 is deleted and replaced with the following:

1104.2 Combining storm and sanitary drainage prohibited. The combining of sanitary and storm drainage systems is prohibited.

(56) Section 1108 is deleted in its entirety.

(57) Section 1204 is amended to read:

1204 Fuel gas piping systems. All fuel gas piping systems shall be sized, installed, tested and placed in operation in accordance with the requirements of the International Mechanical Code.

(58) Section 1205 is amended to read:

Section 1205 CNG GAS-DISPENSING SYSTEMS

1205.1 Dispenser protection. The gas dispenser shall have an emergency switch to shut off the power to the dispenser. An approved backflow device that prevents the reverse flow of gas shall be installed on the gas supply pipe or in the gas dispenser.

1205.2 Ventilation. Gas-dispensing systems installed inside the structure shall be ventilated by mechanical means in accordance with the 1998 International Mechanical Code.

1205.3 Compressed natural gas vehicular fuel systems. Compressed natural gas (CNG) fuel-dispensing systems for CNG-fueled vehicles shall be designed and installed in accordance with NFPA 52 and the fire code as adopted by the State Fire Marshal.

(59) Chapter 14, Referenced Standards, is amended as follows:

NSF - Standard Reference Number 61-99 - The following referenced in code section number is added: 608.11

The following reference standard is added:

TABLE

USC-FCCCHR 9th Edition Manual of Cross Connection Control	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531	Table 608.1

(60) Appendix C of the IPC, Gray Water Recycling Systems, shall not be adopted by any jurisdiction until approved by the Department of Health and the Department of Environmental Quality.

R156-56-708. Statewide Amendments to the IMC.

The following are adopted as amendments to the IMC to be applicable statewide:

(1) Chapter 3, Section 304.8 is amended by adding the following exception at the end of the paragraph:

Exception: R-3 occupancy.

(2) Chapter 3, Section 304.9 is amended by adding the following exception at the end of the paragraph:

Exception: R-3 occupancy.

(3) Chapter 3, Section 306.5 is amended by adding the following exception at the end of the paragraph:

Exception: R-3 occupancy.

(4) Chapter 3, Section 306.6 is amended by adding the following exception at the end of the paragraph:

Exception: Evaporative coolers serving R-3 occupancy.

(5) Chapter 6, Section 603.8.1 is added as follows:

Section 603.8.1 Residential round ducts. Crimp joints for residential round ducts shall have a contact lap of at least 1 1/2 inches (38 mm) and shall be mechanically fastened by means of at least three sheet metal screws equally spaced around the joint, or an equivalent fastening method.

R156-56-709. Statewide Amendments to the IFGC.

The following are adopted as amendments to the IFGC to be applicable statewide:

(1) Chapter 3, Section 306.5 Appliances on roofs or elevated structures is amended by adding the following exception at the end of the paragraph:

Exception: R-3 occupancies.

(2) Chapter 3, Section 306.6 Guards is amended by adding the following exception at the end of the paragraph:

Exception: R-3 occupancy.

(3) Chapter 5, Section 503.10.13 Inspection is amended as follows:

503.10.13 Inspection. The entire length of a single wall vent connector shall be provided with ready access for inspection, cleaning, and replacement.

(4) Chapter 5, Section 504.3.5 is deleted and replaced with the following:

504.3.5 Common vertical vent offset. Where the common vertical vent is offset as shown in Figure B-12, the maximum common vent capacity listed in the common venting tables shall be reduced by 5% per fitting for all offsets of 45 degrees or less and 10% per fitting for all offsets greater than 45 degrees. The total horizontal length of the common vent offsets (L_M) shall not exceed 1 1/2 feet for each inch (18 mm per mm) of common vent diameter (D).

R156-56-710. Statewide Amendments to the IECC.

The following are adopted as amendments to the IECC to be applicable statewide:

(1) Section 801.2 is deleted and replaced with the following:

801.2 Application. The requirements in Section 802, 803, 804, and 805 shall each be satisfied on an individual basis. Where one or more of these sections is not satisfied, compliance

with that section shall be demonstrated in accordance with the applicable provisions of ANSI/ASHRAE/IESNA Standard 90.1-1999 Energy Standard for Buildings Except Low-Rise Residential Buildings.

(2) Chapter 9 Reverence Standards, ASHRAE, Item 4 is deleted and replaced with the following:

ANSI/ASHRAE/IESNA - Energy Standard for Buildings Except Low Rise Residential Buildings 503.1, 701.101.2, 802.1 and 802.2.

R156-56-711. Statewide Amendments to the IRC.

The following are adopted as amendments to the IRC to be applicable statewide:

(1) All amendments to the IBC under Section R156-56-704, the NEC under Section R156-56-708, the IFGC under Section R156-56-709 and the IECC under Section R156-56-710 which may be applied to detached one and two family dwellings and multiple single family dwellings shall be applicable to the corresponding provisions of the IRC.

(2) In Section R202, the definition of "Backsiphonage" is deleted and replaced with the following:

BACKSIPHONAGE: The backflow of potentially contaminated, polluted or used water into the potable water system as a result of the pressure in the potable water system falling below atmospheric pressure of the plumbing fixtures, pools, tanks or vats connected to the potable water distribution piping.

(3) In Section R202 the following definition is added:

CERTIFIED BACKFLOW PREVENTER ASSEMBLY TESTER: A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Subsection 19-4-104(4), Utah Code Ann. (1953), as amended.

(4) In Section R202 the definition of "Cross Connection" is deleted and replaced with the following:

CROSS CONNECTION. Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems(see "Backflow, Water Distribution").

(5) In Section R202 the following definition is added:

HEAT exchanger (Potable Water). A device to transfer heat between two physically separated fluids (liquid or steam), one of which is potable water.

(6) In section R202 the definition of "Potable Water" is deleted and replaced with the following:

POTABLE WATER. Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Titles 19-4 and 19-5, Utah Code Ann. (1953), as amended and the regulations of the public health authority having jurisdiction.

(7) In Section R202 the definition of "Water Heater" is deleted and replaced with the following:

WATER HEATER. A closed vessel in which water is heated by the combustion of fuels or electricity and is withdrawn for use externally to the system at pressures not exceeding 160 psig (1100 kPa (gage)), including the apparatus by which heat is generated, and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit (99 degrees Celsius).

(8) Section R304.3 is deleted and replaced with the following:

R304.3 Minimum dimensions. Habitable rooms shall not be less than 7 feet (2134 mm) in any horizontal dimension.

Exception: Kitchens shall have a clear passageway of not less than 3 feet (914 mm) between counter fronts and appliances or counter fronts and walls.

(9) Section R309.2 is deleted and replaced with the following:

R309.2 Separation required. The garage shall be separated from the residence and its attic area by installation of materials approved for one-hour fire-resistive construction applied to the garage side. Where the separation is a floor-ceiling assembly, the structure supporting the separation shall also be protected by installation of materials approved for one-hour fire-resistive construction.

(10) Section R314.2 is deleted and replaced with the following:

R314.2 Trends and risers. The maximum riser height shall be 8 inches (203 mm) and the minimum tread depth shall be 9 inches (229 mm). The riser height shall be measured vertically between leading edges of the adjacent treads. The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The walking surface of treads and landings of a stairway shall be sloped no steeper than one unit vertical in 48 units horizontal (2-percent slope). The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

R314.2.1 Profile. The radius of curvature at the leading edge of the tread shall be no greater than 9/16 inch (14.3 mm). A nosing not less than 3/4 inch (19.1 mm) but not more than 1 1/4 inches (32 mm) shall be provided on stairways with solid risers. The greatest nosing projection shall not exceed shall not exceed the smallest nosing projection by more than 3/8 inches (9.5 mm) between two stories, including the nosing at the level of floors and landings. Beveling of nosing shall not exceed 1/2 inch (12.7 mm). Risers shall be vertical or sloped from the underside of the leading edge of the tread above at an angle not more than 30 degrees from the vertical. Open risers are permitted, provided that the opening between treads does not permit the passage of a 4-inch diameter (102 mm) sphere.

Exceptions.

1. A nosing is not required where the tread depth is a minimum of 10 inches (254 mm).

2. The opening between adjacent treads is not limited on stairs with a total rise of 30 inches (762 mm) or less.

(11) Section R315.1 is deleted and replaced with the following:

R315.1 Handrails. Handrails shall be provided on at least one side of stairways consisting of four or more risers. Handrails shall have a minimum height of 34 inches (864 mm) and a maximum height of 38 inches (965 mm) measured vertically

from the nosing of the treads. All required handrails shall be continuous the full length of the stairs from a point directly above the top riser to a point directly above the lowest riser of the stairway. The ends of the handrail shall be returned into a wall or shall terminate in newel post or safety terminals. A minimum clear space of 1 1/2 inches (38 mm) shall be provided between the wall and the handrail.

(12) Section R315.2 is deleted and replaced with the following:

R315.2 Handrail grip size. The handgrip portion of handrails shall have a circular cross section of 1 1/4 inches (32mm) minimum to 2 5/8 inches (67mm) maximum. Edges shall have a minimum radius of 1/8 inch (3.2mm).

Exception: Non-circular handrails shall be permitted to have a maximum cross sectional dimension of 3.25 inches (83mm) measured 2 inches (51 mm) down from the top of the crown. Such handrail is required to have an indentation on both sides between 0.625 inch (16mm) and 1.5 inches (38mm) down from the top or crown of the cross section. The indentation shall be a minimum of 0.25 inch (6mm) deep on each side and shall be at least 0.5 inch (13 mm)high. Edges within the handgrip shall have a minimum radius of 0.0625 inch (2 mm). The handrail surface shall be smooth with no cusps so as to avoid catching clothing or skin.

(13) In Section 321.3.2 Exception 1.1 is deleted and replaced with the following:

1.1 By a horizontal distance of not less than the width of a stud space regardless of stud spacing, or

(14) Section R403.1.6.1 is deleted and replaced with the following:

R403.1.6.1 Foundation anchorage in Seismic Design Categories $D_1$and D_2. In addition to the requirements of Section R403.1.6, the following requirements shall apply to light-wood frame structures in Seismic Design Categories $D_1$and D_2. Anchor bolts shall be located within 12 inches (305 mm) from the ends of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls. Plate washers a minimum of 2 inches by 2 inches by 3/16 inch (51 mm by 4.8 mm) thick shall be used on each bolt.

Exceptions:

a. When anchor bolt spacing does not exceed 32 inches (816 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls.

b. When anchor bolt spacing does not exceed 32 inches (816 mm) apart, a properly sized round washer may be used.

The maximum anchor bolt spacing shall be 4 feet (1219 mm) for two-story structures.

(15) In Section R703.7 Stone and masonry veneer, general the following exceptions are added:

Exceptions:

3. For detached one- or two-family dwellings with a maximum nominal thickness of 4 inches (102 mm) of exterior masonry veneer with a backing of wood frame located in Seismic Design Category D_1, the masonry veneer shall not exceed 20 feet (6096 mm) in height above a noncombustible foundation, with an additional 8 feet (2438 mm) permitted for gabled ends, or 30 feet (9144 mm) in height with an additional 8 feet (2438 mm) permitted for gabled ends where the lower 10 feet (3048 mm) has a backing of concrete or masonry wall, provided the following criteria are met:

(a) Braced wall panels shall be constructed with a minimum of 7/16 inch (11.1 mm)thick sheathing fastened with 8d common nails at 4 inches (102 mm) on center on panel edges and at 12 inches (305 mm) on center on intermediate supports.

(b) The bracing of the top story shall be located at each end and at least every 25 feet (7620 mm) on center but not less than 45% of the braced wall line. The bracing of the first story shall be as provided in Table R602.10.3.

(c) Hold down connectors shall be provided at the ends of braced walls for the second floor to first floor wall assembly with an allowable design of 2100 lbs (952.5 kg). Hold down connectors shall be provided at the ends of each wall segment of the braced walls for the first floor to foundation assembly with an allowable design of 3700 lbs. (1678 kg). In all cases, the hold down connector force shall be transferred to the foundation.

(d) Cripple walls shall not be permitted.

4. For detached one- and two-family dwellings with a maximum actual thickness of 3 inches (76 mm) of exterior masonry veneer with a backing of wood frame located in Seismic Design Category D_2, the masonry veneer shall not exceed 20 feet (6096 mm) in height above a noncombustible foundation, with an additional 8 feet (2438 mm) permitted for gabled ends, or 30 feet (9144 mm) in height with an additional 8 feet (2438 mm) permitted for gabled ends where the lower 10 feet (3048 mm)has a backing of concrete on masonry wall, provided the following criteria are met:

(a) Braced wall panels shall be constructed with a minimum of 7/16 inch (11.1 mm)thick sheathing fastened with 8d common nails at 4 inches (102 mm) on center on panel edges and at 12 inches (305 mm) on center on intermediate supports.

(b) The bracing of the top story shall be located at each end and at least every 25 feet (7620 mm) on center but not less than 55% of the braced wall line. The bracing of the first story shall be as provided in Table R602.10.3.

(c) Hold down connectors shall be provided at the ends of braced walls for the second floor to first floor wall assembly with an allowable design of 2300 lbs (1043 kg). Hold down connectors shall be provided at the ends of each wall segment of the braced walls for the first floor to foundation assembly with an allowable design of 3900 lbs. (1769 kg). In all cases, the hold down connector force shall be transferred to the foundation.

(d) Cripple walls shall not be permitted.

(16) Section P2602.2 is added as follows:

P2602.2 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1 and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction.

(17) Section P2602.3 is added as follows:

P2602.3 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage

piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann, (1953), as amended; or an approved private sewage disposal system in accordance with Rule R317-5501 through R317-513 and Rule R317-5, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

(18) Section P2801.2 is added as follows:

P2801.2 Water heater seismic bracing. Water heaters shall be anchored or strapped in the upper third of the appliance to resist a horizontal force equal to one third the operating weight of the water heater, acting in any horizontal direction, or in accordance with the appliance manufacturers recommendations.

(19) Section P2902.1.1 is added as follows:

P2902.1.1 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and Reduced Pressure Detector Assembly, and the spring loaded check valve assembly described in amended Section 608.16.4 of the International Plumbing Code.

(20) Section P2903.9.3 is deleted and replaced with the following:

P2903.9.3 Valve requirements. Valves serving individual fixtures, appliances, risers, and branches shall be provided with access. An individual shutoff valve shall be required on the water supply pipe to each water closet, lavatory, kitchen sink, and appliance.

(21) Section P3003.2.1 is added as follows:

Section P3003.2.1 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

(22) In Section P3103.6, the following sentence is added at the end of the paragraph:

Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

(23) In Section P3104.4, the following sentence is added at the end of the paragraph:

Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when installed below grade in accordance with Chapter 30, and Sections P3104.2 and P3104.3. A wall cleanout shall be provided in the vertical vent.

(24) Chapter 43, Referenced Standards, is amended as follows:

The following reference standard is added:

TABLE

USC-FCCCHR 9th Edition	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Manual Los Angeles CA 90089-2531 of Cross Connection Control	Section P2902

R156-56-712. Local Amendments to the IRC.

The following are adopted as amendments to the IRC to be applicable to the following jurisdictions:

(1) City of Farmington:

Sections R328.1 and R328.2 are added as follows:

R328.1 When required. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when any of the following conditions are present:

1. the structure is over two stories high, as defined by the building code;

2. the nearest point of structure is more than 150 feet from the public way;

3. the total floor area of all stories is over 5,000 square feet (excluding from the calculation the area of the basement and/or garage); or

4. the structure is located on a street constructed after March 1, 2000 that has a gradient over 12% and, during fire department response, access to the structure will be gained by using such street. (If the access is intended to be from a direction where the steep gradient is not used, as determined by the Chief, this criteria shall not apply).

R328.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves or in enclosed attic spaces, unless required by the Chief. Such system shall be installed in accordance with NFPA 13-D.

(2) Morgan City Corp:

Section R105.2 Work Exempt From Permit, the following is added:

10. Structures intended to house farm animals, or for the storage of feed associated with said farm animals when all the following criteria is met:

a. The parcel of property involved is zoned for the keeping of farm animals or has grand fathered animal rights.

b. The structure is setback not less than 50 feet from the rear or side of dwellings, and not less than 10 feet from property lines and other structures.

c. The structure does not exceed 1000 square feet of floor area, and is limited to 20 feet in height. Height is measured from the average grade to the highest point of the structure.

d. Before construction, a site plan is submitted to, and approved by the building official.

Electrical, plumbing, and mechanical permits shall be required when that work is included in the structure.

(3) City of North Salt Lake:

Sections R328.1 and R328.2 are added as follows:

R328.1 When Required. An automatic sprinkler system shall be installed throughout every dwelling when the following condition is present:

1. The structure is over 6,200 square feet.

R328.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves, or in enclosed attic spaces, unless required by the fire chief. Such system shall be installed in accordance with NFPA 13-D.

(4) Park City Corporation:

Section R905.7 is deleted and replaced with the following:

R905.7 Wood shingles. The installation of wood shingles shall comply with the provisions of this section.

Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE
WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

Section R905.8 is deleted and replaced with the following:

R905.8 Wood Shakes. The installation of wood shakes shall comply with the provisions of this section. Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE
WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

Appendix K is adopted.

KEY: contractors, building codes, building inspection, licensing
July 1, 2002 **58-1-106(1)**
Notice of Continuation May 16, 2002 **58-1-202(1)**
58-56-1
58-56-4(2)
58-56-6(2)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-59. Professional Employer Organization Act Rules.
R156-59-101. Short Title.

These rules are known as the "Professional Employer Organization Act Rules".

R156-59-102. Reserved.

R156-59-103. 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 59.

R156-59-104. 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.

R156-59-302a. Qualifications for Licensure.

(1) In accordance with Subsection 58-59-302(4), the Division shall require the PEO's audited financial statement for the year immediately preceding the date of the license application.

(2) In accordance with Subsection 58-59-302(6), responsible managers shall document the following education and experience requirements:

(a) an earned bachelors or post graduate degree in law, accounting, finance or business administration or other related educational program approved by the Division in consultation with the Board and has a minimum of two years of full time paid experience in law, accounting, finance, business administration, management, or other related education and experience approved by the Division in consultation with the Board; or

(b) graduation from high school or have a GED equivalent and have six years of full time paid experience in accounting, finance, business administration, management, or other related experience approved by the Division in consultation with the Board.

(3) In accordance with Subsections 58-59-501(5) and 58-59-502(1), each applicant for licensure as a PEO shall submit a form of the contract to be used between the PEO and the employee and submit a form of the contract to be used between the PEO and the client company to whom leased employees are provided.

(a) The contract forms shall contain:

(i) the name and address of the PEO as filed with the Division of Corporations and Commercial Code and the name and address under which the company does business;

(ii) disclosure that the employee is under contract for the purpose of being leased to a client company;

(iii) disclosure of the identity of the entity from whom the employee will receive compensation for work performed;

(iv) disclosure of the total compensation, including all employee benefits, to which the employee will be entitled;

(v) representation by the PEO that it will pay or cause to be paid when due all amounts to which the employee is entitled or which are to be paid to others, including government agencies and insurance companies; and

(vi) disclosure of any other matter which is material in the employment of the employee by the PEO or in the leasing of the employee to a client company.

(b) The contract forms specified in Subsection (a) shall be accompanied by a letter from legal counsel for the PEO expressing a legal opinion that the contract forms comply with the contract standards set forth in Title 58, Chapter 59, and this section.

R156-59-302b. Change in Ownership or Change in Officers, Directors, Responsible Managers or Other Persons Who Have Controlling Interest.

(1) In accordance with Subsections 58-59-302(5) and (6) and 58-59-502(2), any change in ownership or change in officers, directors, responsible managers who have signatory authority over fiduciary funds or other persons who have a controlling interest in a licensed PEO shall require submission of a criminal background check satisfactory to the Division within 10 days after the change.

(2) In accordance with Subsection 58-59-302(5), responsible managers shall require submission of evidence in a form prescribed by the Division that the new responsible manager has the education and experience requirements set forth in Subsection R156-59-302a(4) within 10 days after the change.

R156-59-306. Financial Filing Requirements.

In accordance with Subsection 58-59-306(1), the quarterly reports prepared by an independent CPA shall be submitted in accordance with the following schedule:

(a) March 31 for the quarter ending December 31;
(b) June 30 for the quarter ending March 31;
(c) September 30 for the quarter ending June 30; and
(d) December 31 for the quarter ending September 30.

R156-59-502. Process for Obtaining Prior Written Approval for Sales, Transfers or Entering Into Contracts which Commits the Licensee to Make Future Payments.

In accordance with Subsection 58-59-502(4), in order to obtain prior written approval from the Division for sales, transfers or entering into contracts which commits the licensee to make future payments, the PEO shall submit:

(1) an application for licensure, if the event or events listed in Subsection 58-59-502(4) results in or would require the creation of a new business entity; or

(2) a verification prepared by an independent certified public accountant stating that upon completion of the event or events listed in Subsection 58-59-502(4) the PEO will have a minimum adjusted net worth of $50,000 or 5% of the total adjusted liabilities, whichever is greater.

KEY: licensing, professional employer organization*
August 1, 2002 58-1-106(1)
Notice of Continuation January 27, 1998 58-1-202(1)
58-59-101

R156. Commerce, Occupational and Professional Licensing.
R156-64. Deception Detection Examiners Licensing Act Rules.
R156-64-101. Title.

These rules are known as the "Deception Detection Examiners Licensing Act Rules".

R156-64-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 64, as used in Title 58, Chapters 1 and 64 or these rules:

(1) "Control question" means a nonrelevant test question used for comparison against a relevant test question in a deception detection examination.

(2) "Irrelevant question" means a question of neutral impact, which does not relate to a matter under inquiry, in a deception detection examination.

(3) "Irrelevant and relevant testing" means a deception detection examination which consists of relevant questions, interspersed with irrelevant questions, and does not include any type of control questions.

(4) "Qualified continuing professional education" means continuing education that meets the standards set forth in Section R156-64-304.

(5) "Relevant question" means a question which relates directly to a matter under inquiry in a deception detection examination.

(6) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 64, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-64-502.

R156-64-103. 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 64.

R156-64-104. 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.

R156-64-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-64-302(1)(c) and 58-64-302(2)(c), each applicant shall provide the following:

(1) a certification issued by the Bureau of Criminal Identification, Utah Department of Public Safety concerning the applicant's criminal history, except if the applicant is a peace officer as defined in Title 53, Chapter 6, in good standing;

(2) two fingerprint cards containing the fingerprints of the applicant; and

(3) a fee established in accordance with Section 63-38-3.2 equal to the cost of conducting a check of the records of the Federal Bureau of Investigation and the Bureau of Criminal Identification, Utah Department of Public Safety, regarding the applicant.

R156-64-302b. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsections 58-64-302(1)(f)(i) and 58-64-302(2)(f)(i) the bachelor's degree shall have been earned from a university or college program, that at the time the applicant graduated, was accredited through the U.S. Department of Education or one of the regional accrediting association of schools and colleges.

(2) In accordance with Subsections 58-64-302(1)(f)(ii) and 58-64-302(2)(f)(ii), the 8,000 hours of investigation experience shall have been as a criminal or civil investigator with a federal, state, county or municipal law enforcement agency.

(3) In accordance with Subsections 58-64-302(1)(f)(iii) and 58-64-302(2)(f)(iii), the college education and investigation experience may be combined in the ratio of 2000 hours of investigation experience for one year as a matriculated student in an accredited bachelor's degree program.

(4) In accordance with Subsections 58-64-302(1)(g) and 58-64-302(2)(g), the deception detection training program shall consist of:

(a) graduation from a course of instruction in deception detection in a school accredited by the American Polygraph Association; and

(b) passing the Utah Deception Detection Theory Exam with a score of at least 75%.

R156-64-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Section 58-1-309, applicants shall pass the Utah Deception Detection Examiners Law and Rule Examination with a score of at least 75%.

R156-64-303. 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 64 is established by rule in Section R156-1-308.

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

R156-64-304. Continuing Education.

(1) In accordance with Section 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 a license in the classification of deception detection examiner.

(2) Continuing education shall consist of 60 hours of qualified continuing professional education in each preceding two year period of licensure or expiration of licensure.

(3) If a renewal period is shortened or extended to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(4) Qualified continuing professional education shall consist of the following:

(a) A minimum of 30 hours shall be from institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction directly relating to deception detection; and

(b) 30 hours may be in the following college courses with one college credit being equal to 15 hours;

(i) psychology;

(ii) physiology;

(iii) anatomy; and

(iv) interview and interrogation techniques.

(5) A deception detection examiner who instructs an approved course shall be given double credit for the first presentation.

(6) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain.

R156-64-306. Clear Criminal History.

(1) In accordance with Section 58-1-203(7) and 58-1-308(3)(b), there is created a clear criminal history requirement as a condition for renewal or reinstatement of a license issued under this chapter.

(2) Each applicant shall submit documents and fees as set forth in Section R156-64-302a.

R156-64-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) not immediately terminating the examination upon the request of the examinee;

(2) not conducting a pre-examination review with the examinee reviewing each question word for word prior to conducting the examination;

(3) attempting to determine truth or deception on matters or issues not discussed with the examinee during the pre-examination review;

(4) basing decisions concerning truthfulness or deception upon less than:

(a) two repetitions of each question during pre-employment or routine examinations; or

(b) three repetitions of each question during specific or criminal examinations;

(5) conducting an examination if the examinee is not physically present and aware that an examination is being conducted;

(6) using irrelevant and relevant testing techniques in other than pre-employment and periodic testing, without prior approval of the division in collaboration with the board;

(7) using a polygraph instrument that does not record as a minimum:

(a) properly functioning respiration;

(b) galvanic skin response; and

(c) cardiovascular response;

(8) conducting more than five deception detection examinations in a 24 hour period;

(9) conducting an examination of less than a 90 minute duration;

(10) conducting a pre-employment or periodic examination of less than a 60 minute duration;

(11) not audibly recording all criminal/specific examinations and informing the examinee of such recording prior to the examination;

(12) during a pre-employment pre-test interview or actual examination, asking any questions concerning the subject's sexual attitudes, political beliefs, union sympathies or religious beliefs unless there is demonstratable overriding reason;

(13) publishing, directly or indirectly, or circulating any fraudulent or false statements as to the skill or method of practice of any examiner;

(14) dividing fees or agreeing to split or divide the fees received for deception detection services with any person for referring a client;

(15) refusing to render deception detection services to or for any person on account of race, color, creed, national origin, sex or age of such person;

(16) conducting an examination:

(a) on a person who is under the influence of alcohol or drugs;

(b) on a person who is pregnant except for a voice stress examination;

(c) on a person who is under the age of 14 without written permission from their parent or guardian; or

(d) on a person who is under medical counseling without written permission from a health care provider;

(17) not providing at least 20 seconds between the end of one question and the beginning of the next, except when the examiner is utilizing a voice stress analyzer;

(18) not using a numerical scoring system in all specific examinations;

(19) not creating and maintaining a record for every examination administered;

(20) creating records not containing at a minimum the following:

(a) all charts on each subject properly identified by name and date and signed by the examinee;

(b) an index, either chronological or alphabetical, listing:

(i) the names of all persons examined;

(ii) the type of exam conducted;

(iii) the date of the exam;

(iv) the name of the examiner;

(v) the file number in which the records are maintained;

(vi) the examiner's written opinion of the test results; and

(vii) the time the examination began and ended;

(c) all written reports or memoranda of verbal reports;

(d) a list of all questions asked while the instrument was recording;

(e) background information elicited during the pre-test interviews;

(f) a form signed by the examinee agreeing to take the examination after being informed of his or her right to refuse;

(g) the following statement, dated and signed by the examinee: "If I have any reason to believe that the examination was not completely impartial, fair and conducted professionally, I am aware that I can report it to the Division of Occupational and Professional Licensing";

(h) any recordings made of the examination; and

(i) documentation of instrument calibration on a quarterly basis including a calibration chart, except for computerized deception detection instruments or computerized voice stress analyzers; and

(21) not maintaining records of all deception detection examinations for a minimum of three years.

KEY: licensing, deception detection examiner*

August 15, 1997 58-64-101

Notice of Continuation July 11, 2002 58-1-106(1)

58-1-

202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-78A. Prelitigation Panel Review Rules.
R156-78A-1. Title.

These rules are known as the "Prelitigation Panel Review Rules".

R156-78A-2. Definitions.

In addition to the definitions in Section 78-14-3, which shall apply to these rules:

(1) "Answer" means a responsive answer to a request.

(2) "Director" means the Director of the Division of Occupational and Professional Licensing.

(3) "Meritorious claim" means that there is a basis in fact and law to conclude that the standard of care has been breached and the petitioner has been injured thereby, such that the petitioner has a reasonable expectation of prevailing at trial.

(4) "Motion" means a request for any action or relief permitted under Sections 78-14-12 through 78-14-16 or these rules.

(5) "Nonmeritorious claim" means that the evidence before the panel is insufficient to conclude that the case is meritorious, but does not necessarily mean the case is frivolous.

(6) "Notice" means a notice of intent to commence action under Section 78-14-8.

(7) "Panel" means the prelitigation panel appointed in accordance with Subsection 78-14-12(4) to review a request.

(8) "Party" means a petitioner or respondent.

(9) "Person" means any natural person, sole proprietorship, joint venture, corporation, limited liability company, association, governmental subdivision or agency, or organization of any type.

(10) "Petitioner" means any person who files a request with the division.

(11) "Pleadings" include the requests, answers, motions, briefs and any other documents filed by the parties to a request.

(12) "Request" means a request for prelitigation panel review under Section 78-14-12.

(13) "Respondent" means any health care provider named in a request.

R156-78A-3. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 78-14-12(1)(b) to define, clarify, and establish the process and procedures which govern prelitigation panel reviews.

R156-78A-4. General Provisions.

(1) Liberal Construction.

These rules shall be liberally construed to secure the just, speedy and economical determination of all issues presented to the division.

(2) Deviation from Rules.

The division may permit a deviation from these rules insofar as it may find compliance therewith to be impractical or unnecessary.

(3) Computation of Time.

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.

R156-78A-5. Representations - Appearances.

(1) Representation of Parties.

A party may represent himself individually, or if not an individual, may represent itself through an officer or employee, or may be represented by counsel.

(2) Entry of Appearance of Representation.

Parties shall promptly enter their appearances by giving their names and addresses and stating their positions or interests in the proceeding. When possible, appearances shall be entered in writing concurrently with the filing of the request for petitioner and no later than 10 days from service of the request for respondent.

R156-78A-6. Pleadings.

(1) Docket Number and Title.

Upon receipt of a timely Request for Prelitigation Review, the division shall assign a two letter code identifying the matter as involving this type of request (PR), a two digit code indicating the year the request was filed, a two digit code indicating the month the request was filed, and another number indicating chronological position among requests filed during the month. The division shall give the matter a title in substantially the following form:

TABLE I

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

John Doe, Petitioner	Request for Prelitigation Review
-vs-	
Richard Roe, Respondent	No. PR-XX-XX-XXX

(2) Form and Content of Pleadings.

Pleadings must be double-spaced and typewritten and presented on standard 8 1/2" x 11" white paper. They must identify the proceeding by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate prayer for relief when relief is sought. A request shall, by affirmation, set forth the date that the required notice was served, shall include a copy of the notice and shall reflect service of the request upon all parties named in the notice and request. When a petitioner fails to attach a copy of the notice to petitioner's request, the division shall return the request to the petitioner with a written notice of incomplete request and

conditional denial thereof. The notice shall advise the petitioner that his request is incomplete and that the request is denied unless the petitioner corrects the deficiency within the time period specified in the notice and otherwise meets all qualifications to have the request granted.

(3) Signing of Pleadings.

Pleadings shall be signed by the party or their counsel of record and shall indicate the addresses of the party and, if applicable, their counsel of record. The signature shall be deemed to be a certification that the signer has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

(4) Answers.

A respondent named in a request may file an answer relative to the merits set forth in the petitioner's notice. Affirmative defenses shall be separately stated and numbered in an answer or raised at the time of the hearing. Any answer must be filed no later than 15 days following the filing of the request.

(5) Motions.

(a) Motions to be Filed in Writing.

Motions shall be in writing unless the motion could not have been anticipated prior to the prelitigation panel hearing.

(b) Time Periods for Filing Motions and Responding Thereto.

(i) Motions to Withdraw a Request.

Any motion to withdraw a request shall be filed no later than five days before the prelitigation panel hearing.

(ii) Motions Directed Toward a Request.

Any motion directed toward a request shall be filed no later than 15 days after service of the request.

(iii) Motions Directed Toward the Composition of a Panel.

Any motion directed toward the composition of a panel shall be filed no later than five days after discovering a basis therefore.

(iv) Motions to Dismiss.

Any motion to dismiss shall be filed no later than five days after discovering a basis therefore.

(v) Extraordinary Motions for Discovery or Perpetuation of Evidence.

Any motion seeking discovery or perpetuation of evidence for good cause shown demonstrating extraordinary circumstances shall be filed no later than 15 days before the prelitigation panel hearing.

(vi) Response to a Motion.

A response to a motion shall be filed no later than five days after service of the motion and any final reply shall be filed no later than five days after service of the response to the motion.

(c) Affidavits and Memoranda.

The division or panel shall permit and may require affidavits and memoranda, or both, in support or contravention of a motion.

(d) The division or panel may permit or require oral argument on a motion.

R156-78A-7. Filing and Service.

(1) Filing of Pleadings. All pleadings shall be filed with the division with service thereof to all parties named in the notice. The division may refuse to accept pleadings if they are not filed in accordance with the requirements of these rules.

(2) Service. Pleadings and documents issued by the division or panel shall be served either by personal service or by first class mail. Personal service shall be made upon a party in accordance with the Utah Rules of Civil Procedure by any peace officer within the State of Utah or by any person specifically designated by the division. When an attorney has entered an appearance on behalf of any party, service upon that attorney constitutes service upon the party so represented.

(3) Proof of Service. There shall appear on all documents required to be served a certificate of service in substantially the following form:

TABLE II

I hereby certify that I have this day served the foregoing document upon the parties of record in this proceeding set forth below (by delivering a copy thereof in person) (by mailing a copy thereof, properly addressed by first class mail):

(Name of parties of record)
(addresses)

Dated this (day) day of (month), (year).

(Signature)
(Title)

R156-78A-8. Panel Selection and Compensation.

(1) The division shall commence the selection and appointment of panel members following the issuance of a notice of hearing pursuant to these rules.

(2) The selection and appointment of panel members shall be in accordance with Subsections 78-14-12(4) and (5).

(3) (a) In accordance with Subsection 78-14-12(4), whenever multiple respondents are identified in a request, the division shall select and appoint a panel to sit in consideration of all claims against any respondent as follows:

(i) one lawyer member who is the chairman in accordance with Subsection 78-14-12(4)(a);

(ii) one lay panelist member in accordance with Subsection 78-14-12(4)(c);

(iii) one licensed health care provider who is practicing and knowledgeable for each specialty represented by the respondents in accordance with Subsection 78-14-12(4)(b)(i); and

(iv) if a hospital or their employees are named as a respondent, one member who is an individual currently serving in a hospital administration position directly related to hospital operations or conduct that includes responsibility for the area of practice that is the subject of the liability claim, in accordance with Subsection 78-14-12(4)(b)(ii).

(b) The distinction between a hospital administrator and a person serving in a hospital administration position referenced in Subsection 78-14-12(4)(b)(ii) is significant and is hereby emphasized.

(c) The person serving in a hospital administration position referenced in Subsection 78-14-12(4)(b)(ii) shall be from a different facility than the facility which is the subject of the alleged medical liability case, but may be from the same umbrella organization provided the panel member certifies under oath that he is free from bias or conflict of interest with

respect to any matter under consideration as required by Subsection 78-14-12(6).

(d) Petitioner and respondent may stipulate concerning the type of health care provider to be selected and appointed by the division, unless the stipulation is in violation with the panel composition requirements set forth in Subsection 78-14-12(4)(b).

(4) Upon stipulation of all parties, a motion to evaluate damages may be submitted to the division whereupon the division may appoint an additional panel member to assist in evaluating damages.

(5) The division shall ensure that panelists possess all qualifications required by statute and these rules.

(6) Upon appointment to a prelitigation panel, each member thereof shall sign a written affirmation in substantially the following form:

TABLE III

I, (panel member), hereby affirm that, as a member of a prelitigation panel, I will discharge my responsibilities without bias towards any party. I also affirm that, to the best of my knowledge, no conflict of interest exists as to any matter which will be entrusted to my consideration as a panel member.
Dated this (day) day of (month), (year).

(Signature)

(7) Panel members shall be entitled to per diem compensation and travel expenses according to a schedule as established and published by the division.

R156-78A-9. Action upon Request - Scheduling Procedures - Continuances.

(1) Action upon Request.

Upon receiving a request, the division shall issue an order approving or denying the request.

(2) Criteria for Approving or Denying a Request.

The criteria for approving or denying a request shall be whether:

(a) the request is timely filed in accordance with Subsection 78-14-12(2)(a);

(b) the request includes a copy of the notice in accordance with Subsection 78-14-12(2)(b); and

(c) the request has been mailed to all health care providers named in the notice and request as required by Subsection 78-14-2(2)(b).

(3) Legal Effect of Denial of Request.

The denial of a request restarts the running of the applicable statute of limitations until an appropriate request is filed with the division.

(4) Scheduling Procedures.

(a) If a request is approved, the order approving the request shall direct the party who made the request to contact all parties named in the request and notice to determine by agreement of the parties:

(i) what type of health care provider panelists are requested;

(ii) at least two dates acceptable to all parties on which a prelitigation panel hearing may be scheduled; and

(iii) whether or not the case will be submitted in accordance with Section R156-78A-13 and if so, the nature of the submission.

(b) The order shall direct the party who made the request to file the scheduling information with the division, on forms available from the division, no later than 20 days following the issuance of the order.

(c) If the party so directed fails to comply with the directive without good cause, the division shall schedule the hearing without further input from the party.

(d) No later than five days following the filing of the approved form, the division shall issue a notice of hearing setting a date, time and a place for the prelitigation panel hearing. No hearing shall take place within the 35 day period immediately following the filing of a Request for Prelitigation Review, unless the parties and the division consent to a shorter period of time.

(e) The division shall thereafter promptly select and appoint a panel in accordance with Subsections 78-14-12(4) and (5) and these rules.

(5) Continuances.

(a) Standard.

In order to prevail on a motion for a continuance the moving party must establish:

(i) that the motion was filed no later than five days after discovering the necessity for the motion and at least two days before the scheduled hearing;

(ii) that extraordinary facts and circumstances unknown and uncontrollable by the party at the time the hearing date was established justify a continuance;

(iii) that the rights of the other parties, the division, and the panel will not be unfairly prejudiced if the hearing is continued; and

(iv) that a continuance will serve the best interests of the goals and objectives of the prelitigation panel review process.

(b) If a continuance is granted, the order shall direct the party who requested the continuance to contact all parties named in the request and notice to establish no less than two dates acceptable to all parties, on which the prelitigation panel hearing may be rescheduled.

(c) The order shall direct the party who requested the continuance to file the scheduling information with the division, on forms approved by the division, no later than five days following the issuance of the order.

(d) If a party so directed is the petitioner and the petitioner fails to comply with the directive without good cause, the division shall dismiss the request without prejudice. Upon issuance of the order of dismissal by the division, the applicable statute of limitations on the cause of action shall no longer be tolled. The petitioner shall be required to file another request prior to the scheduling of any further proceeding and, until this request is filed, the statute of limitations shall continue to run.

(e) If a party so directed is the respondent and the respondent fails to comply with the directive without good cause, the division shall establish a date for the prelitigation panel hearing acceptable to petitioner and disallow any further motions for continuances from respondent.

(f) No later than three days following the filing of the dates, the division shall issue a notice of hearing resetting a date, time and a place for the prelitigation panel hearing.

R156-78A-10. Consequences of Failure to Appear at a Scheduled Hearing.

(1) Except as provided by Section R156-78A-13:

(a) If a party or a representative appointed by the party fails to appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the hearing shall proceed in the party's absence and the party shall lose the right to present any further evidence to the panel.

(b) If neither party nor their representatives appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the division shall dismiss the request without prejudice. The dismissal shall terminate the tolling of the applicable statute of limitations under Subsection 78-14-12(3).

R156-78A-11. Prehearing Procedure.

The division may, upon written notice to all parties of record, schedule a prehearing conference with the panel for the purposes of formulating or simplifying the issues, obtaining admissions of fact and genuineness of documents which will avoid unnecessary proof, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement thereof. Agreements reached during the conference shall be recorded in an appropriate order unless the parties enter into a written stipulation on the matters or agree to a statement thereof made on the record by the chairman of the panel.

R156-78A-12. Hearing Procedures.

(1) Hearings Closed to the Public.

All hearings are closed to the public.

(2) Attendance of Panel Members.

Except where a case is submitted in written form in accordance with Section R156-78A-13, all panel members appointed shall be present during the entire hearing.

(3) Order of Presentation of Evidence.

Unless otherwise directed by the panel at the hearing, the order of procedure and presentation of evidence will be as follows:

(a) Petitioner;

(b) Respondent; and

(c) Petitioner, if the panel permits petitioner to present rebuttal evidence.

(4) Method of Presentation of Evidence.

Evidence may be presented by any party on a narrative basis or through direct examination of said party by their counsel of record. The panel may make inquiry of any party pertinent to the issues to be addressed. If a motion to evaluate damages has been granted, the panel may properly take evidence as to that issue. As set forth in Section 78-14-13, no party has the right to cross-examine, rebut, or demand that customary formalities of civil trials and court proceedings be followed. The panel may, however, request special or supplemental participation of some or all parties in particular respects, including oral argument, evidentiary rebuttal, or submission of briefs.

(5) Rules of Evidence.

Formal rules of evidence are not applicable. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent people in the conduct of their affairs. The panel shall give effect to the rules of privilege recognized by law. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded.

(6) Burden of Proof.

The petitioner shall be responsible for establishing a meritorious claim against any respondent, and if the issue of damages is presented, the amount of damages.

(7) Standard of Proof.

The standard of proof for prelitigation hearings is a preponderance of the evidence.

(8) Use of Evidence.

Use of evidence, documents, and exhibits submitted to a panel shall be in accordance with Subsection 78-14-13(1) and Section 78-14-14.

(9) Record of Hearing.

On its own motion, the panel may record the proceeding for the sole purpose of assisting the panel in its subsequent deliberation and issuance of an opinion. The record may be made by means of tape recorder or other recording device. No tape recorder or other device shall be used by anyone otherwise present during the proceeding to record the matter. Upon issuance by the panel of its opinion, the record of the proceeding shall be destroyed.

(10) Subpoenas and Fees.

(a) Issuance of Subpoenas.

The division may issue subpoenas for the attendance of witnesses and the production of medical records in accordance with Subsection 78-14-13(2) and (3). However, except as permitted by Subsection 78-14-13(2) and (3) and in accordance with Subsection 78-14-13(4), there is not discovery or perpetuation of testimony in prelitigation panel hearings, except upon special order of the panel, and for good cause shown demonstrating extraordinary circumstances.

(b) Payment of Witness Fees.

A subpoenaed witness who appears for a prelitigation panel review shall be entitled to witness fees and mileage to be paid by the requesting party. Witnesses shall receive the same fee and mileage allowed by law to witnesses in a district court. A witness subpoenaed by a party may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless the fee is tendered, the witness shall not be required to appear.

R156-78A-13. Submission of Case in Written Form, by Proffer, or a Combination thereof - Requirements.

(1) A full prelitigation panel hearing is not required if the parties enter into a stipulation that no useful purpose would be served by convening a panel hearing as to any or all respondents or if the parties agree to submit their case as to any or all respondents to the panel in written form, by proffer of evidence, or by a combination thereof.

(2) Any case submitted in writing must include a legal argument addressing the relevant evidence and law with regard to the issues presented in the case.

R156-78A-14. Determination - Supplemental Opinion - Certificate of Compliance.

(1) Panel Determination.

As soon as is reasonably practicable following the

conclusion of a hearing or submission of a case to the panel in accordance with Section R156-78A-13, and, if applicable, submission of briefs by the parties, the panel shall file with the division a determination whether any claim against any respondent is meritorious. If applicable, the determination shall also reflect the panel's evaluation of the damages sustained by the petitioner.

(2) Supplementary Memorandum Opinion.

Within 30 days after filing its determination, the panel shall file a memorandum opinion explaining the panel's determination. The chairman of the panel shall be responsible for the preparation of the memorandum opinion of the panel, but may delegate the initial preparation of the opinion to another member of the panel.

(3) Certificate of Compliance.

Within 15 days after receiving the panel's memorandum opinion, the director shall issue a certificate of compliance which recites that petitioner has fully complied with the requirements of Section 78-14-12. With respect to the tolling of the statute of limitations referenced in Section 78-14-12(3), the 60 day time period mentioned therein shall begin to run as of the date the Director causes the certificate of compliance to be served, the three day mailing period set forth in Section R156-78A-4(3) to be applied.

KEY: medical malpractice, prelitigation*
May 16, 1997 78-14-12(1)(b)
Notice of Continuation July 16, 2002

R162. Commerce, Real Estate.
R162-9. Continuing Education.
R162-9-1. Objective.

9.1 Through education, the licensee shall be reasonably current in real estate knowledge and shall have improved ability to provide greater protection and service to the real estate consumer, thereby meeting the Real Estate Commission's primary objective of protection of and service to the public.

9.1.1 A licensee renewing a sales agent or broker license shall be required to provide evidence of having taken 12 classroom hours or its equivalent of certified real estate education within the two-year period preceding the licensee's renewal date.

9.1.1.1 A minimum of three of the 12 hours must be taken in a "core" course, the subject of which will be designated by the Division to keep a licensee current in changing practices and laws.

R162-9-2. Education Providers.

9.2. Continuing education providers may apply to the Division for certification of their courses.

9.2.1 Approved providers may include accredited colleges and universities, public or private vocational schools, national and state real estate related professional societies and organizations, real estate boards, and proprietary schools.

9.2.2 Those real estate education providers who have been certified for continuing education courses in a minimum of three other states and have specific standards in place for development of their courses and approval of their instructors, and who will provide that criteria to the division of real estate for a one-time approval, may be granted certification of their courses with no further application being necessary.

9.2.3 Licensees may apply to the division for continuing education credit for a non-certified real estate course taken from a national provider that the licensee believes will improve his ability to better protect or serve the public.

9.2.3.1 A licensee may request approval of the course from the division and, for an appropriate fee, the division will review the merits of the non-certified course and determine whether the course meets the criteria for Utah real estate continuing education.

9.2.4. Provided the subject matter of the course taken is not exclusive to the other state, a course approved for continuing education in another state/jurisdiction may be granted Utah credit on a case by case basis.

R162-9-3. Course Certification Criteria.

9.3 Courses submitted for certification shall have significant intellectual or practical content and shall serve to increase the professional competence of the licensee, thereby meeting the objective of the protection of and service to the public.

9.3.1 Three hours shall be comprised of "core course" curricula, the subjects of which will be determined by the division and the Real Estate Commission. The subject matter of these courses will be for the purpose of keeping a licensee current in changing practices and laws. These courses may be provided by the division or by private education providers but, in all cases, will have prior certification by the division.

9.3.1.1 Principal brokers and associate brokers may use the Division's Trust Account Seminar to satisfy the "core" course requirement once every three renewal cycles.

9.3.2 The remaining nine hours shall be in substantive areas dealing with the practice of real estate. Acceptable course criteria shall include the following:

9.3.2.1 Real estate financing, including mortgages and other financing techniques; real estate investments; accounting and taxation as applied to real property; estate building and portfolio management; closing statements; real estate mathematics;

9.3.2.2 Real estate law; contract law; agency and subagency; real estate securities and syndications; regulation and management of timeshares, condominiums and cooperatives; real property exchanging; real estate legislative issues; real estate license law and administrative rules;

9.3.2.3 Land development; land use, planning and zoning; construction; energy conservation;

9.3.2.4 Property management; leasing agreements; accounting procedures; management contracts; landlord/tenant relationships;

9.3.2.5 Fair housing; affirmative marketing; Americans with Disabilities Act;

9.3.2.6 Real estate ethics.

9.3.2.7 Using the computer, the Internet, business calculators, and other technologies to enhance the licensee's service to the public.

9.3.2.8 Offerings concerning sales promotion, including salesmanship, negotiation, sales psychology, marketing techniques, servicing your clients, or similar offerings.

9.3.2.9 Offerings in personal and property protection for the licensee and his clients.

9.3.3 Non-acceptable course criteria shall include courses similar to the following:

9.3.3.1 Offerings in mechanical office and business skills, such as typing, speed reading, memory improvement, language report writing, advertising, or similar offerings;

9.3.3.2 Offerings concerning physical well-being or personal development, such as personal motivation, stress management, time management, dress-for-success, or similar offerings;

9.3.3.3 Meetings held in conjunction with the general business of the licensee and his broker or employer, such as sales meetings, in-house staff or licensee training meetings;

9.3.4 The minimum length of a course shall be one credit hour or its equivalency. A credit hour is defined as 50 minutes within a 60-minute time period.

R162-9-4. Instructor Certification Criteria.

9.4 Instructors for continuing education purposes will be evaluated and approved separately from the continuing education courses.

9.4.1 The instructor applicant must meet the same requirements as a certified prelicensing instructor as defined in R162-8.4.1; and

9.4.2 The instructor applicant must demonstrate knowledge of the subject matter by submission of proof of the following:

9.4.2.1 At least five years experience in a profession, trade

or technical occupation in a field directly related to the course which the applicant intends to instruct; or

9.4.2.2 A bachelors or postgraduate degree in the field of real estate, business, law, finance, or other academic area directly related to the course which applicant intends to instruct; or

9.4.2.3 Any combination of at least five years of full-time experience and college-level education in a field directly related to the course which the applicant intends to instruct, or

9.4.3 The instructor applicant must demonstrate evidence of the ability to communicate the subject matter by the submission of proof of the following:

9.4.3.1 A state teaching certificate or showing successful completion of appropriate college courses in the field of education; or

9.4.3.2 A professional teaching designation from the National Association of Realtors or the Real Estate Educators Association; or

9.4.3.3 Evidence, such as instructor evaluation forms or letters of reference, of the ability to teach in schools, seminars, or in an equivalent setting.

R162-9-5. Submission of Course for Certification.

9.5 An applicant shall apply for consideration of certification of a course to the Division of Real Estate not less than 60 days prior to the anticipated date of the first class.

9.5.1 The application shall include a non-refundable filing fee of $35.00 and an instructor certification fee of $15.00 per course per instructor. Both fees should be made payable to the Division of Real Estate.

9.5.2 The application shall be made on the form approved by the Division which shall include the following information:

9.5.2.1 Name, phone number and address of the sponsor of the course, including owners and the coordinator or director responsible for the offering;

9.5.2.2 The title of the course offering including a description of the type of training; for example, seminar, conference, correspondence course, or similar offering;

9.5.2.3 A copy of the course curriculum including a course outline of the comprehensive subject matter. Except for courses approved for specific distance education delivery, the course outline shall include the length of time to be spent on each subject area broken into segments of no more than 15 minutes each, the instructor for each segment, and the teaching technique used in each segment;

9.5.2.4 Three to five learning objectives for every three hours or its equivalency of the course and the means to be used in assessing whether the learning objectives have been reached;

9.5.2.5 A complete description of all materials to be distributed to the participants;

9.5.2.6 The date, time and locations of each course;

9.5.2.7 The procedure for pre-registration, the tuition or registration fee and a copy of the cancellation and refund policy;

9.5.2.8 Except for courses approved for specific distance education delivery, the procedure for taking and maintaining control of attendance during class time, which procedure shall be more extensive than having the student sign a class roll;

9.5.2.9 The difficulty level of the course categorized by beginning, intermediate or advanced;

9.5.2.10 A sample of the proposed advertising to be used, if any;

9.5.2.11 An instructor application on a form approved by the Division including the information as defined in R162-9.4;

9.5.2.12 A signed statement agreeing to allow the course to be randomly audited on an unannounced basis by the Division or its representative;

9.5.2.13 A statement defining how the course will meet the objectives of continuing education by providing education of a current nature and how it will improve the licensees ability to provide greater protection of and service to the public;

9.5.2.14 A signed statement agreeing not to market personal sales product.

9.5.2.15 A sample of the completion certificate, or the completion certificate required by the division, if any, that will be issued which shall bear the following information:

(a) Space for the licensee's name, type of license and license number, date of course

(b) The name of the course provider, course title, hours of credit, certification number, and certification expiration date;

(c) Space for signature of the course sponsor and a space for the licensee's signature.

9.5.2.16 Signature of the course coordinator or director.

9.5.3 Continuing education courses in which the instruction does not take place in a traditional classroom setting, but rather through other media where teacher and student are separated by distance and sometimes by time, may be certified by the Division provided the delivery method of the course has been certified by the Association of Real Estate Licensing Law Officials (ARELLO).

9.5.3.1 Only the delivery method will be certified by ARELLO. The subject matter of the course will be certified by the Division.

9.5.3.2. Education providers making application for Distance Education Certification shall provide appropriate documentation that the ARELLO certification is in effect and that the course meets the content requirements of R162-9.3.2 along with other applicable requirements of this rule.

9.5.3.2.1. Approval under this paragraph will cease immediately should ARELLO certification be discontinued for any reason.

9.5.3.3. Courses approved for distance education delivery shall justify the classroom hour equivalency as is required by ARELLO standards.

9.5.4. The Real Estate Commission reserves the right to consider alternative certification methods and/or procedures for non-ARELLO certified Distance Education Courses.

R162-9-6. Conditions to Certification.

9.6.1 Upon completion of the educational program the course sponsor shall provide a certificate of completion.

9.6.1.1 Certificates of completion will be given only to those students who attend a minimum of 90% of the required class time of a live lecture. Within 10 days of the end of the course, the sponsor shall provide to the Division a roster of students and their license numbers for whom certificates were issued.

9.6.2 A course sponsor shall maintain for three years a record of registration of each person completing an offering and

any other prescribed information regarding the offering, including exam results, if any.

9.6.2.1 Students registered for a distance education course shall complete the course within one year of the registration date.

9.6.3 Whenever there is a material change in a certified course, for example, curriculum, course length, instructor, refund policy, the sponsor shall promptly notify the Division in writing.

9.6.4 All course certifications shall be valid for one year after date of approval by the Division.

9.6.4.1 If a course is not renewed within three months after its expiration date, the course provider will be required to apply for a new certification for the course.

9.6.4.2 After a course has been renewed for three times, the course provider will be required to make application as for a new certification.

9.6.5 Instructor certifications shall expire December 31 of each year. Instructors who certify for the first time by September 30 shall renew December 31 of that same year. Instructors who certify for the first time after October 1 shall renew December 31 of the following year.

9.6.5.1 To renew instructor certification an instructor must teach, during the year prior to renewal, a minimum of one class in each course for which certification is sought.

9.6.5.2 If the instructor has not taught during the year and wishes to renew certification, written explanation shall be submitted outlining the reason for not instructing the course, including documentation satisfactory to the Division as to the present level of expertise in the subject matter of the course.

R162-9-7. Course and Instructor Evaluations.

9.7 The Division shall cause the course to be evaluated for adherence to course content and other prescribed criteria, and for the effectiveness of the instructor.

9.7.1 At the end of each course each student shall complete a standard evaluation form provided by the Division. The forms shall be collected at the end of the class in an envelope and the course provider will mail the sealed envelope to the Division within 10 days of the last class.

9.7.2 On a random basis the Division will assign monitors to attend a course for the purpose of evaluating the course and the instructor. The monitors will complete a standard evaluation form provided by the Division which will be returned to the Division within 10 days of the last class.

KEY: continuing education
June 20, 2002 **61-2-5.5**
Notice of Continuation June 26, 2002

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

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

R162-106-2. Use of Terms.

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

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

106.3.1. State-Certified Appraiser's Seal.

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

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

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

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

106.3.3. Signatures.

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

106.3.3.2. Appraisers may not affix their signatures to blank or partially completed appraisal reports which will be filled in later by anyone other than the appraiser who has signed the reports.

106.3.3.3. If it is necessary for an appraiser to delegate authority to another individual to sign the appraiser's signature on an appraisal report, the other individual may sign the report for the appraiser only if: a) the report explicitly discloses that the other individual has been authorized to sign the report for the appraiser; b) the permission must have been granted in writing and limited to a specific property address; c) a copy of the written permission to sign must be attached to the report; and d) the appraiser who signs the other's signature must write the word "by" followed by his own name after the other's signature.

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

R162-106-4. Testimony by an Appraiser.

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

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

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

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

R162-106-6. Recordkeeping Requirements.

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

R162-106-7. Sales and Listing History.

In order to comply with Standard 1 of the Uniform Standards of Professional Appraisal Practice (USPAP), appraisers who are licensed or certified under this chapter shall analyze the listing history of the subject property for the year preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agent(s), or the property owner.

KEY: real estate appraisal, conduct
November 15, 2001 61-2b-27
Notice of Continuation March 27, 2002

R162. Commerce, Real Estate.
R162-209. Administrative Proceedings.
R162-209-1. Formal Adjudicative Proceedings.

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

209.1.1. A disciplinary action commenced by the Division following investigation of a complaint; and

209.1.2. Any proceedings conducted subsequent to the issuance of a cease and desist order.

R162-209-2. Informal Adjudicative Proceedings.

209.2.1. All adjudicative proceedings as to any other matters not specifically designated as formal adjudicative proceedings shall be conducted as informal adjudicative proceedings.

209.2.2. A hearing will be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices Act or by these rules.

209.2.3. A party is not required to file a written answer to a notice of agency action from the Division in an informal adjudicative proceeding.

209.2.4. All proceedings on original or renewal applications for registration will be conducted as informal adjudicative proceedings.

209.2.5. Any application form which is filled out and submitted to the Division for registration or renewal of registration shall be deemed a request for agency action pursuant to the Utah Administrative Procedures Act, Section 64-46b-1, et seq.

209.2.6. Within a reasonable time after receipt of an application, the Division shall:

(a) issue and mail a registration to the applicant, which shall be deemed notification that the application is granted conditionally subject to the outcome of the criminal background check;

(b) notify the applicant that the application is incomplete or that further information is needed;

(c) notify the applicant that a hearing shall be scheduled before the Utah Residential Mortgage Regulatory Commission; or

(d) notify the applicant that the application is denied, and, if the proceeding is one in which a hearing is permitted, that he may request a hearing to challenge the denial.

209.2.7. Other Requests for Agency Action. All other requests for agency action shall be in writing and signed by the requestor, and shall contain the following:

(a) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(b) the agency's file number or other reference number, if known;

(c) the date of mailing of the request for agency action;

(d) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(e) a statement of the relief or action sought from the Division; and

(f) a statement of the facts and reasons forming the basis for relief or agency action.

209.2.8. Within a reasonable time after receipt of a request for agency action other than an application for original or renewal registration, the Division shall:

(a) notify the requestor in writing that the request is granted;

(b) notify the requestor that the request is incomplete or that further information is needed before the Division is able to make a determination on the request;

(c) notify the requestor that the Division does not have the legal authority or jurisdiction to grant the relief requested or the action sought; or

(d) notify the requestor that the request is denied, and, if the proceeding is one in which a hearing is permitted, that he may request a hearing to challenge the denial.

209.2.9. A complaint against a registrant requesting that the Division commence an investigation or a disciplinary action is not a request for agency action pursuant to the Utah Administrative Procedures Act, Section 64-46-1, et seq.

R162-209-3. Hearings Not Required.

A hearing is not required and will not be held in the following informal adjudicative proceedings:

(a) The issuance of an original or renewal registration when the application has been approved by the Division;

(b) The issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division; or

(c) The denial of an application for original or renewal registration on the ground that it is incomplete.

R162-209-4. Hearings Permitted.

209.4.1. An informal post-revocation hearing following the revocation of a registration pursuant to Utah Code Section 61-2c-202(4)(d) for the failure of a person to accurately disclose his criminal history will be held only if requested in writing by the person within 30 days from the date the Division's order revoking the registration was mailed.

R162-209-5. Procedures for Hearing in Informal Adjudicative Proceedings.

209.5.1. Notice of hearing. Upon the scheduling of a hearing by the Division on an application for registration or upon receipt of a timely request for a hearing where other hearings are permitted, the Division shall mail written notice of the date, time, and place scheduled for the hearing at least ten days prior to the hearing.

209.5.2. Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary evidence. All parties shall have access to the Division's files and all materials and information gathered in any investigation to the extent permitted by law.

209.5.3. Intervention is prohibited.

209.5.4. Hearings shall be open to all parties, except that a hearing on an applicant's fitness for registration shall be conducted in a closed session which is not open to the public. The parties named in the notice of agency action or the request for agency action may be represented by counsel and shall have the opportunity to testify, present witnesses and other evidence, and comment on the issues.

209.5.5. Within a reasonable time after the hearing, the presiding officer shall cause to be issued and sent to the parties a signed order based on the facts appearing in the agency's files and on the facts presented in evidence at the hearing. The order shall state the decision and the reasons therefor and a notice of the right of administrative review and judicial review available to the parties including applicable time limits.

KEY: residential mortgage loan origination
July 19, 2002 63-46b-4

R251. Corrections, Administration.
R251-305. Visiting at Community Correctional Centers.
R251-305-1. Authority and Purpose.

(1) This rule is authorized by Section 64-13-17.

(2) The purpose of this rule is to provide the Department's rules governing visitation at Community Correctional Centers.

R251-305-2. Definitions.

(1) "Center" means a community corrections halfway house facility designed to facilitate an offender's readjustment to private life.

(2) "Confiscate" means to take possession or immediately seize.

(3) "Contraband" means any material, substance or other item not approved by the Department to be in the possession of residents.

(4) "Evidence" means any item which may be used in prosecution of a violation of Department policy or procedure, federal, state or local law.

(5) "Illegal contraband" means any material, substance or other item the possession of which violates criminal statutes.

(6) "Legal representatives" means court personnel, attorneys-at-law and their assistants such as paralegals and investigators.

(7) "Offender" means a probationer, parolee or inmate housed in a Community Correctional Center.

(8) "Premises" means Center's building and land, including residents' property, rooms, persons and vehicles.

(9) "Religious representative" means a priest, bishop, rabbi, religious practitioner or similar functionary of a church or legally recognized denomination or organization.

(10) "Sponsor" means an individual who is approved by Center staff members to accompany an offender while on leave time away from the Center.

(11) "Visit" means a period of time during which an offender has the opportunity to interact with family and friends on Community Correctional Center premises.

R251-305-3. Policy.

It is the policy of the Department that:

(1) Community Correctional Centers shall schedule days and times for visiting;

(2) visits at other than established visiting hours may be approved by the Center Director/designee;

(3) Community Correctional Centers shall have designated visiting areas;

(4) visitors shall not be allowed in unauthorized areas;

(5) offenders' visitors, except for non-emancipated minors, shall be approved sponsors;

(6) non-emancipated minors shall be accompanied by a parent or guardian;

(7) sponsor applicants may be subject to special conditions (i.e., visiting only, leave time only, etc.);

(8) offenders shall be advised of visiting rules during orientation;

(9) visitors will be advised of visiting rules during the sponsor application process;

(10) visiting may be prohibited for offenders in security cells and as part of restrictions ordered by the Offender Discipline Hearing Officer;

(11) visitors shall be required to sign a visitor log when entering and leaving the Center;

(12) visitors may be required to present picture identification prior to visiting;

(13) visitors shall be modestly dressed to be permitted to visit (i.e., no bare midriffs or see-through blouses or shirts, no shorts, tube tops, halters, extremely tight or revealing clothing, no dresses or skirts more than three inches above the knees, or sexually revealing attire; children under the age of twelve may wear shorts and sleeveless shirts);

(14) sexual contact between visitors and offenders (i.e., petting, prolonged kissing or bodily contact) is prohibited;

(15) visitors shall not bring animals or pets into the Center with the exception of dogs trained to aid the handicapped;

(16) visitors shall visit with only one offender at a time unless approved by Center staff;

(17) offenders and visitors shall not exhibit abusive, disruptive or other inappropriate behavior;

(18) offenders and visitors shall not use loud or offensive language;

(19) visitors suspected to be under the influence of alcohol or drugs shall be denied visiting and advised by staff to arrange alternate transportation if they are operating a vehicle;

(20) if an intoxicated visitor refuses to seek alternate transportation or becomes belligerent, staff shall attempt to detain the individual and contact the local law enforcement for assistance;

(21) visitors shall be responsible for their property and the Department shall not be liable for any loss or damage to visitors' property;

(22) visitors may be subject to search of their person or property for reasonable cause;

(23) visitors attempting to bring contraband on Center premises may have visiting privileges restricted, suspended or revoked;

(24) Center staff may restrict, deny or cancel visiting privileges for the safety, security and orderly operation of the Center or program requirements;

(25) offenders may be prohibited contact with individuals as determined by the court, Board of Pardons and Parole, or Center program requirements; and

(26) an appeal process shall be available to challenge denial or restriction of visiting privileges.

KEY: corrections, visitation
July 8, 2002 **64-13-17**
Notice of Continuation May 13, 2002

R251. Corrections, Administration.
R251-710. Search.
R251-710-1. Authority and Purpose.

(1) This rule is authorized under Section 64-13-10, and Subsections 64-13-14(1), and 64-13-17(2).

(2) The purpose of this rule is to provide the Department's policy, procedures, and requirements for conducting searches.

R251-710-2. Definitions.

(1) "Contraband", for purposes of this rule, means:

(a) materials, substances or other items not approved by the Department, or which are in numbers or amounts that are not approved, and which are otherwise known as regular contraband;

(b) materials, substances or other items possessed in violation of state or federal law and which are otherwise known as illegal contraband; or

(c) items that are not illegal, but are not authorized for an inmate to possess including items made from scraps of paper, wood, plastic, metal, wire, etc. and which are otherwise known as nuisance contraband.

(2) "Exigent circumstances" means a situation wherein reasonable cause exists to believe that a clear and present danger to life and limb exists.

(3) "Prison" means Utah State Prison in Draper and Central Utah Correctional Facility in Gunnison.

(4) "Probable cause" means sufficient knowledge of articulable facts or circumstances to lead a reasonable person to conclude that another person has committed, is committing, or is about to commit a crime or a violation of a legally enforceable policy or rule.

(5) "Public" means persons constituting the general population of a state.

(6) "Reasonable suspicion" means sufficient knowledge of articulable facts or circumstances that would lead a reasonable person to suspect that there may be criminal activity and that the suspected person may be involved in that criminal activity.

(7) "Visitor" means members of the general public entering prison property.

R251-710-3. Policy.

(1) General Regulations

It is the policy of the Department that:

(a) search and seizure activities shall only be carried out by lawful means;

(b) real property, places of business and residences, with legally recognized exceptions shall be searched only with a search warrant, or reasonable cause and voluntary consent;

(c) notice shall be posted at the entrance to the prison that persons, their property and vehicles are subject to search while on prison property;

(d) an officer may assume the driver of a vehicle is the proprietary possessor and has the authority to consent to a search of the vehicle;

(e) vendors, construction workers, Department personnel, or other visitors whose presence is necessary and important to prison operation may have contraband confiscated and returned upon exiting prison property, may be asked to leave prison property, or may be arrested;

(f) all vehicles entering through a secure perimeter gate shall undergo a thorough search for contraband; discovery of contraband may result in arrest;

(g) mandatory searches shall be made of all vehicles accessing the double fence secure perimeters of the facilities;

(h) mandatory searches shall be conducted of all vehicles leaving the prison; vehicle trunks and compartments shall be searched prior to exit;

(i) the alert of a police service dog shall constitute probable cause and an involuntary search may be legally conducted;

(j) an officer may search and seize contraband or evidence without a warrant, in any public place open to public view; and

(k) a visitor to the prison who has an outstanding warrant may be arrested and searched or refused entry to the prison.

(2) Visitor/Public Search.

It is the policy of the Department that:

(a) the person and property of visitors and members of the general public may be searched, and contraband and evidence seized therefrom, by Department personnel pursuant to the following limitations:

(i) their person, personal property, vehicle and residence based upon reasonable suspicion coupled with voluntary consent;

(ii) their person, clothes, personal property immediately associated with their person, and vehicle may be involuntarily searched;

(A) based upon probable cause;

(B) incident to lawful arrest;

(C) pursuant to a search warrant;

(D) under exigent circumstances; or

(E) pursuant to a vehicle inventory incident to the lawful impound thereof;

(iii) their residence may be involuntarily searched;

(A) pursuant to a search warrant;

(B) in the form of a protective sweep under exigent circumstances; or

(C) at the time of, or incident to, a lawful arrest of the owner or occupant thereof, but only that portion of the residence and personal property therein which is in the immediate control of the arrestee at that time;

(b) any visitor who refuses to give consent to a search based upon reasonable suspicion may be denied entrance and required to leave the premises of the prison; and

(c) any person who refuses to give consent to a search of their vehicle upon exiting prison property shall have their vehicle detained until a regularly scheduled institutional count has cleared.

KEY: corrections, search and seizure, security measures, prisons

December 27, 2000	**64-13-7**
Notice of Continuation June 19, 2002	**64-13-10**
	64-13-14(1)
	64-13-17(2)

R307. Environmental Quality, Air Quality.

R307-110. General Requirements: State Implementation Plan.

R307-110-1. Incorporation by Reference.

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan must be incorporated by reference into these rules. Copies of the Utah State Implementation Plan are available at the Utah Department of Environmental Quality, Division of Air Quality.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on September 5, 2001, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on September 9, 1998, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. (Reserved.)

Reserved.

R307-110-17. Section IX, Control Measures for Area and

Point Sources, Part H, Emissions Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Involvement.

The Utah State Implementation Plan, Section XII, Involvement, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Reserved.

Reserved.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on August 1, 2001, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on August 1, 2001, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on August 1, 2001, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, small business assistance program, particulate matter, ozone
May 13, 2002 19-2-104(3)(e)
Notice of Continuation March 27, 2002

R307. Environmental Quality, Air Quality.
R307-415. Permits: Operating Permit Requirements.
R307-415-1. Purpose.

Title V of the Clean Air Act (the Act) requires states to develop and implement a comprehensive air quality permitting program. Title V of the Act does not impose new substantive requirements. Title V does require that sources subject to R307-415 pay a fee and obtain a renewable operating permit that clarifies, in a single document, which requirements apply to a source and assures the source's compliance with those requirements. The purpose of R307-415 is to establish the procedures and elements of such a program.

R307-415-2. Authority.

R307-415 is required by Title V of the Act and 40 Code of Federal Regulations (CFR) Part 70, and is adopted under the authority of Section 19-2-104.

R307-415-3. Definitions.

(1) The definitions contained in R307-101-2 apply throughout R307-415, except as specifically provided in (2).

(2) The following additional definitions apply to R307-415.

"Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

"Administrator" means the Administrator of EPA or his or her designee.

"Affected States" are all states:

(a) Whose air quality may be affected and that are contiguous to Utah; or

(b) That are within 50 miles of the permitted source.

"Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, or radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source, including requirements that have been promulgated or approved by the Board or by the EPA through rulemaking at the time of permit issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the State Implementation Plan;

(b) Any term or condition of any approval order issued under R307-401;

(c) Any standard or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources, including Section 111(d);

(d) Any standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

(e) Any standard or other requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated thereunder;

(f) Any requirements established pursuant to Section 504(b) of the Act, Monitoring and Analysis, or Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification;

(g) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

(h) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

(i) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an operating permit;

(j) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act;

(k) Any standard or other requirement under rules adopted by the Board.

"Area source" means any stationary source that is not a major source.

"Designated representative" shall have the meaning given to it in Section 402 of the Act and in 40 CFR Section 72.2, and applies only to Title IV affected sources.

"Draft permit" means the version of a permit for which the Executive Secretary offers public participation under R307-415-7i or affected State review under R307-415-8(2).

"Emissions allowable under the permit" means a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including a work practice standard, or a federally-enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act, Acid Deposition Control.

"Final permit" means the version of an operating permit issued by the Executive Secretary that has completed all review procedures required by R307-415-7a through 7i and R307-415-8.

"General permit" means an operating permit that meets the requirements of R307-415-6d.

"Hazardous Air Pollutant" means any pollutant listed by the Administrator as a hazardous air pollutant under Section 112(b) of the Act.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (a), (b), or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. Emissions resulting directly from an internal combustion

engine for transportation purposes or from a non-road vehicle shall not be considered in determining whether a stationary source is a major source under this definition.

(a) A major source under Section 112 of the Act, Hazardous Air Pollutants, which is defined as: for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant, including any major source of fugitive emissions or fugitive dust of any such pollutant as determined by rule by the Administrator. The fugitive emissions or fugitive dust of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to any one of the following categories of stationary source:

(i) Coal cleaning plants with thermal dryers;

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants, furnace process;

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or Section 112 of the Act.

(c) A major stationary source as defined in part D of Title I of the Act, Plan Requirements for Nonattainment Areas, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas that are classified as "serious" and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide;

(iv) For PM-10 particulate matter nonattainment areas classified as "serious," sources with the potential to emit 70 tons per year or more of PM-10 particulate matter.

"Non-Road Vehicle" means a vehicle that is powered by an internal combustion engine (including the fuel system), that is not a self-propelled vehicle designed for transporting persons or property on a street or highway or a vehicle used solely for competition, and is not subject to standards promulgated under Section 111 of the Act (New Source Performance Standards) or Section 202 of the Act (Motor Vehicle Emission Standards).

"Operating permit" or "permit," unless the context suggests otherwise, means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to these rules.

"Part 70 Source" means any source subject to the permitting requirements of R307-415, as provided in R307-415-4.

"Permit modification" means a revision to an operating permit that meets the requirements of R307-415-7f.

"Permit revision" means any permit modification or administrative permit amendment.

"Permit shield" means the permit shield as described in R307-415-6f.

"Proposed permit" means the version of a permit that the Executive Secretary proposes to issue and forwards to EPA for review in compliance with R307-415-8.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a

duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million in second quarter 1980 dollars; or

(ii) the delegation of authority to such representative is approved in advance by the Executive Secretary;

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of R307-415, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency;

(d) For Title IV affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act, Acid Deposition Control, or the regulations promulgated thereunder are concerned;

(ii) The responsible official as defined above for any other purposes under R307-415.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any hazardous air pollutant.

"Title IV Affected source" means a source that contains one or more affected units as defined in Section 402 of the Act and in 40 CFR, Part 72.

R307-415-4. Applicability.

(1) Part 70 sources. All of the following sources are subject to the permitting requirements of R307-415, and unless exempted under (2) below are required to submit an application for an operating permit:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(c) Any source, including an area source, subject to a standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Act, Prevention of Accidental Releases;

(d) Any Title IV affected source.

(2) Source category exemptions. The following source categories are exempted from the requirement to obtain an operating permit.

(a) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters;

(b) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation. For Part 70 sources, demolition and renovation activities within the source under 40 CFR 61.145 shall be treated as a separate source for the purpose of R307-415.

(3) Emissions units and Part 70 sources.

(a) For major sources, the Executive Secretary shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) For any area source subject to the operating permit program under R307-415-4(1) or (2), the Executive Secretary shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the operating permit program.

(4) Fugitive emissions. Fugitive emissions and fugitive dust from a Part 70 source shall be included in the permit application and the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of source categories contained in the definition of major source.

(5) Control requirements. R307-415 does not establish any new control requirements beyond those established by applicable requirements, but may establish new monitoring, recordkeeping, and reporting requirements.

(6) Synthetic minors. An existing source that wishes to avoid designation as a major Part 70 source under R307-415, must obtain federally-enforceable conditions which reduce the potential to emit, as defined in R307-101-2, to less than the level established for a major Part 70 source. Such federally-enforceable conditions may be obtained by applying for and receiving an approval order under R307-401. The approval order shall contain periodic monitoring, recordkeeping, and reporting requirements sufficient to verify continuing compliance with the conditions which would reduce the source's potential to emit.

R307-415-5a. Permit Applications: Duty to Apply.

For each Part 70 source, the owner or operator shall submit a timely and complete permit application. A pre-application conference may be held at the request of a Part 70 source or the Executive Secretary to assist a source in submitting a complete application.

(1) Timely application.

(a) Except as provided in the transition plan under (3) below, a timely application for a source applying for an operating permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program.

(b) Except as provided in the transition plan under (3) below, any Part 70 source required to meet the requirements under Section 112(g) of the Act, Hazardous Air Pollutant Modifications, or required to receive an approval order to construct a new source or modify an existing source under R307-401, shall file a complete application to obtain an operating permit or permit revision within 12 months after commencing operation of the newly constructed or modified source. Where an existing operating permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted by the renewal date established in the

permit. The Executive Secretary shall establish a renewal date for each permit that is at least six months and not greater than 18 months prior to the date of permit expiration. A source may submit a permit application early for any reason, including timing of other application requirements.

(2) Complete application.

(a) To be deemed complete, an application must provide all information sufficient to evaluate the subject source and its application and to determine all applicable requirements pursuant to R307-415-5c. Applications for permit revision need supply such information only if it is related to the proposed change. A responsible official shall certify the submitted information consistent with R307-415-5d.

(b) Unless the Executive Secretary notifies the source in writing within 60 days of receipt of the application that an application is not complete, such application shall be deemed to be complete. A completeness determination shall not be required for minor permit modifications. If, while processing an application that has been determined or deemed to be complete, the Executive Secretary determines that additional information is necessary to evaluate or take final action on that application, the Executive Secretary may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in R307-415-7b(2), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified in writing by the Executive Secretary.

(3) Transition Plan. A timely application under the transition plan is an application that is submitted according to the following schedule:

(a) All Title IV affected sources shall submit an operating permit application as well as an acid rain permit application in accordance with the date required by 40 CFR Part 72 effective April 11, 1995, Subpart C-Acid Rain Permit Applications;

(b) All major Part 70 sources operating as of July 10, 1995, except those described in (a) above, and all solid waste incineration units operating as of July 10, 1995, that are required to obtain an operating permit pursuant to 42 U.S.C. Sec. 7429(e) shall submit a permit application by October 10, 1995.

(c) Area sources.

(i) Except as provided in (c)(ii) and (c)(iii) below, each Part 70 source that is not a major source, a Title IV affected source, or a solid waste incineration unit required to obtain a permit pursuant to section 129(e) (42 U.S.C. 7429), is deferred from the obligation to submit an application until 12 months after the Administrator completes a rulemaking to determine how the program should be structured for area sources and the appropriateness of any permanent exemptions in addition to those provided in R307-415-4(2).

(ii) General Permits.

(A) The Executive Secretary shall develop general permits and application forms for area source categories.

(B) After a general permit has been issued for a source category, the Executive Secretary shall establish a due date for permit applications from all area sources in that source category.

(C) The Executive Secretary shall provide at least six months notice that the application is due for a source category.

(iii) Regulation-specific Requirements.

(A) If a regulation promulgated under Section 111 or 112 (42 U.S.C. 7411 or 7412) requires an area source category to submit an application for a Part 70 permit, each area source covered by the requirement must submit an application in accordance with the regulation.

(d) Extensions. The owner or operator of any Part 70 source may petition the Executive Secretary for an extension of the application due date for good cause. The due date for major Part 70 sources shall not be extended beyond July 10, 1996. The due date for an area source shall not be extended beyond twelve months after the due date in (c)(i) above.

(e) Application shield. If a source submits a timely and complete application under this transition plan, the application shield under R307-415-7b(2) shall apply to the source. If a source submits a timely application and is making sufficient progress toward correcting an application determined to be incomplete, the Executive Secretary may extend the application shield under R307-415-7b(2) to the source when the application is determined complete. The application shield shall not be extended to any major source that has not submitted a complete application by July 10, 1996, or to any area source that has not submitted a complete application within twelve months after the due date in (c)(i) above.

(4) Confidential information. Claims of confidentiality on information submitted to EPA may be made pursuant to applicable federal requirements. Claims of confidentiality on information submitted to the Department shall be made and governed according to Section 19-1-306. In the case where a source has submitted information to the Department under a claim of confidentiality that also must be submitted to the EPA, the Executive Secretary shall either submit the information to the EPA under Section 19-1-306, or require the source to submit a copy of such information directly to EPA.

(5) Late applications. An application submitted after the deadlines established in R307-415-5a shall be accepted for processing, but shall not be considered a timely application. Submitting an application shall not relieve a source of any enforcement actions resulting from submitting a late application.

R307-415-5b. Permit Applications: Duty to Supplement or Correct Application.

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

R307-415-5c. Permit Applications: Standard Requirements.

Information as described below for each emissions unit at a Part 70 source shall be included in the application except for insignificant activities and emissions levels under R307-415-5e. The operating permit application shall include the elements specified below:

(1) Identifying information, including company name, company address, plant name and address if different from the

company name and address, owner's name and agent, and telephone number and names of plant site manager or contact.

(2) A description of the source's processes and products by Standard Industrial Classification Code, including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(a) A permit application shall describe the potential to emit of all air pollutants for which the source is major, and the potential to emit of all regulated air pollutants and hazardous air pollutants from any emissions unit, except for insignificant activities and emissions under R307-415-5e. For emissions of hazardous air pollutants under 1,000 pounds per year, the following ranges may be used in the application: 1-10 pounds per year, 11-499 pounds per year, 500-999 pounds per year. The mid-point of the range shall be used to calculate the emission fee under R307-415-9 for hazardous air pollutants reported as a range.

(b) Identification and description of all points of emissions described in (a) above in sufficient detail to establish the basis for fees and applicability of applicable requirements.

(c) Emissions rates in tons per year and in such terms as are necessary to establish compliance with applicable requirements consistent with the applicable standard reference test method.

(d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants and hazardous air pollutants at the Part 70 source.

(g) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to Section 123 of the Act.

(h) Calculations on which the information in items (a) through (g) above is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements, and

(b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce applicable requirements or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the Executive Secretary to define alternative operating scenarios identified by the source pursuant to R307-415-6a(9) or to define permit terms and conditions implementing emission trading under R307-415-7d(1)(c) or R307-415-6a(10).

(8) A compliance plan for all Part 70 sources that contains all of the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary, for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, Acid Deposition Control, with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including all of the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with R307-415-5d and Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification.

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test method.

(c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary.

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance

certification requirements of the Act.

(10) Nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act, Acid Deposition Control.

R307-415-5d. Permit Applications: Certification.

Any application form, report, or compliance certification submitted pursuant to R307-415 shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under R307-415 shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

R307-415-5e. Permit Applications: Insignificant Activities and Emissions.

An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under R307-415-9. The following lists apply only to operating permit applications and do not affect the applicability of R307-415 to a source, do not affect the requirement that a source receive an approval order under R307-401, and do not relieve a source of the responsibility to comply with any applicable requirement.

(1) The following insignificant activities and emission levels are not required to be included in the permit application.

(a) Exhaust systems for controlling steam and heat that do not contain combustion products, except for systems that are subject to an emission standard under any applicable requirement.

(b) Air contaminants that are present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or air contaminants that are present in compressed air or in ambient air, which may contain air pollution, used for combustion.

(c) Air conditioning or ventilating systems not designed to remove air contaminants generated by or released from other processes or equipment.

(d) Disturbance of surface areas for purposes of land development, not including mining operations or the disturbance of contaminated soil.

(e) Brazing, soldering, or welding operations.

(f) Aerosol can usage.

(g) Road and parking lot paving operations, not including asphalt, sand and gravel, and cement batch plants.

(h) Fire training activities that are not conducted at permanent fire training facilities.

(i) Landscaping, janitorial, and site housekeeping activities, including fugitive emissions from landscaping activities.

(j) Architectural painting.

(k) Office emissions, including cleaning, copying, and restrooms.

(l) Wet wash aggregate operations that are solely dedicated to this process.

(m) Air pollutants that are emitted from personal use by employees or other persons at the source, such as foods, drugs, or cosmetics.

(n) Air pollutants that are emitted by a laboratory at a facility under the supervision of a technically qualified individual as defined in 40 CFR 720.3(ee); however, this exclusion does not apply to specialty chemical production, pilot plant scale operations, or activities conducted outside the laboratory.

(o) Maintenance on petroleum liquid handling equipment such as pumps, valves, flanges, and similar pipeline devices and appurtenances when purged and isolated from normal operations.

(p) Portable steam cleaning equipment.

(q) Vents on sanitary sewer lines.

(r) Vents on tanks containing no volatile air pollutants, e.g., any petroleum liquid, not containing Hazardous Air Pollutants, with a Reid Vapor Pressure less than 0.05 psia.

(2) The following insignificant activities are exempted because of size or production rate and a list of such insignificant activities must be included in the application. The Executive Secretary may require information to verify that the activity is insignificant.

(a) Emergency heating equipment, using coal, wood, kerosene, fuel oil, natural gas, or LPG for fuel, with a rated capacity less than 50,000 BTU per hour.

(b) Individual emissions units having the potential to emit less than one ton per year per pollutant of PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide, unless combined emissions from similar small emission units located within the same Part 70 source are greater than five tons per year of any one pollutant. This does not include emissions units that emit air contaminants other than PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide.

(c) Petroleum industry flares, not associated with refineries, combusting natural gas containing no hydrogen sulfide except in amounts less than 500 parts per million by weight, and having the potential to emit less than five tons per year per air contaminant.

(d) Road sweeping.

(e) Road salting and sanding.

(f) Unpaved public and private roads, except unpaved haul roads located within the boundaries of a stationary source. A haul road means any road normally used to transport people, livestock, product or material by any type of vehicle.

(g) Non-commercial automotive (car and truck) service stations dispensing less than 6,750 gal. of gasoline/month

(h) Hazardous Air Pollutants present at less than 1% concentration, or 0.1% for a carcinogen, in a mixture used at a rate of less than 50 tons per year, provided that a National Emission Standards for Hazardous Air Pollutants standard does not specify otherwise.

(i) Fuel-burning equipment, in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure, with a rated capacity of less than five million BTU per hour using no other fuel than natural gas, or LPG or other mixed gas distributed by a public utility.

(j) Comfort heating equipment (i.e., boilers, water heaters, air heaters and steam generators) with a rated capacity of less than one million BTU per hour if fueled only by fuel oil

numbers 1 - 6.

(3) Any person may petition the Board to add an activity or emission to the list of Insignificant Activities and Emissions which may be excluded from an operating permit application under (1) or (2) above upon a change in the rule and approval of the rule change by EPA. The petition shall include the following information:

(a) A complete description of the activity or emission to be added to the list.

(b) A complete description of all air contaminants that may be emitted by the activity or emission, including emission rate, air pollution control equipment, and calculations used to determine emissions.

(c) An explanation of why the activity or emission should be exempted from the application requirements for an operating permit.

(4) The executive secretary may determine on a case-by-case basis, insignificant activities and emissions for an individual Part 70 source that may be excluded from an application or that must be listed in the application, but do not require a detailed description. No activity with the potential to emit greater than two tons per year of any criteria pollutant, five tons of a combination of criteria pollutants, 500 pounds of any hazardous air pollutant or one ton of a combination of hazardous air pollutants shall be eligible to be determined an insignificant activity or emission under this subsection (4).

R307-415-6a. Permit Content: Standard Requirements.

Each permit issued under R307-415 shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(a) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit shall state that, where an applicable requirement is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, Acid Deposition Control, both provisions shall be incorporated into the permit.

(c) If the State Implementation Plan allows a determination of an alternative emission limit at a Part 70 source, equivalent to that contained in the State Implementation Plan, to be made in the permit issuance, renewal, or significant modification process, and the Executive Secretary elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. Except as provided by Section 19-2-109.1(3), the Executive Secretary shall issue permits for a fixed term of five years.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

(i) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(ii) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to (3)(c) below. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph;

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(i) Records of required monitoring information that include the following:

(A) The date, place as defined in the permit, and time of sampling or measurements;

(B) The dates analyses were performed;

(C) The company or entity that performed the analyses;

(D) The analytical techniques or methods used;

(E) The results of such analyses;

(F) The operating conditions as existing at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require all of the following:

(i) Submittal of reports of any required monitoring every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with R307-415-5d.

(ii) Prompt reporting of deviations from permit requirements including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The Executive Secretary shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable

requirements. Deviations from permit requirements due to unavoidable breakdowns shall be reported according to the unavoidable breakdown provisions of R307-107. The Executive Secretary may establish more stringent reporting deadlines if required by the applicable requirement.

(d) Claims of confidentiality shall be governed by Section 19-1-306.

(4) Acid Rain Allowances. For Title IV affected sources, a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Standard provisions stating the following:

(a) The permittee must comply with all conditions of the operating permit. Any permit noncompliance constitutes a violation of the Air Conservation Act and is grounds for any of the following: enforcement action; permit termination; revocation and reissuance; modification; denial of a permit renewal application.

(b) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition, except as provided under R307-415-7f(1) for minor permit modifications.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee shall furnish to the Executive Secretary, within a reasonable time, any information that the Executive Secretary may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Executive Secretary copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(7) Emission fee. A provision to ensure that a Part 70 source pays fees to the Executive Secretary consistent with R307-415-9.

(8) Emissions trading. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Alternate operating scenarios. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Executive Secretary. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield to all terms and conditions under each such operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of R307-415.

(10) Emissions trading. Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under R307-415-6a and 6c to determine compliance;

(b) Shall extend the permit shield to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of R307-415.

R307-415-6b. Permit Content: Federally-Enforceable Requirements.

(1) All terms and conditions in an operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by EPA and citizens under the Act.

(2) Notwithstanding (1) above, applicable requirements that are not required by the Act or implementing federal regulations shall be included in the permit but shall be specifically designated as being not federally enforceable under the Act and shall be designated as "state requirements." Terms and conditions so designated are not subject to the requirements of R307-415-7a through 7i and R307-415-8 that apply to permit review by EPA and affected states. The Executive Secretary shall determine which conditions are "state requirements" in each operating permit.

R307-415-6c. Permit Content: Compliance Requirements.

All operating permits shall contain all of the following elements with respect to compliance:

(1) Consistent with R307-415-6a(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including any report, required by an operating permit shall contain a certification by a responsible official that meets the requirements of R307-415-5d;

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Executive Secretary or an authorized representative to perform any of the following:

(a) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(d) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;

(e) Claims of confidentiality on the information obtained during an inspection shall be made pursuant to Section 19-1-306;

(3) A schedule of compliance consistent with R307-415-5c(8);

(4) Progress reports consistent with an applicable schedule of compliance and R307-415-5c(8) to be submitted semiannually, or at a more frequent period if specified in the applicable requirement or by the Executive Secretary. Such progress reports shall contain all of the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved;

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include all of the following:

(a) Annual submission of compliance certification, or more frequently if specified in the applicable requirement or by the Executive Secretary;

(b) In accordance with R307-415-6a(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may reference the permit or previous reports, as applicable):

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under R307-415-6a(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(iii) The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in (ii) above. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and

(iv) Such other facts as the executive secretary may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the Executive Secretary;

(e) Such additional requirements as may be specified pursuant to Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification, and Section 504(b) of the Act, Monitoring and Analysis;

(6) Such other provisions as the Executive Secretary may require.

R307-415-6d. Permit Content: General Permits.

(1) The Executive Secretary may, after notice and opportunity for public participation provided under R307-415-7i, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the Executive Secretary shall grant the conditions and terms of the general permit. Notwithstanding the permit shield, the source shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be issued for Title IV affected sources under the Acid Rain Program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the Executive Secretary for coverage under the terms of the general permit or must apply for an operating permit consistent with R307-415-5a through 5e. The Executive Secretary may, in the general permit, provide for applications which deviate from the requirements of R307-415-5a through 5e, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under R307-415-7i, the Executive Secretary may grant a source's request for authorization to operate under a general permit, but such a grant to a qualified source shall not be a final permit action until the requirements of R307-415-5a through 5e have been met.

R307-415-6e. Permit Content: Temporary Sources.

The owner or operator of a permitted source may temporarily relocate the source for a period not to exceed that allowed by R307-401-7. A permit modification is required to relocate the source for a period longer than that allowed by R307-401-7. No Title IV affected source may be permitted as a temporary source. Permits for temporary sources shall include all of the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator receive approval to relocate under R307-401-7 before operating at the new location;

(3) Conditions that assure compliance with all other provisions of R307-415.

R307-415-6f. Permit Content: Permit Shield.

(1) Except as provided in R307-415, the Executive Secretary shall include in each operating permit a permit shield provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The Executive Secretary, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An operating permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any operating permit shall alter or affect any of the following:

(a) The emergency provisions of Section 19-1-202 and Section 19-2-112, and the provisions of Section 303 of the Act, Emergency Orders, including the authority of the Administrator under that Section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements under Section 19-2-107(2)(g) and Section 19-2-110 prior to or at the time of permit issuance;

(c) The applicable requirements of the Acid Rain Program, consistent with Section 408(a) of the Act;

(d) The ability of the Executive Secretary to obtain information from a source under Section 19-2-120, and the ability of EPA to obtain information from a source under Section 114 of the Act, Inspection, Monitoring, and Entry.

R307-415-6g. Permit Content: Emergency Provision.

(1) Emergency. An "emergency" is any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of (3) below are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the causes of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the Executive Secretary within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of R307-415-6a(3)(c)(ii). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

R307-415-7a. Permit Issuance: Action on Application.

(1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The Executive Secretary has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit;

(b) Except for modifications qualifying for minor permit modification procedures under R307-415-7f(1)and (2), the Executive Secretary has complied with the requirements for public participation under R307-415-7i;

(c) The Executive Secretary has complied with the requirements for notifying and responding to affected States under R307-415-8(2);

(d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of R307-415;

(e) EPA has received a copy of the proposed permit and any notices required under R307-415-8(1) and (2), and has not objected to issuance of the permit under R307-415-8(3) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under R307-415-5a(3) or under regulations promulgated under Title IV of the Act for the permitting of Title IV affected sources under the Acid Rain Program, the Executive Secretary shall take final action on each permit application, including a request for permit modification or renewal, within 18 months after receiving a complete application.

(3) The Executive Secretary shall promptly provide notice to the applicant of whether the application is complete. Unless the Executive Secretary requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. A completeness determination shall not be required for minor permit modifications.

(4) The Executive Secretary shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The Executive Secretary shall send this

statement to EPA and to any other person who requests it.

(5) The submittal of a complete application shall not affect the requirement that any source have an approval order under R307-401.

R307-415-7b. Permit Issuance: Requirement for a Permit.

(1) Except as provided in R307-415-7d and R307-415-7f(1)(f)and 7f(2)(e), no Part 70 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under these rules.

(2) Application shield. If a Part 70 source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have an operating permit is not a violation of R307-415 until the Executive Secretary takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to R307-415-7a(3), and as required by R307-415-5a(2), the applicant fails to submit by the deadline specified in writing by the Executive Secretary any additional information identified as being needed to process the application.

R307-415-7c. Permit Renewal and Expiration.

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with R307-415-7b and R307-415-5a(1)(c).

(3) If a timely and complete renewal application is submitted consistent with R307-415-7b and R307-415-5a(1)(c)and the Executive Secretary fails to issue or deny the renewal permit before the end of the term of the previous permit, then all of the terms and conditions of the permit, including the permit shield, shall remain in effect until renewal or denial.

R307-415-7d. Permit Revision: Changes That Do Not Require a Revision.

(1) Operational Flexibility.

(a) A Part 70 source may make changes that contravene an express permit term if all of the following conditions have been met:

(i) The source has obtained an approval order, or has met the exemption requirements under R307-402;

(ii) The change would not violate any applicable requirements or contravene any federally enforceable permit terms and conditions for monitoring, including test methods, recordkeeping, reporting, or compliance certification requirements;

(iii) The changes are not modifications under any provision of Title I of the Act; and the changes do not exceed the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions.

(iv) For each such change, the source shall provide written notice to the Executive Secretary and send a copy of the notice to EPA at least seven days before implementing the proposed change. The seven-day requirement may be waived by the Executive Secretary in the case of an emergency. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield shall not apply to these changes. The source, the EPA, and the Executive Secretary shall attach each such notice to their copy of the relevant permit.

(b) Emission trading under the State Implementation Plan. Permitted sources may trade increases and decreases in emissions in the permitted facility, where the State Implementation Plan provides for such emissions trades, without requiring a permit revision provided the change is not a modification under any provision of Title I of the Act, the change does not exceed the emissions allowable under the permit, and the source notifies the Executive Secretary and the EPA at least seven days in advance of the trade. This provision is available in those cases where the permit does not already provide for such emissions trading.

(i) The written notification required above shall include such information as may be required by the provision in the State Implementation Plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the State Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the State Implementation Plan and that provide for the emissions trade.

(ii) The permit shield shall not extend to any change made under this paragraph. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the State Implementation Plan authorizing the emissions trade.

(c) If a permit applicant requests it, the Executive Secretary shall issue permits that contain terms and conditions, including all terms required under R307-415-6a and 6c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. Such changes in emissions shall not be allowed if the change is a modification under any provision of Title I of the Act or the change would exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Executive Secretary shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements, and shall require the source to notify the Executive Secretary and the EPA in writing at least seven days before making the emission trade.

(i) The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will

comply with the terms and conditions of the permit.

(ii) The permit shield shall extend to terms and conditions that allow such increases and decreases in emissions.

(2) Off-permit changes. A Part 70 source may make changes that are not addressed or prohibited by the permit without a permit revision, unless such changes are subject to any requirements under Title IV of the Act or are modifications under any provision of Title I of the Act.

(a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(b) Sources must provide contemporaneous written notice to the Executive Secretary and EPA of each such change, except for changes that qualify as insignificant under R307-415-5e. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirements that would apply as a result of the change.

(c) The change shall not qualify for the permit shield.

(d) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(e) The off-permit provisions do not affect the requirement for a source to obtain an approval order under R307-401.

R307-415-7e. Permit Revision: Administrative Amendments.

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source where the Executive Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Executive Secretary;

(e) Incorporates into the operating permit the requirements from an approval order issued under R307-401, provided that the procedures for issuing the approval order were substantially equivalent to the permit issuance or modification procedures of R307-415-7a through 7i and R307-415-8, and compliance requirements are substantially equivalent to those contained in R307-415-6a through 6g;

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the Executive Secretary consistent with the following:

(a) The Executive Secretary shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that the Executive Secretary designates any such permit revisions as having been made pursuant to this paragraph. The Executive Secretary shall take final action on a request for a change in ownership or operational control of a source under (1)(d) above within 30 days of receipt of a request.

(b) The Executive Secretary shall submit a copy of the revised permit to EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The Executive Secretary shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for administrative permit amendments made pursuant to (1)(e) above which meet the relevant requirements of R307-415-6a through 6g, 7 and 8 for significant permit modifications.

R307-415-7f. Permit Revision: Modification.

The permit modification procedures described in R307-415-7f shall not affect the requirement that a source obtain an approval order under R307-401 before constructing or modifying a source of air pollution. A modification not subject to the requirements of R307-401 shall not require an approval order in addition to the permit modification as described in this section. A permit modification is any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under R307-415-7e. Any permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(1) Minor permit modification procedures.

(a) Criteria. Minor permit modification procedures may be used only for those permit modifications that:

(i) Do not violate any applicable requirement or require an approval order under R307-401;

(ii) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such term or condition would include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I or an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act, Early Reduction; and

(v) Are not modifications under any provision of Title I of the Act.

(b) Notwithstanding (1)(a)above and (2)(a) below, minor permit modification procedures may be used for permit modifications involving the use of economic incentives,

marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State Implementation Plan or an applicable requirement.

(c) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of R307-415-5c and shall include all of the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) The source's suggested draft permit;

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used;

(iv) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(d) EPA and affected State notification. Within five working days of receipt of a complete permit modification application, the Executive Secretary shall notify EPA and affected States of the requested permit modification. The Executive Secretary promptly shall send any notice required under R307-415-8(2)(b) to EPA.

(e) Timetable for issuance. The Executive Secretary may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the Executive Secretary that EPA will not object to issuance of the permit modification, whichever is first. Within 90 days of the Executive Secretary's receipt of an application under minor permit modification procedures or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later, the Executive Secretary shall:

(i) Issue the permit modification as proposed;

(ii) Deny the permit modification application;

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(iv) Revise the draft permit modification and transmit to EPA the new proposed permit modification as required by R307-415-8(1).

(f) Source's ability to make change. A Part 70 source may make the change proposed in its minor permit modification application immediately after it files such application if the source has received an approval order under R307-401 or has met the approval order exemption requirements under R307-413-1 through 6. After the source makes the change allowed by the preceding sentence, and until the Executive Secretary takes any of the actions specified in (1)(e)(i) through (iii) above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) Permit shield. The permit shield under R307-415-6f shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications. Consistent with this paragraph, the Executive Secretary may modify the procedure outlined in (1) above to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

(i) That meet the criteria for minor permit modification procedures under (1)(a) above; and

(ii) That collectively are below the following threshold level: 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in R307-415-3, or five tons per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of R307-415-5c and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(ii) The source's suggested draft permit.

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(iv) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under R307-415-7e(2)(a)(ii).

(v) Certification, consistent with R307-415-5d, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(vi) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(c) EPA and affected State notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under (2)(a)(ii) above, whichever is earlier, the Executive Secretary shall notify EPA and affected States of the requested permit modifications. The Executive Secretary shall send any notice required under R307-415-8(2)(b)to EPA.

(d) Timetable for issuance. The provisions of (1)(e) above shall apply to modifications eligible for group processing, except that the Executive Secretary shall take one of the actions specified in (1)(e)(i) through (iv) above within 180 days of receipt of the application or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later.

(e) Source's ability to make change. The provisions of (1)(f) above shall apply to modifications eligible for group processing.

(f) Permit shield. The provisions of (1)(g) above shall also apply to modifications eligible for group processing.

(3) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative

amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with R307-415 that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of R307-415, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The Executive Secretary shall complete review on the majority of significant permit modifications within nine months after receipt of a complete application.

R307-415-7g. Permit Revision: Reopening for Cause.

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(a) New applicable requirements become applicable to a major Part 70 source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the terms and conditions of the permit have been extended pursuant to R307-415-7c(3).

(b) Additional requirements, including excess emissions requirements, become applicable to an Title IV affected source under the Acid Rain Program. Upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The Executive Secretary or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) EPA or the Executive Secretary determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(e) Additional applicable requirements are to become effective before the renewal date of the permit and are in conflict with existing permit conditions.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under (1) above shall not be initiated before a notice of such intent is provided to the Part 70 source by the Executive Secretary at least 30 days in advance of the date that the permit is to be reopened, except that the Executive Secretary may provide a shorter time period in the case of an emergency.

R307-415-7h. Permit Revision: Reopenings for Cause by EPA.

The Executive Secretary shall, within 90 days after receipt of notification that EPA finds that cause exists to terminate, modify or revoke and reissue a permit, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Executive Secretary may request a 90-day extension if a new or revised permit application is necessary or if the Executive Secretary determines that the permittee must submit additional information.

R307-415-7i. Public Participation.

The Executive Secretary shall provide for public notice, comment and an opportunity for a hearing on initial permit issuance, significant modifications, reopenings for cause, and renewals, including the following procedures:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the Executive Secretary, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.

(2) The notice shall identify the Part 70 source; the name and address of the permittee; the name and address of the Executive Secretary; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan or compliance and monitoring certification, and all other materials available to the Executive Secretary that are relevant to the permit decision; a brief description of the comment procedures; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.

(3) The Executive Secretary shall provide such notice and opportunity for participation by affected States as is provided for by R307-415-8.

(4) Timing. The Executive Secretary shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The Executive Secretary shall keep a record of the commenters and also of the issues raised during the public participation process, and such records shall be available to the public and to EPA.

R307-415-8. Permit Review by EPA and Affected States.

(1) Transmission of information to EPA.

(a) The Executive Secretary shall provide to EPA a copy of each permit application, including any application for permit modification, each proposed permit, and each final operating permit, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category. The applicant may be required by the Executive Secretary to provide a copy of the permit application, including the compliance plan, directly to EPA. Upon agreement with EPA, the Executive Secretary may submit to EPA a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in

computer-readable format compatible with EPA's national database management system.

(b) The Executive Secretary shall keep for five years such records and submit to EPA such information as EPA may reasonably require to ascertain whether the Operating Permit Program complies with the requirements of the Act or of 40 CFR Part 70.

(2) Review by affected States.

(a) The Executive Secretary shall give notice of each draft permit to any affected State on or before the time that the Executive Secretary provides this notice to the public under R307-415-7i, except to the extent R307-415-7f(1) or (2) requires the timing to be different, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category.

(b) The Executive Secretary, as part of the submittal of the proposed permit to EPA, or as soon as possible after the submittal for minor permit modification procedures allowed under R307-415-7f(1) or (2), shall notify EPA and any affected State in writing of any refusal by the Executive Secretary to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the Executive Secretary's reasons for not accepting any such recommendation. The Executive Secretary is not required to accept recommendations that are not based on applicable requirements or the requirements of R307-415.

(3) EPA objection. If EPA objects to the issuance of a permit in writing within 45 days of receipt of the proposed permit and all necessary supporting information, then the Executive Secretary shall not issue the permit. If the Executive Secretary fails, within 90 days after the date of an objection by EPA, to revise and submit a proposed permit in response to the objection, EPA may issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Act.

(4) Public petitions to EPA. If EPA does not object in writing under R307-415-8(3), any person may petition EPA under the provisions of 40 CFR 70.8(d) within 60 days after the expiration of EPA's 45-day review period to make such objection. If EPA objects to the permit as a result of a petition, the Executive Secretary shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Executive Secretary has issued a permit prior to receipt of an EPA objection under this paragraph, EPA may modify, terminate, or revoke such permit, consistent with the procedures in 40 CFR 70.7(g) except in unusual circumstances, and the Executive Secretary may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(5) Prohibition on default issuance. The Executive Secretary shall not issue an operating permit, including a permit renewal or modification, until affected States and EPA have had an opportunity to review the proposed permit as required under this Section.

R307-415-9. Fees for Operating Permits.

(1) Definitions. The following definitions apply only to R307-415-9.

(a) "Allowable emissions" are emissions based on the potential to emit stated by the Executive Secretary in an approval order, the State Implementation Plan or an operating permit.

(b) "Chargeable pollutant" means any "regulated air pollutant" except the following:

(i) carbon monoxide;

(ii) any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(iii) any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

(2) Applicability. As authorized by Section 19-2-109.1, all Part 70 sources must pay an annual fee, based on annual emissions of all chargeable pollutants.

(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 source, even if only one unit or one chargeable pollutant triggers the applicability of R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source elected, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire term of the permit.

(d) When a new Part 70 source begins operating, it shall pay an emission fee for that fiscal year, prorated from the date the source begins operating. The emission fee for a new Part 70

source shall be based on allowable emissions until that source has been in operation for a full calendar year, and has submitted an inventory of actual emissions. If a new Part 70 source is not billed in the first billing cycle of its operation, the emission fee shall be calculated using the emissions that would have been used had the source been billed at that time. This fee shall be in addition to any subsequent emission fees.

(e) When a Part 70 source is no longer subject to Part 70, the emission fee shall be prorated to the date that the source ceased to be subject to Part 70. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance will be refunded.

(i) If that Part 70 source again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source again became subject to the emission fee requirements. The fee shall be based on the emission inventory during the last full year of operation. The emission fee shall continue to be based on actual emissions reported for the last full calendar year of operation until that source has been in operation for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee on allowable emissions, then the prorated fee shall be calculated using allowable emissions.

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications at that source, unless the source demonstrates to the Executive Secretary that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The Executive Secretary may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent inventory data are not available.

(4) Collection of Fees.

(a) The emission fee is due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The Executive Secretary may require any person who fails to pay the annual emission fee by the due date to pay interest on the fee and a penalty under 19-2-109.1(7)(a).

(c) A person may contest an emission fee assessment, or associated penalty, under 19-2-109.1(8).

KEY: air pollution, environmental protection, operating permit, emission fee
August 1, 2002 19-2-109.1
Notice of Continuation March 1, 1999 19-2-104

R313. Environmental Quality, Radiation Control.
R313-15. Standards for Protection Against Radiation.
R313-15-1. Purpose, Authority and Scope.

(1) Rule R313-15 establishes standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses issued by the Executive Secretary. These rules are issued pursuant to Sections 19-3-104(3) and 19-3-104(6).

(2) The requirements of Rule R313-15 are designed to control the receipt, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in Rule R313-15. However, nothing in Rule R313-15 shall be construed as limiting actions that may be necessary to protect health and safety.

(3) Except as specifically provided in other sections of these rules, Rule R313-15 applies to persons licensed or registered by the Executive Secretary to receive, possess, use, transfer, or dispose of sources of radiation. The limits in Rule R313-15 do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with Section R313-32-75, or to exposure from voluntary participation in medical research programs.

R313-15-2. Definitions.

"Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference.

"Air-purifying respirator" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

"Assigned protection factor" (APF) means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

"Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

"Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, Days, of less than ten days, for Class W, Weeks, from ten to 100 days , and for Class Y, Years, of greater than 100 days. For purposes of these rules, "lung class" and "inhalation class" are equivalent terms.

"Constraint (dose constraint)" in accordance with 10 CFR 20.1003, 2001 ed., means a value above which specified licensee actions are required.

"Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

"Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

"Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, Column 3, of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference.

"Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

"Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

"Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

"Filtering facepiece" (dust mask) means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

"Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

"Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

"Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

"Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

"Inhalation class", refer to "Class".

"Labeled package" means a package labeled with a

Radioactive White I, Yellow II, or Yellow III label as specified in U.S. Department of Transportation regulations 49 CFR 172.403 and 49 CFR 172.436 through 440, 2000 ed. Labeling of packages containing radioactive materials is required by the U.S. Department of Transportation if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by U.S. Department of Transportation regulations 49 CFR 173.403(m) and (w) and 49 CFR 173.421 through 424, 2000 ed.

"Loose-fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.

"Lung class", refer to "Class".

"Negative pressure respirator" (tight fitting) means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

"Nonstochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, "deterministic effect" is an equivalent term.

"Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

"Positive pressure respirator" means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

"Powered air-purifying respirator" (PAPR) means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

"Pressure demand respirator" means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

"Qualitative fit test" (QLFT) means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

"Quantitative fit test" (QNFT) means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

"Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

"Reference Man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of the Reference Man is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

"Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

"Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

"Self-contained breathing apparatus" (SCBA) means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

"Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these rules, "probabilistic effect" is an equivalent term.

"Supplied-air respirator" (SAR) or airline respirator means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

"Tight-fitting facepiece" means a respiratory inlet covering that forms a complete seal with the face.

"User seal check" (fit check) means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

"Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of five Gy (500 rad) in one hour at one meter from a radiation source or one meter from any surface that the radiation penetrates.

"Weighting factor" w_T for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

TABLE

ORGAN DOSE WEIGHTING FACTORS

Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30(1)
Whole Body	1.00(2)

(1) 0.30 results from 0.06 for each of five "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.
(2) For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T = 1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

R313-15-3. Implementation.

(1) Any existing license or registration condition that is more restrictive than Rule R313-15 remains in force until there is an amendment or renewal of the license or registration.

(2) If a license or registration condition exempts a licensee or registrant from a provision of Rule R313-15 in effect on or before January 1, 1994, it also exempts the licensee or registrant

from the corresponding provision of Rule R313-15.

(3) If a license or registration condition cites provisions of Rule R313-15 in effect prior to January 1, 1994, which do not correspond to any provisions of Rule R313-15, the license or registration condition remains in force until there is an amendment or renewal of the license or registration that modifies or removes this condition.

R313-15-101. Radiation Protection Programs.

(1) Each licensee or registrant shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of Rule R313-15. See Section R313-15-1102 for recordkeeping requirements relating to these programs.

(2) The licensee or registrant shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA).

(3) The licensee or registrant shall, at intervals not to exceed 12 months, review the radiation protection program content and implementation.

(4) To implement the ALARA requirements of Subsection R313-15-101(2), and notwithstanding the requirements in Section R313-15-301, a constraint on air emissions of radioactive material to the environment, excluding radon-222 and its decay products, shall be established by licensees or registrants such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 0.1 mSv (0.01 rem) per year from these emissions. If a licensee or registrant subject to this requirement exceeds this dose constraint, the licensee or registrant shall report the exceedance as provided in Section R313-15-1203 and promptly take appropriate corrective action to ensure against recurrence.

R313-15-201. Occupational Dose Limits for Adults.

(1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to Section R313-15-206, to the following dose limits:

(a) An annual limit, which is the more limiting of:

(i) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or

(ii) The sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).

(b) The annual limits to the lens of the eye, to the skin, and to the extremities which are:

(i) A lens dose equivalent of 0.15 Sv (15 rem), and

(ii) A shallow dose equivalent of 0.50 Sv (50 rem) to the skin or to any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. See Subsections R313-15-206(5)(a) and R313-15-206(5)(b).

(3) The assigned deep dose equivalent and shallow dose equivalent shall be for the part of the body receiving the highest exposure.

(a) The deep dose equivalent, lens dose equivalent and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable; or

(b) When a protective apron is worn while working with medical fluoroscopic equipment and monitoring is conducted as specified in Subsection R313-15-502(1)(d), the effective dose equivalent for external radiation shall be determined as follows:

(i) When only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in Subsection R313-15-201(1), the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation; or

(ii) When individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in Table I of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference, and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits. See Section R313-15-1107.

(5) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to ten milligrams in a week in consideration of chemical toxicity. See footnote 3, of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference.

(6) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. See Subsection R313-15-205(5).

R313-15-202. Compliance with Requirements for Summation of External and Internal Doses.

(1) If the licensee or registrant is required to monitor pursuant to both Subsections R313-15-502(1) and R313-15-502(2), the licensee or registrant shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee or registrant is required to monitor only pursuant to Subsection R313-15-502(1) or only pursuant to Subsection R313-15-502(2), then summation is not required to demonstrate compliance with the dose limits. The licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses pursuant to Subsections R313-15-202(2), R313-15-202(3) and R313-15-202(4). The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

(2) Intake by Inhalation. If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

(a) The sum of the fractions of the inhalation ALI for each radionuclide, or

(b) The total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000, or

(c) The sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T, and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than ten percent of the maximum weighted value of $H_{T,50}$, that is, $w_T H_{T,50}$, per unit intake for any organ or tissue.

(3) Intake by Oral Ingestion. If the occupationally exposed individual receives an intake of radionuclides by oral ingestion greater than ten percent of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

(4) Intake through Wounds or Absorption through Skin. The licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be evaluated or accounted for pursuant to Subsection R313-15-202(4).

R313-15-203. Determination of External Dose from Airborne Radioactive Material.

(1) Licensees or registrants shall, when determining the dose from airborne radioactive material, include the contribution to the deep dose equivalent, lens dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. See footnotes 1 and 2 of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference.

(2) Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

R313-15-204. Determination of Internal Exposure.

(1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee or registrant shall, when required pursuant to Section R313-15-502, take suitable and timely measurements of:

(a) Concentrations of radioactive materials in air in work areas; or

(b) Quantities of radionuclides in the body; or

(c) Quantities of radionuclides excreted from the body; or

(d) Combinations of these measurements.

(2) Unless respiratory protective equipment is used, as provided in Section R313-15-703, or the assessment of intake is based on bioassays, the licensee or registrant shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(3) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee or registrant may:

(a) Use that information to calculate the committed effective dose equivalent, and, if used, the licensee or registrant shall document that information in the individual's record; and

(b) Upon prior approval of the Executive Secretary, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and

(c) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. See Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference.

(4) If the licensee or registrant chooses to assess intakes of Class Y material using the measurements given in Subsections R313-15-204(1)(b) or R313-15-204(1)(c), the licensee or registrant may delay the recording and reporting of the assessments for periods up to seven months, unless otherwise required by Section R313-15-1202 or Section R313-15-1203. This delay permits the licensee or registrant to make additional measurements basic to the assessments.

(5) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either:

(a) The sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y, from Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference, for each radionuclide in the mixture; or

(b) The ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(6) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(7) When a mixture of radionuclides in air exists, a licensee or registrant may disregard certain radionuclides in the mixture if:

(a) The licensee or registrant uses the total activity of the mixture in demonstrating compliance with the dose limits in Section R313-15-201 and in complying with the monitoring requirements in Subsection R313-15-502(2), and

(b) The concentration of any radionuclide disregarded is less than ten percent of its DAC, and

(c) The sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30 percent.

(8) When determining the committed effective dose equivalent, the following information may be considered:

(a) In order to calculate the committed effective dose

equivalent, the licensee or registrant may assume that the inhalation of one ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 0.05 Sv (5 rem) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(b) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 0.50 Sv (50 rem), the intake of radionuclides that would result in a committed effective dose equivalent of 0.05 Sv (5 rem), that is, the stochastic ALI, is listed in parentheses in Table I of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference. The licensee or registrant may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee or registrant uses the stochastic ALI, the licensee or registrant shall also demonstrate that the limit in Subsection R313-15-201(1)(a)(ii) is met.

R313-15-205. Determination of Prior Occupational Dose.

(1) For each individual likely to receive, in a year, an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall:

(a) Determine the occupational radiation dose received during the current year; and

(b) Attempt to obtain the records of cumulative occupational radiation dose. A licensee or registrant may accept, as the record of cumulative radiation dose, an up-to-date form DRC-05 or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant.

(2) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine:

(a) The internal and external doses from all previous planned special exposures; and

(b) All doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

(3) In complying with the requirements of Subsection R313-15-205(1), a licensee or registrant may:

(a) Accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; and

(b) Obtain reports of the individual's dose equivalents from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile, other electronic media or letter. The licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(4) The licensee or registrant shall record the exposure history, as required by Subsection R313-15-205(1), on form DRC-05, or other clear and legible record, of all the information required on that form.

(a) The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report in preparing form DRC-05 or equivalent. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation on form DRC-05 or equivalent indicating the periods of time for which data are not available.

(b) For the purpose of complying with this requirement, licensees or registrants are not required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed pursuant to the rules in Rule R313-15 in effect before January 1, 1994. Further, occupational exposure histories obtained and recorded on form DRC-05 or equivalent before January 1, 1994, would not have included effective dose equivalent, but may be used in the absence of specific information on the intake of radionuclides by the individual.

(5) If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall assume:

(a) In establishing administrative controls under Subsection R313-15-201(6) for the current year, that the allowable dose limit for the individual is reduced by 12.5 mSv (1.25 rem) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and

(b) That the individual is not available for planned special exposures.

(6) The licensee or registrant shall retain the records on form DRC-05 or equivalent until the Executive Secretary terminates each pertinent license or registration requiring this record. The licensee or registrant shall retain records used in preparing form DRC-05 or equivalent for three years after the record is made.

R313-15-206. Planned Special Exposures.

A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in Section R313-15-201 provided that each of the following conditions is satisfied:

(1) The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the dose estimated to result from the planned special exposure are unavailable or impractical.

(2) The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs.

(3) Before a planned special exposure, the licensee or registrant ensures that each individual involved is:

(a) Informed of the purpose of the planned operation; and

(b) Informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(c) Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(4) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant ascertains prior doses as required by Subsection R313-15-205(2) during the lifetime of the individual for each individual involved.

(5) Subject to Subsection R313-15-201(2), the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

(a) The numerical values of any of the dose limits in Subsection R313-15-201(1) in any year; and

(b) Five times the annual dose limits in Subsection R313-15-201(1) during the individual's lifetime.

(6) The licensee or registrant maintains records of the conduct of a planned special exposure in accordance with Section R313-15-1106 and submits a written report in accordance with Section R313-15-1204.

(7) The licensee or registrant records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual pursuant to Subsection R313-15-201(1) but shall be included in evaluations required by Subsections R313-15-206(4) and R313-15-206(5).

R313-15-207. Occupational Dose Limits for Minors.

The annual occupational dose limits for minors are ten percent of the annual occupational dose limits specified for adult workers in Section R313-15-201.

R313-15-208. Dose to an Embryo/Fetus.

(1) The licensee or registrant shall ensure that the dose equivalent to the embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed five mSv (0.5 rem). See Section R313-15-1107 for recordkeeping requirements.

(2) The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in Subsection R313-15-208(1).

(3) The dose equivalent to an embryo/fetus is the sum of:

(a) The dose equivalent to the embryo/fetus resulting from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman; and

(b) The dose equivalent that is most representative of the dose equivalent to the embryo/fetus from external radiation, that is, in the mother's lower torso region.

(i) If multiple measurements have not been made, assignment of the highest deep dose equivalent for the declared pregnant woman shall be the dose equivalent to the embryo/fetus, in accordance with Subsection R313-15-201(3); or

(ii) If multiple measurements have been made, assignment of the deep dose equivalent for the declared pregnant woman from the individual monitoring device which is most representative of the dose equivalent to the embryo/fetus shall be the dose equivalent to the embryo fetus. Assignment of the highest deep dose equivalent for the declared pregnant woman to the embryo/fetus is not required unless that dose equivalent is also the most representative deep dose equivalent for the region of the embryo/fetus.

(4) If the dose equivalent to the embryo/fetus is found to have exceeded five mSv (0.5 rem) or is within 0.5 mSv (0.05 rem) of this dose by the time the woman declares the pregnancy to the licensee or registrant, the licensee or registrant shall be deemed to be in compliance with Subsection R313-15-208(1) if the additional dose equivalent to the embryo/fetus does not exceed 0.50 mSv (0.05 rem) during the remainder of the pregnancy.

R313-15-301. Dose Limits for Individual Members of the Public.

(1) Each licensee or registrant shall conduct operations so that:

(a) Except as provided in Subsection R313-15-301(1)(c), the total effective dose equivalent to individual members of the public from the licensed or registered operation does not exceed one mSv (0.1 rem) in a year, exclusive of the dose contribution from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Section R313-32-75, from voluntary participation in medical research programs, and from the licensee's or registrant's disposal of radioactive material into sanitary sewerage in accordance with Section R313-15-1003; and

(b) The dose in any unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released in accordance with Section R313-32-75, does not exceed 0.02 mSv (0.002 rem) in any one hour; and

(c) The total effective dose equivalent to individual members of the public from infrequent exposure to radiation from radiation machines does not exceed 5 mSv (0.5 rem) in a year.

(2) If the licensee or registrant permits members of the public to have access to controlled areas, the limits for members of the public continue to apply to those individuals.

(3) A licensee, registrant, or an applicant for a license or registration may apply for prior Executive Secretary authorization to operate up to an annual dose limit for an individual member of the public of five mSv (0.5 rem). This application shall include the following information:

(a) Demonstration of the need for and the expected duration of operations in excess of the limit in Subsection R313-15-301(1); and

(b) The licensee's or registrant's program to assess and control dose within the five mSv (0.5 rem) annual limit; and

(c) The procedures to be followed to maintain the dose ALARA.

(4) The Executive Secretary may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.

R313-15-302. Compliance with Dose Limits for Individual

Members of the Public.

(1) The licensee or registrant shall make or cause to be made surveys of radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in Section R313-15-301.

(2) A licensee or registrant shall show compliance with the annual dose limit in Section R313-15-301 by:

(a) Demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or

(b) Demonstrating that:

(i) The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in Table II of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference; and

(ii) If an individual were continuously present in an unrestricted area, the dose from external sources would not exceed 0.02 mSv (0.002 rem) in an hour and 0.50 mSv (0.05 rem) in a year.

(3) Upon approval from the Executive Secretary, the licensee or registrant may adjust the effluent concentration values in Appendix B, Table II of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference, for members of the public, to take into account the actual physical and chemical characteristics of the effluents, such as, aerosol size distribution, solubility, density, radioactive decay equilibrium, and chemical form.

R313-15-401. Radiological Criteria for License Termination - General Provisions.

(1) The criteria in Sections R313-15-401 through R313-15-406 apply to the decommissioning of facilities licensed under Rules R313-22 and R313-25, as well as other facilities subject to the Board's jurisdiction under the Act. For low-level waste disposal facilities (Rule R313-25), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities.

(2) The criteria in Sections R313-15-401 through R313-15-406 do not apply to sites which:

(a) Have been decommissioned prior to the effective date of the rule in accordance with criteria approved by the Executive Secretary;

(b) Have previously submitted and received Executive Secretary approval on a license termination plan or decommissioning plan; or

(c) Submit a sufficient license termination plan or decommissioning plan before the effective date of the rule with criteria approved by the Executive Secretary.

(3) After a site has been decommissioned and the license terminated in accordance with the criteria in Sections R313-15-401 through R313-15-406, the Executive Secretary will require additional cleanup only if, based on new information, the Executive Secretary determines that the criteria in Sections R313-15-401 through R313-15-406 was not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

(4) When calculating the total effective dose equivalent to the average member of the critical group, the licensee shall determine the peak annual total effective dose equivalent dose expected within the first 1000 years after decommissioning.

R313-15-402. Radiological Criteria for Unrestricted Use.

A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a total effective dose equivalent to an average member of the critical group that does not exceed 0.25 mSv (0.025 rem) per year, including no greater than 0.04 mSv (0.004 rem) committed effective dose equivalent or total effective dose equivalent to an average member of the critical group from groundwater sources, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Determination of the levels which are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

R313-15-403. Criteria for License Termination Under Restricted Conditions.

A site will be considered acceptable for license termination under restricted conditions if:

(1) The licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of Section R313-15-402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels which are ALARA must take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal; and

(2) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025 rem)per year; and

(3) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are:

(a) Funds placed into an account segregated from the licensee's assets outside the licensee's administrative control as described in Subsection R313-22-35(6)(a);

(b) Surety method, insurance, or other guarantee method as described in Subsection R313-22-35(6)(b);

(c) A statement of intent in the case of Federal, State, or local Government licensees, as described in Subsection R313-22-35(6)(d); or

(d) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity; and

(4) The licensee has submitted a decommissioning plan or license termination plan to the Executive Secretary indicating the licensee's intent to decommission in accordance with

Subsection R313-22-36(4) and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the license termination plan or decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice;

(a) Licensees proposing to decommission by restricting use of the site shall seek advice from such affected parties regarding the following matters concerning the proposed decommissioning:

(i) Whether provisions for institutional controls proposed by the licensee;

(A) Will provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025 rem) total effective dose equivalent per year;

(B) Will be enforceable; and

(C) Will not impose undue burdens on the local community or other affected parties; and

(ii) Whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site; and

(b) In seeking advice on the issues identified in Subsection R313-15-403(4)(a), the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(5) Residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group is as low as reasonably achievable and would not exceed either:

(a) one mSv (0.1 rem) per year; or

(b) five mSv (0.5 rem) per year provided the licensee:

(i) Demonstrates that further reductions in residual radioactivity necessary to comply with the one mSv (0.1 rem) per year value of Subsection R313-15-403(5)(a) are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(ii) Makes provisions for durable institutional controls; and

(iii) Provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every five years to assure that the institutional controls remain in place as necessary to meet the criteria of Subsection R313-15-403(2) and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Acceptable financial assurance mechanisms are those in Subsection R313-15-403(3).

R313-15-404. Alternate Criteria for License Termination.

(1) The Executive Secretary may terminate a license using alternative criteria greater than the dose criterion of Section R313-15-402, and Subsections R313-15-403(2) and R313-15-403(4)(a)(i)(A), if the licensee:

(a) Provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the one mSv (0.1 rem) per year limit of Subsection R313-15-301(1)(a), by submitting an analysis of possible sources of exposure; and

(b) Has employed, to the extent practical, restrictions on site use according to the provisions of Section R313-15-403 in minimizing exposures at the site; and

(c) Reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal; and

(d) Has submitted a decommissioning plan or license termination plan to the Executive Secretary indicating the licensee's intent to decommission in accordance with Subsection R313-22-36(4), and specifying that the licensee proposes to decommission by use of alternate criteria. The licensee shall document in the decommissioning plan or license termination plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning; and

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(2) The use of alternate criteria to terminate a license requires the approval of the Executive Secretary after consideration of recommendations from the Division's staff, comments provided by federal, state and local governments, and any public comments submitted pursuant to Section R313-15-405.

R313-15-405. Public Notification and Public Participation.

Upon the receipt of a license termination plan or decommissioning plan from the licensee, or a proposal by the licensee for release of a site pursuant to Sections R313-15-403 or R313-15-404, or whenever the Executive Secretary deems such notice to be in the public interest, the Executive Secretary shall:

(1) Notify and solicit comments from:

(a) Local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the

decommissioning; and

(b) Federal, state and local governments for cases where the licensee proposes to release a site pursuant to Section R313-15-404.

(2) Publish a notice in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.

R313-15-406. Minimization of Contamination.

Applicants for licenses, other than renewals, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of waste.

R313-15-501. Surveys and Monitoring - General.

(1) Each licensee or registrant shall make, or cause to be made, surveys that:

(a) Are necessary for the licensee or registrant to comply with Rule R313-15; and

(b) Are necessary under the circumstances to evaluate:

(i) The magnitude and the extent of radiation levels; and

(ii) Concentrations or quantities of radioactive material; and

(iii) The potential radiological hazards.

(2) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are calibrated at intervals not to exceed 12 months for the radiation measured, except when a more frequent interval is specified in another applicable part of these rules or a license condition.

(3) All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees and registrants to comply with Section R313-15-201, with other applicable provisions of these rules, or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(4) The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

R313-15-502. Conditions Requiring Individual Monitoring of External and Internal Occupational Dose.

Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of Rule R313-15. As a minimum:

(1) Each licensee or registrant shall monitor occupational exposure to radiation from licensed, unlicensed, and registered radiation sources under the control of the licensee and shall supply and require the use of individual monitoring devices by:

(a) Adults likely to receive, in one year from sources external to the body, a dose in excess of ten percent of the limits in Subsection R313-15-201(1); and

(b) Minors likely to receive, in one year, from radiation sources external to the body, a deep dose equivalent in excess of one mSv (0.1 rem), a lens dose equivalent in excess of 1.5 mSv (0.15 rem), or a shallow dose equivalent to the skin or to the extremities in excess of five mSv (0.5 rem); and

(c) Declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of one mSv (0.1 rem); and

(d) Individuals entering a high or very high radiation area; and

(e) Individuals working with medical fluoroscopic equipment.

(i) An individual monitoring device used for the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located under the protective apron at the waist.

(A) If an individual monitoring device worn by a declared pregnant woman has a monthly reported dose equivalent value in excess of 0.5 mSv (50 mrem), the value to be used for determining the dose to the embryo/fetus, pursuant to Subsection R313-15-208(3)(a) for radiation from medical fluoroscopy, may be the value reported by the individual monitoring device worn at the waist underneath the protective apron which has been corrected for the potential overestimation of dose recorded by the monitoring device because of the overlying tissue of the pregnant individual. This correction shall be performed by a radiation safety officer of an institutional radiation safety committee, a qualified expert approved by the Board, or a representative of the Executive Secretary.

(ii) An individual monitoring device used for lens dose equivalent shall be located at the neck, or an unshielded location closer to the eye, outside the protective apron.

(iii) When only one individual monitoring device is used to determine the effective dose equivalent for external radiation pursuant to Subsection R313-15-201(3)(b), it shall be located at the neck outside the protective apron. When a second individual monitoring device is used, for the same purpose, it shall be located under the protective apron at the waist. Note: The second individual monitoring device is required for a declared pregnant woman.

(iv) A registrant is not required to supply and require the use of individual monitoring devices provided the registrant has conducted a survey, pursuant to Section R313-15-501, that demonstrates that the working environment the individual encounters will not likely result in a dose in excess of ten percent of the limits in Subsection R313-15-201(1), and that the individual is neither a minor nor a declared pregnant woman.

(2) Each licensee or registrant shall monitor, to determine compliance with Section R313-15-204, the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(a) Adults likely to receive, in one year, an intake in excess of ten percent of the applicable ALI(s) in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference; and

(b) Minors likely to receive, in one year, a committed effective dose equivalent in excess of one mSv (0.1 rem); and

(c) Declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of one mSv (0.1 rem).

Note: All of the occupational doses in Section R313-15-201 continue to be applicable to the declared pregnant worker as long as the embryo/fetus dose limit is not exceeded.

R313-15-503. Location of Individual Monitoring Devices.

Each licensee or registrant shall ensure that individuals who are required to monitor occupational doses in accordance with Subsection R313-15-502(1) wear individual monitoring devices as follows:

(1) An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar).

(2) An individual monitoring device used for monitoring the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located at the waist under any protective apron being worn by the woman.

(3) An individual monitoring device used for monitoring the lens dose equivalent, to demonstrate compliance with Subsection R313-15-201(1)(b)(i), shall be located at the neck (collar), outside any protective apron being worn by the monitored individual, or at an unshielded location closer to the eye.

(4) An individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with Subsection R313-15-201(1)(b)(ii), shall be worn on the extremity likely to receive the highest exposure. Each individual monitoring device shall be oriented to measure the highest dose to the extremity being monitored.

R313-15-601. Control of Access to High Radiation Areas.

(1) The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(a) A control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of one mSv (0.1 rem) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates; or

(b) A control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(c) Entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

(2) In place of the controls required by Subsection R313-15-601(1) for a high radiation area, the licensee or registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(3) The licensee or registrant may apply to the Executive Secretary for approval of alternative methods for controlling access to high radiation areas.

(4) The licensee or registrant shall establish the controls required by Subsections R313-15-601(1) and R313-15-601(3) in a way that does not prevent individuals from leaving a high radiation area.

(5) The licensee or registrant is not required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation provided that:

(a) The packages do not remain in the area longer than three days; and

(b) The dose rate at one meter from the external surface of any package does not exceed 0.1 mSv (0.01 rem) per hour.

(6) The licensee or registrant is not required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the established limits in Rule R313-15 and to operate within the ALARA provisions of the licensee's or registrant's radiation protection program.

(7) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area as described in Section R313-15-601 if the registrant has met all the specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-602. Control of Access to Very High Radiation Areas.

(1) In addition to the requirements in Section R313-15-601, the licensee or registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at five Gy (500 rad) or more in one hour at one meter from a source of radiation or any surface through which the radiation penetrates. This requirement does not apply to rooms or areas in which diagnostic x-ray systems are the only source of radiation, or to non-self-shielded irradiators.

(2) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area as described in Subsection R313-15-602(1) if the registrant has met all the specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-603. Control of Access to Very High Radiation

Areas -- Irradiators.

(1) Section R313-15-603 applies to licensees or registrants with sources of radiation in non-self-shielded irradiators. Section R313-15-603 does not apply to sources of radiation that are used in teletherapy, in industrial radiography, or in completely self-shielded irradiators in which the source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create a high levels of radiation in an area that is accessible to any individual.

(2) Each area in which there may exist radiation levels in excess of five Gy (500 rad) in one hour at one meter from a source of radiation that is used to irradiate materials shall meet the following requirements:

(a) Each entrance or access point shall be equipped with entry control devices which:

(i) Function automatically to prevent any individual from inadvertently entering a very high radiation area; and

(ii) Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(iii) Prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep dose equivalent to an individual in excess of one mSv (0.1 rem) in one hour.

(b) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by Subsection R313-15-603(2)(a):

(i) The radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard and at least one other authorized individual, who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices.

(c) The licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:

(i) The radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make potentially affected individuals aware of the hazard and the licensee or registrant or at least one other individual, who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier.

(d) When the shield for stored sealed sources is a liquid, the licensee or registrant shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.

(e) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of Subsections R313-15-603(2)(c) and R313-15-603(2)(d).

(f) Each area shall be equipped with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source of radiation can be put into operation and in time for any individual in the area to operate a clearly identified control device, which shall be installed in the area and which can prevent the source of radiation from being put into operation.

(g) Each area shall be controlled by use of such administrative procedures and such devices as are necessary to ensure that the area is cleared of personnel prior to each use of the source of radiation.

(h) Each area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after any use of the source of radiation, the radiation level from the source of radiation in the area is below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour.

(i) The entry control devices required in Subsection R313-15-603(2)(a) shall be tested for proper functioning. See Section R313-15-1110 for recordkeeping requirements.

(i) Testing shall be conducted prior to initial operation with the source of radiation on any day, unless operations were continued uninterrupted from the previous day; and

(ii) Testing shall be conducted prior to resumption of operation of the source of radiation after any unintentional interruption; and

(iii) The licensee or registrant shall submit and adhere to a schedule for periodic tests of the entry control and warning systems.

(j) The licensee or registrant shall not conduct operations, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls, unless control devices are functioning properly.

(k) Entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by individuals, shall be controlled by such devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by any individual through these portals. Exit portals for irradiated materials shall be equipped to detect and signal the presence of any loose radioactive material that is carried toward such an exit and automatically to prevent loose radioactive material from being carried out of the area.

(3) Licensees, registrants, or applicants for licenses or registrations for sources of radiation within the purview of Subsection R313-15-603(2) which will be used in a variety of positions or in locations, such as open fields or forests, that make it impractical to comply with certain requirements of Subsection R313-15-603(2), such as those for the automatic control of radiation levels, may apply to the Executive Secretary for approval of alternative safety measures. Alternative safety measures shall provide personnel protection at least equivalent to those specified in Subsection R313-15-603(2). At least one of the alternative measures shall include an entry-preventing interlock control based on a measurement of the radiation that

ensures the absence of high radiation levels before an individual can gain access to the area where such sources of radiation are used.

(4) The entry control devices required by Subsections R313-15-603(2) and R313-15-603(3) shall be established in such a way that no individual will be prevented from leaving the area.

R313-15-701. Use of Process or Other Engineering Controls.

The licensee or registrant shall use, to the extent practical, process or other engineering controls, such as, containment, decontamination, or ventilation, to control the concentration of radioactive material in air.

R313-15-702. Use of Other Controls.

(1) When it is not practical to apply process or other engineering controls to control the concentration of radioactive material in the air to values below those that define an airborne radioactivity area, the licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

(a) Control of access; or

(b) Limitation of exposure times; or

(c) Use of respiratory protection equipment; or

(d) Other controls.

(2) If the licensee or registrant performs an ALARA analysis to determine whether or not respirators should be used, the licensee may consider safety factors other than radiological factors. The licensee or registrant should also consider the impact of respirator use on workers' industrial health and safety.

R313-15-703. Use of Individual Respiratory Protection Equipment.

If the licensee or registrant uses respiratory protection equipment to limit the intake of radioactive material:

(1) Except as provided in Subsection R313-15-703(2), the licensee or registrant shall use only respiratory protection equipment that is tested and certified by the National Institute for Occupational Safety and Health.

(2) The licensee or registrant may use equipment that has not been tested or certified by the National Institute for Occupational Safety and Health or for which there is no schedule for testing or certification, provided the licensee or registrant has submitted to the Executive Secretary and the Executive Secretary has approved an application for authorized use of that equipment. The application must include a demonstration by testing, or a demonstration on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(3) The licensee or registrant shall implement and maintain a respiratory protection program that includes:

(a) Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses; and

(b) Surveys and bioassays, as necessary, to evaluate actual intakes; and

(c) Testing of respirators for operability, user seal check for face sealing devices and functional check for others, immediately prior to each use; and

(d) Written procedures regarding

(i) Monitoring, including air sampling and bioassays;

(ii) Supervision and training of respirator users;

(iii) Fit testing;

(iv) Respirator selection;

(v) Breathing air quality;

(vi) Inventory and control;

(vii) Storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;

(viii) Recordkeeping; and

(ix) Limitations on periods of respirator use and relief from respirator use; and

(e) Determination by a physician prior to initial fitting of respirators, before the first field use of non-face sealing respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment; and

(f) Fit testing, with fit factor greater than or equal to ten times the APF for negative pressure devices, and a fit factor greater than or equal to 500 for positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed one year. Fit testing must be performed with the facepiece operating in the negative pressure mode.

(4) The licensee or registrant shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(5) The licensee or registrant shall also consider limitations appropriate to the type and mode of use. When selecting respiratory devices the licensee shall provide for vision correction, adequate communication, low temperature work environments, and the concurrent use of other safety or radiological protection equipment. The licensee or registrant shall use equipment in such a way as not to interfere with the proper operation of the respirator.

(6) Standby rescue persons are required whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself. The standby persons must be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons must be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed.

(7) Atmosphere-supplying respirators must be supplied with respirable air of grade D quality or better as defined by the

Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997 ed. and included in 29 CFR 1910.134(i)(1)(ii)(A) through (E), 2000 ed. Grade D quality air criteria include:

(a) Oxygen content (v/v) of 19.5 to 23.5%;

(b) Hydrocarbon (condensed) content of five milligrams per cubic meter of air or less;

(c) Carbon monoxide (CO) content of ten ppm or less;

(d) Carbon dioxide content of 1,000 ppm or less; and

(e) Lack of noticeable odor.

(8) The licensee shall ensure that no objects, materials or substances, such as facial hair, or any conditions that interfere with the face and facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.

(9) In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection, divided by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the corrected value must be used. If the dose is later found to be less than the estimated dose, the corrected value may be used.

R313-15-704. Further Restrictions on the Use of Respiratory Protection Equipment.

The Executive Secretary may impose restrictions in addition to the provisions of Section R313-15-702, Section R313-15-703, and Appendix A of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference to:

(1) Ensure that the respiratory protection program of the licensee or registrant is adequate to limit doses to individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

(2) Limit the extent to which a licensee or registrant may use respiratory protection equipment instead of process or other engineering controls.

R313-15-705. Application for Use of Higher Assigned Protection Factors.

The licensee or registrant shall obtain authorization from the Executive Secretary before using assigned protection factors in excess of those specified in Appendix A of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference. The Executive Secretary may authorize a licensee or registrant to use higher assigned protection factors on receipt of an application that:

(1) Describes the situation for which a need exists for higher protection factors; and

(2) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

R313-15-801. Security and Control of Licensed or Registered Sources of Radiation.

(1) The licensee or registrant shall secure licensed or registered radioactive material from unauthorized removal or access.

(2) The licensee or registrant shall maintain constant surveillance, and use devices or administrative procedures to prevent unauthorized use of licensed or registered radioactive material that is in an unrestricted area and that is not in storage.

(3) The registrant shall secure registered radiation machines from unauthorized removal.

(4) The registrant shall use devices or administrative procedures to prevent unauthorized use of registered radiation machines.

R313-15-901. Caution Signs.

(1) Standard Radiation Symbol. Unless otherwise authorized by the Executive Secretary, the symbol prescribed by 10 CFR 20.1901, 2001 ed., which is incorporated by reference, shall use the colors magenta, or purple, or black on yellow background. The symbol prescribed is the three-bladed design as follows:

(a) Cross-hatched area is to be magenta, or purple, or black, and

(b) The background is to be yellow.

(2) Exception to Color Requirements for Standard Radiation Symbol. Notwithstanding the requirements of 10 CFR 20.1901(a), 2001 ed., which is incorporated by reference, licensees or registrants are authorized to label sources, source holders, or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(3) Additional Information on Signs and Labels. In addition to the contents of signs and labels prescribed in Rule R313-15, the licensee or registrant shall provide, on or near the required signs and labels, additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

R313-15-902. Posting Requirements.

(1) Posting of Radiation Areas. The licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(2) Posting of High Radiation Areas. The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(3) Posting of Very High Radiation Areas. The licensee or registrant shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA."

(4) Posting of Airborne Radioactivity Areas. The licensee or registrant shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA."

(5) Posting of Areas or Rooms in which Licensed or Registered Material is Used or Stored. The licensee or registrant shall post each area or room in which there is used or stored an amount of licensed or registered material exceeding

ten times the quantity of such material specified in Appendix C of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference, with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL."

R313-15-903. Exceptions to Posting Requirements.

(1) A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than eight hours, if each of the following conditions is met:

(a) The sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in Rule R313-15; and

(b) The area or room is subject to the licensee's or registrant's control.

(2) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to Section R313-15-902 provided that the patient could be released from licensee control pursuant to Section R313-32-75.

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 centimeters from the surface of the sealed source container or housing does not exceed 0.05 mSv (0.005 rem) per hour.

(4) A room or area is not required to be posted with a caution sign because of the presence of radiation machines used solely for diagnosis in the healing arts.

(5) Rooms in hospitals or clinics that are used for teletherapy are exempt from the requirement to post caution signs under Section R313-15-902 if:

(a) Access to the room is controlled pursuant to Section R313-32-615; and

(b) Personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients, and members of the public to radiation in excess of the limits established in Rule R313-15.

R313-15-904. Labeling Containers and Radiation Machines.

(1) The licensee or registrant shall ensure that each container of licensed or registered material bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment, to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(2) Each licensee or registrant shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

(3) Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner which cautions individuals that radiation is produced when it is energized.

R313-15-905. Exemptions to Labeling Requirements.

A licensee or registrant is not required to label:

(1) Containers holding licensed or registered material in quantities less than the quantities listed in Appendix C of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference; or

(2) Containers holding licensed or registered material in concentrations less than those specified in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference; or

(3) Containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by Rule R313-15; or

(4) Containers when they are in transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation; or

(5) Containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record. Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells. The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(6) Installed manufacturing or process equipment, such as piping and tanks.

R313-15-906. Procedures for Receiving and Opening Packages.

(1) Each licensee or registrant who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as used in Section R313-19-100, which incorporates 10 CFR 71.4 by reference, shall make arrangements to receive:

(a) The package when the carrier offers it for delivery; or

(b) The notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

(2) Each licensee or registrant shall:

(a) Monitor the external surfaces of a labeled package for radioactive contamination unless the package contains only radioactive material in the form of gas or in special form as defined in Section R313-12-3; and

(b) Monitor the external surfaces of a labeled package for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as used in Section R313-19-100, which incorporates 10 CFR 71.4 by reference; and

(c) Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

(3) The licensee or registrant shall perform the monitoring required by Subsection R313-15-906(2) as soon as practical after receipt of the package, but not later than three hours after the package is received at the licensee's or registrant's facility if

it is received during the licensee's or registrant's normal working hours or if there is evidence of degradation of package integrity, such as a package that is crushed, wet, or damaged. If a package is received after working hours, and has no evidence of degradation of package integrity, the package shall be monitored no later than three hours from the beginning of the next working day.

(4) The licensee or registrant shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the Executive Secretary when:

(a) Removable radioactive surface contamination exceeds the limits of Section R313-19-100 which incorporates 10 CFR 71.87(i) by reference; or

(b) External radiation levels exceed the limits of Section R313-19-100 which incorporates 10 CFR 71.47 by reference.

(5) Each licensee or registrant shall:

(a) Establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(b) Ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(6) Licensees or registrants transferring special form sources in vehicles owned or operated by the licensee or registrant to and from a work site are exempt from the contamination monitoring requirements of Subsection R313-15-906(2), but are not exempt from the monitoring requirement in Subsection R313-15-906(2) for measuring radiation levels that ensures that the source is still properly lodged in its shield.

R313-15-1001. Waste Disposal - General Requirements.

(1) A licensee or registrant shall dispose of licensed or registered material only:

(a) By transfer to an authorized recipient as provided in Section R313-15-1006 or in Rules R313-21, R313-22, R313-24, or R313-25, or to the U.S. Department of Energy; or

(b) By decay in storage; or

(c) By release in effluents within the limits in Section R313-15-301; or

(d) As authorized pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, or R313-15-1005.

(2) A person shall be specifically licensed or registered to receive waste containing licensed or registered material from other persons for:

(a) Treatment prior to disposal; or

(b) Treatment or disposal by incineration; or

(c) Decay in storage; or

(d) Disposal at a land disposal facility licensed pursuant to Rule R313-25; or

(e) Storage until transferred to a storage or disposal facility authorized to receive the waste.

R313-15-1002. Method for Obtaining Approval of Proposed Disposal Procedures.

A licensee or registrant or applicant for a license or registration may apply to the Executive Secretary for approval of proposed procedures, not otherwise authorized in these rules, to dispose of licensed or registered material generated in the licensee's or registrant's operations. Each application shall include:

(1) A description of the waste containing licensed or registered material to be disposed of, including the physical and chemical properties that have an impact on risk evaluation, and the proposed manner and conditions of waste disposal; and

(2) An analysis and evaluation of pertinent information on the nature of the environment; and

(3) The nature and location of other potentially affected facilities; and

(4) Analyses and procedures to ensure that doses are maintained ALARA and within the dose limits in Rule R313-15.

R313-15-1003. Disposal by Release into Sanitary Sewerage.

(1) A licensee or registrant may discharge licensed or registered material into sanitary sewerage if each of the following conditions is satisfied:

(a) The material is readily soluble, or is readily dispersible biological material, in water; and

(b) The quantity of licensed or registered radioactive material that the licensee or registrant releases into the sewer in one month divided by the average monthly volume of water released into the sewer by the licensee or registrant does not exceed the concentration listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference; and

(c) If more than one radionuclide is released, the following conditions shall also be satisfied:

(i) The licensee or registrant shall determine the fraction of the limit in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference, represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee or registrant into the sewer by the concentration of that radionuclide listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference; and

(ii) The sum of the fractions for each radionuclide required by Subsection R313-15-1003(1)(c)(i) does not exceed unity; and

(d) The total quantity of licensed or registered radioactive material that the licensee or registrant releases into the sanitary sewerage system in a year does not exceed 185 GBq (five Ci) of hydrogen-3, 37 GBq (one Ci) of carbon-14, and 37 GBq (one Ci) of all other radioactive materials combined.

(2) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in Subsection R313-15-1003(1).

R313-15-1004. Treatment or Disposal by Incineration.

A licensee or registrant may treat or dispose of licensed or registered material by incineration only in the form and concentration specified in Section R313-15-1005 or as specifically approved by the Executive Secretary pursuant to Section R313-15-1002.

R313-15-1005. Disposal of Specific Wastes.

(1) A licensee or registrant may dispose of the following licensed or registered material as if it were not radioactive:

(a) 1.85 kBq (0.05 uCi), or less, of hydrogen-3 or carbon-

14 per gram of medium used for liquid scintillation counting; and

(b) 1.85 kBq (0.05 uCi) or less, of hydrogen-3 or carbon-14 per gram of animal tissue, averaged over the weight of the entire animal.

(2) A licensee or registrant shall not dispose of tissue pursuant to Subsection R313-15-1005(1)(b) in a manner that would permit its use either as food for humans or as animal feed.

(3) The licensee or registrant shall maintain records in accordance with Section R313-15-1109.

R313-15-1006. Transfer for Disposal and Manifests.

(1) The requirements of Section R313-15-1006 and Appendix G of 10 CFR 20.1001 to 20.2402, 2001 ed., which are incorporated into these rules by reference, are designed to:

(a) control transfers of low-level radioactive waste by any waste generator, waste collector, or waste processor licensee, as defined in Appendix G in 10 CFR 20.1001 to 20.2402, 2001 ed., who ships low-level waste either directly, or indirectly through a waste collector or waste processor, to a licensed low-level waste land disposal facility as defined in Section R313-25-2;

(b) establish a manifest tracking system; and

(c) supplement existing requirements concerning transfers and recordkeeping for those wastes.

(2) Any licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility must document the information required on the U.S. Nuclear Regulatory Commission's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with Appendix G to 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated into these rules by reference.

(3) Each shipment manifest shall include a certification by the waste generator as specified in Section II of Appendix G to 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference.

(4) Each person involved in the transfer of waste for disposal or in the disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in Section III of Appendix G to 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference.

R313-15-1007. Compliance with Environmental and Health Protection Rules.

Nothing in Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006 relieves the licensee or registrant from complying with other applicable Federal, State and local rules governing any other toxic or hazardous properties of materials that may be disposed of pursuant to Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006.

R313-15-1008. Classification and Characteristics of Low-Level Radioactive Waste.

(1) Classification of Radioactive Waste for Land Disposal

(a) Considerations. Determination of the classification of radioactive waste involves two considerations. First, consideration shall be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration shall be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

(b) Classes of waste.

(i) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste shall meet the minimum requirements set forth in Subsection R313-15-1008(2)(a). If Class A waste also meets the stability requirements set forth in Subsection R313-15-1008(2)(b), it is not necessary to segregate the waste for disposal.

(ii) Class B waste is waste that shall meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1008(2).

(iii) Class C waste is waste that not only shall meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1008(2).

(c) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in Table I, classification shall be determined as follows:

(i) If the concentration does not exceed 0.1 times the value in Table I, the waste is Class A.

(ii) If the concentration exceeds 0.1 times the value in Table I, but does not exceed the value in Table I, the waste is Class C.

(iii) If the concentration exceeds the value in Table I, the waste is not generally acceptable for land disposal.

(iv) For wastes containing mixtures of radionuclides listed in Table I, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1008(1)(g).

TABLE I

Radionuclide	Concentration curie/cubic meter(1) nanocurie/gram(2)
C-14	8
C-14 in activated metal	80
Ni-59 in activated metal	220
Nb-94 in activated metal	0.2
Tc-99	3
I-129	0.08
Alpha emitting transuranic radionuclides with half-	

life greater than five years	100
Pu-241	3,500
Cm-242	20,000
Ra-226	100

NOTE: (1) To convert the Ci/m^3 values to gigabecquerel (GBq)/cubic meter, multiply the Ci/m^3 value by 37.
(2) To convert the nCi/g values to becquerel (Bq)/gram, multiply the nCi/g value by 37.

(d) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in Table I, classification shall be determined based on the concentrations shown in Table II. However, as specified in Subsection R313-15-1008(1)(f), if radioactive waste does not contain any nuclides listed in either Table I or II, it is Class A.

(i) If the concentration does not exceed the value in Column 1, the waste is Class A.

(ii) If the concentration exceeds the value in Column 1 but does not exceed the value in Column 2, the waste is Class B.

(iii) If the concentration exceeds the value in Column 2 but does not exceed the value in Column 3, the waste is Class C.

(iv) If the concentration exceeds the value in Column 3, the waste is not generally acceptable for near-surface disposal.

(v) For wastes containing mixtures of the radionuclides listed in Table II, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1008(1)(g).

TABLE II

Radionuclide	Concentration, curie/cubic meter(1)		
	Column 1	Column 2	Column 3
Total of all radionuclides with less than 5-year half-life	700	(2)	(2)
H-3	40	(2)	(2)
Co-60	700	(2)	(2)
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7000
Sr-90	0.04	150	7000
Cs-137	1	44	4600

NOTE: (1) To convert the Ci/m^3 value to gigabecquerel (GBq)/cubic meter, multiply the Ci/m^3 value by 37.
(2) There are no limits established for these radionuclides in Class B or C wastes. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. These wastes shall be Class B unless the concentrations of other radionuclides in Table II determine the waste to be Class C independent of these radionuclides.

(e) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in Table I and some of which are listed in Table II, classification shall be determined as follows:

(i) If the concentration of a radionuclide listed in Table I is less than 0.1 times the value listed in Table I, the class shall be that determined by the concentration of radionuclides listed in Table II.

(ii) If the concentration of a radionuclide listed in Table I exceeds 0.1 times the value listed in Table I, but does not exceed the value in Table I, the waste shall be Class C, provided the concentration of radionuclides listed in Table II does not exceed the value shown in Column 3 of Table II.

(f) Classification of wastes with radionuclides other than those listed in Tables I and II. If the waste does not contain any radionuclides listed in either Table I or II, it is Class A.

(g) The sum of the fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits shall all be taken from the same column of the same table. The sum of the fractions for the column shall be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 1.85 TBq/m^3 (50 Ci/m^3) and Cs-137 in a concentration of 814 GBq/m^3 (22 Ci/m^3). Since the concentrations both exceed the values in Column 1, Table II, they shall be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33., for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is Class B.

(h) Determination of concentrations in wastes. The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as becquerel (nanocurie) per gram.

(2) Radioactive Waste Characteristics

(a) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site.

(i) Wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restrictive than the provisions of Rule R313-15, the site license conditions shall govern.

(ii) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.

(iii) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(iv) Solid waste containing liquid shall contain as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume.

(v) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(vi) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with Subsection R313-15-1008(2)(a)(viii).

(vii) Waste shall not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.

(viii) Wastes in a gaseous form shall be packaged at an absolute pressure that does not exceed 1.5 atmospheres at 20 degrees celsius. Total activity shall not exceed 3.7 TBq (100 Ci) per container.

(ix) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practical the potential hazard from the non-radiological materials.

(b) The following requirements are intended to provide stability of the waste. Stability is intended to ensure that the waste does not degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste.

(i) Waste shall have structural stability. A structurally stable waste form will generally maintain its physical dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

(ii) Notwithstanding the provisions in Subsections R313-15-1008(2)(a)(iii) and R313-15-1008(2)(a)(iv), liquid wastes, or wastes containing liquid, shall be converted into a form that contains as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5 percent of the volume of the waste for waste processed to a stable form.

(iii) Void spaces within the waste and between the waste and its package shall be reduced to the extent practical.

(3) Labeling. Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with Subsection R313-15-1008(1).

R313-15-1101. Records - General Provisions.

(1) Each licensee or registrant shall use the SI units becquerel, gray, sievert and coulomb per kilogram, or the special units, curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by Rule R313-15.

(2) Notwithstanding the requirements of Subsection R313-15-1101(1), when recording information on shipment manifests, as required in Subsection R313-15-1006(2), information must be recorded in SI units or in SI units and the special units specified in Subsection R313-15-1101(1).

(3) The licensee or registrant shall make a clear distinction among the quantities entered on the records required by Rule R313-15, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, lens dose equivalent, deep dose equivalent, or committed effective dose equivalent.

R313-15-1102. Records of Radiation Protection Programs.

(1) Each licensee or registrant shall maintain records of the radiation protection program, including:

(a) The provisions of the program; and

(b) Audits and other reviews of program content and implementation.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(a) until the Executive Secretary terminates each pertinent license or registration requiring the record. The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(b) for three years after the record is made.

R313-15-1103. Records of Surveys.

(1) Each licensee or registrant shall maintain records showing the results of surveys and calibrations required by Section R313-15-501 and Subsection R313-15-906(2). The licensee or registrant shall retain these records for three years after the record is made.

(2) The licensee or registrant shall retain each of the following records until the Executive Secretary terminates each pertinent license or registration requiring the record:

(a) Records of the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents; and

(b) Records of the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose; and

(c) Records showing the results of air sampling, surveys, and bioassays required pursuant to Subsections R313-15-703(3)(a) and R313-15-703(3)(b); and

(d) Records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

R313-15-1104. Records of Tests for Leakage or Contamination of Sealed Sources.

Records of tests for leakage or contamination of sealed sources required by Section R313-15-1401 shall be kept in units of becquerel or microcurie and maintained for inspection by the Executive Secretary for five years after the records are made.

R313-15-1105. Records of Prior Occupational Dose.

For each individual who is likely to receive in a year an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall retain the records of prior occupational dose and exposure history as specified in Section R313-15-205 on form DRC-05 or equivalent until the Executive Secretary terminates each pertinent license requiring this record. The licensee or registrant shall retain records used in preparing form DRC-05 or equivalent for three years after the record is made.

R313-15-1106. Records of Planned Special Exposures.

(1) For each use of the provisions of Section R313-15-206 for planned special exposures, the licensee or registrant shall maintain records that describe:

(a) The exceptional circumstances requiring the use of a planned special exposure; and

(b) The name of the management official who authorized the planned special exposure and a copy of the signed authorization; and

(c) What actions were necessary; and

(d) Why the actions were necessary; and

(e) What precautions were taken to assure that doses were maintained ALARA; and

(f) What individual and collective doses were expected to result; and

(g) The doses actually received in the planned special exposure.

(2) The licensee or registrant shall retain the records until the Executive Secretary terminates each pertinent license or registration requiring these records.

R313-15-1107. Records of Individual Monitoring Results.

(1) Recordkeeping Requirement. Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to Section R313-15-502, and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:

(a) The deep dose equivalent to the whole body, lens dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities; and

(b) The estimated intake of radionuclides, see Section R313-15-202; and

(c) The committed effective dose equivalent assigned to the intake of radionuclides; and

(d) The specific information used to calculate the committed effective dose equivalent pursuant to Subsections R313-15-204(1) and R313-15-204(3) and when required by Section R313-15-502; and

(e) The total effective dose equivalent when required by Section R313-15-202; and

(f) The total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose.

(2) Recordkeeping Frequency. The licensee or registrant shall make entries of the records specified in Subsection R313-15-1107(1) at intervals not to exceed one year.

(3) Recordkeeping Format. The licensee or registrant shall maintain the records specified in Subsection R313-15-1107(1) on form DRC-06, in accordance with the instructions for form DRC-06, or in clear and legible records containing all the information required by form DRC-06.

(4) The licensee or registrant shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

(5) The licensee or registrant shall retain each required form or record until the Executive Secretary terminates each pertinent license or registration requiring the record.

R313-15-1108. Records of Dose to Individual Members of the Public.

(1) Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public. See Section R313-15-301.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1108(1) until the Executive Secretary terminates each pertinent license or registration requiring the record. Requirements for disposition of these records, prior to license termination, are located in Section R313-12-51 for activities licensed under these rules.

R313-15-1109. Records of Waste Disposal.

(1) Each licensee or registrant shall maintain records of the disposal of licensed or registered materials made pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, Rule R313-25, and disposal by burial in soil, including burials authorized before January 28, 1981.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1109(1) until the Executive Secretary terminates each pertinent license or registration requiring the record.

R313-15-1110. Records of Testing Entry Control Devices for Very High Radiation Areas.

(1) Each licensee or registrant shall maintain records of tests made pursuant to Subsection R313-15-603(2)(i) on entry control devices for very high radiation areas. These records shall include the date, time, and results of each such test of function.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1110(1) for three years after the record is made.

R313-15-1111. Form of Records.

Each record required by Rule R313-15 shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period or the record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

R313-15-1201. Reports of Stolen, Lost, or Missing Licensed or Registered Sources of Radiation.

(1) Telephone Reports. Each licensee or registrant shall report to the Executive Secretary by telephone as follows:

(a) Immediately after its occurrence becomes known to the licensee or registrant, stolen, lost, or missing licensed or registered radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference, under such circumstances that it appears to the licensee or registrant that an exposure could result to individuals in unrestricted areas;

(b) Within 30 days after its occurrence becomes known to the licensee or registrant, lost, stolen, or missing licensed or

registered radioactive material in an aggregate quantity greater than ten times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, 2001 ed., which is incorporated by reference, that is still missing.

(c) Immediately after its occurrence becomes known to the registrant, a stolen, lost, or missing radiation machine.

(2) Written Reports. Each licensee or registrant required to make a report pursuant to Subsection R313-15-1201(1) shall, within 30 days after making the telephone report, make a written report to the Executive Secretary setting forth the following information:

(a) A description of the licensed or registered source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form; and, for radiation machines, the manufacturer, model and serial number, type and maximum energy of radiation emitted;

(b) A description of the circumstances under which the loss or theft occurred; and

(c) A statement of disposition, or probable disposition, of the licensed or registered source of radiation involved; and

(d) Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas; and

(e) Actions that have been taken, or will be taken, to recover the source of radiation; and

(f) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.

(3) Subsequent to filing the written report, the licensee or registrant shall also report additional substantive information on the loss or theft within 30 days after the licensee or registrant learns of such information.

(4) The licensee or registrant shall prepare any report filed with the Executive Secretary pursuant to Section R313-15-1201 so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

R313-15-1202. Notification of Incidents.

(1) Immediate Notification. Notwithstanding other requirements for notification, each licensee or registrant shall immediately report each event involving a source of radiation possessed by the licensee or registrant that may have caused or threatens to cause any of the following conditions:

(a) An individual to receive:

(i) A total effective dose equivalent of 0.25 Sv (25 rem) or more; or

(ii) A lens dose equivalent of 0.75 Sv (75 rem) or more; or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 2.5 Gy (250 rad) or more; or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five times the occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(2) Twenty-Four Hour Notification. Each licensee or registrant shall, within 24 hours of discovery of the event, report to the Executive Secretary each event involving loss of control of a licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or threatens to cause, any of the following conditions:

(a) An individual to receive, in a period of 24 hours:

(i) A total effective dose equivalent exceeding 0.05 Sv (five rem); or

(ii) A lens dose equivalent exceeding 0.15 Sv (15 rem); or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 0.5 Sv (50 rem); or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(3) The licensee or registrant shall prepare each report filed with the Executive Secretary pursuant to Section R313-15-1202 so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

(4) Licensees or registrants shall make the reports required by Subsections R313-15-1202(1) and R313-15-1202(2) to the Executive Secretary by telephone, telegram, mailgram, or facsimile.

(5) The provisions of Section R313-15-1202 do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported pursuant to Section R313-15-1204.

R313-15-1203. Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Constraints or Limits.

(1) Reportable Events. In addition to the notification required by Section R313-15-1202, each licensee or registrant shall submit a written report within 30 days after learning of any of the following occurrences:

(a) Incidents for which notification is required by Section R313-15-1202; or

(b) Doses in excess of any of the following:

(i) The occupational dose limits for adults in Section R313-15-201; or

(ii) The occupational dose limits for a minor in Section R313-15-207; or

(iii) The limits for an embryo/fetus of a declared pregnant woman in Section R313-15-208; or

(iv) The limits for an individual member of the public in Section R313-15-301; or

(v) Any applicable limit in the license or registration; or

(vi) The ALARA constraints for air emissions established under Subsection R313-15-101(4); or

(c) Levels of radiation or concentrations of radioactive material in:

(i) A restricted area in excess of applicable limits in the license or registration; or

(ii) An unrestricted area in excess of ten times the applicable limit set forth in Rule R313-15 or in the license or registration, whether or not involving exposure of any individual in excess of the limits in Section R313-15-301; or

(d) For licensees subject to the provisions of U.S.

Environmental Protection Agency's generally applicable environmental radiation standards in 40 CFR 190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those standards.

(2) Contents of Reports.

(a) Each report required by Subsection R313-15-1203(1) shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(i) Estimates of each individual's dose; and

(ii) The levels of radiation and concentrations of radioactive material involved; and

(iii) The cause of the elevated exposures, dose rates, or concentrations; and

(iv) Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license or registration conditions.

(b) Each report filed pursuant to Subsection R313-15-1203(1) shall include for each occupationally overexposed individual: the name, Social Security account number, and date of birth. With respect to the limit for the embryo/fetus in Section R313-15-208, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(3) All licensees or registrants who make reports pursuant to Subsection R313-15-1203(1) shall submit the report in writing to the Executive Secretary.

R313-15-1204. Reports of Planned Special Exposures.

The licensee or registrant shall submit a written report to the Executive Secretary within 30 days following any planned special exposure conducted in accordance with Section R313-15-206, informing the Executive Secretary that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by Section R313-15-1106.

R313-15-1205. Reports to Individuals of Exceeding Dose Limits.

When a licensee or registrant is required, pursuant to the provisions of Sections R313-15-1203 or R313-15-1204, to report to the Executive Secretary any exposure of an identified occupationally exposed individual, or an identified member of the public, to sources of radiation, the licensee or registrant shall also provide a copy of the report submitted to the Executive Secretary to the individual. This report shall be transmitted at a time no later than the transmittal to the Executive Secretary.

R313-15-1207. Notifications and Reports to Individuals.

(1) Requirements for notification and reports to individuals of exposure to radiation or radioactive material are specified in Rule R313-18.

(2) When a licensee or registrant is required pursuant to Section R313-15-1203 to report to the Executive Secretary any exposure of an individual to radiation or radioactive material, the licensee or registrant shall also notify the individual. Such notice shall be transmitted at a time not later than the transmittal to the Executive Secretary, and shall comply with the provisions of Rule R313-18.

R313-15-1208. Reports of Leaking or Contaminated Sealed Sources.

If the test for leakage or contamination required pursuant to Section R313-15-1401 indicates a sealed source is leaking or contaminated, a report of the test shall be filed within five days with the Executive Secretary describing the equipment involved, the test results and the corrective action taken.

R313-15-1301. Vacating Premises.

Each specific licensee or registrant shall, no less than 30 days before vacating or relinquishing possession or control of premises which may have been contaminated with radioactive material as a result of his activities, notify the Executive Secretary in writing of intent to vacate. When deemed necessary by the Executive Secretary, the licensee shall decontaminate the premises in such a manner that the annual total effective dose equivalent to any individual after the site is released for unrestricted use should not exceed 0.1 mSv (0.01 rem)above background and that the annual total effective dose equivalent from any specific environmental source during decommissioning activities should not exceed 0.1 mSv (0.01 rem)above background.

R313-15-1401. Testing for Leakage or Contamination of Sealed Sources.

(1) The licensee or registrant in possession of any sealed source shall assure that:

(a) Each sealed source, except as specified in Subsection R313-15-1401(2), is tested for leakage or contamination and the test results are received before the sealed source is put into use unless the licensee or registrant has a certificate from the transferor indicating that the sealed source was tested within six months before transfer to the licensee or registrant.

(b) Each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the Executive Secretary, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission.

(c) Each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the Executive Secretary, an Agreement State, a Licensing State, or the Nuclear Regulatory Commission.

(d) For each sealed source that is required to be tested for leakage or contamination, at any other time there is reason to suspect that the sealed source might have been damaged or might be leaking, the licensee or registrant shall assure that the sealed source is tested for leakage or contamination before further use.

(e) Tests for leakage for all sealed sources, except brachytherapy sources manufactured to contain radium, shall be capable of detecting the presence of 185 Bq (0.005 uCi) of radioactive material on a test sample. Test samples shall be taken from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted on which one might expect contamination to accumulate. For a

sealed source contained in a device, test samples are obtained when the source is in the "off" position.

(f) The test for leakage for brachytherapy sources manufactured to contain radium shall be capable of detecting an absolute leakage rate of 37 Bq (0.001 uCi) of radon-222 in a 24 hour period when the collection efficiency for radon-222 and its daughters has been determined with respect to collection method, volume and time.

(g) Tests for contamination from radium daughters shall be taken on the interior surface of brachytherapy source storage containers and shall be capable of detecting the presence of 185 Bq (0.005 uCi) of a radium daughter which has a half-life greater than four days.

(2) A licensee or registrant need not perform tests for leakage or contamination on the following sealed sources:

(a) Sealed sources containing only radioactive material with a half-life of less than 30 days;

(b) Sealed sources containing only radioactive material as a gas;

(c) Sealed sources containing 3.7 MBq (100 uCi) or less of beta or photon-emitting material or 370 kBq (ten uCi) or less of alpha-emitting material;

(d) Sealed sources containing only hydrogen-3;

(e) Seeds of iridium-192 encased in nylon ribbon; and

(f) Sealed sources, except teletherapy and brachytherapy sources, which are stored, not being used and identified as in storage. The licensee or registrant shall, however, test each such sealed source for leakage or contamination and receive the test results before any use or transfer unless it has been tested for leakage or contamination within six months before the date of use or transfer.

(3) Tests for leakage or contamination from sealed sources shall be performed by persons specifically authorized by the Executive Secretary, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission to perform such services.

(4) Test results shall be kept in units of becquerel or microcurie and maintained for inspection by representatives of the Executive Secretary. Records of test results for sealed sources shall be made pursuant to Section R313-15-1104.

(5) The following shall be considered evidence that a sealed source is leaking:

(a) The presence of 185 Bq (0.005 uCi) or more of removable contamination on any test sample.

(b) Leakage of 37 Bq (0.001 uCi) of radon-222 per 24 hours for brachytherapy sources manufactured to contain radium.

(c) The presence of removable contamination resulting from the decay of 185 Bq (0.005 uCi) or more of radium.

(6) The licensee or registrant shall immediately withdraw a leaking sealed source from use and shall take action to prevent the spread of contamination. The leaking sealed source shall be repaired or disposed of in accordance with Rule R313-15.

(7) Reports of test results for leaking or contaminated sealed sources shall be made pursuant to Section R313-15-1208.

KEY: radioactive material, contamination, waste disposal, safety

July 23, 2002 **19-3-104**

Notice of Continuation April 30, 1998 **19-3-108**

R313. Environmental Quality, Radiation Control.
R313-22. Specific Licenses.
R313-22-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe the requirements for the issuance of specific licenses.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(3) and 19-3-104(6).

R313-22-2. General.

The provisions and requirements of Rule R313-22 are in addition to, and not in substitution for, other requirements of these rules. In particular the provisions of Rule R313-19 apply to applications and licenses subject to Rule R313-22.

R313-22-4. Definitions.

"Alert" means events may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by off-site response organizations to protect persons off-site.

"Principal activities" means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

"Site Area Emergency" means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by off-site response organizations to protect persons off-site.

R313-22-30. Specific License by Rule.

A license by rule is issued in the following circumstances, without the necessity of filing an application for a specific license as required by Subsection R313-22-32(1), and the licensee shall be subject to the applicable provisions of Sections R313-22-33, R313-22-34, R313-22-35, R313-22-36 and R313-22-37:

(1) When a site must be timely remediated of contamination by radioactive materials that are subject to licensing under these rules but are unlicensed;

(2) When radioactive materials existing as a result of improper handling, spillage, accidental contamination, or unregulated or illegal possession, transfer, or receipt, must be stored and those materials have not been licensed under these rules.

R313-22-32. Filing Application for Specific Licenses.

(1) Applications for specific licenses shall be filed on a form prescribed by the Executive Secretary.

(2) The Executive Secretary may, after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Executive Secretary to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Applications shall be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's behalf.

(4) An application for a license may include a request for a license authorizing one or more activities.

(5) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Executive Secretary, provided the references are clear and specific.

(6) An application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source shall identify the source or device by manufacturer and model number as registered with the U.S. Nuclear Regulatory Commission under 10 CFR 32.210, 2001 ed. or the equivalent regulations of an Agreement State.

(7) As provided by Section R313-22-35, certain applications for specific licenses filed under these rules shall contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before January 1, 1995, this submittal may follow the renewal application but shall be submitted on or before January 1, 1995.

(8)(a) Applications to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Section R313-22-90, "Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release", shall contain either:

(i) An evaluation showing that the maximum dose to a individual off-site due to a release of radioactive materials would not exceed one rem effective dose equivalent or five rems to the thyroid; or

(ii) An emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted under Subsection R313-22-32(8)(a)(i):

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(iii) The release fraction in the respirable size range would be lower than the release fraction shown in Section R313-22-90 due to the chemical or physical form of the material;

(iv) The solubility of the radioactive material would reduce the dose received;

(v) Facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in Section R313-22-90;

(vi) Operating restrictions or procedures would prevent a release fraction as large as that shown in Section R313-22-90; or

(vii) Other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted under Subsection R313-22-32(8)(a)(ii) shall include the following information:

(i) Facility description. A brief description of the licensee's facility and area near the site.

(ii) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(iii) Classification of accidents. A classification system

for classifying accidents as alerts or site area emergencies.

(iv) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(v) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers on-site, and a description of the program for maintaining equipment.

(vi) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the Executive Secretary; also responsibilities for developing, maintaining, and updating the plan.

(viii) Notification and coordination. A commitment to and a brief description of the means to promptly notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured on-site workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the Executive Secretary immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency.

NOTE: These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499 or other state or federal reporting requirements, including 40 CFR 302, 2000 ed.

(ix) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the Executive Secretary.

(x) Training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site including the use of team training for the scenarios.

(xi) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) Exercises. Provisions for conducting quarterly communications checks with off-site response organizations and biennial on-site exercises to test response to simulated emergencies. Quarterly communications checks with off-site response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises although recommended is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(xiii) Hazardous chemicals. A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(d) The licensee shall allow the off-site response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the Executive Secretary. The licensee shall provide any comments received within the 60 days to the Executive Secretary with the emergency plan.

R313-22-33. General Requirements for the Issuance of Specific Licenses.

(1) A license application shall be approved if the Executive Secretary determines that:

(a) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these rules in a manner as to minimize danger to public health and safety or the environment;

(b) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or the environment;

(c) the applicant's facilities are permanently located in Utah, otherwise the applicant shall seek reciprocal recognition as required by Section R313-19-30;

(d) the issuance of the license will not be inimical to the health and safety of the public;

(e) the applicant satisfies applicable special requirements in Sections R313-22-50 and R313-22-75, and Rules R313-24, R313-25, R313-32, R313-34, R313-36, or R313-38; and

(f) in the case of an application for a license to receive and possess radioactive material for commercial waste disposal by land burial, or for the conduct of other activities which the Executive Secretary determines will significantly affect the quality of the environment, the Executive Secretary, before commencement of construction of the plant or facility in which the activity will be conducted, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. The Executive Secretary shall respond to the application within 60 days. Commencement of construction prior to a response and conclusion shall be grounds for denial of a license to receive and possess radioactive material in the plant or facility. As used in this paragraph the term "commencement of construction" means clearing of land, excavation, or other substantial action

that would adversely affect the environment of a site. The term does not mean site exploration, necessary borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

R313-22-34. Issuance of Specific Licenses.

(1) Upon a determination that an application meets the requirements of the Act and the rules of the Board, the Executive Secretary will issue a specific license authorizing the proposed activity in a form and containing conditions and limitations as the Executive Secretary deems appropriate or necessary.

(2) The Executive Secretary may incorporate in licenses at the time of issuance, additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of radioactive material subject to Rule R313-22 as he deems appropriate or necessary in order to:

(a) minimize danger to public health and safety or the environment;

(b) require reports and the keeping of records, and to provide for inspections of activities under the license as may be appropriate or necessary; and

(c) prevent loss or theft of material subject to Rule R313-22.

R313-22-35. Financial Assurance and Recordkeeping for Decommissioning.

(1) Applicants for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2001 ed., which is incorporated by reference, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall also be submitted when a combination of radionuclides is involved if R divided by 10^5 is greater than one, where R is defined here as the sum of the ratios of the quantity of each radionuclide to the applicable value in Appendix B of 10 CFR 30.1 through 30.72, 2001 ed., which is incorporated by reference.

(2) Applicants for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in Subsection R313-22-35(4) shall either:

(a) submit a decommissioning funding plan as described in Subsection R313-22-35(5); or

(b) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Subsection R313-22-35(4) using one of the methods described in Subsection R313-22-35(6). For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6) shall be submitted to the Executive Secretary before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the Executive Secretary, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements in Subsection R313-22-35(6).

(3)(a) Holders of a specific license issued on or after January 1, 1995, which is of a type described in Subsections R313-22-35(1) or (2) shall provide financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(b) Holders of a specific license issued before January 1, 1995, and of a type described in Subsection R313-22-35(1) shall submit, on or before January 1, 1995, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in Section R313-22-35. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(c) Holders of a specific license issued before January 1, 1995, and of a type described in Subsection R313-22-35(2) shall submit, on or before January 1, 1995, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(d) A licensee who has submitted an application before January 1, 1995, for renewal of license in accordance with Section R313-22-37 shall provide financial assurance for decommissioning in accordance with Subsections R313-22-35(1) and (2). This assurance shall be submitted before January 1, 1997.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material:

TABLE

Greater than 10^4 but less than or equal to 10^5 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72, 2001 ed., which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1) divided by 10^4 is greater than one but R divided by 10^5 is less than or equal to one:	$750,000
Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72, 2001 ed., which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1) divided by 10^3 is greater than one but R divided by 10^4 is less than or equal to one:	$150,000
Greater than 10^{10} times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72, 2001 ed., which is incorporated by reference, in sealed	

sources or plated foils. For combination of radionuclides, if R, as defined in R313-22-35(1), divided by 10^{10} is greater than one:	$75,000

(5) A decommissioning funding plan shall contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from Subsection R313-22-35(6), including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. The decommissioning funding plan shall also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6).

(6) Financial assurance for decommissioning shall be provided by one or more of the following methods:

(a) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities;

(b) A surety method, insurance, or other guarantee method. These methods shall guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(8). A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of Section R313-22-35. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(9). A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of Section R313-22-35 or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. A surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:

(i) the surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date the issuer notifies the Executive Secretary, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Executive Secretary within 30 days after receipt of notification of cancellation,

(ii) the surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the Executive Secretary. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency, and

(iii) the surety method or insurance shall remain in effect until the Executive Secretary has terminated the license;

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be as stated in Subsection R313-22-35(6)(b);

(d) In the case of Federal, State or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on the Table in Subsection R313-22-35(4) and indicating that funds for decommissioning will be obtained when necessary; or

(e) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(7) Persons licensed under Rule R313-22 shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), licensees shall transfer all records described in Subsections R313-22-35(7)(a) through (d) to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Executive Secretary considers important to decommissioning consists of the following:

(a) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(b) as-built drawings and modification of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(c) except for areas containing only sealed sources, provided the sources have not leaked or no contamination remains after a leak, or radioactive materials having only half-lives of less than 65 days, a list contained in a single document

and updated every two years, including all of the following:

(i) all areas designated and formerly designated as restricted areas as defined under Section R313-12-3;

(ii) all areas outside of restricted areas that require documentation under Subsection R313-22-35(7)(a);

(iii) all areas outside of restricted areas where current and previous wastes have been buried as documented under Section R313-15-1109; and

(iv) all areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in Sections R313-15-401 through R313-15-406, or apply for approval for disposal under Section R313-15-1002; and

(d) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(8) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), the parent company shall meet one of the following criteria:

(i) The parent company shall have all of the following:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

(B) Net working capital and tangible net worth each at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used;

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used; or

(ii) The parent company shall have all of the following:

(A) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

(B) Tangible net worth at least six times the current decommissioning cost estimate, or prescribed amount if a certification is used;

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if certification is used.

(b) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform the Executive Secretary within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(c)(i) After the initial financial test, the parent company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(ii) If the parent company no longer meets the requirements of Subsection R313-22-35(8)(a) the licensee shall send notice to the Executive Secretary of intent to establish alternative financial assurance as specified in Section R313-22-35. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(d) The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(i) The parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the Executive Secretary. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the Executive Secretary, as evidenced by the return receipts.

(ii) If the licensee fails to provide alternate financial assurance as specified in Section R313-22-35 within 90 days after receipt by the licensee and Executive Secretary of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

(iii) The parent company guarantee and financial test provisions shall remain in effect until the Executive Secretary has terminated the license.

(iv) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the Executive Secretary. An acceptable trustee includes an appropriate State or Federal Government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(9) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), a company shall meet all of the following criteria:

(i) Tangible net worth at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(ii) Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(iii) A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's.

(b) To pass the financial test, a company shall meet all of the following additional requirements:

(i) The company shall have at least one class of equity

securities registered under the Securities Exchange Act of 1934;

(ii) The company's independent certified public accountant shall have compared the data used by the company in the financial test which is derived from the independently audited, yearend financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the Executive Secretary within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; and

(iii) After the initial financial test, the company shall repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(c) If the licensee no longer meets the requirements of Subsection R313-22-35(9)(a), the licensee shall send immediate notice to the Executive Secretary of its intent to establish alternate financial assurance as specified in Section R313-22-35 within 120 days of such notice.

(d) The terms of a self-guarantee which an applicant or licensee furnishes shall provide that:

(i) The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Executive Secretary. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Executive Secretary, as evidenced by the return receipt.

(ii) The licensee shall provide alternative financial assurance as specified in Section R313-22-35 within 90 days following receipt by the Executive Secretary of a notice of a cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the Executive Secretary has terminated the license or until another financial assurance method acceptable to the Executive Secretary has been put in effect by the licensee.

(iv) The licensee shall promptly forward to the Executive Secretary and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in a category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of such fact to the Executive Secretary within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of Subsection R313-22-35(9)(a).

(vi) The applicant or licensee shall provide to the Executive Secretary a written guarantee, a written commitment by a corporate officer, which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Board, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

R313-22-36. Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas.

(1) A specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under Section R313-22-37 no less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license, the existing license expires at the end of the day on which the Executive Secretary makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(2) A specific license revoked by the Executive Secretary expires at the end of the day on the date of the Executive Secretary's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by an Order issued by the Executive Secretary.

(3) A specific license continues in effect, beyond the expiration date if necessary, with respect to possession of radioactive material until the Executive Secretary notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(a) limit actions involving radioactive material to those related to decommissioning; and

(b) continue to control entry to restricted areas until they are suitable for release so that there is not an undue hazard to public health and safety or the environment.

(4) Within 60 days of the occurrence of any of the following, a licensee shall provide notification to the Executive Secretary in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release so that there is not an undue hazard to public health and safety or the environment, or submit within 12 months of notification a decommissioning plan, if required by Subsection R313-22-36(7), and begin decommissioning upon approval of that plan if:

(a) the license has expired pursuant to Subsections R313-22-36(1) or (2); or

(b) the licensee has decided to permanently cease principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release because of an undue hazard to public health and safety or the environment; or

(c) no principal activities under the license have been conducted for a period of 24 months; or

(d) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release because of an undue hazard to public health and safety or the environment.

(5) Coincident with the notification required by Subsection R313-22-36(4), the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to Section R313-22-35 in conjunction with a license issuance or renewal or as required by Section R313-22-36. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to

Subsection R313-22-36(7)(d)(v).

(a) A licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so on or before August 15, 1997.

(b) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Executive Secretary.

(6) The Executive Secretary may grant a request to extend the time periods established in Subsection R313-22-36(4) if the Executive Secretary determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to Subsection R313-22-36(4). The schedule for decommissioning set forth in Subsection R313-22-36(4) may not commence until the Executive Secretary has made a determination on the request.

(7)(a) A decommissioning plan shall be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Executive Secretary and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(b) The Executive Secretary may approve an alternate schedule for submittal of a decommissioning plan required pursuant to Subsection R313-22-36(4) if the Executive Secretary determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(c) Procedures such as those listed in Subsection R313-22-36(7)(a) with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(d) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) a description of planned decommissioning activities;

(iii) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) a description of the planned final radiation survey; and

(v) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(vi) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in Subsection R313-22-36(8).

(e) The proposed decommissioning plan will be approved by the Executive Secretary if the information therein demonstrates that the decommissioning will be completed as soon as practical and that the health and safety of workers and the public will be adequately protected.

(8)(a) Except as provided in Subsection R313-22-36(9), licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practical but no later than 24 months following the initiation of decommissioning.

(b) Except as provided in Subsection R313-22-36(9), when decommissioning involves the entire site, the licensee shall request license termination as soon as practical but no later than 24 months following the initiation of decommissioning.

(9) The Executive Secretary may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Executive Secretary determines that the alternative is warranted by consideration of the following:

(a) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(b) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(c) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(d) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(e) other site-specific factors which the Executive Secretary may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(10) As the final step in decommissioning, the licensee shall:

(a) certify the disposition of all licensed material, including accumulated wastes, by submitting a completed Form DRC-14 or equivalent information; and

(b) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406. The licensee shall, as appropriate:

(i) report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters--removable and fixed--for surfaces, megabecquerels (microcuries) per milliliter for

water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(11) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Executive Secretary determines that:

(a) radioactive material has been properly disposed;

(b) reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c) documentation is provided to the Executive Secretary that:

(i) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406; or

(ii) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406.

R313-22-37. Renewal of Licenses.

Application for renewal of a specific license shall be filed on a form prescribed by the Executive Secretary and in accordance with Section R313-22-32.

R313-22-38. Amendment of Licenses at Request of Licensee.

Applications for amendment of a license shall be filed in accordance with Section R313-22-32 and shall specify the respects in which the licensee desires the license to be amended and the grounds for the amendment.

R313-22-39. Executive Secretary Action on Applications to Renew or Amend.

In considering an application by a licensee to renew or amend the license, the Executive Secretary will use the criteria set forth in Sections R313-22-33, R313-22-50, and R313-22-75 and in Rules R313-24, R313-25, R313-32, R313-34, R313-36, or R313-38, as applicable.

R313-22-50. Special Requirements for Specific Licenses of Broad Scope.

Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity or other product containing byproduct material whose subsequent possession, use, transfer and disposal by all other persons who are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(1) The different types of broad licenses are set forth below:

(a) A "Type A specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of the radioactive material specified in the license, but not exceeding quantities specified in the license, for any authorized purpose. The quantities specified are usually in the multicurie range.

(b) A "Type B specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in Section R313-22-100 for any authorized purpose. The possession limit for a Type B broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in Section R313-22-100, Column I. If two or more radionuclides are possessed thereunder, the possession limits are determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Section R313-22-100, Column I, for that radionuclide. The sum of the ratios for the radionuclides possessed under the license shall not exceed unity.

(c) A "Type C specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in Section R313-22-100, for any authorized purpose. The possession limit for a Type C broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in Section R313-22-100, Column II. If two or more radionuclides are possessed thereunder, the possession limits are determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Section R313-22-100, Column II, for that radionuclide. The sum of the ratios for the radionuclides possessed under the license shall not exceed unity.

(2) An application for a Type A specific license of broad scope shall be approved if all of the following are complied with:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant has engaged in a reasonable number of activities involving the use of radioactive material; and

(c) the applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) the establishment of a radiation safety committee composed of such persons as a radiation safety officer, a representative of management, and persons trained and experienced in the safe use of radioactive material;

(ii) the appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(iii) the establishment of appropriate administrative procedures to assure:

(A) control of procurement and use of radioactive material,

(B) completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures, and

(C) review, approval, and recording by the radiation safety committee of safety evaluations of proposed uses prepared in accordance with Subsection R313-22-50(2)(c)(iii)(B) prior to use of the radioactive material.

(3) An application for a Type B specific license of broad scope shall be approved if all of the following are complied

with:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) the appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(ii) the establishment of appropriate administrative procedures to assure:

(A) control of procurement and use of radioactive material,

(B) completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures, and

(C) review, approval, and recording by the radiation safety officer of safety evaluations of proposed uses prepared in accordance with Subsection R313-22-50(3)(b)(iii)(B) prior to use of the radioactive material.

(4) An application for a Type C specific license of broad scope shall be approved, if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant submits a statement that radioactive material will be used only by, or under the direct supervision of individuals, who have received:

(i) a college degree at the bachelor level, or equivalent training and experience, in the physical or biological sciences or in engineering; and

(ii) at least forty hours of training and experience in the safe handling of radioactive material, and in the characteristics of ionizing radiation, units of radiation dose and quantities, radiation detection instrumentation, and biological hazards of exposure to radiation appropriate to the type and forms of radioactive material to be used; and

(c) the applicant has established administrative controls and provisions relating to procurement of radioactive material, procedures, recordkeeping, material control and accounting, and management review necessary to assure safe operations.

(5) Specific licenses of broad scope are subject to the following conditions:

(a) unless specifically authorized by the Executive Secretary, persons licensed pursuant to this section shall not:

(i) conduct tracer studies in the environment involving direct release of radioactive material;

(ii) receive, acquire, own, possess, use, or transfer devices containing 100,000 curies (3.7 PBq) or more of radioactive material in sealed sources used for irradiation of materials;

(iii) conduct activities for which a specific license issued by the Executive Secretary under Section R313-22-75, and Rules R313-25, R313-32 or R313-36 is required; or

(iv) add or cause the addition of radioactive material to a food, beverage, cosmetic, drug or other product designed for ingestion or inhalation by, or application to, a human being.

(b) Type A specific licenses of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety committee.

(c) Type B specific license of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety officer.

(d) Type C specific license of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used, by or under the direct supervision of, individuals who satisfy the requirements of Subsection R313-22-50(4).

R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material.

(1) Licensing the introduction of radioactive material into products in exempt concentrations.

(a) In addition to the requirements set forth in Section R313-22-33, a specific license authorizing the introduction of radioactive material into a product or material owned by or in the possession of the licensee or another to be transferred to persons exempt under Subsection R313-19-13(2)(a) will be issued if:

(i) the applicant submits a description of the product or material into which the radioactive material will be introduced, intended use of the radioactive material and the product or material into which it is introduced, method of introduction, initial concentration of the radioactive material in the product or material, control methods to assure that no more than the specified concentration is introduced into the product or material, estimated time interval between introduction and transfer of the product or material, and estimated concentration of the radioactive material in the product or material at the time of transfer; and

(ii) the applicant provides reasonable assurance that the concentrations of radioactive material at the time of transfer will not exceed the concentrations in Section R313-19-70, that reconcentration of the radioactive material in concentrations exceeding those in Section R313-19-70 is not likely, that use of lower concentrations is not feasible, and that the product or material is not likely to be incorporated in any food, beverage, cosmetic, drug or other commodity or product designed for ingestion or inhalation by, or application to a human being.

(b) Persons licensed under Subsection R313-22-75(1) shall file an annual report with the Executive Secretary which shall identify the type and quantity of products or materials into which radioactive material has been introduced during the reporting period; name and address of the person who owned or possessed the product and material, into which radioactive material has been introduced, at the time of introduction; the type and quantity of radionuclide introduced into the product or material; and the initial concentrations of the radionuclide in the product or material at time of transfer of the radioactive material by the licensee. If no transfers of radioactive material have been made pursuant to Subsection R313-22-75(1) during the

reporting period, the report shall so indicate. The report shall cover the year ending June 30, and shall be filed within thirty days thereafter.

(2) Licensing the distribution of radioactive material in exempt quantities. Authority to transfer possession or control by the manufacturer, processor or producer of equipment, devices, commodities or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons who are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(a) An application for a specific license to distribute naturally occurring and accelerator-produced radioactive material (NARM) to persons exempted from these rules pursuant to Subsection R313-19-13(2)(b) will be approved if:

(i) the radioactive material is not contained in a food, beverage, cosmetic, drug or other commodity designed for ingestion or inhalation by, or application to, a human being;

(ii) the radioactive material is in the form of processed chemical elements, compounds, or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into a manufactured or assembled commodity, product, or device intended for commercial distribution; and

(iii) the applicant submits copies of prototype labels and brochures and the Executive Secretary approves the labels and brochures;

(b) The license issued under Subsection R313-22-75(2)(a) is subject to the following conditions:

(i) No more than ten exempt quantities shall be sold or transferred in a single transaction. However, an exempt quantity may be composed of fractional parts of one or more of the exempt quantities provided the sum of the fractions shall not exceed unity.

(ii) Exempt quantities shall be separated and individually packaged. No more than ten packaged exempt quantities shall be contained in any outer package for transfer to persons exempt pursuant to Subsection R313-19-13(2)(b). The outer package shall not allow the dose rate at the external surface of the package to exceed 0.5 millirem (5.0 uSv) per hour.

(iii) The immediate container of a quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label which:

(A) identifies the radionuclide and the quantity of radioactivity; and

(B) bears the words "Radioactive Material."

(iv) In addition to the labeling information required by Subsection R313-22-75(2)(b)(iii), the label affixed to the immediate container, or an accompanying brochure, shall:

(A) state that the contents are exempt from Licensing State requirements;

(B) bear the words "Radioactive Material - Not for Human Use - Introduction into Foods, Beverages, Cosmetics, Drugs, or Medicinals, or into Products Manufactured for Commercial Distribution is Prohibited - Exempt Quantities Should Not Be Combined;" and

(C) set forth appropriate additional radiation safety precautions and instructions relating to the handling, use, storage and disposal of the radioactive material.

(c) Persons licensed under Subsection R313-22-75(2) shall maintain records identifying, by name and address, persons to whom radioactive material is transferred for use under Subsection R313-19-13(2)(b) or the equivalent regulations of a Licensing State, and stating the kinds and quantities of radioactive material transferred. An annual summary report stating the total quantity of radionuclides transferred under the specific license shall be filed with the Executive Secretary. Reports shall cover the year ending June 30, and shall be filed within thirty days thereafter. If no transfers of radioactive material have been made pursuant to Subsection R313-22-75(2) during the reporting period, the report shall so indicate.

(3) Licensing the incorporation of naturally occurring and accelerator-produced radioactive material (NARM) into gas and aerosol detectors. An application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt under Subsection R313-19-13(2)(c)(iii) will be approved if the application satisfies requirements equivalent to those contained in 10 CFR 32.26, 2001 ed. The maximum quantity of radium-226 in each device shall not exceed 0.1 microcurie (3.7 kBq).

(4) Licensing the manufacture and distribution of devices to persons generally licensed under Subsection R313-21-22(4).

(a) An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under Subsection R313-21-22(4) or equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State will be approved if:

(i) the applicant satisfies the general requirements of Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(A) the device can be safely operated by persons not having training in radiological protection,

(B) under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that a person will receive in one year, a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1), and

(C) under accident conditions, such as fire and explosion, associated with handling, storage and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:

TABLE

Whole body; head and trunk; active blood-forming organs; gonads; or lens of eye	150.0 mSv (15 rems)
Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square	

centimeter	2.0 Sv (200 rems)
Other organs	500.0 mSv (50 rems); and

(iii) each device bears a durable, legible, clearly visible label or labels approved by the Executive Secretary, which contain in a clearly identified and separate statement:

(A) instructions and precautions necessary to assure safe installation, operation and servicing of the device; documents such as operating and service manuals may be identified in the label and used to provide this information,

(B) the requirement, or lack of requirement, for leak testing, or for testing an "on-off" mechanism and indicator, including the maximum time interval for testing, and the identification of radioactive material by radionuclide, quantity of radioactivity, and date of determination of the quantity, and

(C) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(I) "The receipt, possession, use and transfer of this device, Model No. ....., Serial No. ....., are subject to a general license or the equivalent, and the regulations of the U.S. Nuclear Regulatory Commission or a state with which the U.S. Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION -RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(II) "The receipt, possession, use and transfer of this device, Model No. ....., Serial No. ....., are subject to a general license or the equivalent, and the regulations of a Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION - RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(b) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Executive Secretary will consider information which includes, but is not limited to:

(i) primary containment, or source capsule;

(ii) protection of primary containment;

(iii) method of sealing containment;

(iv) containment construction materials;

(v) form of contained radioactive material;

(vi) maximum temperature withstood during prototype tests;

(vii) maximum pressure withstood during prototype tests;

(viii) maximum quantity of contained radioactive material;

(ix) radiotoxicity of contained radioactive material; and

(x) operating experience with identical devices or similarly designed and constructed devices.

(c) In the event the applicant desires that the general licensee under Subsection R313-21-22(4), or under equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with this activity or activities, and basis for these estimates. The submitted information shall demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1).

(d) Persons licensed under Subsection R313-22-75(4) to distribute devices to generally licensed persons shall:

(i) furnish a copy of the general license contained in Subsection R313-21-22(4) to each person to whom the person directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license contained in Subsection R313-21-22(4);

(ii) furnish a copy of the general license contained in the U.S. Nuclear Regulatory Commission's, Agreement State's, or Licensing State's regulation equivalent to Subsection R313-21-22(4), or alternatively, furnish a copy of the general license contained in Subsection R313-21-22(4) to each person to whom he directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license of the U.S. Nuclear Regulatory Commission, the Agreement State or the Licensing State. If a copy of the general license in Subsection R313-21-22(4) is furnished to such a person, it shall be accompanied by a note explaining that the use of the device is regulated by the U.S. Nuclear Regulatory Commission, Agreement State or Licensing State under requirements substantially the same as those in Subsection R313-21-22(4);

(iii) report to the Executive Secretary all transfers of such devices to persons for use under the general license in Subsection R313-21-22(4). The reports shall identify the general licensee by name and address, an individual by name or position who may constitute a point of contact between the Executive Secretary and the general licensee, the type and model number of device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the

intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user. If no transfers have been made to persons generally licensed under Subsection R313-21-22(4) during the reporting period, the report shall so indicate. The report shall cover each calendar quarter and shall be filed within thirty days thereafter;

(iv) furnish reports to other agencies.

(A) Report to the U.S. Nuclear Regulatory Commission all transfers of those devices to persons for use under the U.S. Nuclear Regulatory Commission general license in 10 CFR 31.5, 2001 ed.

(B) Report to the responsible State agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(4) for use under a general license in that State's regulations equivalent to Subsection R313-21-22(4).

(C) The reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the responsible agency and general licensee, the type and model of the device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user. The report shall be submitted within thirty days after the end of each calendar quarter in which a device is transferred to the generally licensed person.

(D) If transfers have not been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission.

(E) If transfers have not been made to general licensees within a particular state during the reporting period, this information shall be reported to the responsible state agency upon request of that agency; and

(v) keep records showing the name, address and the point of contact for each general licensee to whom the person directly or through an intermediate person transfers radioactive material in devices for use pursuant to the general license provided in Subsection R313-21-22(4), or equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State. The records shall show the date of each transfer, the radionuclide and the quantity of radioactivity in each device transferred, the identity of intermediate persons, and compliance with the report requirements of Subsection R313-22-75(4).

(5) Special requirements for the manufacture, assembly or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble or repair luminous safety devices containing tritium or promethium-147 for use in aircraft for distribution to persons generally licensed under Subsection R313-21-22(5) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.53 through 32.56 and 32.101, 2001 ed, or their equivalent.

(6) Special requirements for license to manufacture calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection R313-21-22(7). An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under Subsection R313-21-22(7) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.57 through 32.59, 32.102 and 10 CFR 70.39, 2001 ed., or their equivalent.

(7) Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection R313-21-22(9) will be approved if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding ten microcuries (370.0 kBq) each;

(ii) iodine-131 in units not exceeding ten microcuries (370.0 kBq) each;

(iii) carbon-14 in units not exceeding ten microcuries (370.0 kBq) each;

(iv) hydrogen-3 (tritium) in units not exceeding 50 microcuries (1.85 MBq) each;

(v) iron-59 in units not exceeding 20 microcuries (740.0 kBq) each;

(vi) cobalt-57 in units not exceeding ten microcuries (370.0 kBq) each;

(vii) selenium-75 in units not exceeding ten microcuries (370.0 kBq) each; or

(viii) mock iodine-125 in units not exceeding 0.05 microcurie (1.85 kBq) of iodine-129 and 0.005 microcurie (185.0 Bq) of americium-241 each;

(c) prepackaged units bear a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed ten microcuries (370.0 kBq) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 50 microcuries (1.85 MBq) of hydrogen-3 (tritium); 20 microcuries (740.0 kBq) of iron-59; or Mock Iodine-125 in units not exceeding 0.05 microcuries (1.85 kBq) of iodine-129 and 0.005 microcurie (185.0 Bq) of americium-241 each; and

(ii) displaying the radiation caution symbol described in Section R313-15-901 and the words, "CAUTION, RADIOACTIVE MATERIAL", and "Not for Internal or External Use in Humans or Animals";

(d) one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(i) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration

of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the U.S. Nuclear Regulatory Commission or of a state with which the U.S. Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority.

.....
Name of Manufacturer"

(ii) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

.....
Name of Manufacturer"

(e) the label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements set out in Section R313-15-1001.

(8) Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection R313-21-22(10) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the criteria of 10 CFR 32.61, 32.62, 32.103, 2001 ed. are met.

(9) Manufacture and distribution of radiopharmaceuticals containing radioactive material for medical use under group licenses.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Rule R313-32 will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits evidence that the applicant is at least one of the following:

(A) registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer;

(B) registered or licensed with a state agency as a drug manufacturer;

(C) licensed as a pharmacy by a State Board of Pharmacy; or

(D) operating as a nuclear pharmacy within a medical institution.

(iii) the applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(iv) the applicant satisfies the following labeling requirements:

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by Subsections R313-22-75(9)(a)(ii)(C) or (D):

(i) May prepare radioactive drugs for medical use, as defined in Section R313-32-2, provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subsections R313-22-75(9)(b)(ii) and (iii), or an individual under the supervision of an authorized nuclear pharmacist as specified in Section R313-32-25.

(ii) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(A) this individual qualifies as an authorized nuclear pharmacist as defined in Section R313-32-2;

(B) this individual meets the requirements specified in Subsection R313-32-980(2) and Section R313-32-972 and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) this individual is designated as an authorized nuclear pharmacist in accordance with Subsection R313-22-75(9)(b)(iii).

(iii) The actions authorized in Subsections R313-22-75(9)(b)(i) and (ii) are permitted in spite of more restrictive language in license conditions.

(iv) May designate a pharmacist, as defined in Section R313-32-2, as an authorized nuclear pharmacist if the individual is identified as of January 1, 1997 as an "authorized user" on a nuclear pharmacy license issued by the Executive Secretary under Subsection R313-22-75(9).

(v) Shall provide to the Executive Secretary a copy of each individual's certification by the Board of Pharmaceutical Specialties, the U.S. Nuclear Regulatory Commission or Agreement State license, or the permit issued by a licensee of broad scope, and a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and (B), the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to

measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(i) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(ii) check each instrument for constancy and proper operation at the beginning of each day of use.

(d) Nothing in Subsection R313-22-75(9) relieves the licensee from complying with applicable FDA, or Federal, and State requirements governing radioactive drugs.

(10) Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed pursuant to Section R313-32-18 for use as a calibration or reference source or for the uses listed in Sections R313-32-400 and R313-32-500 will be approved if:

(a) the applicant satisfies the general requirements in Section R313-22-33;

(b) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form and amount,

(ii) details of design and construction of the source or device,

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,

(iv) for devices containing radioactive material, the radiation profile of a prototype device,

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests,

(vi) procedures and standards for calibrating sources and devices,

(vii) legend and methods for labeling sources and devices as to their radioactive content, and

(viii) instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; provided that instructions which are too lengthy for a label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(c) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the source or device is licensed by the Executive Secretary for distribution to persons licensed pursuant to Sections R313-32-18, R313-32-400, and R313-32-500 or under equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State; provided that labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source;

(d) in the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(e) in determining the acceptable interval for test of leakage of radioactive material, the Executive Secretary shall consider information that includes, but is not limited to:

(i) primary containment or source capsule,

(ii) protection of primary containment,

(iii) method of sealing containment,

(iv) containment construction materials,

(v) form of contained radioactive material,

(vi) maximum temperature withstood during prototype tests,

(vii) maximum pressure withstood during prototype tests,

(viii) maximum quantity of contained radioactive material,

(ix) radiotoxicity of contained radioactive material, and

(x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

(11) Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection R313-21-21(5) or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive a radiation dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1); and

(iii) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the Executive Secretary will approve an application for a specific license under Subsection R313-22-75(11) only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The Executive Secretary may deny an application for a specific license under Subsection R313-22-75(11) if the end

use of the industrial product or device cannot be reasonably foreseen.

(d) Persons licensed pursuant to Subsection R313-22-75(11)(a) shall:

(i) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(ii) label or mark each unit to:

(A) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(B) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State;

(iii) assure that the uranium before being installed in each product or device has been impressed with the following legend clearly legible through a plating or other covering: "Depleted Uranium";

(iv) furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in Subsection R313-21-21(5) or its equivalent:

(A) a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DRC-12; or

(B) a copy of the general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to Subsection R313-21-21(5) and a copy of the U.S. Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DRC-12 with a note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in Subsection R313-21-21(5);

(v) report to the Executive Secretary all transfers of industrial products or devices to persons for use under the general license in Subsection R313-21-21(5). The report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Executive Secretary and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of the calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under Subsection R313-21-21(5) during the reporting period, the report shall so indicate;

(vi) provide certain other reports as follows:

(A) report to the U.S. Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the U.S. Nuclear Regulatory Commission general license in 10 CFR 40.25, 2001 ed.;

(B) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(11) for use under a general license in that state's regulations equivalent to Subsection R313-21-21(5),

(C) reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person,

(D) if no transfers have been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission, and

(E) if no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency; and

(vii) records shall be kept showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection R313-21-21(5) or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in the product or device transferred, and compliance with the report requirements of Subsection R313-22-75(11).

R313-22-90. Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release. Refer to Subsection R313-22-32(8).

TABLE

Radioactive Material(1)	Release Fraction	Quantity (curies)
Actinium-228	0.001	4,000
Americium-241	.001	2
Americium-242	.001	2
Americium-243	.001	2
Antimony-124	.01	4,000
Antimony-126	.01	6,000
Barium-133	.01	10,000
Barium-140	.01	30,000
Bismuth-207	.01	5,000
Bismuth-210	.01	600
Cadmium-109	.01	1,000
Cadmium-113	.01	80
Calcium-45	.01	

20,000		
Californium-252	.001	
9		
(20 mg)		
Carbon-14	.01	50,000
	Non CO	
Cerium-141	.01	10,000
Cerium-144	.01	300
Cesium-134	.01	2,000
Cesium-137	.01	3,000
Chlorine-36	.5	100
Chromium-51	.01	300,000
Cobalt-60	.001	5,000
Copper-64	.01	200,000
Curium-242	.001	
60		
Curium-243	.001	
3		
Curium-244	.001	
4		
Curium-245	.001	
2		
Europium-152	.01	500
Europium-154	.01	400
Europium-155	.01	3,000
Germanium-68	.01	2,000
Gadolinium-153	.01	5,000
Gold-198	.01	30,000
Hafnium-172	.01	400
Hafnium-181	.01	7,000
Holmium-166m	.01	100
Hydrogen-3	.5	20,000
Iodine-125	.5	
10		
Iodine-131	.5	
10		
Indium-114m	.01	1,000
Iridium-192	.001	40,000
Iron-55	.01	40,000
Iron-59	.01	7,000
Krypton-85	1.0	6,000,000
Lead-210	.01	
8		
Manganese-56	.01	60,000
Mercury-203	.01	10,000
Molybdenum-99	.01	30,000
Neptunium-237	.001	
2		
Nickel-63	.01	20,000
Niobium-94	.01	300
Phosphorus-32	.5	100
Phosphorus-33	.5	1,000
Polonium-210	.01	
10		
Potassium-42	.01	9,000
Promethium-145	.01	4,000
Promethium-147	.01	4,000
Ruthenium-106	.01	200
Samarium-151	.01	4,000
Scandium-46	.01	3,000
Selenium-75	.01	10,000
Silver-110m	.01	1,000
Sodium-22	.01	9,000
Sodium-24	.01	10,000
Strontium-89	.01	3,000
Strontium-90	.01	
90		
Sulfur-35	.5	900
Technetium-99	.01	10,000
Technetium-99m	.01	400,000
Tellurium-127m	.01	5,000
Tellurium-129m	.01	5,000
Terbium-160	.01	4,000
Thulium-170	.01	4,000
Tin-113	.01	
10,000		
Tin-123	.01	
3,000		
Tin-126	.01	
1,000		
Titanium-44	.01	
100		
Vanadium-48	.01	
7,000		
Xenon-133	1.0	
900,000		
Yttrium-91	.01	
2,000		
Zinc-65	.01	
5,000		
Zirconium-93	.01	
400		
Zirconium-95	.01	
5,000		
Any other beta-gamma emitter	.01	
10,000		
Mixed fission products	.01	
1,000		
Mixed corrosion products	.01	
10,000		
Contaminated equipment, beta-gamma	.001	
10,000		
Irradiated material, any form other than solid noncombustible	.01	
1,000		
Irradiated material, solid noncombustible	.001	
10,000		
Mixed radioactive waste, beta-gamma	.01	
1,000		
Packaged mixed waste, beta-gamma(2)	.001	
10,000		
Any other alpha emitter	.001	
2		
Contaminated equipment, alpha	.0001	
20		
Packaged waste, alpha(2)	.0001	
20		
Combinations of radioactive materials listed above(1)	-----	----
-		

(1) For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in Section R313-22-90 exceeds one.

(2) Waste packaged in Type B containers does not require an emergency plan.

R313-22-100. Limits for Broad Licenses. Refer to Section R313-22-50.

TABLE

RADIOACTIVE MATERIAL	COLUMN I	COLUMN II
	CURIES	
Antimony-122	1	0.01
Antimony-124	1	0.01
Antimony-125	1	0.01
Arsenic-73	10	0.1
Arsenic-74	1	0.01
Arsenic-76	1	0.01
Arsenic-77	10	0.1
Barium-131	10	0.1
Barium-140	1	0.01

Beryllium-7	10	0.1	Nickel-63	1	0.01
Bismuth-210	0.1	0.001	Nickel-65	10	0.1
Bromine-82	10	0.1	Niobium-93m	1	0.01
Cadmium-109	1	0.01	Niobium-95	1	0.01
Cadmium-115m	1	0.01	Niobium-97	100	1
Cadmium-115	10	0.1	Osmium-185	1	0.01
Calcium-45	1	0.01	Osmium-191m	100	1
Calcium-47	10	0.1	Osmium-191	10	0.1
Carbon-14	100	1	Osmium-193	10	0.1
Cerium-141	10	0.1	Palladium-103	10	0.1
Cerium-143	10	0.1	Palladium-109	10	0.1
Cerium-144	0.1	0.001	Phosphorus-32	1	0.01
Cesium-131	100	1	Platinum-191	10	0.1
Cesium-134m	100	1	Platinum-193m	100	1
Cesium-134	0.1	0.001	Platinum-193	10	0.1
Cesium-135	1	0.01	Platinum-197m	100	1
Cesium-136	10	0.1	Platinum-197	10	0.1
Cesium-137	0.1	0.001	Polonium-210	0.01	0.0001
Chlorine-36	1	0.01	Potassium-42	1	0.01
Chlorine-38	100	1	Praseodymium-142	10	0.1
Chromium-51	100	1	Praseodymium-143	10	0.1
Cobalt-57	10	0.1	Promethium-147	1	0.01
Cobalt-58m	100	1	Promethium-149	10	0.1
Cobalt-58	1	0.01	Radium-226	0.01	0.0001
Cobalt-60	0.1	0.001	Rhenium-186	10	0.1
Copper-64	10	0.1	Rhenium-188	10	0.1
Dysprosium-165	100	1	Rhodium-103m	1,000	10
Dysprosium-166	10	0.1	Rhodium-105	10	0.1
Erbium-169	10	0.1	Rubidium-86	1	0.01
Erbium-171	10	0.1	Rubidium-87	1	0.01
Europium-152 (9.2h)	10	0.1	Ruthenium-97	100	1
Europium-152 (13y)	0.1	0.001	Ruthenium-103	1	0.01
Europium-154	0.1	0.001	Ruthenium-105	10	0.1
Europium-155	1	0.01	Ruthenium-106	0.1	0.001
Fluorine-18	100	1	Samarium-151	1	0.01
Gadolinium-153	1	0.01	Samarium-153	10	0.1
Gadolinium-159	10	0.1	Scandium-46	1	0.01
Gallium-72	10	0.1	Scandium-47	10	0.1
Germanium-71	100	1	Scandium-48	1	0.01
Gold-198	10	0.1	Selenium-75	1	0.01
Gold-199	10	0.1	Silicon-31	10	0.1
Hafnium-181	1	0.01	Silver-105	1	0.01
Holmium-166	10	0.1	Silver-110m	0.1	0.001
Hydrogen-3	100	1	Silver-111	10	0.1
Indium-113m	100	1	Sodium-22	0.1	0.001
Indium-114m	1	0.01	Sodium-24	1	0.01
Indium-115m	100	1	Strontium-85m	1,000	10
Indium-115	1	0.01	Strontium-85	1	0.01
Iodine-125	0.1	0.001	Strontium-89	1	0.01
Iodine-126	0.1	0.001	Strontium-90	0.01	0.0001
Iodine-129	0.1	0.01	Strontium-91	10	0.1
Iodine-131	0.1	0.001	Strontium-92	10	0.1
Iodine-132	10	0.1	Sulphur-35	10	0.1
Iodine-133	1	0.01	Tantalum-182	1	0.01
Iodine-134	10	0.1	Technetium-96	10	0.1
Iodine-135	1	0.01	Technetium-97m	10	0.1
Iridium-192	1	0.01	Technetium-97	10	0.1
Iridium-194	10	0.1	Technetium-99m	100	1
Iron-55	10	0.1	Technetium-99	1	0.01
Iron-59	1	0.01	Tellurium-125m	1	0.01
Krypton-85	100	1	Tellurium-127m	1	0.01
Krypton-87	10	0.1	Tellurium-127	10	0.1
Lanthanum-140	1	0.01	Tellurium-129m	1	0.01
Lutetium-177	10	0.1	Tellurium-129	100	1
Manganese-52	1	0.01	Tellurium-131m	10	0.1
Manganese-54	1	0.01	Tellurium-132	1	0.01
Manganese-56	10	0.1	Terbium-160	1	0.01
Mercury-197m	10	0.1	Thallium-200	10	0.1
Mercury-197	10	0.1	Thallium-201	10	0.1
Mercury-203	1	0.01	Thallium-202	10	0.1
Molybdenum-99	10	0.1	Thallium-204	1	0.01
Neodymium-147	10	0.1	Thulium-170	1	0.01
Neodymium-149	10	0.1	Thulium-171	1	0.01
Nickel-59	10	0.1	Tin-113	1	0.01

Tin-125	1	0.01
Tungsten-181	1	0.01
Tungsten-185	1	0.01
Tungsten-187	10	0.1
Vanadium-48	1	0.01
Xenon-131m	1,000	10
Xenon-133	100	1
Xenon-135	100	1
Ytterbium-175	10	0.1
Yttrium-90	1	0.01
Yttrium-91	1	0.01
Yttrium-92	10	0.1
Yttrium-93	1	0.01
Zinc-65	1	0.01
Zinc-69m	10	0.1
Zinc-69	100	1
Zirconium-93	1	0.01
Zirconium-95	1	0.01
Zirconium-97	1	0.01
Any radioactive material other than source material, special nuclear material, or alpha-emitting radioactive material not listed above	0.1	0.001

R313-22-210. Registration of Product Information.

Licensees who manufacture or initially distribute a sealed source or device containing a sealed source whose product is intended for use under a specific license or general license are deemed to have provided reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and the environment if the sealed source or device has been evaluated in accordance with 10 CFR 32.210, 2001 ed. or equivalent regulations of an Agreement State.

KEY: specific licenses, decommissioning, broad scope, radioactive materials
July 23, 2002 19-3-104
Notice of Continuation October 10, 2001 19-3-108

R315. Environmental Quality, Solid and Hazardous Waste.
R315-301. Solid Waste Authority, Definitions, and General Requirements.
R315-301-1. Authority and Purpose.

The Solid Waste Permitting and Management Rules are promulgated under the authority of the Solid and Hazardous Waste Act, Chapter 6 of Title 19, to protect human health, to prevent land, air and water pollution, and to conserve the state's natural, economic and energy resources by setting minimum performance standards for the proper management of solid wastes originating from residences, commercial, agricultural, and other sources.

R315-301-2. Definitions.

Terms used in Rules R315-301 through R315-320 are defined in Sections 19-1-103 and 19-6-102. In addition, for the purpose of Rules R315-301 through 320, the following definitions apply.

(1) "Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being conducted.

(2) "Airport" means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(3) "Aquifer" means a geological formation, group of formations, or portion of a formation that contains sufficiently saturated permeable material to yield useable quantities of ground water to wells or springs.

(4) "Areas susceptible to mass movement" means those areas of influence, characterized as having an active or substantial possibility of mass movement, where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock falls.

(5) "Asbestos Waste" means friable asbestos, which is any material containing more than 1% asbestos as determined using the method specified in Appendix A, 40 CFR Part 763.1, 2001 ed., which is adopted and incorporated by reference, that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) "Background concentration" means the concentration of a contaminant in ground water upgradient or a lateral hydraulically equivalent point from a facility, practice, or activity, and which has not been affected by that facility, practice, or activity.

(7) "Class I landfill" means a non-commercial landfill or a landfill solely under contract with a local government taking municipal solid waste generated within the boundaries of the local government that is permitted by the Executive Secretary to receive municipal solid waste and any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit, for disposal and receives, on a yearly average, over 20 tons of solid waste per day.

(8) "Class II landfill" means a non-commercial landfill or a landfill solely under contract with a local government taking municipal solid waste generated within the boundaries of the local government that is permitted by the Executive Secretary to receive municipal solid waste and any other nonhazardous waste, not otherwise limited by rule or solid waste permit, for disposal and receives, on a yearly average, 20 tons, or less, of solid waste per day.

(9) "Class III landfill" means a non-commercial landfill that is permitted by the Executive Secretary to receive only nonhazardous industrial solid waste for disposal.

(10) "Class IV landfill" means a non-commercial landfill that is permitted by the Executive Secretary to receive only nonhazardous construction/demolition waste, yard waste, inert waste, dead animals, or upon meeting the requirements of Section 19-6-804 and Section R315-320-3, waste tires and materials derived from waste tires for disposal.

(11) "Class V landfill" means a commercial nonhazardous solid waste disposal facility, as defined by Subsection 19-6-102(3)(a), that is permitted by the Executive Secretary to receive municipal solid waste and any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit, for disposal. Class V Landfill does not include a landfill that is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.

(12) "Class VI Landfill" means a commercial nonhazardous solid waste landfill that is permitted by the Executive Secretary to receive inert waste; construction/demolition waste; yard waste; or upon meeting the requirements of Section 19-6-804 and Subsection R315-320-3(1) or (2), waste tires and materials derived from waste tires for disposal.

(a) A Class VI Landfill may not receive for disposal:

(i) hazardous waste as defined by Subsection R315-301-2(30);

(ii) construction/demolition waste containing PCBs except as allowed by Section R315-315-7;

(iii) conditionally exempt small quantity generator hazardous waste as defined by Subsection R315-2-5;

(iv) garbage as defined by Subsection R315-301-2(27);

(v) dead animals;

(vi) municipal solid waste as defined by Subsection R315-301-2(47); or

(vii) industrial solid waste as defined by Subsection R315-301-2(35).

(b) The wastes received at a Class VI Landfill may be further limited by a solid waste permit.

(c) A Class VI Landfill may not change to a Class V Landfill except by meeting all requirements for a Class V Landfill including obtaining a new Class V Landfill permit and completing the requirements specified in Subsection R315-310-3(2).

(13) "Closed facility" means any facility that no longer receives solid waste and has completed an approved closure plan, and any landfill on which an approved final cover has been installed.

(14) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household waste and industrial wastes.

(15) "Composite liner" means a liner system consisting of

two components: the upper component consisting of a synthetic flexible membrane liner, and the lower component consisting of a layer of compacted soil. The composite liner must have the synthetic flexible membrane liner installed in direct and uniform contact with the compacted soil component and be constructed of specified materials and compaction to meet specified permeabilities.

(16) "Composting" means a method of solid waste management whereby the organic component of the waste stream is biologically decomposed under controlled conditions to a state in which the end product or compost can be safely handled, stored, or applied to the land without adversely affecting human health or the environment.

(17) "Construction/demolition waste" means solid waste from building materials, packaging, and rubble resulting from construction, remodeling, repair, abatement, rehabilitation, renovation, and demolition operations on pavements, houses, commercial buildings, and other structures. Such waste may include: bricks, concrete, other masonry materials, soil, asphalt, rock, untreated lumber, rebar, and tree stumps. It does not include asbestos, contaminated soils or tanks resulting from remediation or clean-up at any release or spill, waste paints, solvents, sealers, adhesives, or similar hazardous or potentially hazardous materials.

(18) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water or soil which is a result of human activity.

(19) "Displaced" or "displacement" means the relative movement of any two sides of a fault measured in any direction.

(20) "Drop box facility" means a facility used for the placement of a large detachable container or drop box for the collection of solid waste for transport to a solid waste disposal facility. The facility includes the area adjacent to the containers for necessary entrance, exit, unloading, and turn-around areas. Drop box facilities normally serve the general public with uncompacted loads and receive waste from off-site. Drop box facilities do not include residential or commercial waste containers on the site of waste generation.

(21) "Energy recovery" means the recovery of energy in a useable form from incineration, burning, or any other means of using the heat of combustion of solid waste that involves high temperature (above 1200 degrees Fahrenheit) processing.

(22) "Existing facility" means any facility that was receiving solid waste on or before July 15, 1993.

(23) "Expansion of a solid waste disposal facility" means any lateral or vertical expansion beyond or above the boundaries outlined in the initial permit application. Where no boundaries were designated in the disposal facility permit, expansion shall apply to all new land purchased or acquired after the effective date of these rules.

(24) "Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more incinerators, landfills, container storage areas, or combinations of these.

(25) "Floodplain" means the land which has been or may be hereafter covered by flood water which has a 1% chance of occurring any given year. The flood is also referred to as the base flood or 100-year flood.

(26) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure or as determined by EPA test method 9095 (Paint Filter Liquids Test) as provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste" as revised December (1996) which is adopted and incorporated by reference.

(27) "Garbage" means discarded animal and vegetable wastes and animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, and of such a character and proportion as to be capable of attracting or providing food for vectors. Garbage does not include sewage and sewage sludge.

(28) "Ground water" means subsurface water which is in the zone of saturation including perched ground water.

(29) "Ground water quality standard" means a standard for maximum allowable contamination in ground water as set by Section R315-308-4.

(30) "Hazardous waste" means hazardous waste as defined by Subsection 19-6-102(9) and Section R315-2-3.

(31) "Holocene fault" means a fracture or zone of fractures along which rocks on one side of the fracture have been displaced with respect to those on the other side, which has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene, approximately 11,000 years ago, to the present.

(32) "Household size" means a container for a material or product that is normally and reasonably associated with households or household activities. The containers are of a size and design to hold materials or products generally for immediate use and not for storage, five gallons or less in size.

(33) "Household waste" means any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(34) "Incineration" means a controlled thermal process by which solid wastes are physically or chemically altered to gas, liquid, or solid residues which are also regulated solid wastes. Incineration does not include smelting operations where metals are reprocessed or the refining, processing, or the burning of used oil for energy recovery as described in Rule R315-15.

(35) "Industrial solid waste" means any solid waste generated at a manufacturing or other industrial facility that is not a hazardous waste. Industrial solid waste includes waste resulting from the following manufacturing processes and associated activities: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing or foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste; oil and gas waste; or other waste excluded by Subsection 19-6-102(17)(b).

(36) "Industrial solid waste facility" means a facility which receives only industrial solid waste from on-site or off-site

sources for disposal.

(37) "Inert waste" means noncombustible, nonhazardous solid wastes that retain their physical and chemical structure under expected conditions of disposal, including resistance to biological or chemical attack.

(38) "Landfill" means a disposal facility where solid waste is placed in or on the land and which is not a landtreatment facility or surface impoundment.

(39) "Landtreatment, landfarming, or landspreading facility" means a facility or part of a facility where solid waste is applied onto or incorporated into the soil surface for the purpose of biodegradation.

(40) "Lateral expansion of a solid waste disposal facility" means any horizontal expansion of the waste boundaries of an existing landfill cell, module, or unit or expansions not consistent with past normal operating practices.

(41) "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.

(42) "Leachate" means a liquid that has passed through or emerged from solid waste and may contain soluble, suspended, miscible, or immiscible materials removed from such waste.

(43) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include human-made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(44) "Lower explosive limit" means the lowest percentage by volume of a mixture of explosive gases which will propagate a flame in air at 25 degrees Celsius (77 degrees Fahrenheit) and atmospheric pressure.

(45) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on site specific seismic risk assessment.

(46) "Municipal solid waste landfill" means a permitted nonhazardous solid waste landfill that may receive municipal solid waste for disposal.

(47) "Municipal solid waste" means household waste, nonhazardous commercial solid waste, and non-hazardous sludge.

(48) "New facility" means any facility that begins receiving solid waste after July 15, 1993.

(49) "Off-site" means any site which is not on-site.

(50) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along the right-of-way. Property separated by a private right-of-way, which the site owner or operator controls, and to which the public does not have access, is also considered on-site property.

(51) "Operator" means the person, as defined by Subsection 19-1-103(4), responsible for the overall operation of a facility.

(52) "Owner" means the person, as defined by Subsection 19-1-103(4), who owns a facility or part of a facility.

(53) "PCB" or "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of materials which contain such substances.

(54) "Permeability" means the ease with which a porous material allows water and the solutes contained therein to flow through it. This is usually expressed in units of centimeters per second (cm/sec) and termed hydraulic conductivity. Soils and synthetic liners with a permeability for water of 1×10^{-7} cm/sec or less may be considered impermeable.

(55) "Permit" means the plan approval as required by Subsection 19-6-108(3)(a), or equivalent control document issued by the Executive Secretary to implement the requirements of the Utah Solid and Hazardous Waste Act.

(56) "Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

(57) "Poor foundation conditions" means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a landfill unit.

(58) "Putrescible" means organic material subject to decomposition by microorganisms.

(59) "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

(60) "Recycling" means extracting valuable materials from the waste stream and transforming or remanufacturing them into usable materials that have a demonstrated or potential market.

(a) Recycling does not include processes that generate such volumes of material that no market exists for the material.

(b) Any part of the waste stream entering a recycling facility and subsequently returned to a waste stream or disposed has the same regulatory designation as the original waste.

(c) Recycling includes the substitution of nonhazardous solid waste fuels for conventional fuels (such as coal, natural gas, and petroleum products) for the purpose of generating the heat necessary to manufacture a product.

(61) "Recyclable materials" means those solid wastes that can be recovered from or otherwise diverted from the waste stream for the purpose of recycling, such as metals, paper, glass, and plastics.

(62) "Run-off" means any rainwater, leachate, or other liquid that has contacted solid waste and drains over land from any part of a facility.

(63) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto the active area of a facility.

(64) "Scavenging" means the uncontrolled removal of solid waste from a facility.

(65) "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizonal acceleration in

lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years.

(66) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from septic tank systems.

(67) "Sharps" means any discarded or contaminated article or instrument from a health facility that may cause puncture or cuts. Such waste may include needles, syringes, blades, needles with attached tubing, pipettes, pasteurs, broken glass, and blood vials.

(68) "Sludge" means any solid, semisolid, or liquid waste, including grit and screenings generated from a:

(a) municipal, commercial, or industrial waste water treatment plant;

(b) water supply treatment plant;

(c) car wash facility;

(d) air pollution control facility; or

(e) any other such waste having similar characteristics.

(69) "Solid waste disposal facility" means a facility or part of a facility at which solid waste is received from on-site or off-site sources and intentionally placed into or on land and at which waste, if allowed by permit, may remain after closure. Solid waste disposal facilities include landfills, incinerators, and land treatment areas.

(70) "Solid waste incinerator facility" means a facility at which solid waste is received from on-site or off-site sources and is subjected to the incineration process. An incinerator facility that incinerates solid waste for any reason, including energy recovery, volume reduction, or to render it non-infectious, is a solid waste incinerator facility and is subject to Rules R315-301 through 320.

(71) "Special waste" means discarded solid waste that may require special handling or other solid waste that may pose a threat to public safety, human health, or the environment. Special waste may include:

(a) ash;

(b) automobile bodies;

(c) furniture and appliances;

(d) infectious waste;

(e) waste tires;

(f) dead animals;

(g) asbestos;

(h) waste exempt from the hazardous waste regulations under Section R315-2-4;

(i) conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5;

(j) waste containing PCBs;

(k) petroleum contaminated soils;

(l) waste asphalt; and

(m) sludge.

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

(73) "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, and any other component used in the construction and operation of a landfill that is necessary for the protection of human health and the environment.

(74) "Surface impoundment or impoundment" means a facility or part of a facility which is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with synthetic materials, which is designed to hold an accumulation of liquid waste or waste containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(75) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility that is staffed by a minimum of one employee of the owner or operator during hours of operation and is used by persons and route collection vehicles to deposit collected solid waste from off-site into a larger transfer vehicle for transport to a solid waste handling or disposal facility.

(76) "Transport vehicle" means a vehicle capable of hauling large amounts of solid waste such as a truck, packer, or trailer that may be used by refuse haulers to transport solid waste from the point of generation to a transfer station or a disposal facility.

(77) "Twenty-five year storm" means a 24-hour storm of such intensity that it has a 4% probability of being equaled or exceeded any given year. The storm could result in what is referred to as a 25-year flood.

(78) "Unit boundary" means a vertical surface located at the hydraulically downgradient limit of a landfill unit or other solid waste disposal facility unit which is required to monitor ground water. This vertical surface extends down into the ground water.

(79) "Unstable area" means a location that is susceptible to natural or human induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(80) "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.

(81) "Vector" means a living animal including insect or other arthropod which is capable of transmitting an infectious disease from one organism to another.

(82) "Washout" means the carrying away of solid waste by waters of a base or 100-year flood.

(83) "Waste tire storage facility" or "waste tire pile" means any site where more than 1,000 waste tires or 1,000 passenger tire equivalents are stored on the ground.

(a) A waste tire storage facility includes:

(i) whole waste tires used as a fence;

(ii) whole waste tires used as a windbreak; and

(iii) waste tire generators where more than 1,000 waste tires are held.

(b) A waste tire storage facility does not include:

(i) a site where waste tires are stored exclusively in buildings or in trailers;

(ii) if whole waste tires are stored for five or fewer days, the site of a registered tire recycler or a processor for a registered tire recycler;

(iii) a permitted solid waste disposal facility that stores whole tires in piles for not longer than one year;

(iv) a staging area where tires are temporarily placed on the ground, not stored, to accommodate activities such as sorting, assembling, or loading or unloading of trucks; or

(v) a site where waste tires or material derived from waste tires are stored for five or fewer days and are used for ballast to maintain covers on agricultural materials or to maintain covers at a construction site or are to be recycled or applied to a beneficial use.

(c) Tires attached to a vehicle are not considered waste tires until they are removed from the vehicle.

(84) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(85) "Yard waste" means vegetative matter resulting from landscaping, land maintenance, and land clearing operations including grass clippings, prunings, and other discarded material generated from yards, gardens, parks, and similar types of facilities. Yard waste does not include garbage, paper, plastic, processed wood, sludge, septage, or manure.

R315-301-3. Owner Responsibilities for Solid Waste.

The owner, operator or occupant of any premises or business establishment shall be responsible for the management and disposal of all solid waste generated or accumulated by the owner, operator, or occupant of the property in compliance with the Utah Solid Waste Permitting and Management Rules and the Utah Solid and Hazardous Waste Act.

R315-301-4. Prohibition of Illegal Disposal or Incineration of Solid Waste.

(1) No person shall incinerate, burn, or otherwise dispose of any solid waste in any place except at a facility which is in compliance with the requirements of Rules R315-301 through 320 and other applicable rules.

(2) When deposition or disposal of the following materials does not cause a hazard to human health or the environment or cause a public nuisance, the requirements of Rules R315-301 through 320 do not apply to:

(a) inert waste used as fill material;

(b) the disposal of mine tailings and overburden;

(c) the disposal of vegetative material generated as a result of land clearing; or

(d) the disposal of vegetative agricultural waste.

R315-301-5. Permit Required.

(1) No solid waste disposal facility shall be maintained, established, or expanded until the owner or operator of such facility has obtained a permit from the Executive Secretary.

(2) The owner or operator of a solid waste disposal facility shall operate the facility in accordance with the conditions of the permit and otherwise follow the permit.

(3) In areas where no public or duly licensed disposal service is available, the on-site disposal of on-site generated nonhazardous solid waste from a single family farm or a single family ranch does not require a permit.

R315-301-6. Protection of Human Health and the Environment.

(1) The management of solid waste shall not present a threat to human health or the environment.

(2) Any contamination of the ground water, surface water, air, or soil that results from the management of solid waste which presents a threat to human health or the environment shall be remediated through appropriate corrective action.

KEY: solid waste management, waste disposal

June 15, 2002	**19-6-105**
Notice of Continuation April 2, 1998	**19-6-108**
	19-6-109
	40 CFR
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R315. Environmental Quality, Solid and Hazardous Waste.
R315-302. Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements.
R315-302-1. Location Standards for Disposal Facilities.

(1) Applicability.

(a) These standards apply to:

(i) Class I, II, and V Landfills;

(ii) Class III Landfills as specified in Rule R315-304;

(iii) Class IV and VI Landfills as specified in Rule R315-305; and

(iv) each new disposal facility and any existing disposal facility seeking facility expansion, including landfills, landtreatment disposal sites, and piles that are to be closed as landfills.

(b) These standards, unless otherwise noted, do not apply to:

(i) an existing facility;

(ii) transfer stations and drop box facilities;

(iii) piles used for storage;

(iv) composting or utilization of sludge or other solid waste on land; or

(v) hazardous waste disposal sites regulated by Rules R315-1 through R315-50 and Rule R315-101.

(2) Location Standards. Each applicable solid waste facility shall be subject to the following location standards.

(a) Land Use Compatibility. No new facility shall be located within:

(i) one thousand feet of a national, state or county park, monument, or recreation area; designated wilderness or wilderness study area; or wild and scenic river area;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitat for threatened or endangered species as designated pursuant to the Endangered Species Act of 1982;

(iii) farmland classified or evaluated as "prime," "unique," or of "statewide importance" by the U.S. Department of Agriculture Soil Conservation Service under the Prime Farmland Protection Act;

(iv) one-fourth mile of:

(A) existing permanent dwellings, residential areas, and other incompatible structures such as schools or churches unless otherwise allowed by local zoning or ordinance; and

(B) historic structures or properties listed or eligible to be listed in the State or National Register of Historic Places;

(v) ten thousand feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft unless the owner or operator demonstrates that the facility design and operation will not increase the likelihood of bird/aircraft collisions. Every new and existing disposal facility is subject to this requirement. If a new landfill or a lateral expansion of an existing landfill is located within five miles of an airport runway end, the owner or operator must notify the affected airport and the Federal Aviation Administration; or

(vi) areas with respect to archeological sites that would violate Section 9-8-404.

(b) Geology. No new facility or lateral expansion of an existing facility shall be located in a subsidence area, a dam failure flood area, above an underground mine, above a salt dome, above a salt bed, or on or adjacent to geologic features which could compromise the structural integrity of the facility.

(i) Holocene Fault Areas. A new facility or a lateral expansions of an existing facility shall not be located within 200 feet of a Holocene fault unless the owner or operator demonstrates to the Executive Secretary that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the unit and will be protective of human health and the environment.

(ii) Seismic Impact Zones. A new facility or a lateral expansion of an existing facility shall not be located in seismic impact zones unless the owner or operator demonstrates to the satisfaction of the Executive Secretary that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(iii) Unstable Areas. The owner or operator of an existing facility, a lateral expansion of an existing facility, or a new facility located in an unstable area must demonstrate to the satisfaction of the Executive Secretary that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted. The owner or operator must consider the following factors when determining whether an area is unstable:

(A) on-site or local soil conditions that may result in significant differential settling;

(B) on-site or local geologic or geomorphologic features; and

(C) on-site or local human-made features or events, both surface and subsurface.

(c) Surface Water.

(i) No new facility or lateral expansion of an existing facility shall be located on any public land that is being used by a public water system for water shed control for municipal drinking water purposes, or in a location that could cause contamination to a lake, reservoir, or pond.

(ii) Floodplains. No new or existing facility shall be located in a floodplain unless the owner or operator demonstrates to the Executive Secretary that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in a washout of solid waste so as to pose a hazard to human health or the environment.

(d) Wetlands. No new facility or lateral expansion of an existing facility shall be located in wetlands unless the owner or operator demonstrates to the Executive Secretary that:

(i) where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(ii) the unit will not violate any applicable state water quality standard or section 307 of the Clean Water Act;

(iii) the unit will not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of a critical habitat protected under the Endangered Species Act of 1973;

(iv) the unit will not cause or contribute to significant

degradation of wetlands. The owner or operator must demonstrate the integrity of the unit and its ability to protect ecological resources by addressing the following factors:

(A) erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the unit;

(B) erosion, stability, and migration potential of dredged and fill materials used to support the unit;

(C) the volume and chemical nature of the waste managed in the unit;

(D) impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) the potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(F) any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(v) to the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands, as defined by acreage and function, by first avoiding impacts to wetlands to the maximum extent practicable as required by Subsection R315-302-1(2)(d)(i), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(vi) sufficient information is available to make a reasonable determination with respect to these demonstrations.

(e) Ground Water.

(i) No new facility or lateral expansion of an existing facility shall be located at a site:

(A) where the bottom of the lowest liner is less than five feet above the historical high level of ground water; or

(B) for a landfill that is not required to install a liner, the lowest level of waste must be at least ten feet above the historical high level of ground water.

(C) If the aquifer beneath a landfill contains ground water which has a Total Dissolved Solids (TDS) of 10,000 mg/l or greater and the landfill is constructed with a composite liner, the bottom of the lowest liner may be less than five feet above the historical high level of the ground water.

(ii) No new facility shall be located over a sole source aquifer as designated in 40 CFR 149.

(iii) No new facility shall be located over groundwater classed as IB under Section R317-6-3.3.

(iv) Unless all units of the proposed facility are constructed with a composite liner or other equivalent design approved by the Executive Secretary:

(A) a new facility located above any aquifer containing ground water which has a TDS content below 1,000 mg/l which does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is greater than 100 feet; or

(B) a new facility located above any aquifer containing ground water which has a TDS content between 1,000 and 3,000 mg/l and does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is 50 feet or greater.

(C) The applicant for the proposed facility will make the demonstration of ground water quality necessary to determine the appropriate aquifer classification.

(v) No new facility shall be located in designated drinking water source protection areas or, if no source protection area is designated, within a distance to existing drinking water wells or springs for public water supplies of 250 days ground water travel time. This requirement does not include on-site operation wells. The applicant for the proposed facility will make the demonstration, acceptable to the Executive Secretary, of hydraulic conductivity and other information necessary to determine the 250 days ground water travel distance.

(vi) Ground Water Exception. Subject to the ground water performance standard stated in Subsection R315-303-3(1), if a solid waste disposal facility is to be located over an area where the ground water has a TDS of 10,000 mg/l or greater, or where there is an extreme depth to ground water, or where there is a natural impermeable barrier above the ground water, or where there is no ground water, the Executive Secretary may exempt the disposal site, on a site specific basis, from some design criteria and ground water monitoring. Exemption of ground water monitoring may require the owner or operator to make the demonstration stated in Subsection R315-308-1(3).

(3) Exemptions. Exemptions from the location standards with respect to airports, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas cannot be granted. Exemptions from other location standards of this section may be granted by the Executive Secretary on a site specific basis if it is determined that the exemption will cause no adverse impacts to public health or the environment.

(a) No exemption may be granted without application to the Executive Secretary.

(b) If an exemption is granted, a facility may be required to have more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(c) All applications for exemptions shall meet the conditions of Section R315-311-3 pertaining to public notice and comment period.

R315-302-2. General Facility Requirements.

(1) Applicability.

(a) Each new landfill, expansion of an existing landfill, energy recovery or incinerator facility, landtreatment disposal site, waste tire storage facility, transfer station, and existing facility applying for a permit or permit renewal shall meet the requirements of Section R315-302-2.

(b) Any facility which stores waste in piles that is subject to the requirements of Rule R315-314 shall meet the applicable requirements of Section R315-302-2.

(c) Any recycling facility or composting facility subject to the standards of Rule R315-312 shall submit a plan of operation, to the Executive Secretary, that demonstrates compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(i) The submitted plan of operation shall be reviewed to determine compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(ii) Prior to the acceptance of waste or recyclable material

or beginning operations at the facility, the owner or operator of a recycling or composting facility must receive notice from the Executive Secretary that the plan of operation meets the applicable standards of Section R315-302-2 and Rule R315-312.

(d) The requirements of Section R315-302-2 apply to industrial solid waste facilities as specified in Rule R315-304.

(2) Plan of Operation. Each owner or operator shall develop, keep on file, and abide by a plan of operation approved by the Executive Secretary. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the Executive Secretary or his authorized representative. The facility must be operated in accordance with the plan or the plan must be so modified with the approval of the Executive Secretary, to allow the facility to operate in accordance with an approved plan. Each plan of operation shall include:

(a) an intended schedule of construction. Facility plan approvals will be reviewed by the Executive Secretary no later than 18 months after the permit is issued and periodically thereafter, to determine if the schedule of construction is reasonably being followed. Failure to comply with the schedule of construction may result in revocation of the plan approval;

(b) a description of on-site solid waste handling procedures during the active life of the facility;

(c) a schedule for conducting inspections and monitoring for the facility;

(d) contingency plans in the event of a fire or explosion;

(e) corrective action programs to be initiated if ground water is contaminated;

(f) contingency plans for other releases, e.g. release of explosive gases or failure of run-off containment system;

(g) a plan to control fugitive dust generated from roads, construction, general operations, and covering the waste;

(h) a description of maintenance of installed equipment including leachate and gas collection systems, and ground water monitoring systems;

(i) procedures for excluding the receipt of prohibited hazardous waste or prohibited waste containing PCBs;

(j) procedures for controlling disease vectors;

(k) a plan for an alternative waste handling or disposal system during periods when the solid waste facility is not able to dispose of solid waste, including procedures to be followed in case of equipment breakdown;

(l) closure and post-closure care plans;

(m) cost estimates and financial assurance as required by Subsection R315-309-2(3);

(n) a general training and safety plan for site operators; and

(o) other information pertaining to the plan of operation as required by the Executive Secretary.

(3) Recordkeeping. Each owner or operator shall maintain and keep, on-site or at a location approved by the Executive Secretary, the following permanent records:

(a) a daily operating record, to be completed at the end of each day of operation, that shall contain:

(i) the weights or volumes, number of vehicles entering, and if available, the types of wastes received each day;

(ii) deviations from the approved plan of operation;

(iii) training and notification procedures;

(iv) results of ground water and gas monitoring that may be required; and

(v) an inspection log or summary; and

(b) other records to include:

(i) documentation of any demonstration made with respect to any location standard or exemption;

(ii) any design documentation for the placement or recirculation of leachate or gas condensate into the landfill as allowed by Subsection R315-303-3(2)(b);

(iii) closure and post-closure care plans as required by Subsections R315-302-3(4) and (7);

(iv) cost estimates and financial assurance documentation as required by Subsection R315-309-2(3);

(v) any information demonstrating compliance with Class II Landfill requirements if applicable; and

(vi) other information pertaining to operation, maintenance, monitoring, or inspections as may be required by the Executive Secretary.

(4) Reporting. Each owner or operator of any facility, including a facility performing post-closure care, shall prepare an annual report and place the report in the facility's operating record. The owner or operator of the facility shall submit a copy of the annual report to the Executive Secretary by March 1 of each year for the most recent calendar year or fiscal year of facility operation. The annual report shall cover facility activities during the previous year and must include, at a minimum, the following information:

(a) name and address of the facility;

(b) calendar year covered by the report;

(c) annual quantity, in tons or volume, in cubic yards, and estimated in-place density in pounds per cubic yard of solid waste handled for each type of treatment, storage, or disposal facility, including applicable recycling facilities;

(d) the annual update of the required financial assurances mechanism pursuant to Subsection R315-309-2(2);

(e) results of ground water monitoring and gas monitoring; and

(f) training programs or procedures completed.

(5) Inspections.

(a) The owner or operator shall inspect the facility to prevent malfunctions and deterioration, operator errors, and discharges which may cause or lead to the release of wastes to the environment or to a threat to human health. The owner or operator must conduct these inspections with sufficient frequency, no less than quarterly, to identify problems in time to correct them before they harm human health or the environment. The owner or operator shall keep an inspection log or summary including at least the date and time of inspection, the printed name and handwritten signature of the inspector, a notation of observations made, and the date and nature of any repairs or corrective action. The log or summary must be kept at the facility or other convenient location if permanent office facilities are not on-site, for at least three years from the date of inspection. Inspection records shall be available to the Executive Secretary or his authorized representative upon request.

(b) The Executive Secretary or any duly authorized officer, employee, or representative of the Board may, at any reasonable

time and upon presentation of appropriate credentials, enter any solid waste facility and inspect the property, records, monitoring systems, activities and practices, or solid waste being handled for the purpose of ascertaining compliance with Rules R315-301 through 320 and the approved plan of operation for the facility.

(i) The inspector may conduct monitoring or testing, or collect samples for testing, to verify the accuracy of information submitted by the owner or operator or to ensure that the owner or operator is in compliance. The owner or operator may request split samples and analysis parameters on any samples collected by the inspector.

(ii) The inspector may use photographic equipment, video camera, electronic recording device, or any other reasonable means to record information during any inspection.

(iii) The results of any inspection shall be furnished promptly to the owner or operator of the facility.

(6) Recording with the County Recorder.

(a) Not later than 60 days after certification of closure, the owner or operator of a solid waste disposal facility shall:

(i) submit plats and a statement of fact concerning the location of any disposal site to the county recorder to be recorded as part of the record of title; and

(ii) submit proof of record of title filing to the Executive Secretary.

(b) Records and plans specifying solid waste amounts, location, and periods of operation may be required by the local zoning authority with jurisdiction over land use and be made available for public inspection.

R315-302-3. General Closure and Post Closure Requirements.

(1) Applicability.

(a) An existing facility, a new facility, or an existing facility seeking lateral expansion shall meet the applicable standards of Section R315-302-3 and shall provide financial assurance for closure and post-closure care costs that meets the requirements of Rule R315-309.

(b) The requirements of Subsections (2), (3), and (4) of this section apply to any solid waste management facility as defined by Subsection 19-6-502(9). The requirements of Subsections (5), (6), and (7) of this section apply to:

(i) Class I, II, IV, V, and VI Landfills;

(ii) Class III Landfills as specified in Rule R315-304: and

(iii) any landtreatment disposal facility.

(2) Closure Performance Standard. Each owner or operator shall close its facility or unit in a manner that:

(a) minimizes the need for further maintenance;

(b) minimizes or eliminates threats to human health and the environment from post-closure escape of solid waste constituents, leachate, landfill gases, contaminated run-off or waste decomposition products to the ground, ground water, surface water, or the atmosphere; and

(c) prepares the facility or unit for the post-closure period.

(3) Closure Plan and Amendment.

(a) Closure may include covering, grading, seeding, landscaping, contouring, and screening. For a transfer station or a drop box facility, closure includes waste removal and decontamination of the site, including soil analysis, ground water analysis, or other procedures as required by the Executive Secretary.

(b) Each owner or operator shall develop, keep on file and abide by a plan of closure required by Subsection R315-302-2(2)(l) which, when approved by the Executive Secretary, will become part of the permit.

(c) The closure plan shall project time intervals at which sequential partial closure, if applicable, is to be implemented and identify closure cost estimates and projected fund withdrawal intervals for the associated closure costs from the approved financial assurance instrument required by Rule R315-309.

(d) The closure plan may be amended if conditions and circumstances justify such amendment. If it is determined that amendment of a facility closure plan is required, the Executive Secretary may direct facility closure activities, in part or whole, to cease until the closure plan amendment has been reviewed and approved by the Executive Secretary.

(e) Each owner and operator shall close the facility or unit in accordance with the approved closure plan and all approved amendments.

(4) Closure Procedures.

(a) Each owner and operator shall notify the Executive Secretary of the intent to implement the closure plan in whole or part, 60 days prior to the projected final receipt of waste at the unit or facility unless otherwise specified in the approved closure plan.

(b) The owner or operator shall commence implementation of the closure plan, in part or whole, within 30 days after receipt of the final volume of waste, or for landfills, when the final elevation is attained in part or all of the facility cell or unit as identified in the approved facility closure plan unless otherwise specified in the approved closure plan. Closure activities shall be completed within 180 days from their starting time. Extensions of the closure period may be granted by the Executive Secretary if justification for the extension is documented by the owner or operator.

(c) When facility closure is completed, each owner or operator shall, within 90 days or as required by the Executive Secretary, submit to the Executive Secretary:

(i) facility or unit closure plans, except for Class IIIb, IVb, and VI Landfills, signed by a professional engineer registered in the state of Utah, and modified as necessary to represent as-built changes to final closure construction as approved in the closure plan; and

(ii) certification by the owner or operator, and, except for Class IIIb, IVb, and VI Landfills, a professional engineer registered in the state of Utah, that the site or unit has been closed in accordance with the approved closure plan.

(5) Post-Closure Performance Standard. Each owner or operator shall provide post-closure activities for continued facility maintenance and monitoring of gases, land, and water for 30 years or as long as the Executive Secretary determines is necessary for the facility or unit to become stabilized and to protect human health and the environment.

(6) Post-Closure Plan and Amendment.

(a) For any disposal facility, except an energy recovery or incinerator facility, post-closure care may include:

(i) ground water and surface water monitoring;

(ii) leachate collection and treatment;

(iii) gas monitoring;

(iv) maintenance of the facility, the facility structures that remain after closure, and monitoring systems for their intended use as required by the approved permit;

(v) a description of the planned use of the property; and

(vi) any other activity required by the Executive Secretary to protect human health and the environment for a period of 30 years or a period established by the Executive Secretary.

(b) Each owner or operator shall develop, keep on file, and abide by a post-closure plan as required by Subsection R315-302-2(2)(l) and as approved by the Executive Secretary as part of the permit. The post-closure plan shall address facility or unit maintenance and monitoring activities until the site becomes stabilized (i.e., little or no settlement, gas production or leachate generation) and monitoring and maintenance activities can be safely discontinued.

(c) The post-closure plan shall project time intervals at which post-closure activities are to be implemented and identify post-closure cost estimates and projected fund withdrawal intervals from the selected financial assurance instrument, where applicable, for the associated post-closure costs.

(d) The post-closure plan may be amended if conditions and circumstances justify such amendment. If it is determined that amendment of a facility or unit post-closure plan is required, the Executive Secretary may direct facility post-closure activities, in part or whole, to cease until the post-closure plan amendment has been reviewed and approved.

(7) Post-Closure Procedures.

(a) Each owner or operator shall commence post-closure activities after closure activities have been completed. The Executive Secretary may direct that post-closure activities cease until the owner or operator receives a notice from the Executive Secretary to proceed with post-closure activities.

(b) When post-closure activities are complete, as determined by the Executive Secretary, the owner or operator shall submit a certification to the Executive Secretary, signed by the owner or operator, and, except for Class IIIb, IVb, and VI Landfills, a professional engineer registered in the state of Utah stating why post-closure activities are no longer necessary (i.e., little or no settlement, gas production, or leachate generation).

(c) If the Executive Secretary finds that post-closure monitoring has established that the facility or unit is stabilized (i.e., little or no settlement, gas production, or leachate generation) the Executive Secretary may authorize the owner or operator to discontinue any portion or all of the post-closure maintenance and monitoring activities.

KEY: solid waste management, waste disposal

June 15, 2002	**19-6-104**
Notice of Continuation April 2, 1998	**19-6-105**
	19-6-108
	19-6-109
	40 CFR 258

R315. Environmental Quality, Solid and Hazardous Waste.
R315-305. Class IV and VI Landfill Requirements.
R315-305-1. Applicability.

(1) These standards apply to each facility that landfills only:

(a) inert waste, construction/demolition waste, yard waste, dead animals; or

(b) upon meeting the requirements of Section 19-6-804 and Subsections R315-320-3(1) or (2), waste tires and material derived from waste tires.

(2) Inert waste used as road building material and fill material are excluded from the requirements of Rule R315-305.

R315-305-2. Class IV and VI Landfill Standards for Performance.

Each Class IV and VI Landfill shall meet the landfill standards for performance as specified in Section R315-303-2.

R315-305-3. Definitions.

Terms used in Rule R315-305 are defined in Section R315-301-2. In addition, for the purpose of Rule R315-305, the following definitions apply.

(1) "Class IVa Landfill" means a Class IV Landfill that receives, based on an annual average, over 20 tons of waste per day and may receive, as a component of construction/demolition waste, conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5.

(2) "Class IVb Landfill" means a Class IV Landfill that receives, based on an annual average, 20 tons, or less, of waste per day or demonstrates that no conditionally exempt small quantity generator hazardous waste is accepted.

(3) "Existing Class IV Landfill" means a Class IV Landfill that was receiving waste on or before January 1, 1998.

(4) "New Class IV Landfill" means a Class IV Landfill that begins receiving waste after January 1, 1998.

R315-305-4. General Requirements.

(1) Location Standards.

(a) A new Class IV or VI Landfill or a lateral expansion of an existing Class IV or VI Landfill shall be subject to the following location standards:

(i) the standards with respect to floodplains as specified in Subsection R315-302-1(2)(c)(ii);

(ii) the standards with respect to wetlands as specified in Subsection R315-302-1(2)(d); and

(iii) the landfill shall be located so that the lowest level of waste is at least five feet above the historical high level of ground water.

(b) An existing Class IV or VI Landfill shall not be subject to the location standards of Subsection R315-305-4(1)(a).

(2) An owner or operator of a Class IV or VI Landfill shall obtain a permit, as set forth in Rule R315-310.

(3) An owner or operator of a Class IV or VI Landfill shall design and operate the landfill to:

(a) prevent the run-on of all surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and

(b) collect and treat, if necessary, the run-off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.

(4) An owner or operator of a Class IVa Landfill shall monitor the ground water beneath the landfill as specified in Rule R315-308.

(5) An owner or operator of a Class IV or VI Landfill shall erect a sign at the facility entrance as specified in Subsection R315-303-3(7)(d).

(6) An owner or operator of a Class IV or VI Landfill shall maintain the applicable records as specified in Subsection R315-302-2(3).

(7) An owner or operator of a Class IV or VI Landfill shall meet the requirements of Subsection R315-302-2(6) and make the required recording with the county recorder.

R315-305-5. Requirements for Operation.

(1) The owner or operator of a Class IV or VI Landfill shall not accept any other form of waste except construction/demolition waste, yard waste, inert waste, dead animals, or upon meeting the requirements of Section 19-6-804 and Subsections R315-320-3(1) or (2), waste tires and material derived from waste tires.

(2) The owner or operator of a Class IV or VI Landfill shall prevent the disposal of unauthorized waste by ensuring that at least one person is on site during hours of operation and shall prevent unauthorized disposal during off-hours by controlling entry, i.e., lockable gate or barrier, when the facility is not open.

(3) The owner or operator of a Class IV or VI Landfill shall:

(a) minimize the size of the working face as required by Subsection R315-303-3(7)(g);

(b) employ measures to prevent emission of fugitive dusts, when weather conditions or climate indicate that transport of dust off-site is liable to create a nuisance;

(c) meet the requirements of Subsection R315-303-3(1)(a) and (b) to minimize liquids admitted to the landfill;

(d) collect scattered litter as necessary to avoid a fire hazard or an aesthetic nuisance; and

(e) prohibit scavenging.

(4) The owner or operator of a Class IV or VI Landfill shall cover timbers, wood, and other combustible waste with a minimum of six inches of soil, or equivalent, as needed to avoid a fire hazard.

(5) The owner or operator of a Class IV or VI Landfill shall meet the applicable general requirements of closure and post-closure care of Section R315-302-3 as determined by the Executive Secretary.

(a) The owner or operator of a Class IVa Landfill shall meet the specific closure requirements of Subsection R315-303-3(4).

(b) The owner or operator of a Class IVb or VI Landfill shall close the facility by:

(i) leveling the waste to the extent practicable;

(ii) covering the waste with a minimum of two feet of soil, including six inches of topsoil;

(iii) contouring the cover as specified in Subsection R315-303-3(4)(a)(iii); and

(iv) seeding the cover with grass, other shallow rooted vegetation, or other native vegetation or covering in another

manner approved by the Executive Secretary to minimize erosion.

(v) The Executive Secretary may approve an alternative final cover design for a Class IVb or VI Landfill if it is documented that the alternative final cover provides equivalent protection from infiltration and erosion as the cover specified in Subsection R315-305-5(5)(b).

KEY: solid waste management, waste disposal

June 15, 2002	**19-6-104**
Notice of Continuation April 2, 1998	**19-6-105**
	19-6-108
	19-6-109
	40 CFR 257

R315. Environmental Quality, Solid and Hazardous Waste.
R315-309. Financial Assurance.
R315-309-1. Applicability.

(1) The owner or operator of any solid waste disposal facility requiring a permit shall establish financial assurance sufficient to assure adequate closure, post-closure care, and corrective action, if required, of the facility by compliance with one or more financial assurance mechanisms acceptable to and approved by the Executive Secretary.

(2) Financial assurance is not required for a solid waste disposal facility that is owned or operated by the State of Utah or the Federal government.

(3) Existing Disposal Facilities.

(a) An existing disposal facility shall have the financial assurance mechanism in place and effective according to the compliance schedule as established for the facility by the Executive Secretary.

(b) In the case of corrective action, the financial assurance mechanism shall be in place and effective no later than 120 days after the corrective action remedy has been selected.

(4) A new disposal facility or an existing disposal facility seeking lateral expansion shall have the financial assurance mechanism in place and effective before the initial receipt of waste at the facility or the lateral expansion.

R315-309-2. General Requirements.

(1) A financial assurance plan, including the assurance mechanism proposed for use, shall be submitted:

(a) for new facilities, upon initial permit application; and

(b) for existing facilities, to meet the effective dates specified in Subsection R315-309-1(3).

(2) The financial assurance shall be updated each year as part of the annual report required by Subsection R315-302-2(4) to adjust for inflation or facility modification that would affect closure or post-closure care costs. The annual update of the financial assurance shall be reviewed and must be approved by the Executive Secretary prior to implementation.

(3) Financial assurance cost estimates shall be based on a third party performing closure or post-closure care.

(a) The closure cost estimate shall be based on the most expensive cost to close the largest area of the disposal facility ever requiring a final cover at any time during the active life in accordance with the closure plan and at a minimum must contain the following elements if applicable:

(i) the cost of obtaining, moving, and placing the cover material;

(ii) the cost of final grading of the cover material;

(iii) the cost of moving and placing topsoil on the final cover; and

(iv) the cost of fertilizing, seeding, and mulching or other approved method.

(b) The post-closure care cost estimate shall be based on the most expensive cost of completing the post-closure care reasonably expected during the post-closure care period and must contain the following elements:

(i) ground water monitoring, if required, including number of monitor wells, parameters to be monitored, frequency of sampling, and cost per sampling;

(ii) leachate monitoring and treatment if necessary;

(iii) gas monitoring and control if required; and

(iv) cover stabilization which will include an estimate of the area and cost for expected annual work to repair residual settlement, control erosion, or reseed.

(4) Any facility for which financial assurance is required for post-closure care must have a financial assurance mechanism, which will cover the costs of post-closure care, in effect and active until the Executive Secretary determines that the post-closure care is complete.

(5) Financial assurance for corrective action shall be required only in cases of known releases of contaminants from a facility and shall be a current cost estimate for corrective action based on the most expensive cost of a third party performing the corrective action that may be required.

R315-309-3. Financial Assurance Mechanisms.

(1) Any financial assurance mechanism in place for a solid waste disposal facility must:

(a) be legally valid, binding, and enforceable under state and Federal law; and

(b) ensure that funds will be available in a timely fashion when needed.

(2) The owner or operator of a solid waste disposal facility that is required to provide financial assurance shall establish financial assurance by one of the following mechanisms.

(a) A solid waste disposal facility shall submit the required documentation of the financial assurance mechanism to the Executive Secretary.

(b) Prior to the financial assurance mechanism becoming effective and active for a solid waste disposal facility, the mechanism must be approved by the Executive Secretary.

(3) Trust Fund.

(a) The trustee must be an entity which has the authority to act as a trustee and whose operations are regulated and examined by a Federal or state agency.

(b) The owner or operator shall submit a copy of the trust agreement to the Executive Secretary for approval and shall place a copy of the trust agreement in the operating record of the solid waste disposal facility.

(c) Payments into the trust fund must be made annually by the owner or operator according to the following schedule:

(i) for a trust fund for closure and post-closure care, annual payments that will ensure the availability of sufficient funds within five years of permit approval for the cost estimates required in Subsection R315-309-2(3). The initial payment into the trust fund must be made, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste and for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); or

(ii) for a trust fund for corrective action, annual payments that will ensure the availability of sufficient funds within one-half of the estimated length in years of the corrective action program for the cost estimate required by Subsection R315-309-2(4). The first payment shall be at least equal to one-half of the current cost estimate for the corrective action divided by one-half the estimated length of the corrective action program. The initial payment into the trust fund shall be made in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(d) The owner or operator, or other person authorized to

conduct closure, post-closure, or corrective action may request reimbursement from the trustee for closure, post-closure, or corrective action costs.

(i) Prior to the release of funds by the trustee, the request for reimbursement must be approved by the Executive Secretary. The Executive Secretary shall act upon the reimbursement request within 30 days of receiving the request.

(ii) After receiving approval from the Executive Secretary, the request for reimbursement may be granted by the trustee only if sufficient funds are remaining to cover the remaining costs and if justification and documentation of the costs is placed in the operating record.

(iii) The owner or operator shall notify the Executive Secretary that documentation for the reimbursement has been placed in the operating record and that the reimbursement has been received.

(4) Surety Bond Guaranteeing Payment or Performance.

(a) The bond must be effective, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste or, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3).

(b) The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury and the owner or operator must notify the Executive Secretary that a copy of the bond has been placed in the operating record.

(c) The penal sum of the bond must be in an amount at least equal to the closure, post-closure, or corrective action cost estimates of Subsection R315-309-2(3) or Subsection R315-309-2(4), whichever is applicable.

(d) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(i) In the case of a payment bond, the surety shall pay the costs of closure and post-closure care if the owner or operator fails to complete closure and post-closure care activities.

(ii) In the case of a performance bond, the surety shall perform closure and post-closure care on behalf of the owner or operator if the owner or operator fails to complete closure and post-closure care activities.

(e) In the case of a payment bond and at the time the bond is issued, the owner or operator shall establish a standby trust fund.

(i) The standby trust fund must meet the requirements of Subsections R315-309-3(3)(a), (b), and (d).

(ii) Payment made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the Executive Secretary and the trustee.

(f) The surety bond guaranteeing payment or performance shall contain provisions preventing cancellation except under the following conditions:

(i) if the surety sends notice of cancellation by certified mail to the owner or operator and the Executive Secretary 120 days in advance of the cancellation date; or

(ii) if an alternative financial assurance mechanism has been obtained by the owner or operator.

(5) Insurance.

(a) The insurance must be effective, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste or, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3).

(b) At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and the owner or operator must notify the Executive Secretary that a copy of the insurance policy has been placed in the operating record.

(c) The insurance policy must guarantee that funds will be available to close the facility or unit and provide post-closure care or provide corrective action, if applicable. The policy must also guarantee that the insurer will be responsible for paying out funds to the owner or operator or other person authorized to conduct closure, post-closure, or corrective action, if applicable, up to an amount equal to the face amount of the policy.

(d) The insurance policy must be issued for a face amount at least equal to the closure, post-closure, or corrective action cost estimates required by Subsection R315-309-2(3) or Subsection R315-309-2(4), whichever is applicable.

(e) An owner or operator, or other authorized person may receive reimbursements for closure, post-closure, or corrective action, if applicable, if the remaining value of the policy is sufficient to cover the remaining costs of the work required and if justification and documentation of the cost is placed in the operating record. The owner or operator must notify the Executive Secretary that the documentation and justification for the reimbursement has been placed in the operating record and that the reimbursement has been received.

(f) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator.

(g) The insurance policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the Executive Secretary 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance.

(6) Letter of Credit.

(a) The letter of credit must be irrevocable and issued for a period of at least one year in the amount at least equal to the current cost estimate as required by Subsection R315-309-2(3) for closure and post-closure care or the cost estimate as required by Subsection R315-309-2(4) for corrective action, if necessary.

(b) The institution issuing the letter of credit must be an entity which has the authority to issue a letter of credit and whose operations are regulated and examined by a Federal or state agency.

(c) The letter of credit must be effective for closure and post-closure care:

(i) for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) for corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(d) The letter of credit must provide that the expiration

date will be automatically extended for a period of at least one year unless the issuing institution has elected not to extend the letter of credit by sending notice by certified mail to the owner or operator and the Executive Secretary 120 days in advance of the expiration.

(e) If the letter of credit is not extended by the issuing institution, the owner or operator shall obtain alternate financial assurance which will become effective on or before the expiration date.

(7) Local Government Financial Test.

(a) The following terms used in Subsection R315-309-3(7) are defined as follows.

(i) "Total revenues" means the revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue form funds managed by local government on behalf of a specific third party.

(ii) "Total expenditures" means all expenditures excluding capital outlays and debt repayments.

(iii) "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

(iv) "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

(b) A local government owner or operator of a solid waste disposal facility may demonstrate financial assurance up to the current cost estimate as required by Subsection R315-309-2(3) for closure and post-closure care and the cost estimate as required by Subsection R315-309-2(4) for corrective action, if required, or up to the amount specified in Subsection R315-309-3(7)(f), which ever is less, by meeting the following requirements.

(i) If the local government has outstanding, rated general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or other guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's or AAA, AA, A, or BBB, as issued by Standard and Poor's on such general obligation bonds.

(ii) If the local government has no outstanding general obligation bonds, the local government shall satisfy each of the following financial ratios based on the local government's most recent audited annual financial statement:

(A) a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(B) a ratio of annual debt service to total expenditures less than or equal to 0.20.

(iii) The local government must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant.

(iv) The local government must place a reference to the closure and post-closure care costs assured through the financial test into the next comprehensive annual financial report and in every subsequent comprehensive annual financial report during the time in which closure and post-closure care costs are assured through the financial test. A reference to corrective action costs must be placed in the comprehensive annual financial report not later than 120 days after the corrective action remedy has been selected. The reference to the closure and post-closure care costs shall contain:

(A) the nature and source of the closure and post-closure care requirements;

(B) the reported liability at the balance sheet date;

(C) the estimated total closure and post-closure care costs remaining to be recognized;

(D) the percentage of landfill capacity used to date; and

(E) the estimated landfill life in years.

(c) A local government is not eligible to assure closure, post-closure care, or corrective action costs at its solid waste disposal facility through the financial test if it:

(i) is currently in default on any outstanding general obligation bonds, or

(ii) has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or

(iii) has operated at a deficit equal to 5%, or more, of the total annual revenue in each of the past two fiscal years; or

(iv) receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant, or appropriate state agency auditing its financial statement. The Executive Secretary may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Executive Secretary deems the qualification insufficient to warrant disallowance of use of the test.

(d) The local government owner or operator must submit the following items to the Executive Secretary for approval and place a copy of these items in the operating record of the facility:

(i) a letter signed by the local government's chief financial officer that:

(A) lists all current cost estimates covered by a financial test; and

(B) provides evidence and certifies that the local government meets the requirements of Subsections R315-309-3(7)(b) and R315-309-3(7)(f);

(ii) the local government's independently audited year-end financial statements for the latest fiscal year including the unqualified opinion of the auditor, who must be an independent certified public accountant;

(iii) a report to the local government from the local government's independent certified public accountant stating the procedures performed and the findings relative to:

(A) the requirements of Subsections R315-309-3(7)(b)(iii) and R315-309-3(7)(c)(iii) and (iv); and

(B) the financial ratios required by Subsection R315-309-3(7)(b)(ii), if applicable; and

(iv) a copy of the comprehensive annual financial report used to comply with Subsection R315-309-3(7)(b)(iv).

(v) The items required by Subsection R315-309-3(7)(d) are to be submitted to the Executive Secretary and copies placed in the facility's operating record as follows:

(A) in the case of closure and post-closure care, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(B) in the case of closure and post-closure care, for an existing facility, in accordance with the effective dates specified

in Subsection R315-309-1(3)(a); and

(C) in the case of corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(e) A local government must satisfy the requirements of the financial test at the close of each fiscal year.

(i) The items required in Subsection R315-309-3(7)(d) shall be submitted as part of the facility's annual report required by Subsection R315-302-2(4).

(ii) If the local government no longer meets the requirements of the local government financial test it shall, within 210 days following the close of the local government's fiscal year:

(A) obtain alternative financial assurance that meets the requirements of R315-309-1(1); and

(B) submit documentation of the alternative financial assurance to the Executive Secretary and place copies of the documentation in the facility's operating record.

(iii) The Executive Secretary, based on a reasonable belief that the local government may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the Executive Secretary finds that the local government no longer meets the requirements of the local government financial test, the local government shall be required to provide alternative financial assurance on a schedule established by the Executive Secretary.

(f) The portion of the closure, post-closure, and corrective action costs for which a local government owner or operator may assume under the local government financial test is determined as follows:

(i) If the local government does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43% of the local government's total annual revenue.

(ii) If the local government assures any other environmental obligation through a financial test, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure by local government financial test. The total that may be assured must not exceed 43% of the local government's total annual revenue.

(iii) The local government shall obtain an alternate financial assurance mechanism for those costs that exceed 43% of the local government's total annual revenue.

(8) Local Government Guarantee.

(a) An owner or operator of a solid waste disposal facility may demonstrate financial assurance for closure, post-closure, and corrective action by obtaining a written guarantee provided by a local government. The local government shall meet the requirements of the local government financial test in Subsection R315-309-3(7) and shall comply with the terms of the written guarantee as specified in Subsections R315-309-3(8)(b) and (c).

(b) The guarantee must be effective for closure and post-closure care:

(i) for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) for corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(c) The guarantee shall provide that if the owner or operator fails to perform closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor will:

(i) perform, or pay a third party to perform, closure, post-closure, or corrective action as required; or

(ii) establish a fully funded trust fund as specified in Subsection R315-309-3(3) in the name of the owner or operator.

(d) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Executive Secretary. Cancellation may not occur until 120 days after the date the notice is received by the Executive Secretary.

(e) If the guarantee is canceled, the owner or operator shall, within 90 days following the receipt of the cancellation notice:

(i) obtain alternate financial assurance that meets the requirements of Subsection R315-309-1(1);

(ii) submit documentation of the alternate financial assurance to the Executive Secretary; and

(iii) place copies of the documentation of the alternate financial assurance in the facility's operating record.

(iv) If the owner or operator fails to provide alternate financial assurance within the 90 day period, the guarantor must provide the alternate financial assurance within 120 days following the guarantor's notice of cancellation, submit documentation of the alternate financial assurance to the Executive Secretary for review and approval, and place copies of the documentation in the facility's operating record.

(9) Corporate Financial Test.

(a) A corporate owner or operator of a solid waste disposal facility may demonstrate financial assurance up to the current cost estimate as required by Subsection R315-309-2(3) for closure and post-closure care and the cost estimate required by Subsection R315-309-2(4) for corrective action, if required, by meeting the following requirements.

(i) The owner or operator must satisfy one of the following three conditions:

(A) a current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or

(B) a ratio of less than 1.5 comparing total liabilities to net worth: or

(C) a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities.

(ii) The tangible net worth of the owner or operator must be greater than:

(A) the sum of the current closure, post-closure care, and corrective action cost estimates and any other environmental obligation, including guarantees, covered by a financial test plus $10 million except as provided in Subsection R315-309-3(9)(a)(ii)(B);

(B) $10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited

financial statements, and subject to the approval of the Executive Secretary.

(iii) The owner or operator must have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test.

(b) The owner or operator must place the following items into the facility's operating record and submit a copy of these items to the Executive Secretary for approval:

(i) a letter signed by the owner's or operator's chief financial officer that:

(A) lists all current cost estimates for closure, post-closure care, corrective action, and any other environmental obligations covered by a financial test; and

(B) provides evidence demonstrating that the firm meets the conditions of Subsection R315-309-3(9)(a)(i)(A), or (i)(B), or (i)(C) and Subsections R315-309-3(9)(a)(ii) and (iii); and

(ii) a copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year.

(A) To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. The Executive Secretary may evaluate qualified opinions on a case-by-case basis and allow use of the financial test where the Executive Secretary deems the matters which form the basis for the qualification are insufficient to warrant disallowance of the test.

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies Subsection R315-309-3(9)(a)(i)(A) or (B) that are different from data in the audited financial statements or data filed with the Securities and Exchange Commission, then a special report from the owner's or operator's independent certified public accountant is required. The special report shall:

(A) be based upon an agreed upon procedures engagement in accordance with professional auditing standards;

(B) describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements;

(C) describe the findings of that comparison; and

(D) explain the reasons for any differences.

(iv) If the chief financial officer's letter provides a demonstration that the firm has assured environmental obligations as provided in Subsection R315-309-3(9)(a)(ii)(B), then the letter shall include a report from the independent certified public accountant that:

(A) verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements;

(B) explains how these obligations have been measured and reported; and

(C) certifies that the tangible net worth of the firm is at least $10 million plus the amount of all guarantees provided.

(v) The items required by Subsection R315-309-3(9)(b) are to be submitted to the Executive Secretary and copies placed in the facility's operating record as follows:

(A) in the case of closure and post-closure care, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(B) in the case of closure and post-closure care, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(C) in the case of corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(c) A firm must satisfy the requirements of the financial test at the close of each fiscal year by submitting the items required in Subsection R315-309-3(9)(b) as part of the facility's annual report required by Subsection R315-302-2(4).

(d) If the firm no longer meets the requirements of the corporate financial test it shall, within 120 days following the close of the firm's fiscal year:

(i) obtain alternative financial assurance that meets the requirements of R315-309-1(1); and

(ii) submit documentation of the alternative financial assurance to the Executive Secretary and place copies of the documentation in the facility's operating record.

(iii) The Executive Secretary, based on a reasonable belief that the firm may no longer meet the requirements of the corporate financial test, may require additional reports of financial condition from the firm at any time. If the Executive Secretary finds that the firm no longer meets the requirements of the corporate financial test, firm shall be required to provide alternative financial assurance on a schedule established by the Executive Secretary.

(10) Corporate Guarantee.

(a) A corporate owner or operator of a solid waste disposal facility may demonstrate financial assurance for closure, post-closure care, and corrective action by obtaining a written guarantee provided by a corporation.

(i) The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a substantial business relationship with the owner or operator.

(ii) The firm shall meet the requirements of the corporate financial test in Subsection R315-309-3(9) and shall comply with the terms of the written guarantee as specified in Subsections R315-309-3(10)(b) and (c).

(A) A certified copy of the guarantee along with copies of the letter from the guarantor's chief financial officer and accountant's opinions must be submitted to the Executive Secretary and placed in the facility's operating record.

(B) If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee.

(C) If the guarantor is a firm with a substantial business relationship with the owner or operator, the letter from the chief financial officer must describe this substantial business relationship and the value received in consideration of the guarantee.

(b) The guarantee must be effective for closure and post-closure care:

(i) for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) for an existing facility, in accordance with the effective

dates specified in Subsection R315-309-1(3)(a); and

(iii) for corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(c) The guarantee shall provide that if the owner or operator fails to perform closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor will:

(i) perform, or pay a third party to perform, closure, post-closure, or corrective action as required; or

(ii) establish a fully funded trust fund as specified in Subsection R315-309-3(3) in the name of the owner or operator.

(d) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Executive Secretary. Cancellation may not occur until 120 days after the date the notice is received by the Executive Secretary.

(e) If the guarantee is canceled, the owner or operator shall, within 90 days following the receipt of the cancellation notice:

(i) obtain alternate financial assurance that meets the requirements of Subsection R315-309-1(1);

(ii) submit documentation of the alternate financial assurance to the Executive Secretary; and

(iii) place copies of the documentation of the alternate financial assurance in the facility's operating record.

(iv) If the owner or operator fails to provide alternate financial assurance within the 90 day period, the guarantor must provide the alternate financial assurance within 120 days following the guarantor's notice of cancellation, submit documentation of the alternate financial assurance to the Executive Secretary for review and approval, and place copies of the documentation in the facility's operating record.

(f) If a corporate guarantor no longer meets the requirements of the corporate financial test as specified in Subsection R315-309-3(9):

(i) the owner or operator must, within 90 days, obtain alternate financial assurance; and

(ii) submit documentation of the alternate financial assurance to the Executive Secretary and place copies of this documentation in the facility's operating record.

(iii) If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

(11) The owner or operator of a solid waste disposal facility may establish financial assurance by other mechanisms that meet the requirements of Subsection R315-309-1(1) as approved by the Executive Secretary.

(12) The owner or operator of a solid waste disposal facility may establish financial assurance by a combination of mechanisms that together meet the requirements of Subsection R315-309-1(1) as approved by the Executive Secretary. Except for the conditions specified in Subsection R315-309-3(7)(f)(iii), financial assurance mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments.

R315-309-4. Discounting.

(1) The Executive Secretary may allow discounting of closure, post-closure care, or corrective action costs up to the rate of return for essentially risk free investments, net inflation.

(2) Discounting may be allowed under the following conditions:

(a) the Executive Secretary determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a professional engineer registered in the state of Utah so stating;

(b) the Executive Secretary finds the facility in compliance with all applicable Utah Solid Waste Permitting and Management Rules and in compliance with all conditions of the facility's permit issued under the rules;

(c) the executive Secretary determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of the facility life; and

(d) discounted cost estimates must be adjusted annually to reflect inflation and years of remaining facility life.

R315-309-5. Termination of Financial Assurance.

The owner or operator of a solid waste disposal facility may terminate or cancel an active financial assurance mechanism under the following conditions:

(1) if the owner or operator establishes alternate financial assurance as approved by the Executive Secretary; or

(2) if the owner or operator is released from the financial assurance requirements by the Executive Secretary after meeting the conditions and requirements of Subsections R315-302-3(7)(b) and (c) or Subsection R315-308-3(2)(c), whichever is applicable.

KEY: solid waste management, waste disposal
July 1, 2001 19-6-105
Notice of Continuation April 20, 1998 40 CFR 258

R315. Environmental Quality, Solid and Hazardous Waste.
R315-310. Permit Requirements for Solid Waste Facilities.
R315-310-1. Applicability.

(1) The following solid waste facilities require a permit:

(a) Class I, II, III, IV, V, and VI Landfills;

(b) energy recovery and incinerator facilities that are regulated by Rule R315-306;

(c) landtreatment disposal facilities that are regulated by Rule R315-307; and

(d) waste tire storage facilities.

(2) Permits are not required for corrective actions at solid waste facilities performed by the state or in conjunction with the United States Environmental Protection Agency or in conjunction with actions to implement the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), or corrective actions taken by others to comply with a state or federal cleanup order.

(3) The permit requirements of Rule R315-310 apply to each existing solid waste facility, for which a permit is required.

(a) The Executive Secretary may incorporate a compliance schedule for each existing facility to ensure that each existing facility meet the requirements of Rule R315-310.

(b) Each new disposal facility or lateral expansion at an existing disposal facility, for which a permit is required, shall:

(i) apply for a permit according to the requirements of Rule R315-310; and

(ii) not begin construction of the facility, lateral expansion, or unit until a permit has been granted.

(4) A landfill may not change from its current class, or subclass, to any other class, or subclass, of landfill except by meeting all requirements for the desired class, or subclass, to include obtaining a new permit from the Executive Secretary for the desired class, or subclass, of landfill.

R315-310-2. Procedures for Permits.

(1) Prospective applicants may request the Executive Secretary to schedule a pre-application conference to discuss the proposed solid waste facility and application contents before the application is filed.

(2) Any owner or operator who intends to operate a facility subject to the permit requirements must apply for a permit with the Executive Secretary. Two copies of the application, signed by the owner or operator and received by the Executive Secretary are required before permit review can begin.

(3) Applications for a permit must be completed in the format prescribed by the Executive Secretary.

(4) An application for a permit, all reports required by a permit, and other information requested by the Executive Secretary shall be signed as follows:

(a) for a corporation: by a principal executive officer of at least the level of vice-president;

(b) for a partnership or sole proprietorship: by a general partner or the proprietor;

(c) for a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official; or

(d) by a duly authorized representative of the person above, as appropriate.

(i) A person is a duly authorized representative only if the authorization is made in writing, to the Executive Secretary, by a person described in Subsections R315-310-2(4)(a), (b), or (c), as appropriate.

(ii) The authorization may specify either a named individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of facility manager, director, superintendent, or other position of equivalent responsibility.

(iii) If an authorization is no longer accurate and needs to be changed because a different individual or position has responsibility for the overall operation of the facility, a new authorization that meets the requirements of Subsections R315-310-2(4)(d)(i) and (ii) shall be submitted to the Executive Secretary prior to or together with any report, information, or application to be signed by the authorized representative.

(5) Filing Fee and Permit Review Fee.

(a) A filing fee, as required by the Annual Appropriations Act, shall accompany the filing of an application for a permit. The review of the application will not begin until the filing fee is received.

(b) A review fee, as established by the Annual Appropriations Act, shall be charged at an hourly rate for the review of an application. The review fee shall be billed quarterly and shall be due and payable quarterly.

(6) All contents and materials submitted as a permit application shall become part of the approved permit and shall be part of the operating record of the solid waste disposal facility.

(7) The owner or operator of a facility shall apply for renewal of the facility's permit every five years.

R315-310-3. General Contents of a Permit Application for a New Facility or a Facility Seeking Expansion.

(1) Each permit application shall contain the following:

(a) the name and address of the applicant, property owner, and responsible party for the site operation;

(b) a general description of the facility accompanied by facility plans and drawings and, except for Class IIIb, IVb, and Class VI Landfills and waste tire storage facilities, unless required by the Executive Secretary, the facility plans and drawings shall be signed and sealed by a professional engineer registered in the State of Utah;

(c) a legal description and proof of ownership, lease agreement, or other mechanism approved by the Executive Secretary of the proposed site, latitude and longitude map coordinates of the facility's front gate, and maps of the proposed facility site including land use and zoning of the surrounding area;

(d) the types of waste to be handled at the facility and area served by the facility;

(e) the plan of operation required by Subsection R315-302-2(2);

(f) the form used to record weights or volumes of wastes received required by Subsection R315-302-2(3)(a)(i);

(g) an inspection schedule and inspection log required by Subsection R315-302-2(5)(a);

(h) the closure and post-closure plans required by Section R315-302-3;

(i) documentation to show that any waste water treatment

facility, such as a run-off or a leachate treatment system, is being reviewed or has been reviewed by the Division of Water Quality; and

(j) a financial assurance plan that meets the requirements of Rule R315-309.

(2) Special Requirements for a Commercial Solid Waste Disposal Facility.

(a) The permit application for a commercial nonhazardous solid waste disposal facility shall contain the information required by Subsections 19-6-108(9) and (10).

(b) Subsequent to the issuance of a solid waste permit by the Executive Secretary, a commercial nonhazardous solid waste disposal facility shall meet the requirements of Subsection 19-6-108(3)(c) and provide documentation to the Executive Secretary that the solid waste disposal facility is approved by the local government, the Legislature, and the governor.

(c) Construction of the solid waste disposal facility may not begin until the requirements of Subsections R315-310-3(2)(b) are met and approval to begin construction has been granted by the Executive Secretary.

(d) Commercial solid waste disposal facilities solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government are not subject to Subsections R315-310-3(2)(a), (b), and (c).

R315-310-4. Contents of a Permit Application for a New or Expanded Class I, II, III, IV, V, and VI Landfill Facility as Specified.

(1) Each application for a new or expanded landfill shall contain the information required by Section R315-310-3.

(2) Each application shall also contain:

(a) the following maps shall be included in a permit application for a Class I, II, III, IV, V, and VI Landfill:

(i) topographic map of the landfill unit drawn to a scale of 200 feet to the inch containing five foot contour intervals where the relief exceeds 20 feet and two foot contour intervals where the relief is less than 20 feet, showing the boundaries of the landfill unit, ground water monitoring wells, landfill gas monitoring points, and borrow and fill areas; and

(ii) the most recent full size U.S. Geological Survey topographic map, 7-1/2 minute series, if printed, or other recent topographic survey of equivalent detail of the area, showing the waste facility boundary, the property boundary, surface drainage channels, existing utilities, and structures within one-fourth mile of the facility site, and the direction of the prevailing winds.

(b) a permit application for a Class I, II, IIIa, IVa, and V Landfill shall contain a geohydrological assessment of the facility that addresses:

(i) local and regional geology and hydrology, including faults, unstable slopes and subsidence areas on site;

(ii) evaluation of bedrock and soil types and properties, including permeability rates;

(iii) depths to ground water or aquifers;

(iv) direction and flow rate of ground water;

(v) quantity, location, and construction of any private and public wells on the site and within 2,000 feet of the facility boundary;

(vi) tabulation of all water rights for ground water and surface water on the site and within 2,000 feet of the facility boundary;

(vii) identification and description of all surface waters on the site and within one mile of the facility boundary;

(viii) background ground and surface water quality assessment and identification of impacts of the existing facility upon ground and surface waters from landfill leachate discharges;

(ix) calculation of a site water balance; and

(x) conceptual design of a ground water and surface water monitoring system, including proposed installation methods for these devices and where applicable, a vadose zone monitoring plan;

(c) a permit application for a Class I, II, IIIa, IVa, and V Landfill shall contain an engineering report, plans, specifications, and calculations that address:

(i) how the facility will meet the location standards pursuant to Section R315-302-1 including documentation of any demonstration made with respect to any location standard;

(ii) the basis for calculating the facility's life;

(iii) cell design to include liner design, cover design, fill methods, elevation of final cover and bottom liner, and equipment requirements and availability;

(iv) identification of borrow sources for daily and final cover, and for soil liners;

(v) interim and final leachate collection, treatment, and disposal;

(vi) ground water monitoring that meet the requirements of Rule R315-308;

(vii) landfill gas monitoring and control that meet the requirements of Subsection R315-303-3(5);

(viii) design and location of run-on and run-off control systems;

(ix) closure and post-closure design, construction, maintenance, and land use; and

(x) quality control and quality assurance for the construction of any engineered structure or feature, excluding buildings at landfills, at the solid waste disposal facility and for any applicable activity such as ground water monitoring.

(d) a permit application for a Class I, II, III, IV, V, and VI Landfill shall contain a closure plan to address:

(i) closure schedule;

(ii) capacity of site in volume and tonnage;

(iii) final inspection by regulatory agencies; and

(iv) identification of closure costs including cost calculations and the funding mechanism.

(e) a permit application for a Class I, II, III, IV, V, and VI Landfill shall contain a post-closure plan to address, as appropriate for the specific landfill:

(i) site monitoring of:

(A) landfill gas on a quarterly basis until the conditions of either Subsection R315-302-3(7)(b) or Subsection R315-302-3(7)(c) are met;

(B) ground water on a semiannual basis, or other schedule as determined by the Executive Secretary, until the conditions of either Subsection R315-302-3(7)(b) or Subsection R315-302-3(7)(c) are met; and

(C) surface water, if required, on the schedule specified by the Executive Secretary and until the Executive Secretary

determines that the monitoring of surface water may be discontinued;

(ii) inspections of the landfill by the owner or operator:

(A) for landfills that are required to monitor landfill gas, on a quarterly basis; and

(B) for landfills that are not required to monitor landfill gas, on a semiannual basis;

(iii) maintenance activities to maintain cover and run-on and run-off systems;

(iv) identification of post-closure costs including cost calculations and the funding mechanism;

(v) changes to record of title as specified by Subsection R315-302-2(6); and

(vi) list the name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

R315-310-5. Contents of a Permit Application for a New or Expanded Class IV or VI Landfill.

(1) Each application for a Class IV or VI Landfill permit shall contain the information required in Section R315-310-3.

(2) Each application shall also contain an engineering report, plans, specifications, and calculations that address:

(a) the information and maps required by Subsections R315-310-4(2)(a)(i) and (ii);

(b) the design and location of the run-on and run-off control systems;

(c) the information required by Subsections R315-310-4(2)(d) and (e);

(d) the area to be served by the facility; and

(e) how the facility will meet the requirements of Rule R315-305.

(3) Each application for a Class IVa Landfill permit shall also contain the applicable information required in Subsections R315-310-4(2)(b)and (c).

R315-310-6. Contents of a Permit Application for a New or Expanding Landtreatment Disposal Facility.

(1) Each application for a landtreatment disposal facility permit shall contain the information required in Section R315-310-3.

(2) Each application for a permit shall also contain:

(a) a geohydrological assessment of the facility site that addresses all of the factors of Subsection R315-310-4(2)(b);

(b) engineering report, plans, specifications, and calculations that address:

(i) how the proposed facility will meet the location standards pursuant to Section R315-302-1;

(ii) how the proposed facility will meet the standards of Rule R315-307;

(iii) the basis for calculating the facility's life;

(iv) waste analyses and methods to periodically sample and analyze solid waste;

(v) design of interim waste storage facilities;

(vi) design of run-on and run-off control systems;

(vii) a contour map of the active area showing contours to the nearest foot;

(viii) a ground water and surface water monitoring program; and

(ix) access barriers such as fences, gate, and warning signs.

(c) a plan of operation that in addition to the requirements of Section R315-302-2 addresses:

(i) operation and maintenance of run-on and run-off control systems;

(ii) methods of taking ground water samples and for maintaining ground water monitoring systems; and

(iii) methods of applying wastes to meet the requirements of Section R315-307-3.

(d) closure plan to address:

(i) closure schedule;

(ii) capacity of site in volume and tonnage; and

(iii) final inspection by regulatory agencies.

(e) post-closure plan to address:

(i) estimated time period for post-closure activities;

(ii) site monitoring of ground water;

(iii) changes in record of title;

(iv) maintenance activities to maintain cover and run-off system;

(v) plans for food-chain crops, if any, being grown on the active areas, after closure; and

(vi) identification of final closure costs including cost calculations and the funding mechanism.

R315-310-7. Contents of a Permit Application for a New or Expanding Energy Recovery or Incinerator Facility.

(1) Each application for a new or expanding energy recovery or incinerator facility permit shall contain the information required in Section R315-310-3.

(2) Each application for a permit shall also contain:

(a) engineering report, plans, specifications, and calculations that address:

(i) the design of the storage and handling facilities on-site for incoming waste as well as fly ash, bottom ash, and any other wastes produced by air or water pollution controls; and

(ii) the design of the incinerator or thermal treater, including charging or feeding systems, combustion air systems, combustion or reaction chambers, including heat recovery systems, ash handling systems, and air pollution and water pollution control systems. Instrumentation and monitoring systems design shall also be included.

(b) an operational plan that, in addition to the requirements of Section R315-302-2, addresses:

(i) cleaning of storage areas as required by Subsection R315-306-2(5);

(ii) alternative storage plans for breakdowns as required in Subsection R315-306-2(3);

(iii) inspections to insure compliance with state and local air pollution laws and to comply with Subsection R315-302-2(5)(a). The inspection log or summary must be submitted with the application;

(iv) how and where the fly ash, bottom ash, and other solid waste will be disposed; and

(v) a program for excluding the receipt of hazardous waste equivalent to requirements specified in Subsection R315-303-4(7).

(c) documentation to show that air pollution and water pollution control systems are being reviewed or have been

reviewed by the Division of Air Quality and the Division of Water Quality.

(d) a closure plan to address:

(i) closure schedule;

(ii) closure costs and a financial assurance mechanism to cover the closure costs;

(iii) methods of closure and methods of removing wastes, equipment, and location of final disposal; and

(iv) final inspection by regulator agencies.

R315-310-8. Contents of a Permit Application for a New or Expanding Waste Tire Storage Facility.

Each application for a waste tire storage facility permit shall contain the information required in Subsections R315-310-3(1)(a), (b), and (c), and Subsection R315-314-3(3).

R315-310-9. Contents of a Permit Application for an Existing Facility or a Permit Renewal.

The owner or operator of each existing facility shall apply for a permit or renewal of their permit by submitting the applicable information and application specified in Sections R315-310-3, -4, -5, -6, -7, or -8, as appropriate. Previous information submitted to the Executive Secretary may be referred to in the application. Changes in operating methods or other changes must be noted in the application in order to be authorized by permit.

R315-310-10. Permit Transfer.

(1) A permit may not be transferred without approval from the Executive Secretary, nor shall a permit be transferred from one property to another.

(2) Application for transfer of a permit shall be made at least 60 days prior to the change of permittee.

(3) The new permittee shall:

(a) assume permit requirements and all financial responsibility;

(b) provide adequate documentation that the operator has or shall have ownership or control of the facility for which the transfer of permit has been requested;

(c) demonstrate adequate knowledge and ability to operate the facility in accordance with the permit conditions; and

(d) demonstrate adequate financial assurance as required in the permit for the operation of the facility.

(4) An application for permit transfer may be denied if the Executive Secretary finds that the applicant has:

(a) knowingly misrepresented a material fact in the application;

(b) refused or failed to disclose any information requested by the Executive Secretary;

(c) exhibited a history of willful disregard of any state or federal environmental law; or

(d) had any permit revoked or permanently suspended for cause under any state or federal environmental law.

KEY: solid waste management, waste disposal

June 15, 2002	**19-6-105**
Notice of Continuation April 20, 1998	**19-6-108**
	19-6-109
	40 CFR 258

R315. Environmental Quality, Solid and Hazardous Waste.
R315-313. Transfer Stations and Drop Box Facilities.
R315-313-1. Applicability.

Any transfer station or drop box facility receiving solid waste from off-site shall meet the requirements of Rule R315-313.

R315-313-2. Transfer Station Standards.

(1) Each transfer station shall meet the requirements of Section R315-302-2 and shall submit a plan of operation and such other information as requested by the Executive Secretary for approval prior to construction and operation.

(2) Each transfer station shall be designed, constructed, and operated to:

(a) be surrounded by a fence, trees, shrubbery, or natural features so as to control access and to screen the station from the view of immediately adjacent neighbors, unless the tipping floor is fully enclosed by a building;

(b) be sturdy and constructed of easily cleanable materials;

(c) be free of potential rat harborage, and provide effective means to control rodents, insects, birds, and other vermin;

(d) be adequately screened to prevent blowing of litter and to provide effective means to control litter;

(e) provide protection of the tipping floor from wind, rain, or snow;

(f) have an adequate buffer zone around the active area to minimize noise and dust nuisances, and a buffer zone of 50 feet from the active area to the nearest property line in areas zoned residential;

(g) provide pollution control measures to protect surface and ground waters by the construction of:

(i) a run-off collection and treatment system, if required, must be designed and operated to collect and treat a 25-year storm and equipment cleaning and washdown water; and

(ii) a run-on prevention system to divert a 25-year storm event;

(h) provide all-weather access in all vehicular areas;

(i) provide pollution control measures to protect air quality including a prohibition against all burning and the development of odor and dust control plans to be made part of the plan of operation;

(j) prohibit scavenging;

(k) provide attendants on-site during hours of operation;

(l) have a sign that identifies the facility and shows at least the name of the site, hours during which the site is open for public use, materials not accepted at the facility, and other necessary information posted at the site entrance;

(m) have communication capabilities, if available in the facility area, to immediately summon fire, police, or emergency service personnel in the event of an emergency; and

(n) remove all wastes at final closure from the facility to another permitted facility.

R315-313-3. Drop Box Facility Standards.

(1) Each drop box facility shall be constructed of durable watertight materials with a lid or screen on top that prevents both the loss of materials during transport and access by rats and other vermin.

(2) Each drop box facility shall be located in an easily identifiable place accessible by all-weather roads.

(3) Each drop box facility shall be designed and serviced as often as necessary to ensure adequate storage capacity at all times. Storage of solid waste outside the drop boxes is prohibited.

(4) Each drop box facility shall have a sign at the entrance that complies with Subsection R315-313-2(2)(l).

(5) The owner or operator of each drop box facility shall remove all remaining wastes at final closure, to a permitted facility and remove the drop box.

KEY: solid waste management

July 1, 2001	**19-6-104**
Notice of Continuation April 28, 1998	**19-6-105**
	19-6-108

R317. Environmental Quality, Water Quality.
R317-10. Certification of Wastewater Works Operators.
R317-10-1. Objectives.

The certification program is established in order to assist in protecting the quality of waters in the state of Utah by helping ensure that personnel in charge of wastewater works are trained, experienced, reliable and efficient; to protect the public health and the environment and provide for the health and safety of wastewater works operators; and to establish standards and methods whereby wastewater works operating personnel can demonstrate competency.

R317-10-2. Scope.

These certification rules apply to all wastewater treatment works and sewerage systems, with the exception of Onsite Wastewater Systems and Large Underground Wastewater Disposal Systems as defined in R317-1-1. This includes both wastewater collection systems and wastewater treatment systems except underground wastewater disposal systems. Wastewater works operated by political subdivisions must employ certified operators as required in this rule. Operators of wastewater systems not requiring certified operators (such as industrial wastewater treatment systems) may be certified according to provisions of these rules for testing and certification.

R317-10-3. Authority.

The Certification Program for Wastewater Works Operators is authorized by Section 19-5-104 of the Utah Code Annotated.

R317-10-4. Definitions.

A. "Board" means the Water Quality Board.

B. "Category" means type of certification (collection or wastewater treatment).

C. "Certificate" means a certificate issued by the Council, stating that the recipient has met the minimum requirements for the specified operator grade described in this rule.

D. "Certified Operator" means a person with the appropriate education and experience, as specified in this rule, that has successfully completed the certification exam or otherwise meets the requirements of this rule.

E. "Chief Operator" means the supervisor in direct responsible charge of all shift operators for a collection or treatment system.

F. "Collection System" means the system designed to collect and transport sewage from the beginning points that the collection entity regards as their responsibility to maintain and operate, to the points where the treatment facility assumes responsibility for operation and maintenance.

G. "Council" means the Utah Wastewater Operator Certification Council.

H. "Continuing Education Unit (CEU)" means ten contact hours of participation in and successful completion of an organized and approved continuing education experience. College credit in approved courses may be substituted for CEUs on an equivalency basis as defined in this rule.

I. "Direct Responsible Charge (DRC)" means active on-site charge and performance of operation duties. The person in direct responsible charge is generally a supervisor over wastewater treatment or collection who independently makes decisions affecting all treatment or system processes during normal operation which may effect the quality, safety, and adequacy of treatment of wastewater discharged from the plant. In cases where only one operator is employed, this operator shall be considered to be in direct responsible charge.

J. "Executive Secretary" means the Executive Secretary of the Water Quality Board.

K. "Grade Level" means any one of the possible steps within a certification category of either wastewater collection or wastewater treatment. There are four levels each for collection and treatment system operators, Grade I being the lowest and Grade IV the highest level. There is one level for lagoon operators.

L. "Grandfather Certificate" means a certificate issued to an operator, without taking an examination, by virtue of the operator meeting experience and other requirements in R317-10-11.G of this rule.

M. "Operating Experience" means experience gained in operating a wastewater treatment plant or collection system which enables the operator to make correct supervisory, operational, safety, and maintenance decisions affecting personnel, water quality, public health, regulatory compliance, and wastewater works operation, efficiency, and longevity.

N. "Operator" means any person who is directly involved in or may be responsible for operation of any wastewater works or facilities treating wastewater.

O. "Population Equivalent (P.E.)" means the population which would contribute an equivalent waste load based on the calculation of total pounds of B.O.D. contributed divided by 0.2. This calculation may be used where a significant amount of industrial waste is discharged to a wastewater system.

P. "Restricted Certificate" means a certificate issued upon passing the certification examination when other requirements have not been met.

Q. "Small Lagoon System" means a wastewater lagoon system designed to serve fewer than 3500 design population equivalent.

R. "Wastewater Works" means facilities for collecting, pumping, treating or disposing of sanitary wastewater.

R317-10-5. Wastewater Works Owner Responsibilities.

A. The chief operator and supervisors who make process decisions for the system must be certified at the level of the facility classification. All other operators in direct responsible charge must be certified at no less than one grade lower than the facility classification or at the lowest required facility classification except as provided in B below. All facilities must have an operator certified at the facility level on duty or on call. If a facility or system undergoes a re-rating, all operators considered to be in DRC must be certified at the appropriate level within one year after notification of the new rating.

B. Upon termination of employment of the Chief Operator, considered in DRC, the Executive Secretary must be notified within 10 working days by the facility owner. The wastewater works must have a certified operator or an operator with a restricted certificate at the appropriate level within one year from the date the vacancy occurred. If the wastewater works is newly constructed, a certified operator or an operator with a restricted certificate at the appropriate level must be employed

within one year after the system is deemed operable.

C. Those required to be certified may operate a system with a restricted certificate of the required grade for up to one year for a Class I or Class II facility, or up to two years for a Class III or Class IV facility, but may not continue to operate a system if they are unable to obtain an unrestricted certificate at the end of the stipulated period.

D. Contracts

1. General. In lieu of employing a DRC operator as part of its workforce, a facility owner may enter into a contract for DRC services with an operator certified at the appropriate level, or with another public or private entity with operators certified at the appropriate level.

2. Any such contract must be reviewed and approved by the Executive Secretary.

3. If the contract is with another entity, it must include the names of the certified individuals who will be in direct responsible charge of the operation of the facility. At a minimum the contract must contain the following elements:

a. A clear description of the overall duties and responsibilities of the facility owner and the responsibilities of the contracted DRC operator(s) related to the supervision of the facility's operation, including the frequency of visits and the duties to be performed.

b. Identification of the contract period and effective date of the contract

c. Consideration

d. Termination clause

e. Execution by authorized signatories

R317-10-6. Facility Classification System.

Treatment plants and collection systems shall be classified in accordance with Table 1.

TABLE 1
FACILITY CLASSIFICATION SYSTEM

FACILITY CATEGORY		CLASS I	II	III	IV
Collection and (1)	Pop. Served	3,500 and less	3,501 to 15,000	15,001 to 50,000	50,001 greater
Treatment Plant (2)	Range of Fac. Points	30 and less	31 to 55	56 to 75	76 and greater
Small Lagoon Systems(3)	Design Pop. Equiv.	3,500 and less			

(1) Simple "in-line" treatment (such as booster pumping, preventive chlorination, or odor control) is considered an integral part of a collection system.

(2) Treatment plants shall be assigned "facility points" in accordance with Table 2 "Wastewater Treatment Plant Classification System".

(3) A combined certificate shall be issued for treatment works/collection system operation.

TABLE 2
WASTEWATER TREATMENT PLANT CLASSIFICATION SYSTEM

Each Unit process should have points assigned only once.

Item	Points
SIZE (2 PT Minimum - 20 PT Maximum)	
Max. Population equivalent (PE) served, peak day(1)	1 - 10
Design flow average day or peak month average, whichever is larger(2)	1 - 10
Variation in raw waste:(3)	
Variations do not exceed those normally or typically expected	0
Recurring deviations or excessive variations of 100 - 200% in strength and/or flow	2
Recurring deviations or excessive variations of more than 200% in strength and/or flow	4
Raw wastes subject to toxic waste discharges	6
Impact of septage of truck-hauled waste	0 - 4
PRELIMINARY TREATMENT	
Plant pumping of main flow	3
Screening, comminution	3
Grit removal	3
Equalization	1
PRIMARY TREATMENT	
Clarifiers	5
Imhoff tanks or similar	5
SECONDARY TREATMENT	
Fixed Film reactor trickling filters, RBC's	10
Activated sludge	15
Stabilization ponds w/o aeration	5
Stabilization ponds w/aeration	8
TERTIARY TREATMENT	
Polishing ponds, wetlands for advanced waste treatment	2
Chemical/physical advanced waste treatment w/o secondary	15
Chemical/physical advanced waste treatment following secondary	10
Biological or chemical/biological advanced waste treatment	12
Nitrification by designed extended aeration only	2
Ion exchange for advanced waste treatment	10
Reverse osmosis, electrodialysis for advanced waste treatment	15
Advanced waste treatment chemical recovery, carbon regeneration	4
Media Filtration	4
ADDITIONAL TREATMENT PROCESSES	
Chemical additions (2 pts./each for max. Of 6 pts.)	2 - 6
Dissolved air flotation (for other than sludge thickening)	8
Intermittent sand filter	2
Recirculating intermittent sand filter	3
Microscreens	5
Generation of oxygen	5
SOLIDS HANDLING	
Solids conditioning	2
Solids thickening	5
Anaerobic digestion of solids	10
Utilization of digester gas for heating or cogeneration	5
Aerobic digestion of solids	6
Evaporative sludge drying	2
Mechanical dewatering of solids	8
Solids reduction (including incineration, wet oxidation)	12
On-site landfill for solids	2
Solids composting	10
Land application of biosolids by contractor	2
Land application of biosolids under direction	

of DRC operator	10
Disinfection: [0-]	10
Chlorination or ultraviolet irradiation	5
Ozonation	10
Effluent discharge: (0-10 pt max.)	
Mechanical Post aeration	2
Direct recycle and reuse	6
INSTRUMENTATION (0-6 Pt. Max.)	
Use of SCADA, similar instrumentation systems to provide data with no process operation	0
Use of SCADA, similar instrumentation systems to provide data with limited process operation	2
Use of SCADA, similar instrumentation systems to provide data with moderate process operation	4
Use of SCADA, similar instrumentation systems to provide data with extensive/total process operation	6
Laboratory Control: (0-15 pt. Max))	
Bacteriological/biological (0-5 pt. Max)):	
Lab work done outside the plant	0
Membrane filter procedures	3
Use of fermentation tubes or any dilution method (fecal coliform determination)	5
Chemical/physical (0-10):	
Lab work done outside the plant	0
Push-button, visual methods for simple tests (i.e. pH, settleable solids)	3
Additional procedures (ie, DO, COD, BOD, gas analysis, titrations, solids volatile content)	5
More advanced determinations (ie, specific constituents; nutrients, total oils, phenols)	7
Highly sophisticated instrumentation (i.e., atomic absorption, gas chromatography) 1-10	10

(1) 1 pt. per 10,000 P.E. or part; maximum of 10 points

(2) 1 pt. per MGD or part

(3) Key concept is frequency and/or intensity of deviation or excessive variation from normal or typical fluctuations; such deviation may be in terms of strength, toxicity, shock loads, inflow and infiltration, with point values ranging from 0 - 6.

(4) Key concept is the degree of dilution provided under low flow conditions with point values ranging from 0 - 6.

(5) Key concept is to credit laboratory analyses done on-site by plant personnel with point values ranging from 0 - 20.

R317-10-7. Qualifications for Operator Grades.

A. General

1. "Qualification Points" means total of years of education and experience required. All substitutions are year for year equivalents. A college "year" is considered 45 quarter hours or 30 semester hours of credit.

2. College-level education must be in a job-related field to be credited. However, partial credit may be given for non-job related education at the discretion of the Council.

3. Experience may be substituted for a high school education or a graduate equivalence degree in Grades I and II only.

4. Education may be substituted for experience, as specified below.

B. Grade I - 13 points required

1. Twelve years education (one point per year).

2. One year operating experience (one point per year).

3. Experience may be substituted for all or any part of the education requirements, on a one-to-one basis.

4. Education may not be substituted for experience.

C. Grade II - 14 points required

1. Twelve years education (one point per year)

2. Two years operating experience (one point per year)

3. Up to one year of additional education may be substituted for an equivalent amount of operating experience.

4. Experience may be substituted for all or any part of the education requirement, on a one-to-one basis.

D. Grade III - 16 points required

1. Twelve years education (one point per year)

2. Four years operating experience (one point per year)

3. Up to 2 years of additional education may be substituted for an equivalent amount of operating experience. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to 1 year of education.

4. At least one year of the operating experience must have been at a Class II facility or higher.

E. Grade IV - 18 points required

1. Twelve years education (one point per year)

2. Six years operating experience (one point per year)

3. Up to 2 years of additional education may be substituted for an equivalent amount of operating experience. Relevant and specialized training may be substituted for education where 25 CEUs equal 1 year of education.

4. At least two years of the operating experience must have been at a Class III facility or higher.

R317-10-8. Council.

A. Members of the Council shall be appointed by the Board from recommendations made by interested organizations including the Department of Environmental Quality, Utah League of Cities and Towns, Water Environment Association of Utah, the Professional Wastewater Operators Division of the Water Environment Association of Utah, the Utah Rural Water Association, Utah Valley State College, and the Civil/Environmental Engineering Departments of Utah's universities. The Council shall serve at the discretion of the Board to oversee the certification program.

B. The Council shall consist of eight members as follows:

1. Three members who are operators holding valid certificates. At least one shall be a wastewater collection system operator.

2. One member with three years' management experience in wastewater treatment and collection, who shall represent municipal wastewater management.

3. One member who is a civil or environmental engineering faculty member of a university in Utah.

4. One non-voting member who is a Senior Environmental Engineer in the Division of Water Quality or other duly designated person who shall represent the Board.

5. One member from the private sector.

6. One member representing vocational training.

C. Voting Council members shall serve as follows:

1. Terms of office shall be for three years with two members retiring each year (except for the third year when three shall retire).

2. Appointments to succeed a Council member who is unable to serve his full term shall be for the remainder of the unexpired term.

3. Council members may be reappointed, but they do not automatically succeed themselves.

D. Each year the Council shall elect from its membership a Chairman and Vice Chairman.

E. The duties of the Council shall include:

1. Preparing and conducting examinations for the various grades of operators, and issuing and distributing the certificates.

2. Regularly reviewing the certification examinations to ensure compatibility between the examinations and operator responsibilities.

3. Ensuring that the certification examinations and training curricula are compatible.

4. Distributing examination applications and notices.

5. Receiving all applications for certification and evaluating the record of applicants as required to establish their qualifications for certification under this rule.

6. Maintaining records of operator qualifications and certification.

7. Preparing an annual report for distribution to the Board and other interested parties.

F. A majority of voting members shall constitute a quorum for the purpose of transacting official Council business.

R317-10-9. Application for Examination.

Prior to taking an examination, an applicant must file a formal application of intention with the Council, accompanied by evidence of qualifications for certification in accordance with the provisions of this rule on application forms available from the Council.

R317-10-10. Examination.

A. The time and place of examinations to qualify for a certificate shall be determined by the Council. All examinations shall be graded and the applicant notified of the results. Examination fees shall be charged to cover the costs of testing.

B. Normally, all examinations for certification shall be written. However, upon request an oral examination will be given. Such examination shall be conducted by at least two Council members in a manner that will ensure the integrity of the certification program.

C. In the event an applicant fails an exam, the applicant may request to review the exam within 30 days following receipt of the exam score. The Council shall not review examination questions for the purpose of changing individual examination scores. However, questions may be edited for future examinations. If an error is found in the grading of the exam, credit may be given.

R317-10-11. Certificates.

A. All certificates shall indicate one of the following grades for which they are issued.

1. Wastewater Works Operator - Grades I through IV.

2. Wastewater Works Operator - Restricted Grades I through IV.

3. Wastewater Collection System Operator - Grades I through IV.

4. Wastewater Collection System Operator - Restricted Grade I through IV.

5. Small Lagoon System Operator - Grade I Wastewater Works/Collection System Combined.

6. Small Lagoon System Operator - Restricted Grade I Wastewater Works/Collection System Combined.

B. An applicant shall have the opportunity to take any grade of examination higher than the classification of the system which he or she operates. A restricted certificate shall be issued if the applicant passes the exam but lacks the experience or education required for a particular grade.

An unrestricted certificate shall be issued if the applicant passes the exam and the experience and education requirements appropriate to the particular grade are met. Restricted certificates shall become unrestricted when the appropriate experience and education requirements are met and a change in status fee is paid. A restricted certificate does not qualify a person as a certified operator at the grade level that the restricted certificate is issued, until the limiting conditions are met, except as provided in R317-10-5. Upon application, a restricted certificate may be renewed subject to the conditions in C below. Replacement certificates may be obtained by payment of a duplicate certificate fee.

C. Certificates shall continue in effect for a period of up to three years unless revoked prior to that time. The certificate must be renewed each three years by payment of a renewal fee and submittal of evidence of required CEUs. The certificates expire on December 31 of the last year of the certificate. Operators considered in DRC must renew by the expiration date in order for the wastewater works to remain in compliance with this rule. Request for renewal shall be made on forms supplied by the Council. It shall be the responsibility of the operator to make application for certificate renewal.

D. An expired certificate may be reinstated within three months after expiration by payment of a reinstatement fee. After three months, an expired certificate cannot be reinstated, and the operator must retest to become certified. The required CEUs for renewal must be accrued before expiration of the certificate.

E. CEUs must be earned during the 3 year period prior to the expiration date of the certificate.

F. The Council may, after appropriate review, waive examination of applicants holding a valid certificate or license issued in compliance with other certification plans having equivalent standards, and issue a comparable Utah certificate upon payment of a reciprocity fee.

If the applicant is working in another state at the time of application, or has relocated to Utah but has not yet obtained employment in the wastewater field in Utah, a letter of intent to issue a certificate by reciprocity may be provided. When the applicant provides proof of employment in the wastewater field in Utah, and meets all other requirements, a certificate may be issued.

G. A grandfather certificate shall be issued, upon application and payment of an administrative fee, to qualified operators who must be certified (chief operators, supervisors, or anyone considered in direct responsible charge). The certificate shall be valid only for the wastewater works at which the operator is employed as that facility existed on March 16, 1991. The certificate may not be transferred to another facility or person. If the facility undergoes an addition of a new process, even if the facility classification does not change, or the collection system has a change in rating, the respective operator must obtain a restricted or unrestricted certificate within one year as specified in this rule. Grandfather certificates shall be

issued for a period of up to three years and must be renewed to remain in effect. Renewal shall include the payment of a renewal fee and submittal of evidence of required CEUs. The renewal fee shall be the same as that charged for renewal of other certificates. The grandfather certificate shall be issued if the currently employed operator:

1. Was a chief operator or person in direct responsible charge of the wastewater works on March 16, 1991; and

2. Had been employed at least ten years in the operation of the wastewater works prior to March 16, 1991; and

3. Demonstrates to the Council his capability to operate the wastewater works at which he is employed by providing employment history and references.

R317-10-12. CEUs and Approved Training.

A. CEUs shall be required for renewal of each certificate according to the following schedule:

TABLE 3
REQUIRED CEUs FOR RENEWAL OF EACH CERTIFICATE

OPERATOR GRADE	CEUs REQUIRED IN A 3-YEAR PERIOD
Grade I	2
Grade II	2
Grade III	3
Grade IV	3

B. All CEUs for certificate renewal shall be subject to review for approval to ensure that the training is applicable to wastewater works operation and meets CEU criteria. Identification of approved training, appropriate CEU or credit assignment and verification of successful completion is the responsibility of the Council. Training records shall be maintained by the Council.

C. All in-house or in-plant training which is intended to meet any part of the CEU requirements must be approved by the Council. In-house or in-plant training must meet the following general criteria to be approved:

1. Instruction must be under the supervision of an instructor approved by the Council.

2. An outline must be included with all submittals listing subjects to be covered and the time allotted to each subject.

3. A list of the teacher's objectives must be submitted which documents the essential points of the instruction ("need-to-know" information) and the methods used to illustrate these principles.

4. No more than one-half of required CEU credits over a three year period following issuance of a certificate shall be given for registration and attendance at the annual technical program meetings of the Water Environment Association of Utah, the Water Environment Federation, Rural Water Association of Utah, or similar organizations.

5. Training must be related to the responsibilities of a wastewater works operator. If a person holds two wastewater operator certificates (treatment and collection), CEU credit may be received for each certificate from one training experience only if the training is applicable to each certificate. It is recommended that at least one-half the required CEUs be technical training directly related to the job duties.

R317-10-13. Appeals of Decisions of the Council.

Any person may request a hearing before the Council of an action or decision by the Council affecting that person. The person must file the request within 90 days of the Council's decision. The hearing will be at a time and location set by the Council. If the affected party does not agree with the decision of the Council after the hearing, an appeal may be made to the Executive Secretary of the Board for a hearing before the Board. Notice of the appeal must be filed with the Executive Secretary of the Board within 30 days of the final action of the Council. All appeals should be submitted to: Wastewater Operator Certification Council, Division of Water Quality, Department of Environmental Quality, State of Utah, Salt Lake City, Utah 84114-4870.

R317-10-14. Certificate Suspension and Revocation Procedures.

A. Prior to the Council's recommendation to the Executive Secretary of the suspension or revocation of a certificate, the individual shall be informed in writing of the reasons the Council is considering such action and allowing the individual an opportunity for a hearing before the Council.

B. Grounds for suspending or revoking an operator's certificate may be any of the following:

1. Demonstrated disregard for the public health and safety;

2. Misrepresentation or falsification of figures and/or reports submitted to the State;

3. Cheating on a certification exam;

4. Falsely obtaining or altering a certificate;

or

5. Gross negligence, incompetence or misconduct in the performance of duties as an operator.

C. Suspension or revocation may result where it may be shown that circumstances and events relative to the operation of the wastewater works were under the operator's jurisdiction and control. Circumstances beyond the control of an operator shall not be grounds for suspension or revocation action.

D. Following an appropriate hearing on these matters, the Council may recommend that the Executive Secretary take formal action.

E. Any suspension or revocation decision by the Executive Secretary may be appealed to the Board. Written request for a hearing before the Board must be filed with the Executive Secretary within 30 days of the decision.

R317-10-15. Noncompliance.

A. Noncompliance with these Certification rules is a violation of Section 19-5-115 Utah Code Annotated.

B. Cases of noncompliance shall be referred to the Board for appropriate enforcement action.

KEY: water pollution, operator certification*, wastewater treatment
July 5, 2002 19-5
Notice of Continuation December 12, 1997

R317. Environmental Quality, Water Quality.
R317-100. Utah State Project Priority System for the Utah Wastewater Project Assistance Program.
R317-100-1. Project Priority System.

This rule is necessary to meet requirements of Federal Water Quality Act, 40 CFR 35.3115 and Section 19-5-104(f) of the Utah Code. Copies of the current Utah State Project Priority List are available at the Utah Department of Environmental Quality, Division of Water Quality.

R317-100-2. General.

A. The Project Priority System is used to prioritize projects to allocate wastewater revolving loan and grant funds which may be available through the state and federal governments. The priority system is intended to identify those projects which will remedy the most severe water quality problems and to provide funds for the most beneficial program of public health protection and water quality improvement.

B. The Project Priority System will prioritize non-point source pollution, point source pollution (both storm water and municipal wastewater), and underground wastewater disposal system projects which are candidates for funding through the Utah State Wastewater Project Assistance Program. All projects considered for funding under this program receive an "alpha" ranking in accordance with R317-100-4. In addition, all point source projects identified on the State Revolving Fund (SRF) Intended Use Plan (IUP) receive a "numeric" ranking under R317-100-3.

R317-100-3. Numeric Project Priority Ranking System.

A. PRIORITY POINT TOTAL

1. A priority number total for a project will be determined by adding the priority points from each of the four priority categories. Total Priority Points = Project Need for Reduction of Water Pollution + Potential for Improvement Factor + Existing Population Affected + Special Consideration. If two or more projects receive an equal number of priority points, such ties shall be broken using the following criteria:

a. The projects shall be ranked in order of the highest "Need for Reduction of Water Pollution."

b. If the tie cannot be broken on the basis of need, the projects shall be ranked in order of the "Potential for Improvement Factor."

c. If the tie cannot be broken on the basis of the above, the project serving the greatest population will be given priority.

B. PROJECT NEED FOR REDUCTION OF WATER POLLUTION

All projects receive the highest applicable point level only.

1. A documented existing substantial health hazard will be eliminated by the project. This may include: (1) discharge of inadequately treated wastewater to an area of immediate public contact where inadequate operation and maintenance is not the primary cause of the condition; (2) an area where a substantial number of failing subsurface disposal systems are causing surfacing sewage in areas of human habitation. The elimination of existing substantial health hazards is of highest priority. The determination of the existence of substantial health hazards shall be based upon the investigation, report, and certification of the local health department and the State Division of Water Quality. Such reports and certifications will be forwarded to EPA with the Priority List. The health hazard designation will normally apply to unsewered communities experiencing widespread septic tank failures and surfacing sewage: 70 points.

2. A raw sewage discharge will be eliminated or prevented: 60 points.

3. The surface water quality standards identified in R317-2 are impaired by an existing discharge. For points to be allotted under this criterion the affected stream segment must be "water quality limited" according to a wasteload analysis and water quality standards. Water quality standards have been established for the waters of Utah according to designated beneficial use classifications. A stream segment is considered to be "water quality limited" if a higher level of treatment than that which is provided by state effluent limitations is required to meet water quality standards. A stream segment is "effluent limited" if water quality standards are met by state imposed effluent limitations: 50 points.

4. The ground water quality standards identified in R317-6 are impaired by an existing discharge. For points to be allotted under this criterion the affected ground water must be impaired according to the numerical criteria outlined in the ground water protection levels established for Class I and II aquifers: 50 points.

5. Construction is needed to provide secondary treatment, or to meet the requirements of a Utah Pollution Discharge Elimination System (UPDES) Permit or Ground Water Discharge Permit, or the Federal Sludge Disposal Requirements: 50 points.

6. Documented water quality degradation is occurring, attributable to failing individual subsurface disposal systems where inadequate operation and maintenance is not the primary cause of the condition: 45 points.

7. Areas not qualifying as an existing substantial health hazard, but where it is evident that inadequate on-site conditions have resulted in the chronic failure of a significant number of individual subsurface disposal systems, causing an ongoing threat to public health or the environment. Points may be awarded in this category only when the Division of Water Quality determines that existing on-site limitations cannot be overcome through the use of approved subsurface disposal practices, or that the cost of upgrading or replacing failed systems to meet the minimum requirements of the local health department are determined to be excessive: 45 points.

8. Treatment plant loading has reached or exceeded 95 percent of design requirements needed to meet conditions of an UPDES Permit or needed to restore designated water use, or design requirements are projected to be exceeded within 5 years by the Division of Water Quality. Points will not be allocated under this criterion where excessive infiltration or inflow is the primary cause for the loading to the system to be at 95 percent or greater of design requirements: 40 points.

9. Existing facilities that do not meet the design requirements in R317-3. Points may be allocated under this category only if the design requirements that are not being met are determined to be fundamental to the ability of the facility to meet water quality standards: 40 points.

10. Interceptor sewers, collection systems, pump stations and treatment, where applicable, are needed to solve existing

pollution, ground water, or public health concerns: 35 points.

a. Points may be awarded under this category only if they will primarily serve established residential areas and only if they are needed to solve existing pollution or public health problems.

b. Points shall not be awarded under this category where an interceptor is proposed for newly developing recreational communities, resorts, or unincorporated subdivisions.

c. Points may be awarded under this category when the majority of existing septic systems are located in defined well head protection zones or principal ground water recharge areas to Class I and II aquifers.

11. Interceptor sewers, collection systems, pump stations and treatment, where applicable, are needed to accomplish regionalization or eliminate existing treatment facilities. Points shall not be awarded under this category where an interceptor is proposed for newly developing recreational communities, resorts, or unincorporated subdivisions: 25 points.

12. Communities having future needs for wastewater facilities construction at existing wastewater systems, not included above, which are consistent with the goals of the Federal Water Pollution Control Act: 10 points.

13. Communities having future needs for new treatment plants and interceptors, not included above, which are consistent with the goals of the Federal Water Pollution Control Act: 5 points.

C. POTENTIAL FOR IMPROVEMENT FACTOR (PIF)

The PIF priority point sub-total is obtained by adding the points obtained in each of the four subcategories. Total PIF points = Classified Water Use + Discharge Standard Factor + Restoration from Water Quality Standard Violation + Estimated Improvement.

1. Classified Water Use. Priority points under this subcategory are allotted in accordance with segment designations listed in R317-2-13, Classifications of Waters of the State. Points are cumulative for segments classified for more than one beneficial use.

a. Protected as a raw water source of culinary water supply; R317-2-13 Use Classes: 1A, 1B, or 1C: 4 points.

b. Protected for primary contact recreation (swimming); R317-2-13: 2A: 4 points.

c. Protected for secondary contact recreation (water skiing, boating and similar uses); R317-2-13: 2B: 3 points.

d. Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain; R317-2-13: 3A: 3 points.

e. Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in the food chain; R317-2-13: 3B: 3 points.

f. Protected for non-game fish and other aquatic life, including the necessary aquatic organisms in their food chain; R317-2-13: 3C: 2 points.

g. Protected for waterfowl, shore birds and other water-oriented wildlife not included above, including the necessary aquatic organisms in their food chain; R317-2-13: 3D: 2 points.

h. Protected for agricultural, industrial, and "special" uses; R317-2-13: 4, 5, and 6: 1 point.

2. Discharge Standard Factor. Priority points are allotted as follows:

a. Project discharge standards are water quality based: 5 points.

b. Project must meet secondary effluent treatment standards: 2 points.

c. Project does not discharge to surface waters: 0 points.

3. Restoration from Water Quality Standard Violation.

a. Project WILL RESTORE Designated Water Use: 5 points.

b. Project WILL NOT RESTORE Designated Water Use: 0 points.

c. Points under this subcategory are assigned on the basis of whether appropriate water quality standard(s) can be restored if the respective project is constructed and any other water quality management controls are maintained at present levels. For a project to receive points under this subcategory, data from a State-approved waste load analysis must generally show that the designated water use is substantially impaired by the wastewater discharge and that the proposed project will likely restore the numerical water quality standards and designated use(s) identified in R317-2-12 and R317-2-14 for the waterbody.

d. Points may not be assigned under this subcategory if nonpoint source pollution levels negate water quality improvement from the proposed construction, if numerical standards or actual levels of pollutants being discharged are questionable, if serious consideration is being given to the redesignation of the stream segment to a lower classification, or if numerical standards for specific pollutants are inappropriately low for the classified water use.

4. Estimated Improvement in Stream Quality or Estimated Improvement in Environmental Quality including Presently Unsewered Communities and Sewered Communities with Raw Sewage Discharges. Points in this category shall be allocated based upon the judgment of the Division of Water Quality Staff and on the nature of the receiving water and surrounding watershed. Consideration shall be given to projects which discharge into Utah priority stream segments as identified in the biennial water quality report (305(b)). The criteria used to develop the Stream Segment Priority List may be used to evaluate projects on other streams not on the Stream Segment Priority List. These criteria include the existing use impairment, the overall index from a use impairment analysis, the potential for use impairment, the downstream use affected, the population affected, the amount of local interest and involvement toward improving the stream quality, the presence of endangered species, and the beneficial use classification. Activities within the watershed that are aimed at reducing point and nonpoint sources of pollution may also be considered in the allocation of points. In addition, the effect of a discharge or proposed change in a discharge on the chemical and biological quality of the receiving stream may be considered in the determination of points. Only those projects which will significantly improve water quality or environmental quality and will restore or protect the designated uses or eliminate public health hazards shall be given the maximum points allowable. Fewer points can be given in instances where some significant improvement will be achieved if a project is constructed.

a. The project is essential immediately, and must be constructed to protect public health or attain a high, measurable

improvement in water quality: 20 points.

b. The project will likely result in a substantial level of improvement in water quality or public health protection: 10 points.

c. Some level of water quality improvement or public health protection would likely be provided by the construction of the project, but the effect has not yet been well established. Also, present facilities lack unit processes needed to meet required discharge standards: 5 points.

d. No significant improvement of water quality or public health protection would likely be achieved, at present, by a project: 0 points.

D. EXISTING POPULATION AFFECTED

For sewered communities, priority points are based on the population served by a treatment facility. For unsewered areas, points are based on the population of the affected community.

1. Greater than 80,000: 10 points.
2. 40,000 - 80,000: 9 points.
3. 20,000 - 40,000: 8 points.
4. 10,000 - 20,000: 7 points.
5. 5,000 - 10,000: 6 points.
6. 4,000 - 5,000: 5 points.
7. 3,000 - 4,000: 4 points.
8. 2,000 - 3,000: 3 points.
9. 1,000 - 2,000: 2 points.
10. Less than 1,000: 1 point.

E. SPECIAL CONSIDERATION

1. The proposed project is an interceptor sewer which is part of a larger regional plan and is necessary to maintain the financial, environmental or engineering integrity of that regionalization plan: 20 points, or

2. The project is needed to preserve high quality waters such as prime cold water fishery and anti-degradation segments: 20 points.

3. The proposed project will change the facility's sludge disposal practice from a non-beneficial use to a beneficial use method: 20 points.

4. The users of the proposed project are subject to a documented water conservation plan: 20 points.

5. The sponsor of the proposed project has completed and submitted the most recent Municipal Wastewater Planning Program (MWPP) questionnaire: 20 points.

R317-100-4. Alpha Project Priority System.

All projects receive the highest applicable designation only. Projects will be included in one of three categories: A. Underground Wastewater Disposal Systems; B. Non-Point Source Pollution Projects, and C. Point Source Pollution Projects. The projects shall be ranked in order of: 1. Public Health Protection; 2. Water Quality Improvement; 3. Potential for Improvement; and, in the case of point source pollution projects, 4. Future Needs. Funding will be allocated as identified in R317-101, Utah Wastewater Project Assistance Program and R317-102, Utah Wastewater State Revolving Fund (SRF) Program for the categories of projects identified below.

A. UNDERGROUND WASTEWATER DISPOSAL SYSTEM PROJECTS:

1. Public Health Protection

a. Projects that improve or prevent a discharge of inadequately treated wastewater to an area of immediate public contact.

b. Projects that improve or prevent a discharge of inadequately treated wastewater within a zone of protection of a municipal or private drinking water well or that eliminate a drinking water impairment.

2. Water Quality Improvement

a. Projects that restore beneficial uses to surface water identified on the 303(d) Water Quality Impaired Waters list.

b. Projects that improve or prevent pollution to ground water.

3. Potential for Improvement

a. Projects that include improvement or replacement of underground wastewater disposal systems that may prevent degradation to surface water or ground water.

b. Projects that are necessary to comply with state or local underground wastewater disposal rules or regulations, e.g., existing systems that have inadequate ground water separation or are installed in unsuitable soil.

c. Projects that may improve underground wastewater disposal system reliability and function.

B. NON-POINT SOURCE POLLUTION PROJECTS:

1. Public Health Protection

a. Projects that improve or prevent a discharge of inadequately treated wastewater or other polluted water to an area of immediate public contact.

b. Projects that improve or prevent a discharge of inadequately treated wastewater or other polluted water within a zone of protection of a municipal or private drinking water well or that eliminate a drinking water impairment.

2. Water Quality Improvement

a. Projects that restore beneficial uses to surface water identified on the 303(d) Water Quality Impaired Waters list.

b. Projects that improve or prevent other surface water pollution.

c. Projects that improve or prevent ground water pollution.

3. Potential for Improvement

a. Projects that improve non-point sources of pollution from industrial, municipal, private or agricultural systems that may prevent degradation to surface water or ground water.

b. Projects that may prevent degradation to riparian areas, wetlands or that preserve the natural environment.

c. Projects that encourage conservation including wastewater reuse, biosolids reuse or new conservation technologies.

d. Projects that encourage Best Management Practices that may directly or indirectly improve or prevent degradation to surface water or ground water.

C. POINT SOURCE POLLUTION PROJECTS:

1. Public Health Protection

a. Projects that improve or prevent a discharge of inadequately treated wastewater to an area of immediate public contact.

b. Projects that improve or prevent a discharge of inadequately treated wastewater or storm water within a zone of protection of a municipal or private drinking water well or that eliminate a drinking water impairment.

2. Water Quality Improvement

a. Projects that restore beneficial uses to surface water

identified on the 303(d) Water Quality Impaired Waters list.

b. Projects that improve or prevent other surface water pollution.

c. Projects that improve or prevent ground water pollution.

d. Projects necessary to achieve water quality standards more stringent than secondary treatment standards.

e. Projects needed to meet secondary treatment standards or that expand systems that are beyond 95 percent of the design capacity or that do not meet current design criteria.

3. Potential for Improvement

a. Projects that improve collection, treatment and disposal systems that may prevent degradation to a surface water or ground water aquifer.

b. Projects that may prevent degradation to riparian areas, wetlands or that preserve the natural environment.

c. Projects that encourage regionalization of treatment systems.

d. Projects that encourage conservation including wastewater reuse, biosolids reuse, or new conservation technologies

4. Future Needs. Projects that may have future needs for the construction, expansion or replacement of collection and treatment systems.

KEY: grants, state assisted loans, wastewater
July 5, 2002 19-5
Notice of Continuation December 12, 1997 19-5-104
40 CFR 35.915 and 40 CFR 35.2015

R331. Financial Institutions, Administration.

R331-5. Rule Governing Sale of Securities by Persons Issuing Securities, Who Are Under the Jurisdiction of the Department of Financial Institutions.

R331-5-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301(13) and 7-1-503.

(2) This rule governs the issuance, offer, offer to sell, offer for sale or sale of any security issued by a person or institution under the jurisdiction of the Department of Financial Institutions.

(3) The rule establishes uniform rules for securities offerings applicable to all persons and institutions subject to the jurisdiction of the department and minimum standards of disclosure to protect the public interest.

R331-5-2. Definitions.

(1) "Issuer" means any person under the jurisdiction of the department who issues or proposes to issue any security.

(2) "Offer, offer to sell, offer for sale or sale" means:

(a) every attempt or offer to dispose of, or solicitation of an offer to buy;

(b) every contract of sale of, contract to sell, or disposition of a security or interest in a security for value;

(c) every sale or offer of a warrant or right to purchase or subscribe to another security of the same issuer or an affiliate of the issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same issuer or an affiliate of the issuer.

(3) "Restricted Securities" means:

(a) securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering;

(b) securities acquired from the issuer that are subject to the resale limitations of SEC Regulation D, Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933, 17 CFR 230.501-508 (1993), or securities issued pursuant to Utah Division of Securities Rule R164-14-2n, Uniform Limited Offering Exemption (1994);

(c) securities that are subject to the resale limitations of SEC Regulation D, Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933, 17 CFR 230.501-508 (1993) or Utah Division of Securities Rule R164-14-2n (1994) and are acquired in a transaction or chain of transactions not involving any public offering.

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

(5) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; pre-organization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The word "security" does not include:

(a) Certificates of deposit or similar instruments issued by a bank, savings and loan association, credit union, or industrial loan corporation authorized or approved by the commissioner;

(b) A loan participation, letter of credit, or other form of indebtedness incurred in the ordinary course of business by a bank, savings and loan association, credit union, or industrial loan corporation; or

(c) Promissory notes or other evidences of indebtedness, and the security therefor, leases of personal property, contracts to sell real or personal property, or other loans or investments sold by a depository institution in the secondary market.

R331-5-3. Registration with the Department.

(1) Any person under the jurisdiction of the department who issues, offers, offers to sell, offers for sale or sells any security, the issuer of which is also a person under the jurisdiction of the department, after the effective date of this rule, shall register with the department on forms as the department may require.

(2) No person may issue, offer, offer to sell, offer for sale or sell any security of which the issuer is also a person under the jurisdiction of the department, unless and until the department has provided notice to the issuer that the securities have been registered with the department and an offering circular containing, at a minimum, the information required in Rule R331-5-4, has been approved by the department.

R331-5-4. Offering Circular Requirements.

(1) General

No person subject to the jurisdiction of the department shall issue, offer, offer to sell, offer for sale or sell, directly or indirectly, any security issued by it unless the offer or sale is made through the use of an offering circular which has been filed and declared effective pursuant to this rule.

(2) Communications not deemed an offer

The following communications shall not be deemed an offer:

(a) Prior to filing an offering circular, any notice of a proposed offering which satisfies the requirements of SEC Rule 135, Notice of Certain Proposed Offerings , 17 CFR 230.135 (1993); and

(b) Subsequent to filing an offering circular, any notice, circular, advertisement, letter, or other communication published or transmitted to any person which satisfies the requirements of SEC Rule 134, Communications Not Deemed a Prospectus , 17 CFR 230.134 (1993).

(3) Preliminary offering circular

A preliminary offering circular may be used prior to the effective date of the offering circular if:

(a) The preliminary offering circular has been filed pursuant to this rule;

(b) The preliminary offering circular includes the information required by this rule, except for the information relating to offering price, discounts or commissions, amount of proceeds, conversion rates, call prices, or other matters dependent on the offering price; and

(c) The offering circular declared effective by the department is furnished to the purchaser prior to any sale.

(4) Form and Content

Any offering circular or amendment filed pursuant to this rule shall comply with the information requirements of Section (b) of the Securities and Exchange Commission Rule 502, General Conditions to be Met, 17 CFR 230.502 (1993).

(5) Number of Copies

Any filing shall include three copies of each document to be filed with the department. After the effective date of an offering circular, an offering circular which varies from the form previously filed shall not be used, unless it includes only non-material supplemental or additional information and until three copies have been filed with the department.

(6) Effective Date

An offering circular filed with the department is effective on the tenth day after filing. Upon request, the commissioner may declare an earlier effective date if he is satisfied that the offering circular is adequate and that the earlier effective date does not materially prejudice any party in interest. Exceptions include:

(a) If any amendment is filed prior to the effective date, the offering circular shall be deemed to have been filed when such amendment was filed;

(b) If a duly authorized amendment, telegram confirmed in writing, or letter states that the effective date is delayed until a further amendment is filed stating specifically that the offering circular will become effective in accordance with this paragraph; or

(c) If it appears to the department at any time that the offering circular is incomplete or inaccurate in any material respect, the department may determine to declare the offering circular not effective until a materially complete and accurate amendment is filed.

(7) Use of the offering circular

(a) An offering circular or amendment declared effective by the department shall not be used more than nine months after the effective date, unless the information contained therein is as of a date not more than sixteen months prior to such use.

(b) An offering circular filed under this rule shall not extend the period for which an effective offering circular or amendment may be used under Subsection (c).

(c) No offering circular shall be used and no offer or sale of securities subject to the offering circular requirements of this department shall be made subsequent to any material change in an issuer's business operations or financial condition, until the offering circular has been amended to include information as to the material changes and the amended offering circular has been filed with and declared effective by the department.

(8) Withdrawal or abandonment

(a) Any offering circular, amendment, or exhibit may be withdrawn prior to the effective date. A withdrawal shall be signed and state fully the grounds upon which it is made. Any documents withdrawn will not be removed from the files of the department, but will be marked "Withdrawn upon the request of the issuer on (date)."

(b) When an offering circular or amendment has been on file with the department for a period of nine months and has not become effective the department may, in its discretion, determine whether the filing has been abandoned, after notifying the issuer that the filing is out of date and must either be amended to comply with the applicable requirements of this rule or be withdrawn within 30 days after the date of such notice. Where a filing is abandoned, the documents will not be removed from the files of the department, but will be marked "Declared abandoned by the department on (date)."

R331-5-5. Securities Sale Report.

Within ten days after the termination of an offering pursuant to this rule, the issuer shall file a report with the department describing the sale of its securities which shall include:

(1) The name and address of the issuer;

(2) The title, number, aggregate and per-unit offering price of the securities sold;

(3) The aggregate and per-unit dollar amounts of actual itemized expenses, discounts or commissions, and other fees;

(4) The aggregate and per-share dollar amounts of the net proceeds raised; and

(5) The number of purchasers of each class of securities sold and the number of beneficial owners of each class of the issuer's equity securities at the termination of the offering.

R331-5-6. Limitations on Resale of "Restricted Securities".

(1) "Restricted Securities" acquired in a transaction pursuant to this rule, shall not be resold or otherwise disposed of for a period of two years without the prior written consent of the department. The issuer shall exercise reasonable care to ensure that the purchasers of the securities are not purchasing for resale or distribution.

(2) Reasonable care shall include the following:

(a) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

(b) Written disclosure to each purchaser prior to sale that the securities cannot be resold or otherwise disposed of for a period of two years without the prior written consent of the department;

(c) Placement of a legend on the certificate or other document that evidences the securities which states that: "The securities evidenced by this certificate are restricted as to transfer for a period of two years from the date of this certificate pursuant to the rules of the Utah Department of Financial Institutions and may not be sold or otherwise disposed of without the prior written consent of the department";

(d) The determination of the period securities have been held after acquisition for the purposes of this Section shall be made as would be determined under the provisions of the SEC Rule 144(d), Holding Period for Restricted Securities, 17 CFR 230.144(d); and

(e) Where securities of the issuer are exchanged for other securities in any business combination, securities of the issuer which are restricted under this Section may be exchanged for other securities which are similarly restricted and have the legend required by Subsection (c), and the holding periods may run concurrently.

R331-5-7. Remuneration Paid for Solicitation or for Sales.

No commission or similar remuneration shall be paid or given directly or indirectly for soliciting any prospective investor or in connection with the offer or sale of the securities in reliance on this rule unless such commission or similar

transaction-related remuneration is paid or given to a broker-dealer licensed pursuant to Section 61-1-4 or an issuer's agent licensed to sell as an agent of this issuer pursuant to Section 61-1-4.

R331-5-8. Manipulative and Deceptive Devices.

(1) In any offer, purchase, or sale in connection with an issuer's offering of its securities, under this rule, no person, directly or indirectly, shall:

(a) Employ any device, scheme, or artifice to defraud;

(b) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, or make any misleading statement; or

(c) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) All documents used in connection with an issuer's offering of securities including, but not necessarily limited to, written promotional materials, offering circulars, and reports of financial condition furnished to prospective purchasers must be accurate and contain no material misstatements or omit to state facts necessary in order to make the statement not misleading.

(3) No person is authorized to make any statement not contained in the disclosure statement.

R331-5-9. Waiver.

The department may waive any or all of the requirements of this rule or the filing of any required information if:

(1) the department determines the requirements or information is unnecessary; or

(2) the issuer is subject to supervisory actions of the commissioner.

R331-5-10. Penalties for Violation.

Penalties for the violation of this rule shall be the same as those imposed by the provisions of Sections 61-1-21 and 61-1-22.

KEY: financial institutions, securities

1995	**7-1-301(13)**
Notice of Continuation August 1, 2002	**7-1-503**
	61-1-21
	61-1-22

R331. Financial Institutions, Administration.

R331-7. Rule Governing Leasing Transactions by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions.

R331-7-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301(15), and 7-1-501.

(2) This rule applies to all depository institutions and their subsidiaries subject to the jurisdiction of the Department of Financial Institutions.

(3) The purpose of this rule is to clarify acceptable employment of deposits and other funds involved in leasing or leasing related transactions.

R331-7-2. Definitions.

(1) "Affiliate" means any company under common control with the depository institution excluding any subsidiary.

(2) "Assigned lease" means a lease having all of the following characteristics:

(a) Residual dependence greater than 5% of original equipment cost;

(b) Originated by a lessor - assignor who subsequently assigned its rights or sold a participation in the lease, payments, or ownership rights to the depository institution - assignee;

(c) The assigned lease is either a tax or non-tax lease;

(d) The depository institution may or may not have recourse to the assignor in addition to lessee recourse;

(e) The assigned lease is accounted for in accordance with R331-7-9.

(3) "Bargain call purchase option" means a written call purchase option which is a lessee option to purchase the asset as contrasted with a put purchase option which is a lessor right to force the lessee to purchase the asset. An option is considered a bargain if at the inception of the lease the purchase option exercise price is considered to be significantly less than the expected future fair market value of the property at the time the option becomes exercisable.

(4) "Capital lease vs. operating lease" means if at its inception a lease meets one or more of the (a) through (d) criteria and both of the (e) and (f) criteria, the lease shall be classified as a sales-type capital lease or a direct-financing capital lease, whichever is appropriate, by the lessor. Otherwise, it shall be classified as an operating lease.

(a) The lease automatically transfers ownership of the property to the lessee during or by the end of the lease term.

(b) The lease contains a bargain call purchase option.

(c) The lease term is equal to 75% or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last 25% of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

(d) The present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments representing executory costs to be paid by the lessor, including any profit thereon, equals or exceeds 90% of the excess of the fair value of the leased property to the lessor at the inception of the lease over any related investment tax credit retained by the lessor and expected to be realized by him.

(i) However, if the beginning of the lease terms falls within the last 25% of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used to classify the lease.

(ii) A lessor shall compute the present value of the minimum lease payments using the interest rate implicit in the lease.

(e) The collectability of the minimum lease payments shall be reasonably predictable. A lessor shall not be precluded from classifying a lease as a sales-type lease or as a direct financing lease simply because the receivable is subject to an estimate of uncollectability based on experience with groups of similar receivables.

(f) No important uncertainties surround the amount of unreimbursable costs yet to be incurred by the lessor under the lease. Important uncertainties might include commitments by the lessor to guarantee performance of the leased property in a manner more extensive than the typical product warranty or to effectively protect the lessee from obsolescence of the leased property. However, the necessity of estimating executory costs to be paid by the lessor shall not by itself constitute an important uncertainty as referred to herein.

(5) "Company" means a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any form of business entity.

(6) "Control" means control as defined in Section 7-1-103.

(7) "Department" means the Department of Financial Institutions.

(8) "Depository institution" means depository institution as defined in Section 7-1-103, and any subsidiary.

(9) "Direct financing lease" means a capital lease other than a leveraged lease that does not give rise to a dealer's profit or loss to the lessor but that meets one or more of the first four criteria and both criteria (e) and (f) in Subsection (4) above. In a direct financing lease, the cost and fair market value of the leased property is the same at the inception of the lease.

(10) "FASB 13" means the Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No. 13, Accounting for Leases, as amended, which outlines the required accounting procedures for accounting for leases by a lessor and is incorporated by reference. Other statements by the FASB, which are incorporated by reference, concerning leasing shall similarly be referred to by number such as "FASB 17" which defines initial direct costs of a lessor.

(11) "Gross investment in the lease" means the aggregate of the total minimum lease payments receivable and the unguaranteed residual in the lease.

(12) "Implicit interest rate" means the discount interest rate in a lease which when applied to the minimum lease payments, excluding that portion of the payments representing executory costs to be paid by the lessor, together with any profit thereon, and the unguaranteed residual value accruing to the benefit of the lessor, causes the aggregate present value at the beginning of the lease term to be equal to the fair value of the leased property to the lessor at the inception of the lease, minus any investment tax credit retained by the lessor and expected to be realized by him. This definition does not necessarily purport to include all factors that a lessor might recognize in determining his rate of return.

(13) "Leveraged lease" means a lease having all of the following characteristics:

(a) The lease involves at least three parties: a lessee, a long-term non-recourse creditor, and a lessor, commonly called the equity participant. A depository institution could be either the long-term non-recourse creditor or the equity participant;

(b) The financing provided by the long-term non-recourse creditor is non-recourse as to the general credit of the lessor although the creditor may have recourse to the specific property leased and the unremitted rentals relating to it. The amount of the non-recourse financing is sufficient to provide the lessor with substantial "leverage" in the transaction;

(c) Except for the exclusion of leveraged leases from the definition of a direct financing lease as set forth in R331-7-2(9), the lease otherwise meets the direct financing lease definition. A participation in a net, limited residual dependent lease purchased by a depository institution and a lease that meets the definition of a sales-type lease set forth in R331-7-2(4) shall not be considered a leveraged lease.

(14) "Limited residual dependent" means a lease from which the lessor can reasonably expect to realize a return of its investment in the leased property, plus the estimated cost of financing the property over the term of the lease, plus a reasonable profit, all of which are derived from:

(a) Lease rental payments;

(b) Estimated tax benefits; and

(c) The limited in amount estimated residual value of the property at the expiration of the initial non-cancelable term of the lease. The degree to which a depository institution may depend upon residual value to derive a profit from a lease transaction is subject to certain residual dependence restrictions set forth at Rule R331-7-4(1).

(15) "Minimum lease payments" means the minimum payments received on a lease which include any or all of the following:

(a) Guaranteed residual value by lessee or related party whether or not title transfers;

(b) Basic rentals during the non-cancelable lease term;

(c) Renewal rentals preceding a bargain call purchase option;

(d) Bargain call purchase options;

(e) Purchase option puts whether bargain or not;

(f) Third party residual guarantee, excluded by lessee as a criterion;

(g) Non-renewal penalties; and

(h) Unguaranteed residuals, including non-bargain purchase options, are excluded from minimum lease payments.

(16) "Net investment in the lease" means the gross investment less the unearned income.

(17) "Net lease" means a lease under which the depository institution will not directly provide or be obligated to provide for:

(a) The servicing, repair, or maintenance of the leased property during the lease term; however, the depository institution shall not be precluded from offering these same "full-service" benefits indirectly by subcontracting such service, repair, or maintenance to independent sub-contracting firms provided that such firms have the resources to meet the terms of the service contract;

(b) The purchasing of parts and accessories for the leased property, provided however, that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the net, limited residual dependence requirements;

(c) The loan of replacement or substitute property while the leased property is being serviced or repaired unless such loan or substitution of property is provided by an independent firm whose loan or replacement services have been subcontracted;

(d) The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance;

(e) The renewal of any license or registration for the property unless such action by the depository institution is necessary to protect its interest as an owner or financier of the property.

(18) "Non-tax lease" means a lease wherein the depository institution as a lessor does not receive the tax benefits of ownership of the leased property, and the residual dependence of the lessor is greater than 5% of the cost of the property.

(19) "Purchase option put" means a lessor right to force the lessee to purchase the asset.

(20) "Residual" means a residual payment or residual value in a lease which is represented by any of the following:

(a) A fixed purchase option fixed either as a dollar amount or as a percentage of cost of the leased property;

(b) A guaranteed residual where the residual value is guaranteed by the lessee, a third party, or the manufacturer or vendor;

(c) A fair market value purchase option where the option price is determined at the end of the lease based on the prevailing appraised market value;

(d) An unguaranteed residual such as in a closed end lease where the property reverts back to the lessor at the end of the lease term at which time the lessor has no guarantee as to the value of the property upon resale or release of the property. Fixed call purchase options that are not considered "bargain" will also be referred to as unguaranteed residuals.

(21) "Residual dependence" means depending upon residual value, including rentals and tax benefits, in a lease transaction in order to earn a required profit, recoup original capital investment, and cover financing costs. Full payout leases do not depend upon residual for profit whereas residual dependent leases do.

(22) "Sales-type lease" means a capital lease that gives rise to dealer's profit or loss to the lessor, in other words, the fair value of the leased property at the inception of the lease is greater or less than its cost, and that meets one or more of the criteria (a) through (d) and both criteria (e) and (f) in R331-7-2(4).

(a) Normally, a sales-type lease will arise when the depository institution acts as a dealer using leasing as a means of improving profit margins. Leases involving lessors that are primarily engaged in financing operations normally will not be sales-type leases if they qualify under R331-7-2(4), but will most often be direct financing leases, as described in R331-7-2(9).

(b) However, a lessor need not be a dealer to realize

dealer's profit or loss on a transaction. For example, if a lessor, who is not a dealer, leases an asset that at the inception of the lease has a fair value that is greater or less than its cost or carrying amount, if different, such a transaction is a sales-type lease, assuming the criteria referred to are met.

(23) "Subsidiary" means subsidiary as defined in Section 7-1-103.

(24) "Tax lease" means a lease where the depository institution as a lessor is construed to be the tax owner of the property for income tax purposes and thereby receives the tax benefits of ownership including tax credits and depreciation, and the residual dependence of the lessor is greater than 5% of the cost of the property.

(25) "Total Capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserves for loan losses, and subordinated notes and debentures with more than one year maturity.

(26) "Unearned income" means the difference between the gross investment in the lease and the cost or carrying amount, if different, of the leased property. Unearned income shall be increased by any deferral of the investment tax credit or any other tax credits and decreased by any initial direct costs incurred on direct financing leases.

(27) "Unguaranteed residual value" means the estimated residual value of the leased property exclusive of a portion guaranteed by the lessee, by any party related to the lessee or by a third party unrelated to the lessor. If the guarantor is related to the lessor, the residual value shall be considered as unguaranteed.

(28) "Used property" means property which has been in use for 90 days or more.

R331-7-3. Acceptable Leases and Leasing Transactions for Depository Institutions.

(1) A depository institution may enter into or purchase a participation in net, limited residual dependent leases wherein the depository institution:

(a) Becomes the legal or beneficial owner and lessor of specific real or personal property or otherwise acquires such property at the request of a lessee who wishes to lease it from the depository institution; or

(b) Becomes the owner and lessor of real or personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and

(c) Incurs obligations incidental to its position as the legal or beneficial owner and lessor of the leased property, if the lease is a net, limited residual dependent lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of that lease; or

(d) Becomes the assignee of the lease payments from another lessor where the depository institution is not the legal owner or tax owner of such property.

(2) This rule shall apply to any tax lease, non-tax lease, or assigned lease irrespective of whether the depository institution funded such lease or assignment with deposits or private funds, debt or equity.

(3) The classification of whether this rule applies to any lease and the related terminology should not be confused with other accounting or tax terminology; but should be applied only for the purposes of this rule. Any depository institution and especially any savings and loan association should consult its tax accountant before entering into any lease transaction.

(4) A depository institution, when acting as a lessor of property, may assign leases to a third party funding source. A depository institution shall be considered an assignor of lease payments, residual of assigned leases, or both, if after entering into a lease as a lessor of property, it then borrows against the lease payments, residual, or both, by assigning them to another funding source. A depository institution shall be considered an assignee of lease payments, residual of assigned leases, or both, if another lessor assigns the lease payments, residual, or both, of its own lease to the depository institution in order to fund the lease.

R331-7-4. Residual Dependence Restrictions for Depository Institutions.

(1) The residual dependence by a depository institution as a lessor of property on leases other than leases with terms of 24 months or less or automobiles and small trucks of one ton or less shall not exceed 30% of the acquisition cost of the property to the lessor unless the estimated residual value is guaranteed by a manufacturer of such property, or by a third party which is not an affiliate of the depository institution and the depository institution makes the determination that the guarantor has the resources to meet the guarantee.

(a) Any such guarantee of residual value by a third party is to be considered in addition to the requirement that the unguaranteed residual value estimate shall not exceed 30% of the acquisition cost of the property.

(b) However, the combined total of the 30% unguaranteed residual value and the guaranteed residual value may not exceed 50% of the leased property's acquisition cost.

(2) In all cases, however, both the estimated residual value of the property and that portion of the guaranteed residual value relied upon by the lessor to satisfy the requirements of a limited residual dependent lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the credit worthiness of the lessee and any guarantor of the residual value, and only secondarily on the residual market value of the leased property.

R331-7-5. Salvage Powers for Depository Institutions.

(1) If, in good faith, a depository institution believes that there has been an unanticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the provisions of this rule shall not prevent the depository institution:

(a) As the owner, lessor, or both, under a net, limited residual dependent lease from taking reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(b) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(c) Upon return of the leased property by the lessee to the depository institution at the expiration of the lease term or at any other time that the depository institution has possession of the property upon default by the lessee; the depository institution in order to avoid the cost and inherent liability of maintaining the property and to recoup its investment in the lease plus financing costs shall:

(i) Sell the property;

(ii) Release the property by entering into a new and separate net, limited residual dependent lease with a lessee;

(iii) Rent the property in which case the depository institution may be required to maintain the property in suitable condition to be used by another party on a rental basis. Such maintenance must be performed by an independent firm on a sub-contract basis only;

(iv) Transfer the property to a separately identified holding or repossessed property account within the depository institution.

(2) The provisions of this section do not prohibit a depository institution from including any provisions in a lease, or from making any additional agreements to protect its financial position or investment in the circumstances.

R331-7-6. Sales-Type Capital Lease Restrictions for Depository Institutions.

(1) Within the limitations of this rule, a depository institution, as lessor, shall be permitted to enter into a sales-type capital lease. Although a depository institution shall be allowed to earn a gross profit in a lease transaction in addition to interest income from the rentals and residual, it shall be precluded from inventorying property except for sample or display purposes.

(2) Although many equipment manufacturers and vendors require their dealers to inventory products prior to sale in order for the depository institution to be allowed to receive a wholesale price or comparable discount, the inventory of equipment prior to leasing the equipment is not permitted.

(3) A depository institution may purchase or acquire property in a direct lease situation only in response to a lessee's request for that specific property and any gross profit derived from volume discounts shall be accounted for separately from the lease.

R331-7-7. Sale-Leaseback Restrictions for Depository Institutions.

A depository institution acting as a lessor may lease used property in a sale-leaseback transaction provided that:

(1) The aggregate of the total net investment in such sale-leaseback transactions, at any point, in time does not exceed 50% of the depository institution's total capital; and

(2) The sale-leaseback transactions are separately identified.

R331-7-8. Leveraged Lease Restrictions for Depository Institutions.

(1) Due to increased risk inherent in leveraged leasing, a depository institution may invest as a lessor in a leveraged lease provided that:

(a) The aggregate of such leveraged leases does not exceed 30% of the depository institution's total capital at any point in time; and

(b) The leveraged leases are separately identified.

(2) A depository institution shall not enter into a leveraged lease as a lessor, equity-participant unless the inherent tax benefits are useable by the depository institution.

(3) This rule does not preclude a depository institution from purchasing non-recourse interests in leveraged lease pools or joint ventures, provided that:

(a) The aggregate of such participations or interests does not exceed 30% of the depository institution's total capital; and

(b) The participations or interests are separately identified.

R331-7-9. Accounting Requirements for Depository Institutions.

(1) The following restrictions and procedures shall be adhered to by a depository institution in accounting and reporting for acceptable leases and leasing transactions whether the depository institution is the assignor or the assignee. All other accounting and reporting procedures concerning leasing not covered by this rule shall be in accordance with generally accepted accounting principles as promulgated by the FASB, as amended.

(a) As lease payment revenue is received by the depository institution under a direct financing or sales-type capital lease, the lease payments shall be amortized or allocated between principal and interest income actuarially using the effective interest method over the lease term. A depository institution shall be precluded from using other approximations to the effective interest method such as the "Rule of 78's" method of amortizing lease payments.

(b) In accounting for a capital lease whether a sales-type or direct financing lease, a depository institution shall record the gross investment in the lease on the balance sheet allocated into its two components:

(i) Total minimum lease payments receivable; and

(ii) Unguaranteed residuals.

(c) The difference between the gross investment in the lease and the cost or carrying amount, if different, of the leased property shall be recorded as unearned income. Such unearned income shall be increased by any deferral of the investment tax credit or any other tax credits if the lessor elects deferral or if deferral is required by generally accepted accounting principles and decreased by any initial direct costs incurred on direct financing leases.

(d) Initial direct costs are limited to those costs incurred by the lessor that are directly associated with negotiating and consummating completed leasing transactions. Those costs include commissions, legal fees, cost of credit investigations, and costs of preparing and processing documents for new leases acquired.

(i) In addition, that portion of salespersons' compensation, other than commissions, and the compensation of other employees that is applicable to the time spent in the activities described above with respect to completed leasing transactions shall also be included in initial direct costs. That portion of salespersons' compensation and the compensation of other employees that is applicable to the time spent in negotiating leases that are not consummated shall not be included in initial direct costs.

(ii) No portion of supervisory and administrative expenses or other indirect expenses, such as rent and facilities cost, shall be included in initial direct costs.

(iii) In order to prevent initial overstatement by a depository institution of reported earnings and subsequent understatement of reported earnings throughout the remainder of the lease term, the depository institution shall not recognize initial direct costs in excess of 8% of the unearned income for leases which cost less than $10,000 at their inception; or initial direct costs in excess of 6% of the unearned income for leases which cost $10,000 or more at the inception of the lease. Initial direct costs shall include all costs directly attributable to consummating a lease as defined above.

(e) In accounting for the amount of initial direct costs associated with consummated direct financing capital leases, a depository institution is not required to treat as an initial direct cost the estimate of bad debt expense pertaining to a lease subject to the limitations of R331-7-9(d)(iii) which limits the maximum amount of initial direct costs.

(f) At any time during the lease term when it has been determined by a depository institution that there has been an impairment of the estimated residual value as initially recorded then such impairment of value shall be recognized in the period that the impairment of value has been determined.

(i) Any such impairment of guaranteed or unguaranteed residual value shall be recognized by a debit charge to income and a corresponding credit reduction to the unearned residual component of the gross investment in the lease.

(ii) A new implicit rate is to be computed for the lease using the reduced residual value and any remaining unearned income is to be recognized actuarially over the remaining lease term using the newly computed implicit rate.

(g) Differences between reported accounting net income for book purposes of a depository institution and its taxable income for the same period caused by the application of different accounting principles such as depreciation methods; or differences in how revenue is recognized; or because of any other timing differences, shall be shown in the depository institution's financial statements as a deferred tax credit or charge as required by interperiod tax allocation procedures explained in Accounting Principles Board Opinion No. 11, Accounting for Income Taxes, as amended, which is incorporated by reference.

(2) The following restrictions and procedures shall be adhered to by a depository institution in accounting and reporting for assigned leases whether the depository institution is the assignor or the assignee.

(a) A depository institution, after having entered into a lease as a lessor, may assign the lease payment stream to a third party in order to fund the lease. To such an assignment, the depository institution becomes the assignor.

(i) If the assignment is non-recourse to the depository institution any profits or loss on the assignment shall be recognized at the time of the transaction except when the assignment is between related parties. The profit or loss is the difference between the net investment in the assigned lease and the loan funds received from the lender.

(ii) If the assignment is recourse to the depository institution or if it is non-recourse but between related parties, both the lease and the related loan should be shown separately in the financial statements of the depository institution.

(iii) The lease shall be shown on the balance sheet by recording the gross investment in the lease receivable and the unearned income account relating to the lease. The net of these two accounts represents the net investment in the lease. The gross investment in the lease receivable shall be further allocated and shown in the financial statements in its two separate components:

(A) Minimum lease payments, and

(B) Residual.

(b) A depository institution which has funded a lease originated by another lessor and taken an assignment of the lease may have funded the lease on either a recourse or a non-recourse basis to the lessor. In either case, the assignment shall be regulated by this rule only if the residual dependence is greater than 5% of the cost of the leased property, in which case the assignment shall be accounted for as described in R331-7-9(2)(a) above. If the residual dependence is equal to or less than 5% of the cost of the leased property then such assignment shall not be regulated by this rule and shall be accounted for as a loan.

(3) The following restrictions and procedures shall be adhered to by a depository institution in accounting and reporting for operating leases:

(a) Leases other than sales-type, direct financing, or leveraged capital leases are classified as operating leases.

(b) Revenue in an operating lease shall be recognized in conformity with FASB 13 paragraph 19.b.

(4) Accounting for leveraged leases, sale-leasebacks, and real estate sales shall be in conformity with FASB 13 procedures:

(a) Leveraged leases, FASB 13 paragraphs 41-47;

(b) Sale-leasebacks, FASB 13 paragraphs 32-34;

(c) Real estate leases, FASB 13 paragraphs 24-28.

KEY: financial institutions, leases
October 3, 1997 **7-1-301(4)**
Notice of Continuation August 1, 2002 **7-1-301(8)a**
7-1-501

R331. Financial Institutions, Administration.
R331-9. Rule Prescribing Rules of Procedure for Hearings Before the Commissioner of Financial Institutions of the State of Utah.
R331-9-1. Authority, Scope, and Purpose.

(1) This rule is adopted pursuant to Sections 7-1-301 and 7-1-309.

(2) This rule will apply to administrative hearings conducted before the Commissioner or his designee.

R331-9-2. Definitions.

(1) "Commissioner" means the Commissioner of Financial Institutions.

(2) "Department" means the Department of Financial Institutions.

(3) "Interested party" means a party who may be affected by the outcome of any proceeding but who, in the case of a dispute or adjudicative hearing, is not named as a party or does not seek to participate as a named party.

(4) "Party" shall mean the same as a "person" as defined in Section 7-1-103, and shall also include any governmental subdivision or agency.

(5) "Proceeding" shall mean any hearing, whether formal or informal, before the Commissioner or his designee and any and all required and permitted actions precedent thereto.

(6) "U.R.C.P." means the Utah Rules of Civil Procedure.

R331-9-3. Commissioner's Discretion to Commence Hearings.

(1) Except when required by statute, the commissioner shall have sole and complete discretion as to whether any kind of hearing procedure shall be employed in connection with any matter pending before the department.

(2) Nothing in this rule shall be construed as creating any right to a hearing on any matter apart from those rights separately conferred by statute or required by due process of law.

R331-9-4. Types of Hearing.

All hearings conducted before the commissioner or his designee shall be classified in one of the following categories:

(1) Comment Hearing.

This type of hearing is generally characterized as one where:

(a) The primary purpose for the hearing is to receive information and comments from interested parties concerning a particular subject pending in the department.

(b) Witness statements are unsworn, voluntary and normally delivered in a narrative manner subject to no restriction on the content of the statement except that it be relevant to the matter being heard.

(c) There is no proof to be made and so no burden on any party.

(d) The presentation of evidence may be subject to time restrictions both as to the length of individual statements and the number of statements that can be made.

(e) The hearing is always public.

(2) Dispute Hearing.

This type of hearing is generally characterized as one where:

(a) The primary purpose is to receive and examine evidence concerning a disputed application or other discretionary matter pending before the department.

(b) The burden of proof is upon the party requesting the approval of the matter at issue.

(c) All testimony is taken under oath and subject to cross-examination but the evidence itself is generally not restricted except as to relevancy.

(d) The hearing is usually public, but may be closed when special circumstances warrant.

(3) Adjudicative Hearing.

This type of hearing is generally characterized as one where:

(a) The primary purpose is to adjudicate specific charges directed against an individual party or parties.

(b) Evidence is received generally in accordance with rules patterned on those applicable to the admission of evidence and the conduct of trials in the judicial courts of this state.

(c) No time restriction is imposed which would deprive any party of an opportunity to present all proper evidence in the case.

(d) The hearing may be closed to the public and the record treated confidentially.

(4) The commissioner shall have complete discretion to designate a particular hearing as being for comment, dispute, or adjudicative purposes, and shall so indicate in the first notice of the hearing. Any party to the hearing or, in the case of a comment hearing, any interested party who disagrees with the commissioner's classification may file a motion to change the designation of the hearing from one type to the other within ten days after public notice of a comment hearing is first published, or notice of a dispute or adjudicative proceeding is first mailed to a party to the proceeding who objects to its designation, whichever applies.

R331-9-5. Commencement of Proceedings.

(1) Comment Hearing.

Proceedings incident to a comment hearing shall be commenced by the department issuing public notice of the hearing. The notice shall specify:

(a) The subject matter of the hearing,

(b) That it is to be a comment hearing,

(c) The date, time and place of the hearing,

(d) The person or persons who will preside at the hearing, and

(e) Any special provisions or requirements concerning the hearing such as advance notice by any party wishing to speak at the hearing or limits on speaking time.

(2) Dispute Hearing.

(a) A dispute hearing shall be commenced by issuing Notice to the party which filed the application or request at issue and to any party or parties that may have protested or otherwise objected to the same prior to issuance of the Notice.

(b) The Notice shall specify the matters relating to the application or request which are in dispute and advise the party who filed the application or request that it will have the initial burden at the hearing of showing that the application or request should be granted.

(3) Adjudicative Hearing.

(a) An adjudicative hearing shall be commenced when the department issues Notice to the parties named in the proceeding.

(b) If a party to a hearing refuses to sign an acknowledgment of having received a copy of a Notice then such Notice shall be served upon the party in the manner prescribed for service of process in Rule 4 of the U.R.C.P. If personal service is not possible then the commissioner upon motion may authorize alternative forms of service similar to those specified in Rule 4 of the U.R.C.P. If a party resides out of state and cannot be served in this state, a copy of the Notice may be mailed to the party at the party's last known address by certified mail without having to obtain an order from the commissioner.

(c) The Notice of the adjudicative proceeding shall contain at a minimum the following information:

(i) The names of all individual parties to the proceeding.

(ii) A reasonably specific description of the department's allegations against each of the named parties.

(iii) A reasonably specific description of any and all actions the department intends to take against each named party with respect to the matters alleged.

(iv) A statement that within 30 days following service of the department's Notice each party must file an Answer specifically admitting or denying the department's allegations and separately describing in reasonable detail any affirmative defenses the party may claim with respect to the department's allegations.

(v) An express warning that failure to file an Answer within 30 days following service of the Notice will entitle the commissioner to accept the department's allegations as true in their entirety and immediately enter a final order with respect to the matters alleged in the Notice.

(d) If any party named in an adjudicative hearing files a timely and proper Answer then a hearing shall be scheduled before an independent hearing examiner and notice thereof stating the time, date, place of the hearing and identifying the hearing examiner shall be mailed to the answering party. Named parties to a proceeding who do not file a timely and proper Answer shall not be entitled to participate in any subsequent hearing as a party except by leave of the hearing examiner and the commissioner may immediately enter a final order as to such party with respect to the matters alleged in the department's Notice without further adjudicative proceedings.

(e) Proceeding Involving Temporary Cease and Desist Order.

(i) In a proceeding involving a Temporary Cease and Desist Order issued pursuant to Section 7-1-307, the Notice to be served on a party to the proceeding shall include notice that the party is entitled to a show cause hearing concerning the Temporary Cease and Desist Order but must request the same within ten days following service of receipt of the Temporary Cease and Desist Order, in which event the show cause hearing shall be scheduled within ten days after the party's request is received by the department unless the party and the department mutually agree on another time for the hearing.

(ii) In a proceeding involving a Temporary Cease and Desist Order issued pursuant to Section 7-1-307(2), the Order shall state a date, time and place for a hearing before the commissioner, or, if he is unable to preside, before, within ten days after the date the Temporary Cease and Desist Order is signed. The notice shall also advise any interested party that it shall be its burden at the hearing to show cause why the Temporary Cease and Desist Order should not remain in full force and effect for 30 days after it was signed, should not be extended for no more than two successive 15-day periods thereafter, or both.

(f) Upon motion and notice to all other parties to the proceeding, the commissioner or his designee may, for good cause shown, shorten or enlarge any time limits specified herein, including that for scheduling a show cause hearing on a Temporary Cease and Desist Order but excepting the time limits set forth in the foregoing subsection (e)(ii), permit amendments to the department's Notice or any Answer, reschedule a hearing, bifurcate a hearing, permit the joinder of a party, or enter such other preliminary or procedural Order as the commissioner or his designee considers proper and equitable to protect the rights and interests of the parties to the proceeding, expedite the hearing procedure, or both.

R331-9-6. Confidential Proceedings.

(1) If the commissioner deems a proceeding confidential then all pleadings and documents filed in the matter, including the department's initial Notice of the proceedings, shall be conspicuously so designated, and thereafter all such documents shall be made available only to the parties to the proceeding, their legal representatives, and such other parties as may be specifically authorized to examine the documents by the commissioner or his designee.

(2) The only persons who may be present during a confidential hearing are named parties, parties determined by the commissioner or his designee to have a direct interest equivalent to judicial standing in the subject matter of the hearing, the legal representatives of the parties or persons, persons employed by or acting on behalf of the department, the commissioner or his designee, persons necessary to transcribe the proceedings, and any witness then testifying.

R331-9-7. Form of Pleadings.

(1) All pleadings filed with the department shall comply with the requirements of Rule 10 of the U.R.C.P. except for the caption specified in subparagraph (a) thereof. The caption for all pleadings filed with the department shall indicate that the matter is before the Department of Financial Institutions of the State of Utah. In the case of a comment hearing, the documents shall identify the subject matter of the hearing and the subject matter of the particular pleading. In the case of a dispute or adjudicative hearing, the pleadings shall identify all parties to the proceeding, shall separately state that the proceeding is dispute or adjudicative, that it is confidential or not confidential, the subject matter of the pleading, and any case number which may have been assigned to that proceeding by the department. A document that substantially complies with Rule 10 of the U.R.C.P. will be acceptable.

(2) The provisions of Rule 11 of the U.R.C.P. shall apply to all pleadings filed with the department by any attorney representing a party.

R331-9-8. Discovery.

(1) Discovery rights and procedures as specified below shall only be available to parties in a dispute or adjudicative proceeding.

(2) Parties may obtain discovery in any manner authorized by Rules 27, 28, 29, 30, 31, 33, 34, and 36 of the U.R.C.P. Depositions may be used in a hearing before the commissioner or his designee in the same manner as specified for judicial proceedings in Rule 32 of the U.R.C.P.

(3) The commissioner or his designee may impose sanctions for failure to comply with a proper discovery request similar to those specified in Rule 37 of the U.R.C.P.

R331-9-9. Subpoenas.

The commissioner or his designee shall issue subpoenas as authorized by Section 7-1-310 for the purpose of facilitating a proper discovery request or to compel the attendance of a witness at a dispute or adjudicative hearing. Each subpoena shall be obtained by filing a written request with the commissioner or his designee describing the purpose for which the subpoena is sought. If the commissioner or his designee determines that any specific request is objectionable or possibly so then he may either deny the request without further proceedings or schedule a hearing to receive evidence concerning the objection prior to making a final decision on the request.

R331-9-10. Hearings.

(1) Comment Hearings.

Comment hearings shall be held before the commissioner or his designee. A recording shall be made of such hearings capable of being transcribed verbatim. Persons entering statements into the record shall not be sworn on oath and the content of the statements made shall not be restricted except as to irrelevant, scandalous or inappropriate matters. The commissioner or his designee may limit the number of speakers or prescribe time limits for each speaker, or both. After each speaker has made his statement, the commissioner may ask questions of the speaker and permit other participants of the hearing to ask questions of the speaker.

(2) Dispute Hearings.

(a) Dispute hearings shall be heard before the commissioner or his designee.

(b) At the hearing it shall be the burden of the party named in the proceeding to show, by a preponderance of the evidence, that matters in dispute should be resolved in the named party's favor and the application or request at issue should be granted. Similarly, it shall be the burden of any interested party to support each claim made by it concerning the matter at issue by a preponderance of the evidence.

(c) The commissioner or his designee may receive any evidence he deems relevant and of probative value in understanding and deciding the matters at issue. However, all testimony shall be given under oath subject to cross-examination, and whenever possible the rules of evidence and trial procedure applicable to the courts of this state shall be generally complied with.

(d) No findings, conclusions, order or other decision shall be prepared concerning the hearing itself. If a designee of the commissioner presides then he shall prepare a report to the commissioner summarizing the evidence presented for the purpose of assisting the commissioner in reaching a final decision on the matter to which the hearing pertained.

(3) Adjudicative Hearings.

(a) Except for a show cause hearing concerning a Temporary Order or a Temporary Cease and Desist Order, all adjudicative hearings shall be held before an independent hearing officer selected by the commissioner.

(b) At the hearing it shall be the department's responsibility to establish by a preponderance of the evidence the allegations it has made against each party named in the proceeding. Similarly, any named party shall prove any affirmative defense it has claimed by a preponderance of the evidence. All evidence shall be presented, rebutted and received or excluded in accordance with the Rules of Evidence and the U.R.C.P. except the hearing officer may receive other evidence when, in the examiner's discretion, taking into account its lesser probative value, such other evidence would be of use in supplementing or tending to confirm any admitted evidence or proffered evidence subject to its admission.

(c) After the hearing has been concluded, the hearing officer shall prepare Findings, Conclusions and Recommendations for the commissioner. At the same time as the original is delivered to the commissioner, copies of the Findings, Conclusions and Recommendations shall be mailed to all attorneys and named parties who participated in the proceedings.

(d) After receiving the Findings, Conclusions and Recommendations, the commissioner shall enter an Order, or remand the matter back to the hearing officer to conduct further proceedings on the subjects as may be specified by the commissioner, or dismiss the proceedings in whole or in part.

(e)(i) Within 15 days after the hearing officer's Findings, Conclusions and Recommendations are mailed to a party, that party shall file a notice of any objections the party may have specifying each Finding, Conclusion or Recommendation objected to and describing in reasonable detail the basis for each objection.

(ii) A party may request reconsideration of any Order resulting from an adjudicative proceeding within 30 days after a copy of the Order is mailed to the party by the department. Each request shall specify in reasonable detail the party's reasons supporting the request and may, with leave from the commissioner, be accompanied by a memo of points and authorities to which all other parties may respond, all within deadlines to be specified in the commissioner's grant of leave.

(iii) The commissioner may enter an Order whether or not the deadline for filing objections to Findings, Conclusions and Recommendations has elapsed. The timely filing of objections shall not affect the implementation of any Order already entered, or bar the entry of an Order based in any degree on any Finding, Conclusion or Recommendation objected to before ruling on the objection, except the Order shall not be deemed final until the objections have been ruled on by the commissioner. The 30 days allowed for requesting reconsideration of any Order shall not be tolled by the filing of objections to precedent Findings, Conclusions and Recommendations.

(f) The commissioner may require the parties to the

proceeding to pay any costs and expenses incident to the hearing as he deems proper including reporter or other transcription expenses, fees of the hearing officer, witness costs, fees for examiner time based on the normal rate charged for examinations, and attorney's fees.

(g) A show cause hearing on a Temporary Order or a Temporary Cease and Desist Order shall be held before the commissioner or his designee. If neither the commissioner nor the commissioner's designee is available to preside at the hearing within the required period then the Temporary Order shall be dissolved, without prejudice.

KEY: financial institutions, government hearings
1995 7-1-301
Notice of Continuation August 1, 2002 7-1-309

R331. Financial Institutions, Administration.

R331-10. Schedule for Retention or Destruction of Records of Financial Institutions Under the Jurisdiction of the Department of Financial Institutions.

R331-10-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301(7).

(2) This rule establishes a schedule for the retention of records of financial institutions under the jurisdiction of the Department of Financial Institutions. Each financial institution may deem it prudent from a business, legal, or other regulatory reason to retain records not identified in this rule.

(3) It is the purpose of this rule to require the maintenance of appropriate types of records where such records have a high degree of usefulness and prescribe the period for which records of each class are retained.

(4) This rule does not prescribe the method of retention other than that the method selected by each financial institution must ensure the records be readily retrieved in an unaltered state.

R331-10-2. Definitions.

Key to Abbreviations:
Figures - Years

R331-10-3. Retention of Records.

(1) CORPORATE AND LEGAL

TABLE 1

Regulation S (domestic and international funds transfer	5
Annual Disclosures Statements/Annual Reports	2
Minute books of directors, executive committee an other records reflecting corporate governance documentation, (e.g., minutes, articles, bylaws, stock records)	10
Superceded policies and procedures	2
Business licenses	1
Service agreements with vendors	2
Litigation documents (after resolution)	2
Affidavits	2
Attachments, garnishments	6

(2) DEPOSITORY PRODUCTS

TABLE 2

Records of checks, drafts and other instruments presented for payment or deposit	6
Deposit records showing relationship of insurance claimants to insurance funds	1
Deposit records disclosing a relationship which might provide the basis for additional insurance	1
Records evidencing compliance with Truth in Savings Act	2
Records of purchases and purchasers of bank checks, drafts, cashier's checks, money orders, and traveler's checks	5
Tax identification numbers of deposit/share/ transaction accounts	5
Deposit account trial balance records	5
Each check, deposit, money order issued or payable by bank in excess of $100	5
Records of debits to customers' account in excess of $100	5
Records of purchaser of certificate of deposit	5
Records of tax identification number of any person presenting certificate of deposit for payment	5
Deposit slips and credit tickets in excess of $100	5
Records of receipts of currency in excess of $10,000 received from persons outside United States	5
Cash letters	1
Account documentation, (e.g., signature card, resolutions, power of attorney, guardianship)	6
Stop payment orders (after release)	1

(3) FIDUCIARY

TABLE 3

Safe deposit documentation, (e.g., access records, contracts)	5
Records relating to municipal securities dealing: copies of filings to any associated person following termination of association	3
Record of all brokers/dealers selected by bank to effect transactions and amount of commission paid or allocated each year	3
Tax identification number of customers having securities	5
Records of securities authority from customer	5
Records of amounts expended and adjustments made to property acquired and held for investment or to verify exercise of qualified stock option, debts written off, amount of loans outstanding with regard to reserves for losses on bad debts of financial institutions for last five taxable years	6
Fiduciary authority documentation, (e.g., trust agreements, court orders, powers of attorney, directives, authorizations)	6
Fiduciary account documentation, (e.g., cash and asset records, tax returns)	6
Fiduciary management committee meeting records	5
Escrow records (after closing)	

Safekeeping records and receipts	6
Fiduciary account documentation, (e.g., chronological logs of itemized daily records, account records for each customer, order ticket of each buy/sell, record of all brokers used	2
	3

(4) LENDING/LEASING

TABLE 4

Lending and leasing documents after closed, (e.g., credit application, appraisal, credit report, signatory)	6
Card applications, documentation from date of application	2
Open or closed-end credit document files excluding card application documentation	6

(5) REGULATORY

TABLE 5

Credit record of transfers of credit more than $10,000 to outside the United States	5
Credit record of transfers of funds more than $10,000 to outside the United States	5
Checks or records of drafts in excess of $10,000 drawn on foreign banks	5
Checks, drafts in excess of $10,000 from bank, broker or exchange dealer outside United States	5

(6) FINANCIAL

TABLE 6

Escheatment documentation (abandoned deposit accounts, unpaid cashier's checks, unpaid expense checks)	7
Internal audit reports	5
Investment confirmations, statements, buy and sell orders	6
Financial records, (e.g., journals, ledgers, statements, source documents)	7
Reconcilements, (e.g., General ledger account and supporting documentation)	2
Notes on contracts payable documentation (after closing)	2

R331-10-4. Exemptions.

The Commissioner of Financial Institutions may make exemptions from any requirement otherwise imposed under this rule and as are consistent with the purposes of this rule.

R331-10-5. Reproduction of Records.

Any institution subject to this rule may cause records in its custody to be reproduced by the micro-photographic or other equivalent process. Any reproduction shall have the same force and effect as the original and shall be admissible into evidence as if it were the original.

R331-10-6. Relationship to other Laws.

This rule will not pre-empt any other retention requirement longer than that specified herein imposed by any other state or federal statute or rule.

KEY: financial institutions
October 17, 2000 7-1-301(7)
Notice of Continuation August 1, 2002

R331. Financial Institutions, Administration.
R331-12. Guidelines Governing the Purchase and Sale of Loans and Participations in Loans by all State Chartered Financial Institutions.
R331-12-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301.

(2) This rule applies to all state chartered financial institutions.

(3) The purpose of this rule is to establish guidelines for the purchase and sale of loans and participations in loans by state chartered financial institutions.

R331-12-2. Definitions.

(1) "Participation" means the purchase or sale by a lender of a loan or part of a loan under circumstances in which the acquiring institution

(a) has no formal or direct role in establishing the terms and conditions binding the borrower, or

(b) is not a signatory of the loan agreement binding the borrower.

(2) "Participation agreement" means an agreement between the lead financial institution and the participant financial institution spelling out in detail the terms, conditions, and understandings between the parties to a loan participation.

(3) "Recourse" means an oral or written agreement whereby a selling institution of a loan or participation in a loan agrees to repurchase in whole or in part upon request of the purchaser or the seller.

R331-12-3. General Rule.

(1) A written participation agreement covering multiple or individual participations will be on record at each participating institution, and shall include, at a minimum, the following:

(a) The party to the agreement to be paid first from the loan repayment proceeds;

(b) Party responsible for collection of the note in the event of default;

(c) How collection or other expenses related to the participation will be divided among the participants;

(d) Recourse arrangements in writing outlining the rights and obligations of each party. Generally, loans will not be sold on a recourse basis except in cases where the sale is made for the purpose of obtaining temporary funds for operations.

(2) In addition, a financial institution which buys and sells loans or participations in loans shall establish written policies setting forth satisfactory controls over such sales and purchases. At a minimum, the following conditions shall be met:

(a) The loan must comply with applicable state and federal laws;

(b) The purchased loan must conform to the financial institution's lending and loan approval standards;

(c) Complete and current credit information must be maintained during the term of the loan;

(d) The financial institution must maintain evidence of sufficient overall loan documentation including an analysis of the value and lien status of collateral;

(e) The status of principal and interest payments including accrual status must be available.

KEY: financial institutions
1987 7-1-301
Notice of Continuation August 1, 2002

R331. Financial Institutions, Administration.

R331-14. Rule Governing Parties Who Engage in the Business of Issuing and Selling Money Orders, Traveler's Checks, and Other Instruments for the Purpose of Effecting Third-Party Payments.

R331-14-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301, 7-1-501(8)(c) and 7-1-505.

(2) This rule applies to any individual or other party who issues, sells or offers to sell within the state any instrument for the purpose of effecting payments to third parties, including, but not limited to, money orders, traveler's checks, and the wire transmission of money. Excluded from this rule are:

(a) any party chartered and regulated by the United States or the state as a depository institution which is currently operating as a depository institution, and

(b) the U.S. Post Office.

(3) The purpose of this rule is to require licensing and prescribe standards with regard to the financial condition and capability of all parties who issue instruments payable to third parties, such as money orders and traveler's checks, for the benefit and protection of the purchasers of such instruments.

R331-14-2. Definitions.

(1) "Department" means the Department of Financial Institutions.

(2) "Payment instrument" means a check, money order, traveler's check, draft, or other instrument for the transmission or payment of money to third parties.

(3) "Party" means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any form of business entity.

R331-14-3. License Required.

No party subject to this rule shall issue any kind of payment instrument to be offered for sale or sold in the state unless the issuer first obtains a license to do so from the department. No party subject to this rule may offer for sale or sell payment instruments of any kind in the state which are issued by any party not holding a current license to issue payment instruments in accordance with this rule, unless the issuer is exempt from the requirement to hold such a license.

R331-14-4. Requirements for a License.

To qualify for a license to issue payment instruments for sale in Utah, an applicant shall provide or pay to the department:

(1)(a) Proof satisfactory to the department that the applicant is a depository institution chartered and regulated by a state in the United States other than Utah and is currently operating as a depository institution; or

(b) A certified financial statement satisfactory to the department for the most recent fiscal year showing the applicant has a net worth of at least one million dollars ($1,000,000).

(B) A surety bond satisfactory to the department in the minimum sum of $50,000 to reimburse the state for any expenses of any kind or nature that it may incur in connection with any administrative or judicial proceedings against a licensee, former licensee or seller relating to the issuance and/or sale of payment instruments in Utah.

(3) Additional information as may be specified by the department.

(4) A non-refundable filing fee in the sum of $100.00.

R331-14-5. Renewal.

Unless previously revoked by the department, each license shall expire on July 31 of each year if before that date the licensee fails to deliver or pay to the department:

(1) Proof that the party continues to operate as a regulated depository institution or a certified financial statement for the licensee's last fiscal year showing that it continues to have a net worth of at least $1,000,000, proof of renewal of the surety bond described in part 4B hereof, and any other information the department may request, all in a form acceptable to the department.

(2) A non-refundable renewal fee in the sum of $100.00.

R331-14-6. Revocation of License.

The department, with or without a hearing, may for cause revoke or suspend a license to issue payment instruments at any time. If the department revokes a license, it shall not be obligated to refund any portion of the licensee's filing or renewal fee for the remainder of the period for which the fee was paid.

R331-14-7. Required Deposits.

If the department finds any reasonable cause to believe that a licensee is in an unsafe or unsound condition or is unwilling or unable to pay its payment instruments when they come due, it may require the licensee to deposit funds in a financial institution(s) acceptable to the department in such amounts, for such period, and upon such conditions as the department may specify, and may prohibit the licensee from issuing payment instruments for sale in Utah in an aggregate unpaid amount exceeding the amount of any such required deposit or the amount actually deposited pursuant to such a requirement, whichever is less.

R331-14-8. Instruments to Bear Name of Licensee.

Every payment instrument issued by a licensee for sale in Utah, or which is sold in Utah, shall state on its face the name of the licensee issuer.

KEY: financial institutions

October 3, 1997	**7-1-301**
Notice of Continuation August 1, 2002	**7-1-501(8)(c)**
	7-1-505

R382. Health, Children's Health Insurance Program.
R382-10. Eligibility.
R382-10-1. Authority.

This rule sets forth the eligibility requirements for coverage under the Children's Health Insurance Program. It is authorized by Title 26, Chapter 40.

R382-10-2. Definitions.

(1) The Department adopts the definitions found in Sections 2110(b) and (c) of the Social Security Act as enacted by Pub. L. No. 105-33 which are incorporated by reference in this rule.

(2) The following additional definitions also apply:

(a) "Applicant," means a child on whose behalf an application has been made for benefits under the Children's Health Insurance Program, but who is not an enrollee.

(b) "Best estimate" means the Department's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

(c) "Children's Health Insurance Program" or "CHIP" means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(d) "Department" means the Utah State Department of Health.

(e) "Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.

(f) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(g) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(h) "Local office" means any Bureau of Eligibility Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(i) "Renewal month" means the last month of the eligibility period for an enrollee.

(j) "Verifications" means the proofs needed to decide if a child meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of a child.

R382-10-3. Actions on Behalf of a Minor.

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply for CHIP enrollment, provide information required by this rule, or otherwise act on behalf of a child in all respects under the statutes and rules governing the CHIP program.

(a) The child, if 18 years old or an emancipated minor, the child's parent or legal guardian must indicate in writing to the Department who is authorized as the child's representative.

(b) The executive director of the Department or his designee may designate an authorized representative if the child needs a representative but is unable to make a choice either in writing or orally in the presence of a witness.

(2) Where the statutes or rules governing the CHIP program require a child to take an action, the parent or adult who has assumed responsibility for the care or supervision of the child is responsible to take the action on behalf of the child. If the parent or adult who has assumed responsibility for the care or supervision of the child fails to take an action, the failure is attributable as the child's failure to take the action.

(3) Notice to the parent or adult who has assumed responsibility for the care or supervision of the child is notice to the child.

R382-10-4. Applicant and Enrollee Rights and Responsibilities.

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply or reapply at any time for Children's Health Insurance Program benefits on behalf of a child. An emancipated child or an 18 year old child may apply on his own behalf.

(2) The applicant must provide the Department with verifications to establish the eligibility of the child, including information about the parents.

(3) Anyone may look at the eligibility policy manuals located at any local office, except at outreach or telephone locations.

(4) The parent or other individual who arranged for medical services on behalf of the child shall repay the Department for services paid for by the Department under this program if the child is determined not to be eligible for CHIP.

(5) The parent(s) or child, or other responsible person acting on behalf of a child must report certain changes to the local office within ten days of the day the change becomes known. Some examples of reportable changes include:

(a) An enrollee begins to receive coverage under a group health plan or other health insurance coverage.

(b) An enrollee begins to have access to coverage under a group health plan or other health insurance coverage.

(c) An enrollee leaves the household or dies.

(d) An enrollee or the household moves out of state.

(e) Change of address of an enrollee or the household.

(f) An enrollee enters a public institution or an institution for mental diseases.

(6) Applicants and enrollees have the right to be notified about actions the agency takes regarding their eligibility or continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action.

R382-10-5. Verification and Information Exchange.

(1) The applicant and enrollee upon renewal must provide verification of eligibility factors as requested by the Department.

(2) The Department may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(3) The Department must release information to the Title IV-D agency and Social Security Administration to determine benefits.

(4) The Department may verify information by exchanging information with other public agencies as described in 42 CFR

435.945, 435.948, 435.952, 435.955, and 435.960, 1997 edition.

R382-10-6. Citizenship and Alienage.

(1) To be eligible to enroll in the program, a child must be a citizen of the United States or a qualified alien as defined in Pub. L. No. 104-193(401) through (403), (411), (412), (421) through (423), (431), and (435), and amended by Pub. L. No. 105-33(5302)(b) and (c), (5303), (5305)(b), (5306), (5562), (5563), and (5571).

(2) Hmong or Highland Lao veterans who fought on behalf of the Armed Forces of the United States during the Vietnam conflict and who are lawfully admitted to the United States for permanent residence, and their family members who are also qualified aliens, may be eligible to enroll in the program regardless of their date of entry into the United States.

(3) One adult household member must declare the citizenship or alien status of all applicants in the household. The applicant must provide verification of his citizenship or alien status.

(4) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), admitted into the United States prior to August 22, 1996, may enroll in the program.

(5) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), newly admitted into the United States on or after August 22, 1996, may enroll in the program after five years have passed from his date of entry into the United States.

R382-10-7. Utah Residence.

(1) A child must be a Utah resident to be eligible to enroll in the program.

(2) An American Indian child in a boarding school is a resident of the state where his parents reside. A child in a school for the deaf and blind is a resident of the state where his parents reside.

(3) A child is a resident of the state if he is temporarily absent from Utah due to employment, schooling, vacation, medical treatment, or military service.

(4) The child need not reside in a home with a permanent location or fixed address.

R382-10-8. Residents of Institutions.

(1) Residents of institutions described in Section 2110(b)(2)(A) of the Social Security Act as enacted by Pub. L. No. 105-33 are not eligible for the program.

(2) A child under the age of 18 is not a resident of an institution if he is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R382-10-9. Social Security Numbers.

(1) The Department may request applicants to provide the correct Social Security Number (SSN) or proof of application for a SSN for each household member at the time of application for the program.

(2) A child may not be denied CHIP enrollment for failure to provide a SSN.

R382-10-10. Creditable Health Coverage.

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b)(1)(C) and (2)(B) of the Social Security Act as enacted by Pub. L. No. 105-33.

(2) A child who is covered under a group health plan or other health insurance coverage including coverage under a parent's or legal guardian's employer, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for CHIP assistance.

(3) A child who is covered under an absent parent's insurance coverage that does not provide coverage in the State of Utah is eligible for enrollment.

(4) A child who is covered under a group health plan or other health coverage but has reached the lifetime maximum coverage under that plan is eligible for enrollment.

(5) A child who has access to health insurance coverage through an employer where the cost to enroll the child in the plan is less than 5% of the household's gross annual income, is not eligible for CHIP assistance. The child is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(6) The Department shall deny eligibility if the applicant or a custodial parent has voluntarily terminated health insurance coverage in the 90 days prior to the application date for enrollment under CHIP. An applicant or applicant's parent(s) who voluntarily terminates COBRA coverage or who is involuntarily terminated from an employer's plan is eligible for CHIP without a 90 day waiting period.

(7) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(8) An applicant must report at application and renewal whether any of the children in the household for whom enrollment is being requested has access to or is covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(9) An enrollee must report when any enrollee in the household begins to receive coverage under, or begins to have access to, any type of group health plan, other health insurance coverage, or a state employee's health benefits plan.

(10) The Department shall deny an application or renewal if the enrollee fails to respond to questions about health insurance coverage for children the household seeks to enroll or renew in the program.

R382-10-11. Household Composition.

(1) The following individuals who reside together must be included in the household for purposes of determining the household size and whose income will be counted, whether or not the individual is eligible to enroll in the program:

(a) A child who meets the CHIP age requirement and who does not have access to and is not covered by a group health plan or other health insurance;

(b) Siblings, half-siblings, adopted siblings, and step-siblings of the child who meets the CHIP age requirement if these individuals also meet the CHIP age requirement;

(c) Parents and stepparents of any child who is included in the household size;

(d) Children of any child included in the household size;

(e) The spouse of any child who is included in the household size; and

(f) Unborn children of anyone included in the household size.

(2) Any individual described in Subsection (1) of this Section who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of application, is part of the household.

(3) A household member described in Subsection (1) of this Section who does not qualify to enroll in the CHIP program due to his alien status is included in the household size and his income is counted as household income.

(4) If an individual is caring for a child of his or her former spouse, in a case in which a divorce has been finalized, the child may be included in the household if the child resides in the home.

R382-10-12. Age Requirement.

(1) A child must be under 19 years of age to enroll in the program.

(2) The month in which a child's 19th birthday occurs is the last month of eligibility for CHIP enrollment.

R382-10-13. Income Provisions.

To be eligible to enroll in the Children's Health Insurance Program, gross household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of equal size. All gross income, earned and unearned, received by the parents and step-parents of any child who is included in the household size, is counted toward household income, unless this section specifically describes a different treatment of the income.

(1) The Department does not count income that is defined in 20 CFR 416(K) Appendix, 1997 edition, which is adopted and incorporated by reference.

(2) Any income in a trust that is available to, or is received by a household member, is countable income.

(3) Payments received from the Family Employment Program, General Assistance, or refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 is countable income.

(4) Rental income is countable income. The following expenses can be deducted:

(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;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. An applicant or enrollee who disputes household ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to the household. Funds that are successfully disputed are not countable income.

(6) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(7) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the eligibility period.

(8) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service or did not work to receive is not counted as income.

(9) SSI and State Supplemental Payments are countable income.

(10) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(11) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(12) Child Care Assistance under Title XX is not countable income.

(13) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the State Department of Health are not countable income.

(14) Needs-based Veteran's pensions are not counted as income. If the income is not needs-based, only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(15) Income of a child is excluded if the child is not the head of a household.

(16) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(17) Reimbursements for expenses incurred by an individual are not countable income.

(18) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103-286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

(19) Victim's Compensation payments as defined in Pub. L. No. 101-508 are not countable income.

(20) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103-286 are not countable income.

R382-10-14. Budgeting.

The following section describes methods that the Department will use to determine the household's countable monthly or annual income.

(1) The gross income of all household members is counted

in determining the eligibility of a child, unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department shall determine monthly income by taking 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. The Department shall multiply the weekly amount by 4.3 to obtain a monthly amount. The Department shall multiply income paid bi-weekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine a child's eligibility and cost-sharing requirements prospectively for the upcoming eligibility period at the time of application and at each renewal for continuing eligibility. The Department shall determine prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming eligibility period. The Department shall prorate income that is received less often than monthly over the eligibility period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the eligibility period, or an annual amount that is prorated over the eligibility period. Different methods may be used for different types of income received in the same household.

(5) The Department shall determine farm and self-employment income by using the individual's recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department shall request income information from a recent time period during which the individual had farm or self-employment income. The Department shall deduct 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department shall request expense information and deduct the expenses from the gross income. The Department shall deduct the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and in particular for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

R382-10-15. Assets.

An asset test is not required for CHIP eligibility.

R382-10-16. Application and Renewal.

The application is the initial request from an applicant for CHIP enrollment for a child. The application process includes gathering information and verifications to determine the child's eligibility for enrollment in the program. Renewal is the process of gathering information and verifications on a periodic basis to determine continued eligibility of an enrollee.

(1) The applicant must complete and sign a written application to become enrolled in the program.

(2) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for CHIP enrollment.

(3) Individuals may apply in person, through the mail, over the telephone or by fax for enrollment during an open enrollment period.

(4) The Department may interview applicants, the applicant's parents, and any adult who has assumed responsibility for the care or supervision of the child to assist in determining eligibility.

(5) If eligibility for CHIP enrollment ends, the Department shall review the case for eligibility under any other medical assistance program without requiring a new application. The Department may request additional verification from the household if there is insufficient information to make a determination.

R382-10-17. Eligibility Decisions.

(1) The Department must determine eligibility for CHIP within 30 days of the date of application. If a decision can not be made in 30 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the Department's control delay the eligibility decision, the Department shall document the reason for the delay in the case record. The Department must inform the applicant of the status of the application and the time frame for completing the application process.

(2) The Department may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility because the Department has not determined eligibility within that time.

(3) The Department shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdrew the application and the Department sent a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant can not be located or has not responded to requests for information within the 30 day application period.

(4) The Department must redetermine eligibility at least every 12 months.

(5) At application and renewal, the Department must determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid. A child who is eligible for Medicaid coverage is not eligible for CHIP. A child who must meet a spend-down to receive Medicaid is not eligible for Medicaid until the spend-down has been met.

R382-10-18. Effective Date of Enrollment and Renewal.

(1) The effective date of CHIP enrollment is the date a completed and signed application is received by the Department. The Department may allow a grace enrollment period beginning no earlier than four days before the date a completed and signed application is received by the Department. The Department shall not pay for any services received before the effective

enrollment date.

(2) The effective date of enrollment for a renewal is the first day of the month after the renewal month, if the renewal is completed by the end of the renewal month, or by the last day of the month immediately following the recertification month, and the child continues to be eligible.

(3) If the renewal is not completed by the end of the renewal month, the case will be closed unless the enrollee has good cause for not completing the renewal process on time. Good cause includes a medical emergency, death of an immediate family member, or natural disaster, or other similar occurrence.

(4) The Department may require an interview with the parent, child, or adult who has assumed responsibility for the care or supervision of a child, or other authorized representative as part of the renewal process.

R382-10-19. Open Enrollment Period.

(1) The Department accepts applications for enrollment at times when sufficient funding is available to justify enrolling more individuals. The Department limits the number it enrolls according to the funds available for the program.

(a) The Department shall notify the public of the open enrollment period 10 days in advance through a newspaper of general circulation.

(b) During an open enrollment period, the Department accepts applications in person, through the mail or online. The Department sorts applications according to the date received. When an application is received through the mail, the date of receipt is the date of the postmark. When an application is submitted online, the date of receipt is the date of electronic transmission. If the applications received on a day exceed the number of openings available, the Department shall randomize all applications for that day and select the number needed to fill the openings.

(c) The Department will not accept applications prior to the open enrollment date.

R382-10-20. Enrollment Period.

(1) The enrollment period begins with either the date of application, or an earlier date as defined in R382-10-18, if the applicant is determined eligible for CHIP enrollment. Covered services the child received on or after the effective date of enrollment are payable by CHIP for a child who was eligible upon application.

(2) A child eligible for CHIP enrollment receives 12 months of coverage unless the child turns 19 years of age before the end of the 12-month enrollment period, moves out of the state, becomes eligible for Medicaid, begins to be covered under a group health plan or other health insurance coverage, or enters a public institution. The month a child turns 19 years of age is the last month the child is eligible for CHIP.

R382-10-21. Termination and Notice.

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or at renewal.

(2) The Department shall notify an enrollee in writing ten days before taking a proposed action adversely affecting the enrollee's eligibility.

(3) Notices under this section shall provide the following information:

(a) The action to be taken;

(b) The reason for the action;

(c) The regulations or policy that support the action;

(d) The applicant's or enrollee's right to a hearing;

(e) How an applicant or enrollee may request a hearing; and

(f) The applicant's or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(4) The Department need not give ten-day notice of termination if:

(a) the child is deceased;

(b) the child has moved out of state and is not expected to return; or

(c) the child has entered a public institution, in which case eligibility may cease immediately and without prior notice.

R382-10-22. Case Closure or Withdrawal.

The department shall terminate a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time prior to approval of the application.

KEY: children's health benefits*
July 2, 2002 **26-1-5**
26-40

R386. Health, Epidemiology and Laboratory Services, Epidemiology.

R386-800. Immunization Coordination.

R386-800-1. Authority and Purpose.

(1) This rule is authorized by Title 26, Chapter 6, Communicable Disease Control, and Title 26, Chapter 3, Health Statistics.

(2) It establishes a system to coordinate immunizations among health care providers to assure adequate immunization and to avoid unnecessary immunizations. It provides for the sharing of immunization information among authorized health care providers, health insurers, schools, day care centers, and publicly funded programs to meet statutory immunization requirements and to control disease outbreaks.

(3) It establishes a requirement allowing individuals to withdraw from the system.

(4) It establishes confidentiality requirements and lists penalties for violations.

R386-800-2. Participation by Individuals.

(1) Individual participation in the immunization coordination system is voluntary. Immunization records of individuals in Utah may be included in the system unless the individual or parent or guardian withdraws. An individual or his or her parent or guardian may withdraw from the system at any time.

(2) An individual who has given prior affirmative consent to participate in the system will be included until such time as he or she withdraws from the system.

R386-800-3. Participation by Organizations.

(1) Health care providers, health insurers, schools, day care centers, and publicly funded programs can apply to participate in the system. An authorized organizational participant must sign a participation agreement and abide by its requirements.

(2) No person or individual is required to access the system to coordinate immunizations.

R386-800-4. Notification.

Organizations that participate in the program shall inform individuals or parents or guardians about the system and provide information about the right to withdraw from of the system as required in the participation agreement. This notice must be provided directly to parents or guardians when issuing birth certificates.

R386-800-5. Withdrawal.

(1) The Department of Health shall provide withdrawal forms and contact information to individuals, parents or guardians, and organizational participants.

(2) Organizational participants shall make the forms and contact information available to individuals or their parents or guardians as required by the participation agreement, but are not responsible to assure that the individual is withdrawn from the system.

R386-800-6. Access and Confidentiality.

(1) Organizational participants may access identifiable patient information in the system only as required to assure adequate immunization of a patient, to avoid unnecessary immunizations, to confirm compliance with mandatory immunization requirements, and to control disease outbreaks.

(2) All other access is restricted by Title 26, Chapter 6, Communicable Disease Control, and Title 26, Chapter 3, Health Statistics.

R386-800-7. Liability.

(1) Organizational participants report immunization records to the system under the authority of the Communicable Disease Control Act.

(2) An organizational participant who reports information in good faith pursuant to this rule is not liable for reporting the immunization information to the Department of Health for use in the system.

R386-800-8. Penalties for Violation.

As required by Section 63-46a-3(5): Any person who violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: immunization data reporting, consent
July 8, 2002 **26-3**
26-6

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-303. Coverage Groups.

R414-303-1. A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups.

The definitions in R414-1 apply to this rule.

(1) The Department shall provide Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.541, 2000 ed., which are incorporated by reference. The Department shall provide coverage to individuals as described in 20 CFR 416.901 through 416.1094, 2000 ed., which is incorporated by reference. The Department shall provide coverage to individuals as required by Sections 470 through 479, 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), 1902(a)(10)(E) and 1902(e) of Title XIX of the Social Security Act in effect January 1, 1999. The Department shall provide coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 1999. Coverage under Section 1902(a)(10)(A)(ii)(XIII) shall be referred to as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) If a client has been denied SSI or SSA and claims to have become disabled since the SSI or SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(4) If a client has earned income and claims to be disabled, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(5) The age requirement for A Medicaid is 65 years of age.

(6) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 1999, the Department shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by the section.

(7) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv) of Title XIX of the Social Security Act in effect January 1, 1999, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 1999 for a given year. Applicants will be denied coverage when the uncommitted allocated funds are insufficient to provide such coverage.

(8) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the Department shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(9) The Department shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

R414-303-2. Family Medicaid and Family Institutional Medicaid Coverage Groups.

(1) The Department shall provide Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.217, 435.223, and 435.300 through 435.310, 2000 ed., and 45 CFR 233.90, 2001 ed., and Title XIX of the Social Security Act as in effect January 1, 2000, Sections 1931(a), (b), and (g), which are incorporated by reference.

(2) The following definitions apply to this rule:

(a) "1931 Family Medicaid" (1931 FM) means a medical assistance program that meets the criteria found in Section 1931(a) and (b) of the Social Security Act in effect January 1, 1999 that requires the Department to use the eligibility criteria of the pre-welfare reform Aid to Families With Dependent Children cash assistance program along with any subsequent amendments made by the Department as allowed under Section 1931 of the Act.

(b) "Family Employment Program" (FEP) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Temporary Assistance to Needy Families (TANF).

(c) "Diversion" means a one time FEP payment that may equal up to three months of FEP cash assistance.

(3) The Department provides Medicaid coverage to individuals who are 1931 FM qualified, as described in 45 CFR 233.39, 233.90, and 233.100, 2001 ed., which are incorporated by reference.

(4) The Department provides 1931 Family Medicaid coverage to individuals who are qualified for FEP cash assistance.

(5) For unemployed two-parent households, the Department shall not require the primary wage earner to have an employment history.

(6) Households that receive a FEP diversion payment shall have the option to receive 1931 Family Medicaid coverage for three months beginning with the month of application for the diversion payment.

(7) A specified relative, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following rules apply to a Family Medicaid application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The parents' obligation to financially support their child shall be enforced.

(d) The income and resources of the specified relative will not be counted unless the specified relative is also included in the Medicaid coverage group.

(e) If the specified relative is currently included in a FEP household or a 1931 Family Medicaid household, the child shall be included in the FEP or 1931 FM case of the specified

relative.

(f) The specified relative may choose to be excluded from the Medicaid coverage group. The ineligible children of the specified relative must be excluded. The specified relative will not be included in the income standard calculation.

(g) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources will not be used to determine eligibility or spenddown.

(h) If the specified relative is not the parent of a dependent child who meets deprivation of support criteria and elects to be included in the Medicaid coverage group, the following income rules apply:

(i) The monthly gross earned income of the specified relative and spouse shall be counted.

(ii) The unearned income of the relative and the excluded spouse shall be counted.

(iii) For each employed person, $90 will be deducted from the monthly gross income.

(iv) Child care expenses necessary for employment will be deducted for only the specified relative's children. The maximum allowable deduction will be $200.00 per child under age two and $175.00 per child age two and older each month for full-time employment or $160.00 per child under age two and $140.00 per child age two and older each month for part-time employment.

(8) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(9) Temporary absence from the home for purposes of schooling, vacation, or medical treatment shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences which are caused solely by reason of employment, school, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

(10) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

(11) The Department imposes no suitable home requirement.

(12) Medicaid assistance is not continued for a temporary period while the effects of deprivation of support are being overcome.

(13) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration or the Social Security Administration;

(c) provide a Medical Report Form 21 completed by a physician or licensed/certified psychologist which indicates that the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.

R414-303-3. 12 Month Transitional Family Medicaid.

(1) The Department complies with Title XIX of the Social Security Act, Sections 1925 and 1931 (c)(2) as in effect January 1, 1999, which are incorporated by reference.

(2) The Department shall consider Medicaid coverage under 12 month Transitional Medicaid for households that lose eligibility for 1931 Family Medicaid, FEP cash assistance, and households that receive 1931 Family Medicaid for three months because they received a FEP Diversion payment.

R414-303-4. Four Month Transitional Family Medicaid.

(1) The Department adopts 42 CFR 435.115(f), (g) and (h), 2000 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) in effect January 1, 1999 which are incorporated by reference.

(2) Changes in household composition do not affect eligibility for the four month extension period. New household members may be added to the case only if they meet the AFDC or AFDC two-parent criteria for being included in the household if they were applying in the current month. Newborn babies are considered household members even if they were unborn the month the household became ineligible for Family Medicaid under Section 1931 of the Social Security Act. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-5. Foster Care.

The Department adopts 42 CFR 435.115(e)(2), 2000 ed., which is incorporated by reference.

R414-303-6. Subsidized Adoptions.

The Department adopts 42 CFR 435.115(e)(1), 2000 ed., which is incorporated by reference.

R414-303-7. Child Medicaid.

(1) The Department adopts 42 CFR 435.222 and 435.301 through 435.308, 2000 ed., which are incorporated by reference.

(2) The Department elects to cover all individuals under age 18 who would be eligible for AFDC but do not qualify as dependent children. Individuals who are 18 years old may be covered if they would be eligible for AFDC except for not living with a specified relative or not being deprived of support.

(3) If a child receiving SSI elects to receive Child Medicaid or receives benefits under the Home and Community Based Services Waiver, the child's SSI income shall be counted with other household income.

R414-303-8. Refugee Medicaid.

(1) The Department adopts 45 CFR 400.90 through 400.107, 2001 ed., which are modified by the Federal Register 60 FR 33584, published Wednesday, June 28, 1995, and 45 CFR 401, 2001 ed., all of which are incorporated by reference.

(2) Specified relative rules do not apply.

(3) Child support enforcement rules do not apply.

(4) The sponsor's income and resources are not counted.

In-kind service or shelter provided by the sponsor is not counted.

(5) Initial settlement payments made to a refugee from a resettlement agency are not counted.

(6) Refugees may qualify for medical assistance for eight months after entry into the United States.

R414-303-9. Prenatal and Newborn Medicaid.

(1) The Department adopts Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(IV), (VI), (VII) and 1902(l), in effect January 1, 1999, Title XIX of the Social Security Act, Section 1902(k) in effect January 1, 1993, and Section 26-18-3.1.

(2) The Department elects to impose a resource standard on Newborn Medicaid coverage for children age six to the month in which they turn age 19. The resource standard is the same as other Family Medicaid Categories.

(3) The Department elects to provide Prenatal Medicaid coverage to pregnant women whose countable income is equal to or below 133% of poverty.

(4) At the initial determination of eligibility for Prenatal Medicaid applicants who have $5,000 or more of assets, the Department will require the applicant to pay four percent of countable resources to become eligible for Prenatal Medicaid. This payment amount shall not exceed $3,367. The payment must be met with cash; incurred medical bills and medical expenses are not allowed to meet this payment.

(5) In subsequent months, through the 60 day postpartum period, the Department disregards all excess resources.

(6) This resource payment applies only to pregnant women covered under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX)(A) of the Social Security Act in effect January 1, 1999.

(7) No resource payment will be required when the Department makes a determination based on information received from a medical professional that social, medical, or other reasons place the pregnant woman in a high risk category.

(8) Children born after September 30, 1983 may qualify for the newborn program through the month in which they turn 19.

R414-303-10. PG Medicaid.

The Department adopts 42 CFR 435.116 (a), 435.301 (a) and (b)(1)(i) and (iv),2000 ed. and Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(III) in effect January 1, 1999.

R414-303-11. DD/MR Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2000 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 1999.

(2) Medicaid Eligibility for Developmentally Disabled Mentally Retarded (DD/MR) Home and Community-Based Services is limited to mentally retarded and developmentally disabled individuals. Eligibility is limited to those referred by the Division of Services to People with Disabilities (DSPD) or any DD/MR worker.

(3) Medicaid eligibility for DD/MR Home and Community-Based Services is limited to individuals who qualify for a regular Medicaid coverage group, except for individuals who only qualify for the Primary Care Network.

(4) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(5) All of the client's income is countable unless excluded under other federal laws.

(6) To determine countable earned income, the Department will deduct from the individual's earned income an amount equal to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect January 1, 1999.

(7) The Department shall allow deductions for any health insurance or medical expenses for the waiver eligible client that are paid by the waiver client.

(8) The spousal impoverishment provisions for Institutional Medicaid income apply.

(9) The client obligation for the contribution to care, which may be referred to as a spenddown, will be the amount of income that exceeds the personal needs allowance after allowable deductions. The contribution to care must be paid to the Department.

(10) The Department shall count parental and spousal income only if the client is given a cash contribution from a parent or spouse.

(11) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

R414-303-12. Aging Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2000 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 1999.

(2) Medicaid eligibility for Aging Home and Community-Based Services is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care except that the spousal impoverishment resource limits apply. Eligibility is limited to those referred by the Division of Aging or a county aging worker.

(3) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(4) All income is counted, unless excluded under other federal laws. The client's contribution to care, which may be referred to as a spenddown, is determined counting only the client's income less allowable deductions.

(5) The spousal impoverishment provisions for Institutional Medicaid income apply. Income deductions include health insurance premiums, medical expenses, a percentage of shelter costs and an aging waiver personal needs deduction.

(6) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

(7) The Department shall count a spouse's income only if the client is given a cash contribution from a spouse.

R414-303-13. Technologically Dependent Child Waiver/Travis C. Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2000 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 1999.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver require that the individual meets the medical criteria established by the Department and the Division in Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan effective on January 1, 1995 and renewed effective July 1, 1998 through June 30, 2003, which is incorporated by reference.

(4) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the twenty first birthday falls.

(5) Once admitted to the waiver, the individual can continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department non-financial Medicaid eligibility criteria in R414-302, a Medicaid category of coverage defined in R414-303, and the income and resource criteria defined in R414-303-11, except that the earned income deduction is limited to $125.

(6) Income and resource eligibility requirements follow the rules for the DD/MR Home and Community Based Services Waiver found in R414-303-11.

R414-303-14. Persons with Brain Injury Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2000 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 1999.

(2) The Department will operate this program statewide initially with a limited number of available slots.

(3) Eligibility for services under this waiver require that the individual has medical needs resulting from a brain injury. This means that the individual must be in need of skilled nursing or rehabilitation services as a result of the damage sustained because of the brain injury. A medical need determination will be established through the Department of Human Services, Division of Services for People with Disabilities.

(4) To qualify for services under this waiver, the individual must be 18 years old or older. The person is considered to be 18 in the month in which the 18th birthday falls.

(5) All other eligibility requirements follow the rules for the Aging Home and Community Based Services Waiver found in R414-303-12.

(6) The spousal impoverishment provisions for Institutional Medicaid income apply, with one exception: An individual who has a dependent family member living in the home is allowed a deduction for a dependent family member even if the individual is not married or is not living with the spouse.

R414-303-15. Personal Assistance Waiver for Adults with Physical Disabilities.

(1) The Department adopts 42 CFR 435.726 and 435.217, 2000 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 1999.

(2) The waiver shall be limited to individuals 18 years of age and over.

(3) The individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(4) A client must qualify for a nursing home level of care. Eligibility is limited to those referred by the Division of Services to People with Disabilities and determined medically eligible by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment.

(5) A client's resources must be equal to or less than $2000. The spousal impoverishment resource provisions for married, institutionalized clients in R414-305-3 apply to this rule.

(6) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. After determining countable income, eligibility is determined counting only the gross income of the client.

(7) The client's income can not exceed three times the SSI benefit amount payable under Section 1611(b)(1) of the Social Security Act, except that individuals with income over this amount can spenddown to the Medicaid Basic Maintenance Standard for a household of one.

(8) Transfer of resource provisions described in R414-305-6 apply to this rule.

R414-303-16. Medicaid Cancer Program.

The Department shall provide coverage to individuals described in 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 1999, as amended by Pub. L. No. 106-354 effective October 24, 2000. This coverage shall be referred to as the Medicaid Cancer Program.

(1) Medicaid eligibility for services under this program will be provided to women who have been screened for breast or cervical cancer under the Centers for Disease Control and prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(2) A woman who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Insurance Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program.

(3) A woman who is eligible for Medicaid under any mandatory categorically needy eligibility group, is not eligible for coverage under the program.

(4) A woman must be under 65 years of age to enroll in the program.

KEY: income, coverage groups*
July 2, 2002 **26-18**
Notice of Continuation February 6, 1998

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 or any portion of a month for 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, 2000 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, 2000 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 from 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 federal benefit rate 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 current child support received in a month for the disabled child 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. Child support payments which are payments owed for past months or years are countable income to the parent receiving the payments.

(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 current child support payments received by the child or guardian that are not subject to collection by ORS shall count as unearned income 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 or a parent shall not be considered in determining Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals 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 100% of 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 100% of 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 100% 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 100% of 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 100% of the two-person poverty guideline, then the aged or disabled spouse shall be eligible under the 100% poverty-related Aged or Disabled Medicaid program.

(B) If the countable income exceeds 100% of 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 100% 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) Except when determining countable income for the 100% poverty-related Aged and Disabled Medicaid programs, income will not be deemed from a spouse who meets 1619(b) protected group criteria.

(f) 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.

(ii) If one spouse receives Part A Medicare, and the other spouse is aged, blind, or disabled and that spouse either 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.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, income of the ineligible spouse shall be deemed to the eligible spouse when it exceeds the allocation for a spouse. The combined countable income shall be compared to the applicable percentage of the federal poverty guideline for a two-person household. If the ineligible spouse's deemable income does not exceed the allocation for a spouse, only the eligible spouse's income shall be counted, and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) SSI income will not be counted to determine eligibility for QMB, SLMB or QI assistance.

(g) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the income of neither parent shall be considered to determine a child's eligibility for B or D Medicaid.

(h) 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.

(16) Income, unearned and earned, shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

(17) Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(18) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

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, 2000 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. The Department shall not count as income any payments which are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The Department shall allow the provisions found in R414-304-2 (3) through (12), and (15) through (17).

(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 as a deduction.

(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. Include in the household size, any dependent children under age 18. Also include in the household size any children who are 18, 19, or 20 and are full-time students. After allowable deductions, the net income shall be compared to 250% of the federal poverty guideline for the household size involved.

(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 the individual's parents to 250% of the federal poverty guideline for the household size involved.

R414-304-4. Family Medicaid and Institutional Family Medicaid Unearned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 2000 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, 2001 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 "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 in the month the payment is received or made available to the individual.

(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) Income, unearned and earned, shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

(20) Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(21) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(22) 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.

(23) 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, 2000 ed., and 20 CFR 416.1110 through 416.1112, 2000 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.

(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, 2000 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), 2001 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 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.

(12) 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, 2000 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.

(a) The entire payment shall be allowed as a deduction in the month it is due and will not be prorated.

(b) 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.

(c) Health insurance premiums paid in the application month or during the three month retroactive period which are not fully used as a deduction in the month paid may be allowed as a deduction only through the month of application.

(3) Medicare premiums shall not be allowed as deductions if the state will pay the premium or will reimburse 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 the medical service was received and paid during the month of application or during the three month time period immediately preceding the date of application. The date the medical service was provided on an unpaid expense does not matter. Bills for services received and paid during the application month or the three month time period preceding the date of application can be used as deductions only through the month of application.

(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 shall be responsible for deciding if services are not medically necessary.

(7) The Department shall not allow as a medical expense, co-payments or co-insurance amounts 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 and at each review when the client continues to be eligible under the spenddown program. 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 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 R414-304-7 (1) through (3).

(2) The Department shall apply the following deductions from income in determining countable 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 half of the remaining 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 will not be deducted 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 himself or other family members in the household shall be deducted from income before determining the buy-in premium.

(5) An eligible individual may meet the buy-in premium with cash, check or money order payable to the Office of Recovery Services.

(6) No one will be required to pay a buy-in premium of less than $1.

R414-304-9. A, B, and D Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.725, 435.726, and 435.832, 2000 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 or co-insurance amounts 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 the standard utility allowance used by the federal food stamp program. 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, 2000 ed., which are incorporated by reference. The Department adopts 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, 2001 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 the months in the retroactive period, except when the income was not being received during, and was not intended to cover, those specific months in the retroactive period.

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 buy-in premium for individuals who qualify for the Medicaid Work Incentive Program when the countable income of the Medicaid Work Incentive Program eligible individual, or the eligible individual and eligible spouse, 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 buy-in premium when the child's countable income, including income deemed from parents, exceeds 100% of the federal poverty guideline for a one person household. The premium will be calculated as a percentage of the eligible individual's, or eligible couple's, countable income as follows:

TABLE

Income over	But Not More Than	Premium equals
100% FPL	125% FPL	30%
125% FPL	150% FPL	35%
150% FPL	175% FPL	40%
175% FPL	200% FPL	45%
200% FPL	225% FPL	50%
225% FPL	250% FPL	55%

(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, Medicaid Work Incentive, QMB, SLMB, and QI Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 2000 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 the 100% poverty A or D Medicaid program:

(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 100% 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;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(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;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(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, 2000 ed., 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), 2001 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 the contribution to cost of care, which may be referred to as a spenddown.

(2) For Family institutional, and home and community-based waiver Medicaid programs, the Department adopts 45 CFR 206.10(a)(1)(vii), 2001 ed., which is incorporated by reference.

(3) The Department shall base eligibility and the contribution to cost of care, which may be referred to as a 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, 2000 ed., which is incorporated by reference.

(4) The Department shall base eligibility and the contribution to cost of care, which may be referred to as a spenddown, on the income of the client and the income deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

KEY: financial disclosure, income, budgeting
July 2, 2002 26-18-1
Notice of Continuation February 6, 1998

R420. Health, Health Care Financing, Medical Assistance Program.

R420-1. Utah Medical Assistance Program.

R420-1-1. Utah Medical Assistance Program.

(1) The Utah Medical Assistance Program (UMAP) is designed to provide medically necessary care to low income clients who are not eligible for Medicaid or Medicare.

(2) This rule is authorized under Section 26-18-10.

(3) To be eligible for UMAP services, clients must meet the criteria in R414-310.

(4) The scope of services covered by UMAP is limited to specialty care received during an authorized and donated hospital stay.

KEY: indigent, medicaid, UMAP

July 2, 2002	**26-1-5**
Notice of Continuation July 12, 2002	**26-18-10**

R477. Human Resource Management, Administration.
R477-1. Definitions.
R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: An act of resignation resulting from an employee's unexcused absence from work or failure to come to work for three consecutive days when the employee is capable, but does not properly notify his supervisor.

(2) Active Duty: Full-time active military or reserve duty; a term used for veteran's preference adjustments. It does not include active or inactive duty for training or initial active duty for training.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments. This time is calculated in increments of 15 minutes or more for purposes of overtime accrual, and shall not include "on-call," holiday leave, or any other leave time taken off during the work period.

(4) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(5) Administrative Adjustment: A DHRM approved change of a position from one job to another job or salary range change for administrative purposes that is not based on a change of duties and responsibilities.

(6) Administrative Salary Decrease: A salary decrease of one or more pay steps based on non-disciplinary administrative reasons determined by an agency head or commissioner.

(7) Administrative Salary Increase: A salary increase of one or more pay steps based on special circumstances determined by an agency head or commissioner.

(8) Agency: Any department, division, institution, office, commission, board, committee, or other entity of state government.

(9) Agency Head: The chief executive officer of each agency or their designated appointee.

(10) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(11) Appeal: A formal request to a higher level review for consideration of an unacceptable grievance decision.

(12) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(13) Assignment: Appointment of an employee to a position.

(14) "At will" Employee: An individual appointed to work for no specified period of time or one who has not acquired career service status and may be terminated at any time without just cause.

(15) Bumping: A procedure that may be applied in a reduction-in-force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points who are in the same categories of work identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(16) Career Exempt Employee: An employee appointed to a position exempt from career service in state employment and who serves at the pleasure of the appointing authority.

(17) Career Exempt Position: A position in state service exempted by law from provisions of competitive career service, as prescribed in 67-19-15 and in R477-2-1(1).

(18) Career Mobility: A time-limited assignment of an employee to another position of equal or higher salary for purposes of professional growth or fulfillment of specific organizational needs.

(19) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(20) Career Service Status: Status granted to employees who successfully completes a probationary period for competitive career service positions.

(21) Category of Work: Jobs, work units, or other definable categories of work within departments, divisions, institutions, offices, commissions, boards or committees that are designated by the agency head as the Category of Work to be eliminated through a reduction-in-force. These are subject to review by the Executive Director, DHRM.

(22) Certifying: The act of verifying the qualifications and availability of individuals on the hiring list. The number of individuals certified shall be based on standards and procedures established by the Department of Human Resource Management.

(23) Change of Workload: A change in the work requirements or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(24) Classification Grievance: The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(25) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12 of the Utah Code Annotated.

(26) Classification Study: A Classification review conducted by DHRM or an approved contract agency, under the rules outlined in R477-3-4. A study may include single or multiple job or position reviews.

(27) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

(28) Constant Review: A period of formal review of an employee, not to exceed six months, resulting from substandard performance or behavior, as defined by Utah law and contained in these rules. Removal from constant review requires a formal evaluation.

(29) Contract Agency: An agency with authority to perform specific HR functions as outlined in a formal delegation agreement with DHRM under authority of section 67-19-7.

(30) Contractor: An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and shall not accrue benefits.

(31) Corrective Action: A written administrative action to address substandard performance or behavior of an employee as

described in R477-10-2. Corrective action includes a period of constant review.

(32) Demeaning Behavior: Any behavior which lowers the status, dignity or standing of any other individual.

(33) Demotion: An action resulting in a salary reduction on the current salary range or the movement of an incumbent from one job or position to another job or position having a lower salary range, which may include a reduction in salary. Administrative adjustments and reclassifications are not included in the definition of a demotion.

(34) Department: The Department of Human Resource Management.

(35) Derisive Behavior: Any behavior which insults, taunts, or otherwise belittles or shows contempt for another individual.

(36) Designated Hiring Rule: A rule promulgated by DHRM that defines which individuals on a certification are eligible for appointment to a career service position.

(37) DHRM: The Department of Human Resource Management.

(38) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which includes:

(a) continuous recruitment of all positions;

(b) a centralized and automated computer database of resumes and related information administered by the Department of Human Resource Management;

(c) decentralized access to the database based on delegation agreements.

(39) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (1994); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (1993); including exclusions and modifications.

(40) Disciplinary Action: Action taken by management under the rules outlined in R477-11.

(41) Discrimination: Unlawful action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other non-merit factor, as specified by law.

(42) Dismissal: A separation from state employment for cause.

(43) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 85 (1993), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(44) Employee Personnel Files: For purposes of Titles 67-18 and 67-19, the files maintained by DHRM and agencies as required by R477-2-6. This does not include employee information maintained by supervisors.

(45) Employment Eligibility Certification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

(46) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(47) Equal Employment Opportunity (EEO): Non-discrimination in all facets of employment by eliminating patterns and practices of illegal discrimination.

(48) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's hours actually worked, plus additional hours paid but not worked, exceed an employee's normal work period.

(49) Fair Employment Opportunity and Practice: Assures fair treatment of applicants and employees in all aspects of human resource administration without regard to age, disability, national origin, political or religious affiliation, race, sex, or any non-merit factor.

(50) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(51) FLSA: Fair Labor Standards Act. The federal statute that governs overtime. See 29 USC 201 (1996).

(52) FLSA Exempt: Employees who are exempt from the Fair Labor Standards Act.

(53) FLSA Non-Exempt: Employees who are not exempt from the Fair Labor Standards Act.

(54) Full Time Equivalent (FTE): The budgetary equivalent of one full time position filled full time for one year.

(55) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(56) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment.

(57) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-408 and the rules promulgated by the Career Service Review Board.

(58) Gross Compensation: Employee's total earnings, taxable and untaxable, as shown on the employee's paycheck stub.

(59) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.

(60) Hostile Work Environment: A work environment or work related situation where an individual suffers physical or emotional stress due to the unwelcome behavior of another individual which is motivated by race, religion, national origin, color, sex, age, disability or protected activity under the anti-discrimination statutes.

(61) HRE: Human Resource Enterprise; the state human resource management information system.

(62) Immediate Supervisor: The employee or officer who exercises direct authority over an employee and who appraises the employee's performance.

(63) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(64) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(65) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

(66) Intern: An individual in a college degree program assigned to work in an activity where on-the-job training is accepted.

(67) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same, salary range and test standards are applied to each position in the group.

(68) Job Series: Two or more jobs in the same functional area having the same job class title, but distinguished and defined by increasingly difficult levels of duties and responsibilities and requirements.

(69) Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force proceedings.

(70) Job Requirements: Skill requirements defined a the job level.

(71) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(72) Job Identification Number: A unique number assigned to a job by DHRM.

(73) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(74) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(75) Market Comparability Adjustment: Legislatively approved reallocation of a salary range for a job based on a compensation survey conducted by DHRM.

(76) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(77) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(78) Nonfeasance: Failure to perform either an official duty or legal requirement.

(79) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(80) Performance Evaluation Date: The date when an employee's performance evaluation shall be conducted. An evaluation shall be conducted at least once during the probationary period and no less than once annually thereafter consistent with the common review date.

(81) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(82) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(83) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(84) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Title 63, Chapter 46b, for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Board, or the classification appeals procedure.

(85) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(86) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(87) Position Management Report: A document that lists an agency's authorized positions including job identification numbers, salaries, and schedules. The list includes occupied or vacant positions and full or part-time positions.

(88) Position Sharing: A situation where two employees share the duties and responsibilities of one full-time career service position. Salary, retirement service credits and leave benefits for position sharing employees are pro-rated according to the number of hours worked. To be eligible for benefits, position sharing employees must work at least 50% of a full-time equivalent.

(89) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(90) Productivity Step Adjustment: A management authorized salary increase of one to four steps. Management and employees agree to the adjustment for employees who accept an increased workload resulting from FTE reductions and agency base budget reduction.

(91) Promotion: A management initiated action moving an employee from a position in one job to a position in another job having a higher maximum salary step.

(92) Protected Activity: Opposition to discrimination or participation in proceedings covered by the anti-discrimination statutes. Harassment based on protected activity can constitute unlawful retaliation.

(93) Reappointment: Return to work of an employee from the reappointment register. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at termination.

(94) Reappointment Register: A register of career service employees who have been separated in a reduction in force because of inadequate funds, change of workload or lack of work. It also includes career service employees who accepted exempt positions without a break in service and who were not retained, unless discharged for cause, and those employees who by the Career Service Review Board's decision are placed on the reappointment register.

(95) Reasonable Suspicion: Knowledge sufficient to induce an ordinary, reasonable and prudent person to arrive at

a conclusion of thought or belief based on factual, non-subjective and substantiated observations or reported circumstances. Factual situations verified through personal visual observation of behavior or actions, or substantiated by a reliable witness.

(96) Reassignment: A management initiated action moving an employee from his current job or position to a job or position of an equal salary range for administrative, corrective action or other reasons not included in the definition of demotion, transfer or reclassification. Management may also move an employee to a job or position with a lower salary range when permitted by applicable Federal or state law, including, but not limited to the American Disabilities Act. A reassignment may be to one or more of the following:

A. a different job or position;

B. a different organizational unit; or

C. a different work location.

(97) Reclassification: A DHRM or an approved contract agency reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities as determined by a classification study.

(98) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(99) Reemployment: Return to work of an employee who terminated state employment to join the uniformed services covered under USERRA. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out at termination.

(100) Rehire: Return to work of a former career service employee who terminated state employment. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at termination.

(101) Retaliation: An adverse employment action taken against an employee who has engaged in a protected act. The adverse action must have a causal link.

(102) Requisition: An electronic document used for Utah Skill Match search and tracking purposes that includes specific information for a particular position.

(103) Return from LWOP: A return to work from any leave without pay status. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out before the leave without pay period began.

(104) Ridiculing Behavior: Any behavior specifically performed to cause humiliation or to mock, taunt or tease another individual.

(105) RIF'd Employee: An employee who is placed on the reappointment register as a result of a reduction in force.

(106) Safety Sensitive Position: A position approved by DHRM that includes the performance of functions:

(a) directly related to law enforcement; or

(b) involving direct access or having control over direct access to controlled substance; or

(c) directly impacting the safety or welfare of the general public.

(d) which require an employee to carry or have access to firearms.

(107) Salary Range: The segment of an approved pay plan assigned to a job.

(108) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (Schedule B) or career service exempt (Schedule A).

(109) Serious Health Condition: An illness, injury, impairment, physical or mental condition that involves:

(a) In-patient care in a hospital, hospice, or residential medical care facility;

(b) Continuing treatment by a health care provider.

(110) Sexual Harassment:

(a) A form of unlawful discrimination of a sexual nature which is unwelcome and pervasive, demeaning, ridiculing, derisive or coercive and results in a hostile, abusive or intimidating work environment.

(i) Level One: sex role stereotyping

(ii) Level Two: targeted gender harassment/discrimination

(iii) Level Three: targeted or individual harassment

(iv) Level Four: criminal touching of another's body parts or taking indecent liberties with another.

(b) Any quid pro quo behavior which requires an employee to submit to sexual conduct in return for increased employment benefits or under threat of adverse employment repercussions.

(111) Tangible Employment Action: Any significant change in employment status e.g. hiring, firing, promotion, failure to promote, demotion, undesirable assignment, a decision causing a significant change in benefits, compensation decisions, and work assignment. Tangible employment action does not include insignificant changes in employment status such as a change in job title without a change in salary, benefits or duties.

(112) Temporary Transitional Assignment: An assignment on a temporary basis to a position or duties of lesser responsibility and salary range to accommodate an injury or illness or to provide a temporary reasonable accommodation.

(113) Transfer: A voluntary movement of an employee from one job or position to another job or position for which the employee qualifies. A transfer may be to one or more of the following:

a job or position with the same salary range;

a job or position with a lower salary range;

a different work location;

a different organizational unit.

(114) Underfill: DHRM authorization for an agency to fill a position at a lower salary range within the same job series.

(115) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, or any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; absence from work for an examination to determine fitness for any of the above types of duty.

(116) Unlawful Harassment: Any behavior or conduct of an unlawful nature based on race, religion, national origin,

color, sex, age, disability or protected activity under the anti-discrimination statutes that is unwelcome, pervasive, demeaning, derisive or coercive and results in a hostile, abusive or intimidating work environment or tangible employment action.

(117) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who left state employment to enter the uniformed services and who return to work within a specified time period after military discharge. Employees covered under USERRA are in a leave without pay status from their state position.

(118) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

(119) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

(120) Volunteer Experience Credit: Credit given in meeting job requirements to participants who gain experience through unpaid or uncompensated volunteer work with the state, its subdivisions or other public and private organizations.

KEY: personnel management, rules and procedures, definitions*
July 5, 2002 **67-19-6**
Notice of Continuation June 11, 2002

R477. Human Resource Management, Administration.
R477-2. Administration.
R477-2-1. Rules Applicability.

These rules apply to all career and non-career state employees except those specifically exempted in Section 67-19-12.

(1) Certificated employees of the State Board of Education are covered by these rules except for rules governing classification and compensation, found in R477-3 and R477-6.

(2) Non-state agencies with employees protected by the career service provisions of these rules in R477-4, R477-5, R477-9 and R477-11 are exempted by contract from any provisions deemed inappropriate in their jurisdictions by the Executive Director, DHRM.

(3) Unless employees in exempt positions have written contracts of employment for a definite period of time, they are "at will" employees. The following employees are exempt from mandatory compliance with these rules:

(a) Members of the Legislature and legislative employees

(b) Members of the judiciary and judicial employees

(c) Elected members of the executive branch and their direct staff who are career service-exempt employees

(d) Officers, faculty, and other employees of state institutions of higher education

(e) Any positions for which the salary is set by law

(f) Attorneys in the attorney general's office

(g) Agency heads and other persons appointed by the governor when authorized by statute

(h) Employees of the Department of Community and Economic Development whose positions have been designated executive/professional by the executive director of the Department of Community and Economic Development with the concurrence of the Executive Director, DHRM.

(4) All other exempt positions are covered by provisions of these rules except rules governing career service status in R477-4, R477-5, R477-9 and R477-11.

(5) The above positions may or may not be exempt from federal and other state regulations.

R477-2-2. Compliance Responsibility.

Agencies shall manage their own human resources in compliance with these rules. Agencies are authorized to correct any administrative errors.

(1) The Executive Director, DHRM, may authorize exceptions to provisions of these rules when one or more of the following criteria are satisfied:

(a) Applying the rule prevents the achievement of legitimate government objectives;

(b) Applying the rule impinges on the legal rights of an employee;

(2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules and are subject to compliance audits by the DHRM.

(3) In cases of noncompliance with the State Personnel Management Act, Title 67, Chapter 19, and these rules, the Executive Director, DHRM, may find the responsible agency official to be subject to the penalties prescribed by Section 67-19-18(1) pertaining to misfeasance, malfeasance or nonfeasance in office.

R477-2-3. Fair Employment Practice.

All state personnel actions must provide equal employment opportunity for all individuals.

(1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

(2) Employment actions shall not be based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor, nor shall any person be subjected to unlawful harassment by a state employee.

(3) Any employee who alleges that they have been illegally discriminated against, may submit a claim to the agency head.

(a) If the employee does not agree with the decision of the agency head, the employee may file a complaint with the Utah Anti-Discrimination and Labor Division.

(b) No state official shall impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

(4) Employees are protected from employment discrimination under the following laws:

(a) The Age Discrimination in Employment Act of 1967, 29 USC 621, as implemented by 29 CFR 1625(1999). This act prohibits discrimination on the basis of age for individuals forty years and over.

(b) The Vocational Rehabilitation Act of 1973, 29 USC 701, as implemented by 34 CFR 361(1999). This act prohibits discrimination on the basis of disability status under any program or activity that receives federal financial assistance. Employers with federal contracts or subcontracts greater than $10,000.00 must have an affirmative action plan to accommodate qualified individuals with disabilities for employment and advancement. All of an employer's operations and facilities must comply with Section 503 as long as any of the operations or facilities are included in federal contract work. Section 504 incorporates the employment provisions of Title I of the Americans With Disabilities Act of 1990.

(c) The Equal Pay Act of 1963, 29 USC 206(d), as implemented by 29 CFR 1620(1999). This act prohibits discrimination on the basis of sex.

(d) Title VII of the Civil Rights Act of 1964 as amended, 42 USC 2000e. This act prohibits discrimination on the basis of sex, race, color, national origin, religion, or disability.

(e) The Americans with Disabilities Act of 1990, 42 USC 12201. This act prohibits discrimination against qualified individuals with disabilities in recruitment, selection, benefits and all other aspects of employment.

(f) Uniformed Services Employment and Reemployment Act of 1994, 38 USC 4301 (USERRA). This act requires a state to reemploy eligible veterans who left state employment for military service and return to work within specified time periods defined by USERRA.

R477-2-4. Grievance Procedure for Discrimination.

The following rules outline the grievance procedure and the specific requirements of the major laws:

(1) Age Discrimination in Employment Act of 1967.

(a) An aggrieved individual may bypass the state's grievance procedure and file directly with the Equal Employment Opportunity Commission (EEOC) or the Utah Anti-Discrimination and Labor Division (UALD).

(b) Employees shall report the alleged discriminatory act within one of the following time periods:

(i) 180 days after the occurrence to EEOC, or

(ii) 300 days after the occurrence to EEOC if the matter has been presented to UALD for proceedings under an applicable state law, or

(iii) to the EEOC 30 days after the individual receives notice of termination of any state proceedings.

(c) The Utah Anti-Discrimination and Labor Division of the Labor Commission is authorized by the Equal Employment Opportunity Commission to act on charges of employment discrimination. Employees must file charges within thirty days following an act of discrimination.

(2) Section 503 of The Rehabilitation Act of 1973, as implemented by 34 CFR 361(1999).

(a) An aggrieved individual may bypass the state's grievance mechanism and file a complaint with the granting federal agency or the Office of Federal Contract Compliance Programs (OFCCP) within 180 days of the discriminatory event.

(b) If dissatisfied with the outcome of the state's grievance mechanism, an individual may also file a complaint with the OFCCP within 180 days of the discriminatory event.

(3) Section 504 of the Rehabilitation Act of 1973.

(a) An aggrieved individual may bypass the state's grievance mechanism and file a complaint with the granting federal agency. If unsatisfied with the outcome of the state's grievance mechanism, an individual may also file a complaint with EEOC. A charge of discrimination should be filed within 180 days of the discriminatory event.

(b) Under the 1978 amendments to the Rehabilitation Act, the procedures for enforcing Section 504 are the same as for Title VII of the Civil Rights Act of 1964.

(4) The Equal Pay Act of 1963 - The enforcement provisions of the Fair Labor Standards Act apply for an equal pay claim. The following rules apply:

(a) Sex discrimination in the payment of unequal wage rates is a continuous violation, and employees have a right to sue each payday that the discrimination persists.

(b) Employees are not required to exhaust any administrative procedures prior to filing an action.

(c) Employees alleging an equal pay claim may file directly with the Equal Employment Opportunity Commission.

(d) Employees do not have the right to file a court action when the Equal Employment Opportunity Commission initiates a court proceeding on the employee's behalf to either enjoin an employer or to obtain recovery of an employee's unpaid wages.

(e) Employees must file suit within two years from the last date of harm, unless the employer committed a willful violation of the law, in which case, they have three years.

(5) Title VII of the Civil Rights Act of 1964.

(a) An aggrieved individual may bypass the state's grievance mechanism and file directly with the EEOC.

(b) Time lines for filing a complaint are the same as for the Age Discrimination Act in R477-2-4.(1).

(6) Americans with Disabilities Act (ADA) of 1990.

(a) An aggrieved individual may bypass the state's grievance procedure and file directly with the EEOC or with the Utah Anti-Discrimination and Labor Division.

(b) Time lines for filing a complaint are the same as for the Age Discrimination Act in R477-2-4.(1).

(7) Uniformed Service Employment and Re-employment Act of 1994 (USERRA).

(a) State statutes of limitations shall not apply to any proceedings under USERRA.

(b) An action may be initiated only by a person claiming rights or benefits, not by an employer.

(c) The United States Department of Labor, Veterans Employment and Training Service is authorized to act on charges of employment discrimination under USERRA.

(i) Prior to filing an action with the Veterans Employment and Training Service, an individual shall exhaust state administrative procedures.

(ii) If unsatisfied with the outcome of the State's grievance mechanism, an individual may file an administrative complaint.

(d) A person who receives notice from the Veterans Employment and Training Service of an unsuccessful attempt to resolve a complaint may request that the complaint be referred to the Attorney General of the United. States. The U.S. Attorney General is entitled to appear on behalf of, act as attorney for, and commence action for relief in an appropriate U.S. District Court.

(e) An individual may commence an action for relief if that person:

(i) has chosen not to file a complaint through the Veterans Employment and Training Service;

(ii) has chosen not to request that the complaint be referred to the U.S. Attorney General;

(iii) has been refused representation by the U.S. Attorney General.

R477-2-5. Control of Personal Service Expenditures.

(1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Planning and Budget, the Department of Human Resource Management and the Division of Finance.

(2) Agency management may request changes to the Position Management Report which are justified as cost reduction or improved service measures.

(a) Changes in the numbers, job identification, or salary ranges of positions listed in the Position Management Report shall be approved by the Executive Director, DHRM or designee.

(3) No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Position Management Report.

R477-2-6. Records.

(1) DHRM shall maintain a computerized file for each employee that contains the following, as appropriate:

(a) Performance ratings;

(b) Records of actions affecting employee salary, current classification, title and salary range, salary history, and other personal data, status or standing.

(2) Agencies shall maintain the following records in each employee's personnel file:

(a) Applications for employment, Employment Eligibility Certification record, Form I-9, and other documents required by Immigration and Naturalization Service (INS) Regulations, under the Immigration Reform and Control Act of 1986, employee signed overtime agreement, personnel action records, notices of corrective or disciplinary actions, new employee orientation form, benefits notification forms, performance evaluation records, termination records.

(b) References to or copies of transcripts of academic, professional, or training certification or preparation.

(c) Copies of items recorded in the DHRM computerized file and other materials required by agency management to be placed in the personnel file. The agency personnel file shall be considered a supplement to the DHRM computerized file and shall be subject to the rules governing personnel files.

(d) Leave and time records.

(e) Copies of any documents affecting the employee's conduct, status or salary. The agency shall inform employees of any changes in their records based on conduct, status or salary no later than when changes are entered into the file.

(3) Employees have the right to review their personnel file, upon request, in DHRM or the agency, as governed by law and as provided through agency policy.

(a) Employees may correct, amend, or challenge any information in the DHRM computerized or agency personnel file, through the following process:

(i) The employee shall request in writing that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee, shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter; the agency's response; and the DHRM Executive Director's decision.

(4) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.

(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed section and the authority for the action.

(5) Upon employee termination, DHRM and agencies shall retain computerized records for thirty years. Agency hard copy records shall be retained by the agency for a minimum of two years, then transferred to the State Record Center by State Archives Division to be retained for 65 years.

(6) Information classified as private in both DHRM and agency personnel and payroll files shall be available only to the following people:

(a) the employee;

(b) users authorized by the Executive Director, DHRM, who have a legitimate "need-to-know";

(c) individuals who have the employee's written consent.

(7) Utah is an open records state, according to Chapter 2, Title 63, the Government Records Access and Management Act. Requests for information shall be in writing. The following information concerning current or former state employees, volunteers, independent contractors, and members of advisory boards or commissions shall be given to the public upon written request where appropriate with the exception of employees whose records are private or protected:

(a) the employee's name;

(b) gross compensation;

(c) salary range;

(d) contract fees;

(e) the nature of employer-paid benefits;

(f) the basis for and the amount of any compensation in addition to salary, including expense reimbursement;

(g) job title;

(h) performance plan;

(i) education and training background as it relates to qualifying the individual for the position;

(j) previous work experience as it relates to qualifying the individual for the position;

(k) date of first and last employment in state government;

(l) the final disposition of any appeal action by the Career Service Review Board;

(m) the final disposition of any disciplinary action;

(n) work location;

(o) a work telephone number;

(p) city and county of residence, excluding street address;

(q) honors and awards as they relate to state government employment;

(r) number of hours worked per pay period;

(s) gender;

(t) other records as approved by the State Records Committee.

(8) When an employee transfers from one state agency to another, the former agency shall transfer the employee's original file to the new agency. The file shall contain a record of all actions that have affected the employee's status and standing.

(9) An employee may request a copy of any documentary evidence used for disciplinary purposes in any formal hearing regardless of the documents source, prior to such use. This shall not apply to documentary evidence used for rebuttal.

(10) Employee medical information obtained orally or documented in separate confidential files is considered private or controlled information. Communication must adhere to the Government Records Access and Management Act, Section 63-2-101. Employees who violate confidentiality are subject to state disciplinary procedures and may be personally liable for slander or libel.

(11) In compliance with the Government Records Access and Management Act, only information classified as "public" or "private" which can be determined to be related to and necessary for the disposition of a long term disability or unemployment insurance determination shall be approved for release on a need to know basis. The agency human resource manager or authorized manager in DHRM shall make the determination.

(12) Employees may verbally request the release of information for personal use; or authorize in writing the release of their performance records for use by an outside agent based on a need to know authorization. "Private" data shall only be released, except to the employee, after a written request has been evaluated and approved.

R477-2-7. Release of Information in a Reference Inquiry.

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information falls under a category outlined in R477-2-6(7), or if the subject of the record has signed and provided a reference release form for information authorized under Title 63, Chapter 2.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

R477-2-8. Employment Eligibility Certification (Immigration Reform and Control Act - 1986).

(1) All career and non-career employees appointed on and after November 7, 1986, as a new hire, rehire, interdepartmental transfer or through reciprocity with or assimilation from another career service jurisdiction must provide verifiable documentation of their identity and eligibility for employment in the United States as required under the Immigration Reform and Control Act of 1986.

(2) Agency hiring officials are responsible for verifying the identity and employment eligibility of these employees, by completing all sections of the Employment Eligibility Certification Form I-9 in conformance with Immigration and Naturalization Service (INS) Regulations. The I-9 form shall be maintained in the agency personnel file.

R477-2-9. Disclosure by Public Officers Supervising a Relative.

It is unlawful for a public officer to appoint, directly supervise, or to make salary or performance recommendations for relatives except as prescribed in the Nepotism Act, Section 52-3-1.

(1) A public officer supervising a relative shall make a complete written disclosure of the relationship to the chief administrative officer of the agency or institution, in accordance with Section 52-3-1.

R477-2-10. Employee Liability.

An employee who becomes aware of any occurrence which may give rise to a law suit, who receives notice of claim, or is sued because of an incident related to his employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Office of Risk Management.

(1) In most cases, under provisions of the Governmental Immunity Act (GIA), Sections 63-30-36, 63-30-37, employees shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) If a law suit results against an employee, the GIA stipulates that the employee must request a defense from his agency head in writing within ten calendar days.

R477-2-11. Quality Service Award.

When requested by the Director, agencies shall assign employees to serve on the Utah Quality Award Evaluation Panel according to criteria established by section 67-19-6.4 and DHRM.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information

July 5, 2002	**63-2-204(5)**
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R477. Human Resource Management, Administration.
R477-3. Classification.
R477-3-1. Job Classification Methods.

The Executive Director, DHRM, shall prescribe the procedures and methods for classifying all positions not exempted by law from the classification plan. The Executive Director, DHRM, may authorize exceptions to provisions of the following rule, consistent with R477-2-2(1).

R477-3-2. Job Description.

DHRM shall maintain job descriptions, as appropriate, for all jobs in the classified plan.

(1) Job descriptions shall contain:

(a) Job title

(b) Distinguishing characteristics

(c) A description of tasks commonly associated with most positions in the job

(d) Statements of required knowledge, skills, and other requirements

(e) FLSA status and other administrative information as approved by DHRM.

R477-3-3. Assignment of Duties.

Management may assign, modify, or remove any employee task or responsibility in order to accomplish reorganization, improve business practices or process, or for any other reason deemed appropriate by the department administration.

R477-3-4. Position Classification Review.

(1) A classification review may be conducted under the following circumstances:

(a) As part of a scheduled study.

(b) At the request of the agency, with the approval of the Executive Director, DHRM.

(c) As part of a classification grievance review.

(2) DHRM or an approved contract agency shall determine if there are significant changes in the duties of a position to warrant a review.

(3) When an agency is reorganized or positions are redesigned, no classification reviews shall be conducted during a three months settling period unless otherwise determined necessary by DHRM or an approved contract agency.

(4) The Executive Director, DHRM, or designee shall make final classification decisions unless overturned by a hearing officer or court.

R477-3-5. Position Classification Grievances.

(1) A career service employee may grieve classification decisions involving the duties and responsibilities of their own position.

(a) This rule refers to grievances concerning the assignment of individual positions to appropriate jobs. The assignment of salary ranges is not included in this rule.

(b) Career service employees who grieve a classification decision must complete the job classification grievance form. The form must be received by DHRM within 10 working days of receiving notice of the decision from DHRM; otherwise the grievance will not be processed.

(2) The position classification grievance process is as follows:

(a) Grievances must be submitted to DHRM on a currently approved grievance form.

(b) The Executive Director, DHRM, shall assign the grievance to a classification panel of three or more impartial persons who are trained in the state's classification procedures.

(c) The classification panel may:

(i) Access previous fact finding reviews, classification decisions, and reports;

(ii) Request new or additional fact finding interviews;

(iii) Consider new or additional information.

(d) The classification panel shall determine whether the assigned classification was appropriate. The panel shall follow the appropriate statutes, rules, and procedures which were current at the time the decision was made. The panel shall report its findings and recommendations to the Executive Director, DHRM. The Executive Director, DHRM, shall make a decision and notify the grievant and the agency representative of the decision.

(e) The grievant may grieve the Executive Director's decision to an impartial classification hearing officer contracted by the state. The grievance must be received by DHRM within 10 working days of the employee receiving notice of the panel decision.

(g) The hearing officer shall review the classification and make the final decision.

KEY: administrative procedure, grievances, job descriptions, position classifications
July 5, 2002 67-19-6
Notice of Continuation June 11, 2002 67-19-12

R477. Human Resource Management, Administration.
R477-4. Filling Positions.
R477-4-1. Authorization to Fill a Position.

Agencies shall have sufficient funds to fill positions that are listed in the Position Management Report. The Executive Director, DHRM, may authorize exceptions to provisions of this rule, consistent with R477-2-2(1).

The DHRM approved recruitment and selection system is the state's recruitment and selection system for career service positions. Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by the Department of Human Resource Management.

R477-4-2. Selecting Non-Career Service Positions.

(1) Agencies and managers may use any process to select employees for exempt positions which complies with state and federal law and regulations.

R477-4-3. Career Service (Schedule B) Positions.

(1) Selection of career service employees shall be governed by the following:

(a) DHRM standards and procedures;

(b) Career service principles;

(c) Equal employment opportunity principles;

(d) Utah Code governing nepotism found in Section 52-3-1.

(e) Reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

(2) DHRM shall take affirmative action to ensure that members of legally protected classes have the opportunity to apply and be considered for available positions in state government.

R477-4-4. Order of Selection for Career Service Positions.

(1) Prior to implementing the steps for order of selection, agencies may administer the following personnel actions:

(a) Reemployment of a veteran eligible under USERRA;

(b) Reassignment or transfer for the purposes of reasonable accommodation under the Americans with Disabilities Act;

(c) Fill positions as a result of return to work from long term disability or workers compensation at the same or lesser salary range;

(d) Reassignments made in order to avoid a reduction in force, or for reorganization or bumping purposes;

(e) Reassignments, career exchange assignments or other movement of qualified career service employees at the same or lesser salary range to better utilize skills or assist management in meeting the organization's mission;

(f) Reclassification.

(2) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Appointing authorities may make appointments according to the following order of selection which applies to all vacant career service positions:

(a) First, agencies shall make appointments from the statewide reappointment register with the names of employees who meet the job qualifications and who apply for the position. See R477-12-3(7) for additional reinstatement criteria.

(b) Second, agencies may make appointments within an agency through promotion of a qualified career service employee, or across agency lines through transfer or promotion of qualified career service employees, career exchange assignments to a higher salary range, or conversions from schedule A to schedule B as authorized by R477-5-1.(3).

(c) Third, agencies may make appointments from a list of qualified applicants certified as eligible for appointment to the position, or from another competitive process pre-approved by the Executive Director, DHRM.

R477-4-5. Recruitment Within Agencies.

(1) Agencies shall provide information about internal job opportunities to their employees. Agencies shall develop a consistent, internal recruitment strategy for job families and shall communicate this strategy to their employees.

(a) For agency recruitments when the DHRM approved recruitment and selection system is not used, vacancies shall be announced for a minimum of 5 days within an agency, an organizational unit or work group. Each vacancy announcement shall include an opening and closing date.

(b) When the DHRM approved recruitment and selection system is used, agencies are required to provide their employees information about the DHRM approved recruitment and selection system.

(c) Recruitment is not required for personnel actions outlined in R477-4-4.(1).

(d) Appointment of employees from the statewide reappointment register must comply with the order of selection specified in R477-4-4.

R477-4-6. Transfer and Reassignment.

(1) Jobs or positions may be filled by reassigning an employee without a reduction in pay for administrative reasons, or corrective action pursuant to R477-10-2.

(2) The agency that receives a transfer or reassignment of an employee shall verify his career status and that the employee meets the job requirements for the position.

(a) An employee with a disability who is otherwise qualified may be eligible for transfer or reassignment to a vacant job or position within the agency as a reasonable accommodation measure.

(3) Payroll actions involving transfer or reassignment shall only be allowed at the beginning of a payroll period.

(4) Agencies receiving a transfer or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

(5) A career service employee assimilated from another career service jurisdiction shall accrue leave at the same rate as a career service employee with the same seniority.

R477-4-7. Rehire.

(1) A former career service employee may be eligible for rehire to any career service position for which he is qualified.

(a) A rehired employee must compete through the DHRM approved recruitment and selection system and must serve a new probationary period, as designated in the official job description.

(i) The annual leave accrual rate for an employee rehired

on or after July 1, 1995 shall be based on all State employment in which the employee was eligible to accrue leave.

(ii) An employee who is rehired within 12 months of separation to a position which receives sick leave benefits shall have his previously accrued sick leave credit reinstated.

(b) A Rehired employee may be offered any salary within the regular salary range for the position.

(2) Career Service exempt employees cannot be rehired to career service positions, except as prescribed by Section 67-19-17.

R477-4-8. Public Recruitment and Recruitment Across Agencies.

(1) Recruitment shall comply with federal and state laws and DHRM rules and procedures.

(a) Recruitment shall include the following:

(i) job information about available positions;

(ii) information about the DHRM approved recruitment and selection system;

(iii) documented communication regarding examination methods and opening and closing dates, if applicable;

(iv) a strategy for affirmative action, if applicable.

(2) Job information for career service positions shall be announced publicly for a minimum of 5 days if a DHRM approved recruitment and selection system does not produce a sufficient pool of qualified applicants.

R477-4-9. Examinations.

(1) Examinations shall be designed to measure and predict success of individuals on the job. Appointment to career service positions shall be made through open, competitive selection.

(2) The Executive Director, DHRM, shall establish the standards for the development, approval and implementation of examinations. Examinations shall include the following:

(a) A documented job analysis;

(b) An initial, unbiased screening of the individual's qualifications;

(c) Security of examinations and ratings;

(d) Timely notification of individuals seeking positions;

(e) Elimination from further consideration of individuals who abuse the process;

(f) Unbiased evaluation and results;

(g) Reasonable accommodation for qualified individuals with disabilities.

(3) When examinations utilizing ratings of training and experience are administered, agencies may establish maximum years of credit for training and experience for the purpose of rating qualified applicants. Separate maximums may be set for years of training and years of experience. These maximums shall be included in the agency's recruitment notice.

(4) The Executive Director, DHRM, may enter into delegation agreements with agencies to develop and administer examination instruments, subject to periodic administrative audits by DHRM.

R477-4-10. Hiring Lists.

(1) The hiring list shall include the names of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.

(a) Hiring lists shall be constructed using the DHRM approved recruitment and selection system or another competitive process pre-approved by DHRM. All competitive processes shall be based on job-related criteria.

(b) All applicants included on a hiring list shall be examined with the same examination or examinations.

(c) An individual shall be considered an applicant when he is determined to be both qualified for and interested in a particular position identified through a specific requisition.

(2) An applicant may be removed from further consideration when he, without valid reason, does not pursue appointment to a position.

(3) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.

(4) Five percent of the total possible score shall be added to the rating or an appropriate adjustment shall be made on the hiring list for any applicant claiming veterans preference who:

(a) has served more than 180 consecutive days of active duty in and honorably discharged or released from the armed forces of the United States; or

(b) is the spouse or unremarried surviving spouse of any veteran.

(5) Ten percent of the total possible score shall be added to the rating or an appropriate adjustment shall be made on the hiring list for any applicant claiming veterans preference who:

(a) Was honorably discharged or released from active duty with a disability incurred in the line of duty or is a recipient of a Purple Heart, whether or not that person completed 180 days of active duty.

(b) Is the spouse or unremarried surviving spouse of any disabled veteran.

(6) The Executive Director, DHRM may enter into delegation agreements with agencies to develop and maintain hiring lists, and certify eligible applicants to their appointing authorities, subject to periodic administrative audits by DHRM.

(7) Selection of intra-departmental RIF employees shall be made in order of their retention points.

(a) The employee with the highest retention points shall be reappointed first, provided that the employee:

(i) Meets job requirements; and

(ii) Previously attained the position level comparable to the vacancy.

(8) When more than one RIF employee is certified by DHRM, the appointment shall be made from the most qualified.

(9) The appointing authority shall demonstrate and document that equal consideration was given to all applicants whose final score or rating is equal to or greater than that of the applicant hired.

(10) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

R477-4-11. Time-Limited Exempt Positions.

The Executive Director, DHRM, may approve the creation and filling of non-career service positions for temporary, emergency, seasonal, intermittent or other special and justified agency needs. These appointments shall be "at will," as

described below. See Section 67-19-15 for description of positions exempt from career service employment.

(1) Time-limited, temporary or seasonal non-career appointments, such as schedules AJ and AL may be made without competitive examination, provided job requirements are met.

(a) The following appointments are temporary, and may not receive benefits:

(i) AJ appointments for positions which are half-time or more shall last no longer than 1560 working hours in any 12 consecutive month period.

(b) Appointments under schedules AE, AI and AL shall be non-career positions. AE, AI and AL employees may receive benefits on a negotiable basis.

(i) Schedule AL appointments shall work on time-limited projects for a maximum of two years or on projects with time limited funding.

(ii) Only schedule A appointments made from a hiring list as prescribed by R477-4-10(1) may be considered for conversion to career service.

(2) Appointments to fill an employee's position who is on approved leave-without-pay shall only be made temporarily. A notice of appointment shall be signed by the parties.

R477-4-12. Job Sharing.

Agency management may establish a job sharing program as a means of increasing opportunities for career part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

R477-4-13. Internships and Cooperative Education.

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary, career service exempt positions.

R477-4-14. Reorganization.

(1) When a department or agency is reorganized, but an employee's position does not change substantially, he shall not be required to compete for his current position. However, a reduction in the number of positions in a certain class shall be treated as a reduction-in-force.

R477-4-15. Career Mobility Programs.

Employees and agencies are encouraged to promote career mobility programs.

(1) Agencies may provide career mobility assignments inside or outside state government to qualified employees. Career mobility programs are designed to develop agencies' resources and to enhance the employee's career growth.

(a) Agencies shall establish policies governing career mobility programs.

(b) An eligible employee, the agency or supervisor may initiate a career mobility.

(c) Interested participants shall meet the job requirements of the career mobility position.

(2) Agencies shall develop and use written career mobility contract agreements between employees and supervisors to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(a) Programs shall conform to equal employment opportunities and practices.

(b) Participating employees shall retain all rights, privileges, entitlements, tenure and benefits from their previous position while on career mobility.

(c) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(3) If a career mobility assignment does not become permanent at its conclusion, employees shall return to their previous position or a similar position. They shall receive the same salary rate they would have received without the career mobility assignment.

(a) Employees who have not attained career service status prior to the career mobility program cannot permanently fill a career service position until they have obtained career service status through a competitive process.

R477-4-16. Assimilation.

(1) Employees assimilated by the state from another career service system shall receive career service status after completing a probationary period if they were originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process used in the state career service.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

R477-4-17. Underfill.

(1) Underfill shall only be used in circumstances that meet the following conditions:

(a) The position is in the same classification series, as reflected on the position management report. Positions shall be underfilled only until the employee satisfactorily meets the job requirements of the next higher level position as determined by management.

(b) There must be discernible and documented differences between levels in career ladders.

KEY: employment, fair employment practices, hiring practices

July 5, 2002 67-19-6

Notice of Continuation June 11, 2002

R477. Human Resource Management, Administration.
R477-5. Employee Status and Probation.
R477-5-1. Career Service Status.

(1) Only employees who are appointed through a pre-approved competitive process shall be eligible for appointment to a career service position.

(2) Employees shall complete a probationary period in a competitive career service position prior to receiving career service status.

(3) Exempt employees may only convert to career service status under the following conditions:

(a) They previously held career service status with no break in service between exempt status and the previous career service position.

(b) They were hired from a hiring list as prescribed by R477-4-10(1), and completed a probationary period.

R477-5-2. Probationary Period.

The probationary period allows agency management to evaluate an employee's ability to perform the duties, and responsibilities, skills and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

(1) Employees shall receive full and fair opportunity to demonstrate competence in the job in a career position. As a minimum, a performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.

(a) At the end of the probationary period, employees shall receive performance evaluations. Evaluations shall be entered into HRE as the performance evaluation which reflects successful or unsuccessful completion of probation.

(2) Each career position shall be assigned a probationary period consistent with its job.

(a) The probationary period may not be extended except for periods of leave without pay or workers compensation leave.

(b) The probationary period may not be reduced after appointment.

(c) An employee who has completed a probationary period and obtained career service status shall not be required to serve a new probationary period unless there is a break in service.

(3) Employees in career service positions who work at least 50 percent of the time or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.

(4) Probationary periods may be interrupted by military service covered under USERRA.

(5) An employee serving probation in a competitive career service position may be transferred, reassigned or promoted to another competitive career service position. Each new appointment shall include a new probationary period unless the agency determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period. If an agency determines that a new probationary period is needed, it shall be the full probationary period defined in the job description.

(6) A reemployed veteran shall be required to complete the remainder of the probationary period if it was not completed in his pre-service employment.

R477-5-3. Temporary Transitional Position.

(1) Employees on probation who are temporarily disabled may be placed in another position with lighter duty or reduced responsibility and pay.

(a) This accommodation shall occur for no longer than one year from the date of disability.

(b) Time spent in a transitional position does not reduce the required probationary period in the primary position.

R477-5-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with R477-2-2(1).

KEY: employment, personnel management, state employees
July 5, 2002 67-19-6
Notice of Continuation June 11, 2002 67-19-16(5)(b)

R477. Human Resource Management, Administration.
R477-6. Compensation.
R477-6-1. Pay Plans.

(1) DHRM shall develop or modify pay plans for compensating employees.

(2) Market comparability salary range increases shall be legislatively approved.

R477-6-2. Allocation to the Pay Plans.

(1) Each job shall be assigned to a salary range on the applicable pay plan, except where compensation is established by statute.

(2) Salary range determination for benchmark jobs shall be based on salary survey data. The salary ranges for other jobs are determined by relative ranking with the appropriate benchmark job.

R477-6-3. Appointments.

(1) All appointments shall be placed on a salary step in the DHRM approved salary range for the job. Hiring officials shall receive approval from their agency head or agency human resource designee before making appointment offers to individuals.

(2) Re-employed veterans under USERRA shall be placed in their previous position or a similar position at their previous salary range. Reemployment shall include the same seniority status, and any cost of living allowances, reclassification of the veteran's pre-service position, or market comparability adjustments that would have affected the veteran's pre-service position during the time spent by the affected veteran in the uniformed services. Performance related salary increases are not included.

R477-6-4. Salary.

(1) Merit increases - The following are applicable if merit increases are authorized and funded by the legislature:

(a) Employees, who are not on a longevity step, who receive a successful or higher rating on their performance evaluations and who have been in a paid status by the state for at least six months shall receive a merit increase of one or more salary steps at the beginning of the first pay period of the new fiscal year.

(b) Employees designated as schedule AJ are not eligible for a merit step increase. Merit increases for employees in schedule AL, AM, or AS are not mandatory unless they are receiving benefits, and the increase is approved in agency policy.

(2) Highest Level Performer

(a) Employees designated by the agency as a highest level performer consistent with subsection R477-10-1(2) shall receive, as determined by the agency head, either:

(i) a salary step increase, or;

(ii) a bonus; or

(iii) administrative leave; or

(iv) other appropriate recognition as determined by the agency.

(b) Employees on a longevity step are not eligible for a salary step increase but may receive a bonus, administrative leave or other appropriate recognition as determined by the agency.

(3) Promotions and Reclassifications

(a) Employees promoted or reclassified to a position with a salary range exceeding the employee's current salary range maximum by one salary step shall receive a salary increase of a minimum of one salary step and a maximum of four salary steps. Employees who are promoted or reclassified to a position with a salary range exceeding the employee's current salary range maximum by two or more salary steps shall receive a salary increase of a minimum of two salary steps and a maximum of four salary steps.

(i) Employees may not be placed higher than the maximum salary step or lower than the minimum salary step in the new salary range. Placement of employees in longevity shall be consistent with subsection R477-6-4(4).

(ii) Employees who remain in longevity status after a promotion or reclassification shall retain their salary by being placed on the corresponding longevity step.

(b) To be eligible for a promotion, an employee shall:

(i) meet the job requirements/skills specified in the job description and position specific criteria as determined by the agency for the position unless the promotion is to a career service exempt position;

(c) Employees whose positions are reclassified or whose position is changed by administrative adjustment to a job with a lower salary range shall retain their current salary. The employee shall be placed on the corresponding longevity step if their salary exceeds the maximum of the new salary range.

(4) Longevity

(a) An employee shall receive a longevity increase of 2.75 percent when:

(i) They have been in state service for eight years or more. They may accrue years of service in more than one agency, and such service is not required to be continuous.

(ii) They have been at the maximum salary step in the current salary range for at least one year and received a performance appraisal rating of successful or higher within the 12 month period preceding the longevity increase.

(b) Employees on a longevity step shall be eligible for the same across-the-board pay plan adjustments authorized for all other employee pay plans.

(c) Employees on a longevity step shall only be eligible for additional step increases every three years. To be eligible, employees must receive a performance appraisal rating of successful or higher within the 12 month period preceding the longevity increase.

(d) Employees on a longevity step who are reclassified to a lower salary range, shall retain their salary.

(e) Employees on a longevity step who are promoted or reclassified to a higher salary range shall only receive an increase if their current salary step is less than the highest salary step of their new range.

(f) Agency heads or time-limited exempt employees identified in R477-4-11 are not eligible for the longevity program.

(5) Administrative Adjustment

(a) Employees who have had their position allocated by DHRM from one job to another job or salary range for administrative purposes, shall not receive an adjustment in

salary.

(b) Implementation of new job descriptions as an administrative adjustment shall not result in a salary increase unless the employee is below the minimum step of the new range.

(6) Reassignment

(a) When permitted, by federal or state law, including but not limited to the American with Disability Act, management may lower the salary of an employee one or more steps when the employee is reassigned to a job or position with a salary range having a lower maximum step.

(7) Transfer

Employees who transfer from one job or position to another job or position may be offered salary increases effective the same date as the transfer.

(8) Demotions

Employees demoted consistent with R477-11-2 shall receive a salary reduction of one or more salary steps as determined by the agency head or designee. The agency head or designee may move an employee to a position with a lower salary range concurrent with the salary reduction.

(9) Payroll actions

Payroll actions shall be effective on the first day of a payroll period with the exception of new hires, rehires, and terminations.

(10) Productivity step adjustment

Agency management may establish policies to reward employees who assume additional workloads which result from the elimination of a position for at least one year with a salary increase of up to four salary steps. Employees at the top salary step of their salary range or in longevity shall be given a one time lump sum bonus award of 2.75% of their annual salary.

(a) To implement this program, agencies shall apply the following criteria:

(i) Either the employees or management can make the suggestion;

(ii) Employees and management agree;

(iii) The agency head approves;

(iv) A written program policy achieves increased productivity through labor/management collaboration;

(v) The agency human resource representative approves;

(vi) The position will be abolished from the position authorization plan for a minimum of one year;

(vii) Staff receives additional duties which are substantially above a normal full workload;

(viii) The same or higher level of service or productivity is achieved without accruing additional overtime hours;

(ix) The total dollar increase, including benefits, awarded to the workgroup as a result of the additional salary steps does not exceed 50 percent of the savings generated by eliminating the position;

(11) Administrative Salary Increase

The agency head or commissioner authorizes and approves Administrative Salary increases under the following parameters:

(a) Employees shall receive one or more steps up to the maximum of their salary range.

(b) Administrative Salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for Administrative Salary Increases shall be:

(i) In writing;

(ii) Approved by the agency head or commissioner;

(iii) Supported by issues such as: special agency conditions or problems or other unique situations or considerations in the agency.

(d) The agency head or commissioner is the final authority for salary actions authorized within these guidelines. The agency head or commissioner or designee shall answer any challenge or grievance resulting from an Administrative Salary Increase.

(e) Administrative salary increases may be given during the probationary period. These increases alone do not constitute successful completion of probation or the granting of career service status.

(f) Employees at the maximum step of their range or on a longevity step may not be granted administrative salary increases.

(12) Administrative Salary Decrease

The agency head or commissioner authorizes and approves administrative salary decreases for non-disciplinary reasons according to the following:

(a) Employees shall receive a one or more step decrease not to exceed the minimum of their salary range.

(b) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the agency head or commissioner;

(iii) supported by issues such as; previous written agreements between the agency and employees to include career mobility; reasonable accommodation, special agency conditions or problems or other unique situations or considerations in the agency.

(c) The agency head or commissioner is the final authority for salary actions within these guidelines. The agency head or commissioner or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

R477-6-5. Incentive Awards.

Only agencies with written and published incentive award policies may reward employees with cash incentive awards, and non-cash incentive awards. Policies shall be consistent with standards established in these rules and with Department of Administrative Services, Division of Finance rules and procedures.

(1) Cash Incentive Awards

Agencies may reward employees or groups of employees who propose workable cost saving measures and other worthy acts with a cash incentive award.

(a) Individual awards shall not exceed $4,000 per occurrence and $8,000 in a fiscal year.

(b) Awards of $100 or more must be documented, evaluated, and approved by the agency. A copy shall also be maintained in the agency's individual employee file.

(2) Non-Cash Incentive Awards

Agency heads may recognize employees or groups of employees with non-cash incentive awards.

(a) Individual non-cash incentive awards shall not exceed

a value of $50 per occurrence and $200 for each fiscal year.

(b) Non-cash incentive awards may not include cash equivalents such as gift certificates or tickets for admission.

R477-6-6. Employee Benefits.

(1) Agencies shall explain all benefits provided by the state to new hires or rehires within five working days of the hire date.

(2) Agency payroll or human resource staff shall submit personnel action forms to the appropriate agency levels within ten days of hire date.

(3) Employees must elect to enroll in the life, health and dental plans within 60 days of the hire date to avoid having to provide proof of insurability. Agencies shall submit the enrollment forms to Group insurance within three days of the date entered on the enrollment card.

(4) Flex Benefits

(a) The annual open enrollment period will be held each November for the following FLEX plan year. Exceptions to this rule are as follows:

(i) New employees wishing to participate in the FLEX benefits program shall enroll within the first 60 days of their employment. Coverage becomes effective on their employment date.

(ii) Employees who have a change in family status, such as marriage, divorce, or birth of a child, may enroll or make changes within 60 days of such event. Proper documentation, such as marriage license, divorce decree, or birth certificate, plus a completed FLEX family status change form must be received by the PEHP FLEX Plan Department within 60 days of the change in family status.

(b) Employees must re-enroll each year to participate in the FLEX benefits program.

(c) An employee's designated FLEX payroll deduction shall not be changed during the course of a year unless there is a change in family status.

(d) To be eligible for reimbursement, employees must submit eligible FLEX claims accompanied by documentation to the PEHP FLEX Office no later than the first Thursday of each pay period.

(e) The claim submission deadline for any plan year shall be 90 days following the end of the calendar year. To be eligible for reimbursement, the FLEX claim must be received at the PEHP FLEX Plan Department by close of business on the established plan year deadline.

(5) Employees working less than 40 hours per pay period are ineligible for benefits. Employees working 40 hours, except those identified in R477-4-11, or more per pay period shall be eligible for leave benefits on a pro-rated basis.

(6) Re-employed veterans under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

R477-6-7. Employees Converting from Career Service to Schedule AD, AR, or AS.

(1) Career service employees in positions meeting the criteria for career service exempt Schedule AD, AR, or AS shall have 60 days to elect to convert from career service to career service exempt. As an incentive to convert, employees shall be provided the following:

(a) a base salary increase of one (1) to three (3) salary steps, as determined by the agency head. Employees at the maximum of their current salary range or on longevity shall receive, in lieu of the salary step adjustment, a one time bonus of 2.75 percent, 5.5 percent or 8.25 percent to be determined by the agency head;

(b) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan:

(i) Salaries less than $50,000 shall receive $125,000 of term life insurance;

(ii) Salaries between $50,000 and $60,000 shall receive $150,000 of term life insurance;

(iii) Salaries more than $60,000 shall receive $200,000 of term life insurance.

(2) Employees electing to convert to career service exempt after their 60 days election period shall not be eligible for the salary increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) Employees electing not to convert to career service exemption shall retain career service even though their position shall be designated as Schedule AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if he had previously earned career service. However, he shall not be eligible for the severance package or the life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the coverage.

(5) Career service exempt employees without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be done consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-6-8. State Paid Life Insurance.

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, and AR shall be provided the following benefits:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Salaries less than $50,000 shall receive $125,000 of term life insurance;

(ii) Salaries between $50,000 and $60,000 shall receive $150,000 of term life insurance;

(iii) Salaries more than $60,000 shall receive $200,000 of term life insurance.

(2) Employees on schedule AC, AK, AM and AS may be provided these benefits at the discretion of the appointing authority.

R477-6-9. Severance Benefit.

(1) A benefits eligible career service exempt employee on schedule AB, AD and AR who is terminated from state service shall receive a severance benefit equal to one week of pay for each year of consecutive exempt service accrued after January 1, 1993 except as provided in R477-6-9(3).

(2) A benefits eligible career service exempt employee on schedule AB, AD and AR who accepts reassignment to a position with a lower salary range, without a break in service, shall receive a severance benefit equal to the difference between his current hourly rate of pay and his new hourly rate multiplied by the number of accrued annual leave, converted sick leave and excess hours.

(3) A severance benefit shall not be paid to employees:

(a) whose statutory term has expired without reappointment;

(b) who are retiring from state service or are voluntarily separating

from the executive branch;

(c) who are eligible for retirement; or

(d) who are discharged for cause.

(4) Employees on schedule AC, AK, AM and AS may be provided the same severance benefit at the discretion of the appointing authority.

R477-6-10. Human Resource Transactions.

The Executive Director, DHRM, shall publicize procedures for processing payroll/human resource transactions actions and documents.

KEY: salaries, employee benefit plans*, insurance, personnel management

July 5, 2002 **67-19-6**

Notice of Continuation June 11, 2002 **67-19-12**

67-19-12.5

67-19-15.1(4)

R477. Human Resource Management, Administration.
R477-7. Leave.
R477-7-1. Conditions of Leave.

(1) All employees who regularly work 40 hours or more per pay period, except those identified as "at will" in R477-4-11, are eligible for leave benefits. Employees receive leave benefits in proportion to the time paid.

(a) Eligible employees who work 40 or more hours per pay period shall accrue annual and sick leave in proportion to the time paid.

(b) Employees shall use leave in no less than quarter hour increments.

(2) Seasonal, temporary, or part-time employees working less than 40 hours per pay period are not eligible for paid leave.

(3) Accrual rates for sick, holiday and annual leave are determined on the Annual, Sick and Holiday Leave Accrual table available through DHRM.

(4) An employee may not use annual, sick, excess or holiday leave before he has accrued it.

(5) Employees transferring from one agency of State service to another are entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

(6) Employees on paid leave shall continue to accrue annual and sick leave.

(7) Employees terminating from State service shall be paid in a lump sum for all annual leave and converted sick leave. Retiring employees shall be paid for all accrued annual leave. Employees may transfer this pay out to their 401(k) or 457 account up to the amount allowed by IRS regulation. Leave cannot be used or accrued after the last day worked. No leave-on-leave may accrue or be paid on the cashed out annual leave. Calculations of all leave paid shall be effective through the last day actually worked.

(8) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in R477-7-5(2) and the Retirement Benefit in R477-7-6.

R477-7-2. Holiday Leave.

(1) The following dates are designated legal holidays:

(a) New Years Day -- January 1

(b) Dr. Martin Luther King Jr. Day -- third Monday of January

(c) Washington and Lincoln Day -- third Monday of February

(d) Memorial Day -- last Monday of May

(e) Independence Day -- July 4

(f) Pioneer Day -- July 24

(g) Labor Day -- first Monday of September

(h) Columbus Day -- second Monday of October

(i) Veterans' Day -- November 11

(j) Thanksgiving Day -- fourth Thursday of November

(k) Christmas Day -- December 25

(l) The Governor may also designate any other day a legal holiday.

(2) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday. If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall receive compensation for the excess hours worked.

(4) The following employees are eligible to receive holiday leave:

(a) Full-time employees shall accrue eight hours of paid holiday leave on holidays;

(b) Part-time career service employees and partners in a job-shared position who work 40 hours or more per pay period shall receive holiday leave in proportion to the hours they normally work in a pay period;

(c) Employees working flex-time, as defined in R477-8-2, shall receive a maximum of 88 hours of holiday leave in each calendar year. If the holiday falls on a regularly scheduled day off, flex-time employees shall receive an equivalent workday off, not to exceed eight hours or shall receive compensation for the excess hours at the later date.

(5) Employees receive holiday leave in proportion to the number of hours they are paid during the pay period in which the holiday falls.

(a) New hires shall be in a paid status on or before the holiday in order to receive holiday leave.

(b) Terminating employees shall be in a paid status on or after the holiday in order to receive holiday leave.

(c) Employees in a leave without pay status shall receive holiday leave in proportion to the time paid in the pay period in which the holiday falls.

(6) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

R477-7-3. Annual Leave.

(1) Employees eligible for annual leave shall accrue leave based on the following years of State service:

(a) Zero through five years -- four hours per pay period.

(b) Beginning of sixth year through ten years -- five hours per pay period.

(c) Beginning of eleventh year through twenty years --six hours per pay period.

(d) Beginning of the twenty-first year or more -- seven hours per pay period.

(2) The accrual rate for employees hired on or after July 1, 1995 shall be based on all State employment in which the employee was eligible to accrue leave.

(3) Eligible employees may begin to use annual leave time after completing the equivalent of two full pay periods of employment.

(4) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year. However, annual leave granted shall be approved in advance by management.

(5) An employee may elect to convert unused annual leave to a 401(k) or 457 deferred compensation program sponsored by the Utah State Retirement Board.

(a) Only hours accrued in excess of 320 hours after the end of the last pay period of the leave year are eligible for conversion.

(b) The election to convert may only be made after the end of the last pay period of the leave year as determined by the Division of Finance.

(c) The conversion shall be in whole hour increments.

(d) An employee may convert up to 20 hours or $250 in value, whichever is less.

(e) The value of the converted leave may not cause the contribution to the 401(k) or 457 account to exceed the maximum authorized by the Internal Revenue Code.

(6) After the conversion in R477-7-3(5), unused accrued annual leave time in excess of 320 hours shall be forfeited at the beginning of the first full pay period of each calendar year.

(7) Department deputy directors and division directors appointed to career service exempt positions shall be eligible for the maximum annual leave accrual rate upon their date of hire.

(a) They shall not be eligible for any transfer of leave from other jurisdictions.

(b) Other provisions of leave shall apply as defined in R477-7-3.

R477-7-4. Sick Leave.

(1) Employees shall accrue sick leave with pay at the rate of four hours each pay period. Sick leave shall accrue without limit.

(2) Employees may begin to use accrued sick leave after completing the equivalent of at least two full pay periods of employment.

(3) Sick leave shall be granted for preventive health and dental care, maternity/paternity and adoption care, or for absence from duty because of illness, injury or temporary disability of the employee, a spouse or dependents living in the employee's home. Exceptions may be granted for other unique medical situations.

(4) Employees shall arrange for a telephone report to supervisors at the beginning of the scheduled workday they are absent due to illness or injury. Management may require reports for serious illnesses or injuries.

(5) Any application for a grant of sick leave to cover an absence that exceeds four successive working days shall be supported by administratively acceptable evidence. If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce evidence regardless of the number of sick hours used.

(6) Any absence for illness beyond the accrued sick leave credit may continue under the following provisions: an approved leave-without-pay status, not to exceed 12 months, an approved Family Medical Leave Status, or in an annual or other accrued leave status.

(7) After filing a termination notice, employees must support sick leave requests with a doctor's certificate.

(8) Employees separating from State service may not receive compensation for accrued unused sick leave unless they are retiring.

(a) Employees who are rehired within 12 months of separation to a position that receives sick leave benefits shall have their previously accrued unused sick leave credit reinstated.

(b) Employees who retire from State service and are then rehired may not reinstate their unused sick leave credit.

R477-7-5. Converted Sick Leave.

As an incentive to reduce sick leave abuse, an employee may convert sick leave hours to converted sick leave after the end of any calendar year in which he is eligible.

(1) To be eligible, an employee must have a minimum of 144 hours in his sick leave account at the beginning of the first pay period of the calendar year.

(a) At the end of the last pay period of a calendar year in which an employee is eligible, all unused hours accrued that year in excess of 64 shall be converted to converted sick leave unless the employee designates otherwise.

(b) Upon termination, an eligible employee may convert any unused hours accrued in the current calendar leave year in excess of 64 to converted sick. In the event the employee has the maximum accrued in converted sick these hours will be added to his annual leave account balance.

(c) The maximum hours of converted sick leave an employee may accrue is 320.

(2) Converted sick leave may be used as annual leave, regular sick leave, or as paid-up health and life insurance at the time of retirement for employees under age 65. If an employee is 65 years of age or older at the time of retirement, converted sick leave may be used to purchase a Medicare supplement.

(a) Payment for health and life insurance is the responsibility of the employing agency.

(b) The purchase rate shall be eight hours of converted sick leave for the state paid portion of the premium for one month's coverage for health and life insurance.

(c) The participation rate on premium payments for health and life insurance shall be the same as the participation rate for current employees on the same plan.

R477-7-6. Sick Leave Retirement Benefit.

Employees may be offered a retirement benefit program, according to Section 67-19-14(2).

(1) This program is optional for each department. However, any decision whether or not to participate shall be agency-wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency must notify all employees at least 60 days before the new fiscal year begins.

(b) The employing department shall provide the same health and life insurance benefits as provided to current employees for five years or until the employee reaches the age eligible for Medicare, whichever comes first.

(i) Health insurance provided shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided.

(ii) Life insurance provided shall be the minimum authorized coverage provided for all State employees.

(iii) The participation rate on premium payments shall be the same as the participation rate for current employees on the same plan.

(2) Employee participation in any part of this incentive program shall be voluntary, but the decision to participate shall be made at retirement.

(3) An employee may elect to receive a cash payment, or transfer to an approved 401(k) or 457(k)account, up to 25

percent of his accrued unused sick leave at his current rate of pay.

(4) After the election for cash out is made, 480 hours shall be deducted from the employees remaining sick leave balance.

(5) The employee may use remaining sick leave hours to participate in the following incentive program.

(a) The employee may purchase PEHP health insurance, or a state approved program, and life insurance coverage for himself until he reaches the age eligible for Medicare.

(i) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(ii) Life insurance provided shall be the minimum authorized coverage provided for all State employees.

(iii) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(iv) The participation rate on premium payments shall be the same as the participation rate for current employees on the same plan.

(b) After the employee reaches the age eligible for Medicare, he may purchase PEHP Preferred Care health insurance, or a state approved cost equivalent program for a spouse until the spouse reaches the age eligible for Medicare.

(i) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(c) When the employee reaches the age eligible for Medicare, he may purchase a high option Medicare supplement policy for himself at the rate of eight hours of sick leave for one month's premium.

(d) When the spouse reaches the age eligible for Medicare, the employee may purchase a high option Medicare supplement policy for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

R477-7-7. Administrative Leave.

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

(a) corrective action;

(b) personal decision-making prior to discipline;

(c) suspension with pay-- during removal from job site-- pending hearing on charges;

(d) during management decision situations that benefit the organization;

(e) incentive awards in lieu of cash;

(f) when no work is available due to unavoidable conditions or influences;

(g) removal from adverse or hostile work environment situations pending management corrective action;

(h) educational assistance;

(i) employee assistance and fitness for duty evaluations.

(2) The agency head or designee may grant paid administrative leave for no more than ten consecutive working days per occurrence. Other conditions of administrative leave are:

(a) Administrative leave in excess of 10 consecutive working days per occurrence may be granted by written approval of the agency head.

(b) Administrative leave taken must be documented in the employee's leave record.

R477-7-8. Jury Leave.

(1) Employees are entitled to a leave of absence with full pay when, in obedience to a subpoena or direction by proper authority, they are required to:

(a) Appear as a witness as part of their position for the federal government, the State of Utah, or a political subdivision of the state, or

(b) Serve as a witness in a grievance hearing as provided in Section 67-19-31 and Title 67, Chapter 19a, or

(c) Serve on a jury

(2) Employees who are absent in order to litigate in matters unrelated to their state employment shall use eligible accrued leave or leave without pay.

(3) Employees choosing to use paid leave while on jury duty shall be entitled to keep jurors fees; otherwise, jurors fees received shall be returned to agency payroll clerks for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the low org. where the salary is recorded.

R477-7-9. Funeral Leave.

Employees may receive a maximum of twenty-four hours funeral leave per occurrence with pay, at management's discretion, to attend the funeral of a member of the immediate family. Funeral leave may not be charged against accrued sick or annual leave.

(1) The "immediate family" means-- wife, husband, children, daughter-in-law, son-in-law, parents, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandparents, step-grandparents, spouse's grandparents, spouse's step-grandparents, step-children, and step-parents, brothers and sisters, step-brothers and step-sisters of the employee.

R477-7-10. Military Leave.

One day of military leave is the equivalent to the employee's normal workday but not to exceed 8 hours.

(1) Employees who are members of the National Guard or Military Reserves are entitled to military leave not to exceed fifteen days per calendar year without loss of pay, annual leave or sick leave. Employees shall be on official military orders and may not claim salary for non-working days spent in military training or for traditional weekend training.

(2) After the first fifteen days, officers and employees of the state shall be granted military leave without pay for the period of active service or duty, including travel time, Section 39-3-1.

(a) Employees may use accrued leave while on active duty.

(3) Employees shall give notice of active military service as soon as they are notified.

(4) Upon termination from active military service, under honorable conditions, employees shall be placed in their original position or one of like seniority, status and pay. The cumulative length of time allowed for re-employment may not exceed five years. Employees are entitled to re-employment rights and benefits including increased pension and leave accrual. Persons entering military leave may elect to have payment for annual leave deferred. In order to be reemployed, employees shall present evidence of military service and leave

without pay status, and:

(a) For service less than thirty-one days, return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an eight-hour rest period, or:

(b) For service of more than thirty-one days but less than 181 days, submit an application for reemployment within fourteen days of release from service, or

(c) For service of more than 180 days, submit an application for reemployment within ninety days of release from service.

R477-7-11. Disaster Relief Volunteer Leave.

(1) An employee may be granted an aggregate of 15 working days or 120 work hours in any 12-month period to participate in disaster relief services for the American Red Cross. To request this leave an employee must be a certified disaster relief volunteer and file a written request with the employing agency. The request shall include:

(a) a copy of a written request for the employee's services from an official of the American Red Cross;

(b) the anticipated duration of the absence;

(c) the type of service the employee is to provide for the American Red Cross; and

(d) the nature and location of the disaster where the employee's services will be provided.

R477-7-12. Organ Donor Leave.

Employees who serve as bone marrow or human organ donors shall be granted paid leave for the donation and recovery.

(1) Employees who donate bone marrow shall be granted up to seven days of paid leave.

(2) Employees who donate a human organ shall be granted up to 30 days of paid leave.

R477-7-13. Leave of Absence Without Pay.

Employees may be granted continuous leave of absence without pay for up to 12 months. Employees shall apply in writing to agency management for approval. If absence is due to FMLA, workers compensation or long-term disability, R477-7-15, R477-7-16 or R477-7-17 applies.

(1) Medical leave without pay may be granted for no more than twelve months. Medical leave may be approved if a registered health practitioner certifies that an employee is temporarily disabled.

(2) Agency management may approve leave without pay for employees even though annual or sick leave balances exist. Employees may take up to ten consecutive working days of leave without pay without affecting the leave accrual rate.

(a) Employees who receive no compensation for a complete pay period shall be responsible for payment of state provided benefit premiums, unless they are covered by the provisions under the federal Family and Medical Leave Act, in R477-7-15.

(3) Employees who return to work on or before the expiration of leave without pay, shall be placed in a position with comparable pay and seniority to their previously held position, provided the same or comparable level of duties can be performed with or without reasonable accommodation. The employee shall also be entitled to previously accrued annual and sick leave.

(4) Leave without pay for non-disability reasons may be granted only when there is an expectation that the employee will return to work.

(5) Health insurance benefits shall continue for employees on leave without pay because of work-related injuries or illnesses. Except as provided under the family and medical leave provisions, employees on leave without pay must personally continue the premiums to receive health insurance benefits.

R477-7-14. Furlough.

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

(a) Employees accrue annual and sick leave.

(b) Full payment of all fringe benefits continue at agency's expense.

(c) Employees shall return to their positions.

(d) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

R477-7-15. Family and Medical Leave.

(1) This rule conforms to the federal Family and Medical Leave Act, 29 USC 2601. Employees eligible under this rule shall continue to receive medical insurance benefits provided the employee was entitled to medical insurance benefits prior to the commencement of FMLA leave.

(a) Agency management shall authorize up to twelve weeks of leave each calendar year to employees for any of the following reasons:

(i) birth of a child,

(ii) adoption of a child,

(iii) placement of a foster child,

(iv) a serious health condition of the employee, or

(v) care of a spouse, dependent child or parent with a serious medical condition.

(2) To be eligible for the twelve weeks of family medical leave, the employee must be--

(a) Employed by the state for at least 12 months, and

(b) Employed by the state for a minimum of 1250 compensable work hours as determined under FMLA during the 12-month period immediately preceding the commencement of leave.

(3) Employees (or an appropriate spokesperson) shall submit a leave request

(a) Thirty days in advance for foreseeable needs; or

(b) As soon as possible in emergencies.

(4) Agency Responsibility

(a) Agency management shall be responsible for:

(i) documenting employee leave requests which qualify as FMLA leave; and

(ii) designating any qualifying leave taken by employees as FMLA leave. All leave requests which qualify as FMLA leave shall be designated as such and shall be subject to all provisions of this rule; and

(iii) notifying employees in writing of the designation within two business days, or as soon as a determination can be made that the leave request qualifies as FMLA leave if the agency does not initially have sufficient information to make a determination.

(b) Written notification to employees shall include the following information:

(i) that the leave will be counted against the employee's annual FMLA entitlement;

(ii) any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so;

(iii) a statement explaining that the employee will be required to exhaust unused annual, converted, and/or sick leave, before going into a LWOP status;

(iv) any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments, and the possible consequences of failure to make such payments on a timely basis;

(v) the employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave;

(vi) any requirement for the employee to present a fitness-for-duty certificate to be restored to employment; and

(vii) the employee's rights to restoration to the same or an equivalent job upon return from leave.

(c) Agencies may designate FMLA leave after the fact only:

(i) if the reason for leave was previously unknown, provided the reason for leave is made within two business days after the employee's return to work; or

(ii) the agency has preliminarily designated the leave as FMLA leave and is awaiting medical certification.

(d) Agencies shall allow employees at least 15 calendar days to provide medical certification if FMLA leave is not foreseeable.

(e) Agencies shall inform Group Insurance that an employee is approved for FMLA leave.

(5) An employee shall be required to use accrued annual and converted sick leave and excess hours prior to the use of leave without pay for the family and medical leave period. Employees shall be required to use accrued sick leave only in situations considered eligible under R477-7-4(3). Employees who take family and medical leave in a leave without pay status must comply with R477-7-13.

(a) Employees may choose to use compensatory time for an FMLA reason. Any period of leave paid from the employee's accrued compensatory time account may not be counted against the employee's FMLA leave entitlement.

(6) Employees shall be eligible to return to work under R477-7-13.

(a) If an employee fails to return to work after unpaid FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if he or she returns for at least 30 calendar days.

(b) Exceptions to this provision include:

(i) FLSA exempt and Schedule AB, AD and AR employees who have been denied restoration upon expiration of their leave time;

(ii) Employees whose circumstances change unexpectedly beyond their control during the leave period and he or she cannot return to work at the end of twelve weeks.

(7) For maternity and child placement leave, time must be taken in no less than 8 hour increments.

(8) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care shall not be taken intermittently unless the employee and employer mutually agree.

(9) Leave required for certified medical reasons may be taken intermittently.

(10) Leave taken for a serious health condition covered under workers' compensation may be counted towards an employee's FMLA entitlement. Use of accrued paid leave shall not be required for FMLA leave at the same time the employee is collecting a workers' compensation benefit.

(11) Medical records created for purposes of FMLA and the Americans with Disabilities Act must be maintained in accordance with confidentiality requirements of R477-2-6(6).

R477-7-16. Workers Compensation Leave.

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit and workers compensation benefit shall not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if:

(i) the employee is declared medically stable by licensed medical authority; or

(ii) the workers compensation fund terminates the benefit; or

(iii) the employee has been absent from work for one year; or

(iv) the employee refuses to accept appropriate employment offered by the state; or

(v) the employee receives Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) Employees will continue to accrue state paid benefits while receiving a workers compensation time loss benefit for up to one year.

(3) Employees who file fraudulent workers compensation claims shall be disciplined according to the provisions of R477-11.

R477-7-17. Long Term Disability Leave.

(1) Employees who are determined eligible for the Long Term Disability Program (LTD) shall be granted up to one year of medical leave, if warranted by a medical condition.

(a) The one-year medical leave begins on the last day the employee worked. LTD requires a three-month waiting period before benefit payments begin. During this period, employees

may use available sick and converted sick leave. When those balances are exhausted, employees may use other leave balances available.

(b) Employees determined eligible for Long Term Disability benefits, after the three-month waiting period, shall be eligible for health insurance benefits beginning two months after the last day worked. The health insurance benefit shall continue without premium payment for up to twenty-two months or until they are eligible for Medicare/Medicaid, whichever occurs first. After twenty-two months, the health insurance may be continued, with premiums being paid in accordance with LTD policy and practice.

Upon approval of the LTD claim:

(i) Bi-weekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three-month waiting period, the LTD benefit shall be offset by the amount received.

(ii) The employee shall be paid for remaining balances of annual leave, compensatory hours and excess hours in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon termination from state employment. No reduction of the LTD payment shall be made to offset this payment. If the employee returns to work prior to one year after the last day worked, the employee has the option of buying back annual leave.

(iii) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump-sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(iv) An employee who retires from state government directly from LTD may be eligible for up to five years health and life insurance as provided in Subsection 67-19-14(2)(b)(ii).

(v) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the cash payout and the purchase of health and life insurance as provided in Subsection 67-19-14(2)(c)(i).

(2) Employees shall continue to accrue service credit for retirement purposes while receiving long-term disability benefits.

(3) Conditions for return from leave without pay shall include:

(a) If an employee is able to return to work within one year of the last day worked, the agency shall place the employee in his previously held position or similar position in a comparable salary range.

(b) If an employee is unable to perform the essential functions of the position because of a permanent disability, the obligation to place the employee in the same or similar position shall be set aside. The employing unit shall place the employee in the best available, vacant position for which he is qualified, if able to perform the essential functions of the position with or without reasonable accommodation

(c) The agency head may extend the medical leave beyond one year if the employee's illness or injury results in disability prohibiting the employee from performing the essential functions of the position, as defined by ADA.

(4) Employees who file fraudulent long-term disability claims shall be disciplined according to the provisions of R477-11.

R477-7-18. Leave Bank.

With the approval of the agency director, agencies may establish a leave bank program as follows:

(1) Only annual leave, excess hours and converted sick leave hours may be donated to a leave bank.

(2) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) Employees shall not receive donated leave until they use all of their individually accrued leave.

(4) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

R477-7-19. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule consistent with R477-2-3(1).

KEY: holidays, leave benefits, vacation

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63-13-2
67-19-6
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67-19-14.5

R477. Human Resource Management, Administration.
R477-8. Working Conditions.
R477-8-1. Agency Policies and Exemptions.

(1) Each agency shall write its own policies for work schedules, overtime, leave, and other working conditions consistent with these rules.

(2) The Executive Director, DHRM, may authorize exceptions to this rule, consistent with R477-2-2(1).

R477-8-2. Work Period.

(1) Tasks shall be assigned and wages paid in return for work completed. During the state's standard work week, each employee is responsible for fulfilling the essential functions of his job.

(a) The state's standard work week begins Saturday and ends the following Friday.

(b) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt extended business hours to enhance service to the public, consistent with overtime provisions of R477-8-6.

(c) Employees may negotiate for flexible starting and quitting times with their immediate supervisor as long as scheduling is consistent with overtime provisions of the rules R477-8-6.

(d) Agencies may implement alternative work schedules approved by the Director.

(e) Employees are required to be at work on time. Employees who are late regardless of the reason, including inclement weather, shall make up the lost time by using accrued leave, leave without pay or, with management approval, adjust their work schedule.

R477-8-3. Bus Passes.

Agencies may participate in the purchase of bus passes for employees.

R477-8-4. Telecommuting.

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

(a) Establish a written policy governing telecommuting.

(b) Enter into a written contract with each telecommuting employee to specify conditions, such as use of state or personal equipment, and results such as identifiable benefits to the state and how customer needs are being met.

(c) Not allow telecommuting employees to violate overtime rules.

R477-8-5. Lunch and Break Periods.

(1) Each full-time work day shall include a minimum of 30 minutes non-compensated lunch period. This lunch period is normally scheduled between 11:00 a.m. and 1:00 p.m. for a regular day shift.

(2) Employees may take a 15 minute compensated break period for every four hours worked.

(3) Lunch and break periods shall not be adjusted or accumulated to accommodate a shorter work day. Any exceptions must be approved in writing by the Executive Director, DHRM.

R477-8-6. Overtime.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(1996).

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) Prior supervisory approval for all overtime worked;

(b) Recordkeeping guidelines for all overtime worked;

(c) Verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation standards are identified for each job title in HRE as either FLSA non-exempt, or FLSA exempt.

(a) Employees may appeal their FLSA designation to their agency human resource office and DHRM concurrently. Further appeals must be filed directly with the United States Department of Labor, Wage and Hour Division. The provisions of Sections 67-19-31 and 67-19a-301 and Title 63, Chapter 46b shall not apply for FLSA appeals purposes.

(3) FLSA non-exempt employees may not work more than 40 hours a week without management approval. They shall receive overtime when they actually work more than 40 hours a week. Leave and holiday time taken within the work period shall not count as hours worked when calculating overtime accruing. Hours worked over two or more weeks shall not be averaged out with the exception of certain types of law enforcement, fire protection, and correctional employees.

(a) FLSA non-exempt employees shall sign a prior overtime agreement authorizing management to compensate them for overtime worked by actual payment or time off at time and one-half.

(b) FLSA non-exempt employees may receive compensatory time for overtime, up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace/correctional officers, emergency or seasonal employees. Once employees reach the maximum, they shall be paid for additional overtime on the pay day for the period in which it was earned.

(4) FLSA exempt employees may not work more than 80 hours in a pay period without management approval. They shall accrue compensatory time when they actually work more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate FLSA exempt employees who work overtime by giving them time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time. Compensatory hours earned in excess of a base of 80 shall be paid down to 80.

(a) Agencies shall establish in written policy a uniform overtime year and communicate it to employees. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will determine the date for the agency at the end of one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year.

(b) Any compensatory time earned by FLSA exempt employees is not an entitlement, a benefit, nor a vested right.

(c) Any compensatory time earned by FLSA exempt employees shall lapse at the end of an agency's annual overtime year.

(d) Any compensatory time earned by FLSA exempt employees shall lapse when they transfer to another agency, terminate, retire or otherwise do not return to work before the end of the overtime year.

(e) The agency director may approve overtime for non-career service deputy and division directors, but overtime shall not be compensated with actual payment.

(5) Law enforcement, correctional and fire protection employees

(a) To be considered for overtime compensation under this rule, a law enforcement or correctional officer must meet the following criteria:

(i) be a uniformed or plainclothes sworn officer;

(ii) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury, and to prevent and detect crimes

(iii) have the power to arrest; and

(iv) be POST certified or scheduled for POST training.

(b) Agencies shall select one of the following maximum work-hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA non-exempt and covered under this rule.

(i) 171 hours in a work period of 28 consecutive days; or

(ii) 86 hours in a work period of 14 consecutive days.

(c) Agencies shall select one of the following maximum work-hour thresholds to determine when overtime compensation is granted to fire protection employees.

(i) 212 hours in a work period of 28 consecutive days; or

(ii) 106 hours in a work period of 14 consecutive days.

(d) Agencies may designate a lesser threshold in a 14-day or 28-day consecutive work period as long as it conforms to the following:

(i) The Fair Labor Standards Act, Section 207(k);

(ii) 29 CFR 553.230;

(iii) The State's payroll period;

(iv) The approval of the Executive Director, DHRM.

(6) Compensatory Time

(a) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endanger public health, safety or property.

(b) Compensatory time balances are paid down to zero when FLSA non-exempt employees transfer from one agency to a different agency.

(7) Time Reporting

(a) FLSA non-exempt employees must complete and sign a State approved biweekly time sheet. Time sheets developed by the agency shall have the same elements of the State approved time sheet and be approved by the Department of Administrative Services, Division of Finance.

(b) FLSA exempt employees who work more than 80 hours in a work period must record their total hours worked, and/or the compensatory time used on their biweekly time sheet. All hours must be recorded in order to claim overtime. Completion of the time sheet is at agency discretion when no overtime is worked during the work period.

(8) Hours Worked: FLSA non-exempt employees shall be compensated for all hours they are permitted to work. Hours worked shall be accounted for as long as the state permits employees to work on its behalf, regardless of the reason for the work. Employees who work unauthorized overtime may be subject to disciplinary actions.

(a) All time that FLSA non-exempt employees are required to wait for an assignment while on duty, before reporting to duty, or before performing their activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) The employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) The employee is completely relieved from duty and allowed to leave the job;

(iii) The employee is relieved until a definite specified time;

(iv) The relief period is long enough for the employee to use as the employee sees fit.

(c) On-call time: Employees required by agency management to be available for on-call work shall be compensated for on-call time at a rate of 1 hour for every 12 hours the employee is on-call.

(i) Time is considered "on-call time" when the employee has freedom of movement in personal matters as long as he/she is available for call to duty.

(ii) An employee must be directed by his supervisor, either verbally or in writing, that he is on call for a specified time period. Carrying a beeper or cell phone shall not constitute on call time without a specific directive from a supervisor.

(iii) The employee shall record the hours spent in on call status on his time sheet in order to be paid.

(d) Stand-by time: Employees restricted to "stand-by" at a specified location ready for work must be paid full time or overtime, as appropriate. Workers must be paid for stand-by time if they are required to stand by their posts ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shut-downs.

(e) The meal periods of guards, police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours must be counted as working time, unless an express agreement excludes the time.

(f) Commuting and Travel Time:

(i) Normal commuting time from home to work and back shall not count towards hours worked.

(ii) Time employees spend traveling from one job site to another during the normal work schedule shall count towards hours worked.

(iii) Time employees spend traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(iv) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an

airplane, train, boat, bus, or automobile.

(v) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to nonworking days, as well as regular working days. However, regular meal period time is not counted.

(g) Excess Hours: Employees may use excess hours the same way as annual leave.

(i) Agency management shall approve excess hours before the work is performed.

(ii) Agency management may deny the use of any leave time, other than holiday leave, that results in an employee accruing excess hours.

(iii) Employees on schedule AB may not accumulate more than 80 excess hours.

(iv) Agency management may pay out excess hours under one of the following:

(A) Paid off automatically in the same pay period accrued;

(B) All hours accrued above 40;

(C) All hours accrued above 80.

(D) Employees on schedule AB shall only be paid for excess hours at retirement or termination.

R477-8-7. Dual State Employment.

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee in a dual employment status, regardless of the schedule of any of the secondary position(s) the employee may be in, shall be coded as schedule TL.

(2) An employee may work in up to 4 different positions in state government.

(3) An employee's benefits status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(4) An employee's FLSA status (exempt or non-exempt) for any secondary position(s) shall be the same as the primary position.

(5) Leave accrual shall be based on all hours worked in all positions, and may not exceed the maximum amount allowed in the primary position.

(6) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(7) As a condition of dual employment, the Overtime/Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(8) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(9) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(10) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions outlined in R477-9-2(1).

R477-8-8. Reasonable Accommodation.

Reasonable accommodation for qualified individuals with disabilities may be a factor in any employment action. Before notifying an employee of denial of reasonable accommodation, the agency shall consult with the Division of Risk Management.

R477-8-9. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) Return to work from injury or illness;

(2) When management determines that there is a direct threat to the health or safety of self or others;

(3) In conjunction with corrective action, performance or conduct issues, or discipline;

(4) When a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-10. Temporary Transitional Assignment.

Temporary transitional assignments may be part of any of the following:

(1) Return to work from injury or illness;

(2) When management determines that there is a direct threat to the health or safety of self or others;

(3) In conjunction with corrective action, performance or conduct issues, or discipline;

(4) Where there is a bona fide occupational qualification for retention in a position;

(5) As a temporary measure while an employee is being evaluated to determine if reasonable accommodation is appropriate.

R477-8-11. Change in Work Location.

(1) A change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond his current one way commute, unless:

(a) The policy is communicated to the employee at employment;

(b) The agency shall either pay to move the employee consistent with R25-6-8 and Department of Administrative Services, Division of Finance Policy 05-04.03, or reimburse commuting expenses up to the cost of a move.

KEY: breaks, telecommuting, overtime, dual employment
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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, DHRM, who 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

July 5, 2002 67-19-6

Notice of Continuation June 11, 2002 67-19-19

R477. Human Resource Management, Administration.
R477-10. Employee Development.
R477-10-1. Performance Evaluation.

Agency management shall develop an employee performance management system consistent with these rules and subject to approval by the Executive Director, DHRM. The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with R477-2-2. For this rule, the word employee refers to career service employees, unless otherwise indicated.

(1) An acceptable performance management system shall satisfy the following criteria:

(a) Performance standards and expectations for each employee shall be specifically written in a performance plan by August 30 of each fiscal year.

(b) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and conduct outlined in the performance plan.

(c) Each employee shall be informed concerning the actions to be taken, time frames, and the supervisor's role in providing assistance to improve performance and increase the value of service.

(d) Each employee shall have the right to include written comment with his performance evaluation.

(e) Agency management shall select a performance management rating system or a combination of systems by August 30 to be effective for the entire fiscal year. The rating system shall be one or more of the following:

TABLE

SYSTEM	#	RATING	POINTS
1		Pass	2
		Fail	0
2		Exceptional	3
		Successful	2
		Unsuccessful	0
3		Exceptional	3
		Highly Successful	2.5
		Successful	2
		Unsuccessful	0
4		Exceptional	3
		Highly Successful	2.5
		Successful	2
		Marginal	1
		Unsuccessful	0

(2) In addition to the above ratings, agency management may establish a rating category for highest level performers under the following conditions:

(a) Each employee who receives this rating shall receive a performance rating of 4.

(b) Agencies shall devise and publish the criteria they will use to select the highest level performers by August 30 of each year. Selection criteria for non-supervisory employees shall be comparable to the Utah Code 67-19c-101(3)(c). Selection criteria for supervisory/management employees shall be comparable to "The Manager of the Year Award."

(3) Each state employee shall receive a performance evaluation effective on or before the beginning of the first pay period of each fiscal year.

(a) Probationary employees shall receive a performance evaluation at the end of their probationary period and again prior to the beginning of the first pay period of the fiscal year.

(4) The employee shall sign the evaluation. Signing the evaluation only means that the employee has reviewed the evaluation. Refusal to sign the evaluation shall constitute insubordination, subject to discipline.

(a) The evaluation form shall include a space for employees' comments. The employee shall check a space indicating either agreement or disagreement with the evaluation. The employee may comment in writing, either in the space provided or on a separate attachment.

R477-10-2. Corrective Action.

When an employee's performance does not meet established standards due to failure to maintain skills, incompetency, or inefficiency, agency management shall take appropriate, documented, and clearly labeled corrective action in accordance with the following rules:

(1) The supervisor shall discuss the substandard performance with the employee to discover the reasons and to develop an appropriate written corrective action plan. The employee shall sign the written corrective action plan to certify that he has reviewed it. Refusal to sign the corrective action shall constitute insubordination subject to discipline. An employee shall have the right to submit written comment to accompany the corrective action plan.

(a) Corrective actions shall include one or more of the following:

(i) Closer supervision

(ii) Training

(iii) Referral for personal counseling by an agency head's approved designee

(iv) Reassignment

(v) Use of appropriate leave

(vi) Career counseling and out-placement

(vii) Period of constant review

(viii) Opportunity for remediation

(ix) Written warnings

(2) The supervisor shall designate an appropriate corrective action period and shall provide frequent evaluation of the employee's progress.

(3) If, after reasonable effort, the corrective actions taken do not result in improved performance that is satisfactory,the employee shall be disciplined according to R477-11. The written record of the corrective action shall satisfy the requirement of Section 67-19-18(1).

(4) DHRM shall provide assistance to agency management upon request.

R477-10-3. Employee Development and Training.

Agency management may establish a program for training and staff development consistent with these rules.

(1) All agency sponsored training shall be agency specific or designed for highly specialized or technical jobs and tasks.

(2) Agency management shall consult with the Executive Director, DHRM, when proposed training and development activities may have statewide impact or may be offered more cost effectively on a statewide basis. The Executive Director, DHRM, shall determine whether DHRM will be responsible for

the training standards.

(3) The Executive Director, DHRM, shall work with agency management to establish standards to guide the development of statewide activities and to facilitate sharing of resources statewide.

(4) When an agency directs an employee to participate in an educational program, the agency shall pay full costs before the course begins.

(5) Agencies are required to provide refresher training and make reasonable efforts to re-qualify veterans reemployed under USERRA, as long as it does not cause an undue hardship to the employing agency.

R477-10-4. Liability Prevention Training.

Agencies shall provide liability prevention training to their employees. The curriculum shall be approved by DHRM and Risk Management. Topics shall include but not be limited to: new employee orientation, prevention of sexual harassment; and supervisor training on prevention of workplace violence.

R477-10-5. Education Assistance.

State agencies may assist employees in their educational goals by granting employees administrative leave to attend classes and/or a subsidy of educational expenses.

(1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions:

(a) The educational program will provide a benefit to the state.

(b) The employee shall successfully complete the required course work or the educational requirements of a program.

(c) The employee shall agree to repay any assistance received if the employee voluntarily terminates within 12 months of completing educational work.

(d) Education assistance shall not exceed $5,250 per employee in any one calendar year unless approved in advance by the agency head.

(2) Agency management shall be responsible for determining the taxable/non-taxable status of educational assistance reimbursements.

(3) Agencies may offer educational assistance to law enforcement and correctional officers consistent with section 67-19-12.4 and with these criteria:

(a) The program shall comply with R477-10-5(1) and R477-10-5(2).

(b) The program shall be published and available to all qualified employees. To qualify:

(i) The employee's job duties shall satisfy the conditions of subsection 67-19-12.4 (1).

(ii) The employee shall have completed probation.

(iii) The employee shall maintain a grade point average of at least 3.0 or equivalent from an accredited college or university.

(c) The program may provide additional compensation for employees who complete a higher degree on or after April 30, 2001 in a subject area directly related to the employee's duties. If this policy is adopted, then:

(i) Two steps shall be given for an associate's degree.

(ii) Two steps shall be given for a bachelor's degree.

(iii) Two steps shall be given for a master's degree.

KEY: educational tuition, employee performance evaluation, employee productivity, training programs

July 5, 2002 67-19-6

Notice of Continuation June 11, 2002 67-19-12.4

R477. Human Resource Management, Administration.
R477-11. Discipline.
R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following causes or reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards and workplace policies;

(b) work performance that is inefficient or incompetent;

(c) failure to maintain skills and adequate performance levels;

(d) insubordination or disloyalty to the orders of a superior;

(e) misfeasance, malfeasance, nonfeasance or failure to advance the good of the public service;

(f) any incident involving intimidation, physical harm or threats of physical harm against co-workers, management, or the public;

(g) no longer meets the requirements of the position.

(2) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. In all such cases, except as provided under Subsection 67-19-18(4), the disciplinary process shall include all of the following:

(a) The agency representative notifies the employee in writing of the proposed discipline and the underlying reasons supporting the intended action.

(b) The employee's reply must be received within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to respond or does not reply within the time frame established by the agency representative or within five days, whichever is longer, discipline may be imposed in accordance with these rules.

(3) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any non-career service employee not subject to the same procedural rights, by imposing one or more of the following:

(a) Written reprimand

(b) Suspension without pay up to 30 calendar days per incident requiring discipline

(c) Demotion of any employee through one of the following methods:

(i) An employee may be moved from a position in one job to a position in another job having a lower maximum salary range and may receive a reduction in pay.

(ii) A demotion within the employee's current pay range may be accomplished by lowering the employee's salary rate back on the range, as determined by the agency head or designee.

(d) Dismissal

(i) An agency head shall dismiss or demote a career service employee only in accordance with the provision's of Subsection 67-19-18(5) and R477-11-2.

(4) If an agency determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, as provided by subsection 67-19-18-(4), pending an investigation and determination of facts:

(a) Paid administrative leave

(b) Temporary reassignment to another position or work location at the same rate of pay

(5) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(6) Disciplinary actions are subject to the grievance and appeals procedure as provided by law for career service employees only. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

R477-11-2. Dismissal or Demotion.

An employee may be dismissed or demoted for cause as explained under R477-10-2 and R477-11-1, and through the process outlined in this rule.

(1) An agency head or appointing officer may dismiss or demote a non-career service status employee without right of appeal by providing written notification to the employee specifying the reasons for the dismissal or demotion and the effective date.

(2) No employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the Grievance Procedure Rules and law cited in R137-1-13 and Title 67, Chapter 19a and the following procedures:

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee must reply within five working days for the agency representative to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. The hearing before the department head or designee shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

At the hearing the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits or other written materials at the hearing. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under Chapter 63-2 the Governmental Access and Records Management Act.

(d) Following the hearing, the employee may be dismissed or demoted if the agency head finds adequate cause or reason.

(e) The employee shall be notified in writing of the agency head's decision. Specific reasons shall be provided if the decision is a demotion or dismissal.

(3) Agency management may suspend an employee with pay pending the administrative appeal to the agency head.

R477-11-3. Discretionary Factors.

(1) When deciding the specific type and severity of discipline, the agency head or representative may consider the following factors:

(a) Consistent application of rules and standards

(b) Prior knowledge of rules and standards

(c) The severity of the infraction

(d) The repeated nature of violations

(e) Prior disciplinary/corrective actions

(f) Previous oral warnings, written warnings and discussions

(g) The employee's past work record

(h) The effect on agency operations

(i) The potential of the violations for causing damage to persons or property.

KEY: discipline of employees, dismissal of employees, grievances, government hearings

July 5, 2002 67-19-6

Notice of Continuation June 11, 2002 67-19-18

63-2

R477. Human Resource Management, Administration.
R477-12. Separations.
R477-12-1. Resignation.

Employees may resign by giving written or verbal notice to the appointing authority. In this rule, the word employee refers to career service employees, unless otherwise indicated.

(1) Agency management may accept an employee's resignation without prejudice when the resignation is received at least ten working days before its effective date.

(2) After submitting a resignation, employees may withdraw their resignation on the next working day. After the close of the next working day following its submission, withdrawal of a resignation may occur only with the consent of the appointing authority.

R477-12-2. Abandonment of Position.

Employees who are absent from work for three consecutive working days and are capable of providing proper notification to their supervisor, but do not, shall be considered to have abandoned their position.

(1) Management may terminate an employee who has abandoned his position. Management shall inform the employee of the action in writing.

(a) The employee shall have the right to appeal to the agency head within five working days of receipt or delivery of the notice of abandonment to the last known address.

(b) If the termination action is appealed, management may not be required to prove intent to abandon the position.

R477-12-3. Reduction in Force.

Reductions in force shall be required when there are inadequate funds, or a change of workload, or lack of work. Reductions in force shall be governed by DHRM business practices, standards and the following rules:

(1) When staff will be reduced in one or more classes, agency management shall develop a work force adjustment plan (WFAP). Career service employees shall only be given formal written notification of separation after a WFAP has been reviewed and approved by the Executive Director, DHRM or designee. The following items shall be considered in developing the work force adjustment plan:

(a) The categories of work to be eliminated, including positions impacted through bumping, as determined by management.

(b) A decision by agency management allowing or disallowing bumping.

(c) Specifications of measures taken to facilitate the placement of affected employees through normal attrition, retirement, reassignment, relocation, and movement to vacant positions based on interchangeability of skills.

(d) A list of all affected employees showing the retention points for each employee.

(2) Eligibility for RIF

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity for a hearing with the agency head may be RIF'd.

(b) Employees covered by USERRA and in a leave without pay status must be identified, assigned retention points and notified of the RIF of their previous position in the same manner as career service employees.

(3) Retention points shall be calculated for all affected employees within a category of work as follows:

(a) Seniority shall be determined by the length of total state career service, which commenced in a competitive career service position for which the probationary period was successfully completed.

(i) For part-time work, length of service shall be determined in proportion to hours actually worked.

(ii) Exempt service time subsequent to attaining career service tenure with no break in service shall also be counted for purposes of seniority.

(iii) In the event of ties in retention points, the amount of time employed in the affected agency/department serves as the tie breaker.

(b) Length of state service shall be measured in years and additional days shown as a fraction of a year.

(c) Time spent in a leave without pay status for service in the uniformed services covered under USERRA shall be counted for purposes of seniority.

(d) Any time spent in leave without pay status, to include worker's compensation leave, may not be counted for purposes of seniority.

(e) All affected employees including employees covered under USERRA in a leave without pay status within a category of work shall be assigned a job proficiency rating. The job proficiency rating shall be an average of the last three annual performance evaluation ratings as described in R477-10-1.(1)(e). If employees have had fewer than three annual performance evaluations, the proficiency ratings shall be an average of the all ratings received as of that time.

(f) The numeric values of each employee's job proficiency rating and that employee's actual length of service shall be added together to produce the retention points.

(g) Retention points shall be calculated for employees covered under USERRA and in a leave without pay status in the same manner as for current employees in the affected class. If there are no performance evaluation ratings for an employee covered under USERRA, no proficiency rating shall be included in the retention points.

(4) The order of separation shall be:

(a) Non-career service employees

(b) Probationary employees

(c) Career service employees in the order of their retention points with the lowest points are released first. In the event of ties in retention points, the amount of seniority in the affected agency serves as the tie breaker.

(5) Employees, including those covered under USERRA in a leave without pay status, who are separated due to a reduction in force shall be given formal written notification of separation, allowing for a minimum of 20 working days prior to the effective date of the RIF.

(6) Appeals

(a) An employee separated due to a reduction in force may appeal to the agency head for an administrative review. Employees must submit notice of appeal within 20 working days after the receipt of written notification of separation.

(b) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service

Review Board.

(7) Reappointment of RIF'd employee

(a) A RIF'd employee is eligible for reappointment into a half time or greater career service position for which he qualifies in a salary range comparable to or less than the last career service position held, for a period of one year following the date of separation. See R477-5-4 for selection of employees from the reappointment register.

(i) The Executive Director, DHRM, shall maintain a reappointment register and shall make the final determination on whether an eligible RIF meets the job requirements for position vacancies.

(ii) A RIF'd employee shall remain on the state reappointment register for twelve months from the date of separation, unless reappointed sooner.

(b) During a statewide mandated freeze on hiring wherein the Governor disallows increases in each department's FTEs, eligibility for the reappointment register shall be extended for the entire length of time covered by a freeze.

(c) When determining comparable salary ranges in cases of RIF eligibility or bumping eligibility, a comparison of the previous to the new salary range maximum step is required. The previous salary range shall be considered comparable if the maximum step is equal to or greater than the maximum step of the new salary range.

(d) A RIF'd employee who is reappointed to a career service position shall not be required to serve a probationary period. The employee shall enjoy all the rights and privileges of a regular career service employee.

(e) At agency discretion, employees reappointed from a reappointment register may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(8) Appeal rights of RIF'd employee - An individual whose name is on the reappointment register as a result of a reduction in force may use the grievance procedure regarding their reappointment rights.

(9) Career service employees in exempt positions - Any career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer, unless discharged for cause as provided for by these regulations, shall:

(a) Be placed on a reappointment register and shall be appointed to any half time or greater career service position for which the employee qualifies in a pay range comparable to the employee's last position in the career service, provided an opening exists; or

(b) Be appointed to any lesser career service position for which the employee qualifies pending the opening of a position at the last career service salary range held. The Executive Director, DHRM, shall maintain a reappointment register for this purpose, and shall make the final determination on whether an eligible RIF meets the job requirements for position vacancies.

(c) The employee shall declare his desire to remain on the reappointment register upon inquiry by DHRM.

R477-12-4. Exceptions.

The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with R477-2-2(1).

KEY: administrative procedure, employees' rights, grievances, retirement

July 5, 2002 67-19-6

Notice of Continuation June 11, 2002 69-19-17

69-19-18

R477. Human Resource Management, Administration.
R477-14. Substance Abuse and Drug-Free Workplace.
R477-14-1. Rules Governing a Drug-Free Workplace.

(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportational Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:

(a) Provide a safe and productive work environment that is free from the effect of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.

(b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.

(c) Assure the protection and safety of employees and the public.

(2) State employees may not unlawfully manufacture, dispense, possess, distribute or use any controlled substance or alcohol during working hours, on state property or while operating a state vehicle at any time or other vehicle while on duty except where legally permissible.

(a) Employees shall follow R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of $25,000 or more.

(3) When, during work hours, there is reasonable suspicion that an employee is using or is impaired through the use of a controlled substance or alcohol unlawfully, an employee may be required to submit to medically accepted testing procedures to determine whether the employee is using a controlled substance or alcohol in violation of federal or state law.

(a) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(b) Drug and alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(c) For employees in non-safety sensitive positions the State of Utah will use the same cut off levels for positive drug tests as the federal government. This rule incorporates by reference the requirements of 49CFR40.29(2001), Laboratory Analysis Procedures.

(d) For employees in non-safety sensitive positions, the State of Utah will use a blood alcohol concentration level .08 as the cut off for a positive alcohol test.

(e) For employees in safety sensitive positions, the State of Utah will use the same cut off levels for positive drug and alcohol tests as the federal government. This rule incorporates by reference the requirements of 49CFR40.29(2001), Laboratory Analysis Procedures, 49CFR382.107 (2001), Definitions, 49CFR382.201(2001), Alcohol Concentration and 49CFR382.505 (2001), Other Alcohol Related Conduct.

(f) Management may take corrective or disciplinary action if:

(i) There is a positive confirmation test for controlled substances;

(ii) Results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level.

(iii) Management determines an employee is unable to perform his assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.

(4) Employees in safety sensitive positions, as approved by DHRM, are subject to drug or alcohol testing without justification of reasonable suspicion or critical incident. Random drug testing of employees in safety sensitive positions shall be conducted by the employing agency as authorized by the Executive Director, DHRM.

(a) Employees in safety sensitive positions whose confirmation test for alcohol results are .02 or greater, when tested before, during, or immediately after performing safety sensitive functions, must be removed from performing safety sensitive duties for 8 hours, or until another test is administered and the result is less than .02.

(b) Employees in safety sensitive positions whose confirmation test for alcohol results are .04 or greater when tested before, during or after performing safety sensitive duties, may be subject to corrective action or discipline.

(5) Agencies with employees in positions requiring a commercial driver license shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current DHRM Drug and Alcohol Testing Manual.

(6) The agency's Human Resource Office or authorized official shall keep a separate, private record of drug or alcohol test results. The employee's official personnel file shall only contain a document making reference to the existence of the drug or alcohol test record.

R477-14-2. Management Action.

(1) Pursuant to R477-10, R477-11 and R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action.

(2) Management may take disciplinary action which may include termination.

(3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include termination. See Section 67-19-33.

(4) An employee who substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample or attempts to do so is subject to disciplinary action which may include termination.

(5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per R477-11, under the following conditions:

(a) If the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of $25,000.00.

(b) If the employee's action puts employees, clients, customers, patients or co-workers at physical risk.

(6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be required to participate at his expense in a rehabilitation program, as provided for in section 67-19-38.(3). If this is required, the following shall apply:

(a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient

treatment.

(b) The employee must sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) All communication shall be classified as private in accordance with Title 63, Chapter 2.

(d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in his previously held position, or a position with a comparable or lower salary range.

(7) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action.

(8) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing.

(9) An employee who is convicted under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing selling or using a controlled substance for a violation occurring in the workplace shall notify the agency head of the conviction no later than 5 calendar days after the conviction.

(a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:

(i) the judicial system,

(ii) other sources,

(iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

R477-14-3. Rule Distribution.

(1) The Department of Human Resource Management shall distribute this rule to every state agency for communication to its employees.

R477-14-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule consistent with R477-2-3(1).

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees

July 5, 2002	**67-19-6**
Notice of Continuation December 11, 2001	**67-19-18**
	67-19-34
	67-19-38

R501. Human Services, Administration, Administrative Services, Licensing.
R501-12. Child Foster Care.
R501-12-1. Authority.

Pursuant to 62A-2-101 et seq., the Office of Licensing, hereinafter referred to as Office, shall license child foster care services according to the following rules. Child foster care services are provided pursuant to 62A-4a-106 for the Division of Child and Family Services, hereinafter referred to as DCFS, and 62A-7-104 for the Division of Youth Corrections, hereinafter referred to as DYC.

R501-12-2. Purpose Statement.

The purpose of these rules is to establish the minimum requirements for licensure of child foster homes and proctor homes for children in the custody of the Department of Human Services, herein after referred to as DHS. Rules applying to child foster care are also applicable to proctor care unless otherwise specified below.

R501-12-3. Definitions.

A. "Child foster care" means the provision of care which is conductive to the physical, social, emotional and mental health of children or adjudicated youth who are temporarily unable to remain in their own homes.

B. "Proctor care" means the provision of foster care for only one youth at a time placed in a licensed foster home. The youth shall be adjudicated to the custody of DYC.

C. "Foster care agency" is any authorized licensed private agency certifying providers for foster care services, hereinafter referred to as Agency.

D. "Child" means anyone under 18 years of age with the exception of DYC proctor care where custody and guardianship may be maintained to 21 years of age.

R501-12-4. Licensing and Renewal.

A. Application: An individual or legally married couple age 21 and over may apply to be foster parents. The applicant shall be provided with an application and a copy of the foster care licensing rules. The application shall require the applicant to list each member of the applicant's household.

B. Medical Information:

1. At the time of application, each potential foster parent shall obtain and submit to the Agency or the Office, a medical reference letter, completed by a licensed health care professional, which assesses the physical ability of the individual to be a foster parent. On an annual basis thereafter, each foster parent shall submit a personal health status statement.

2. A psychological examination of a potential or current foster parent may be required by the Office or the Agency if there are questions regarding the individual's mental stability which may impair functioning as a foster parent. The psychological examination shall be arranged and paid for by the foster parent.

C. References:

The applicant shall submit the names of individuals not related to the applicant who may be contacted by the Agency or the Office for a reference. The named individuals, such as neighbors, school personnel, or clergy, shall be knowledgeable of the ability of the potential foster parents to nurture children. Three acceptable letters of reference must be received by the Agency or the Office before a license will be issued.

D. Background Screening:

1. Pursuant to 62A-2-120, criminal background screening, referred to as CBS, requires that all child foster care applicants or persons 18 years of age or older living in the home must have the criminal background screening successfully completed. This shall be completed on initial home approval and yearly thereafter. In accordance with 62A-2-120, no applicant can be licensed to provide foster care services when the applicant has been convicted of a felony.

2. Pursuant to 62A-2-121, the child abuse data base shall also be screened for each applicant or persons 18 years of age or older living in the home to see if a report of alleged abuse and neglect has been substantiated. This shall be done on initial home approval and yearly thereafter.

a. In accordance with 62A-4a-116(2)(b) the following types of abuse and neglect shall be considered for licensing purposes:

1) physical abuse,

2) sexual abuse,

3) sexual exploitation,

4) abandonment, medical neglect resulting in death, disability, or serious illness, or

5) chronic or severe neglect.

b. In accordance with 62A-2-121, if the name of any individual living in the home appears on the child abuse data base as substantiated, a license may be denied, approved, or renewed based on a comprehensive review of the individual circumstances, conducted by DHS, in accordance with R501-18.

E. Home Study: There shall be a current home study report on record prepared, or reviewed and signed off, by a licensed Social Worker. A home study shall be completed for each potential foster home. The home study shall be updated annually with a home visit.

F. Provider Code of Conduct: Each foster care applicant shall read, abide by, and sign a current copy of the DHS Provider Code of Conduct.

G. Training: Each foster care applicant shall complete the required pre-service training as specified in R501-12-5 prior to receiving a license.

H. Approval or Denial:

1. Following pre-service training and submission of all required documentation, the home study and assessment of an applicant shall be completed.

2. A license shall be issued for applicants who meet Foster Care Licensing Rules. In addition, the applicants shall be responsible to identify and meet any local ordinances applicable to the type of care.

3. The decision to approve or deny the applicant shall be made on the basis of observable facts and the professional judgement of the Agency or the Office regarding the safety and sanitation conditions of the home.

4. No person may be denied a foster care license on the basis of race, color, or national origin of the person, or a child, involved, pursuant to the Social Security Act, Section 471(a)(18)(A).

5. The provider shall be evaluated annually for compliance with rules when renewing a license.

6. Kinship and Specific Home Approval: An applicant may be licensed for placement of one specific child or sibling group. The home study shall be completed and all licensing requirements met. This license is valid for the duration of the specific placement only and must be renewed annually.

7. Licensure approval is not a guarantee that a child will be placed in the home. Additional requirements for adoptive parents and adoptive assessments for children in State custody are included in R512-41(3)(4).

8. Providers shall not be licensed or certified to provide foster care for children in the same home in which they are providing child care, as defined in UCA 26-39-102, or a licensed human service program, as defined in UCA 62A-2-101.

9. The Office Director or designee may grant a variance to a rule if it is in the best interest of the specific child.

10. All providers shall report any major changes as listed in a. through e. in their lives to the Office or Agency within 48 hours. These changes shall be re-evaluated within one month of the change by the Office or Agency. A major change in the lives of the foster parents shall include, but is not limited to the following;

a. death or serious illness among the members of the foster family,

b. separation or divorce,

c. loss of employment,

d. change of residence, or

e. suspected abuse or neglect of any child in the foster home.

R501-12-5. Training.

A. Applicants shall attend training required by the applicable DHS Division or other approved entity and submit verification of completed training to the Office or Agency.

B. At least one spouse shall complete the entire training series in order for the home to be licensed. The other spouse shall attend at least one third of the training.

C. Providers associated with an Agency that is contracted to provide foster care or proctor care services shall meet the training requirements specified by the contract.

R501-12-6. Foster Parent Requirements.

A. Personal characteristics of foster parents shall include the following:

1. Foster parents shall be in good health, able to provide physical and emotional care to the child.

2. Foster parents shall be emotionally stable and responsible persons over 21 years of age. Legally married couples and single individuals, may be foster parents.

3. Foster parents shall have the ability to help the child grow and change in behavior.

4. Foster parents shall not be dependent on the foster care payment for their expenses beyond those associated with foster care, and shall allocate funds as directed by Division policy. Verification of income shall be submitted with the application to the Office or Agency on an annual basis.

5. Division employees shall not be approved as foster parents to care for children in the custody of their respective Divisions. An employee may provide care for children in the custody of a different Division with approval of the Regional Director in accordance with DHS conflict of interest policy.

6. Owners, directors, and members of the governing body for foster care agencies shall not serve as foster parents.

7. Foster parents shall follow Agency rules and work cooperatively with the Agency, State Court, and law enforcement officials.

B. Family Composition shall meet the following:

1. The number, ages, and gender of persons in the home shall be taken into consideration as they may be affected by or have an effect upon the child.

2. Variance requests for the following must address why a variance is in the best interests of the child, and how basic health and safety requirements will be maintained, in accordance with R501-1-8.

a. No more than two children under the age of two, shall reside in a foster home, including natural children.

b. No more than two non-ambulatory children shall be in a foster home including infants under the age of two.

c. No more than four foster children shall be in any one home.

d. No more than one foster child shall be in any one home designated for proctor care by agencies contracted with DYC.

R501-12-7. Physical Aspects of Home.

A. The foster home shall be located in a vicinity in which school, church, recreation, and other community facilities are reasonably available.

B. The physical facilities of the foster home shall be clean, in good repair, and shall provide for normal comforts in accordance with accepted community standards.

C. The foster home shall be free from health and fire hazards. Each foster home shall have a working smoke detector on each floor and at least one approved fire extinguisher. An approved fire extinguisher shall be inspected annually and be a minimum of 2A:10BC five point, rated multi-purpose, dry chemical fire extinguisher.

D. There shall be sufficient bedroom space to provide for the following:

1. rooms are not shared by children of the opposite sex, except infants under the age of two years,

2. children do not sleep in the parents' room, except infants under the age of two years,

3. each child has his or her own solidly constructed bed adequate to the child's size,

4. a minimum of 80 square feet is provided in a single occupant bedroom and a minimum of 60 square feet per child is provided in a multiple occupant bedroom excluding storage space, and

5. no more than four children are housed in a single bedroom.

E. Sleeping areas shall have a source of natural light and shall be ventilated by mechanical means or equipped with a screened window that opens.

F. Closet and dresser space shall be provided within the bedroom for the children's personal possessions and for a reasonable degree of privacy.

G. There shall be adequate indoor and outdoor space for

recreational activities.

H. Foster homes shall offer sufficiently balanced meals to meet the child's needs.

I. All indoor and outdoor areas shall be maintained to ensure a safe physical environment.

J. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers.

K. Equipment: All furniture and equipment shall be maintained in a clean and safe condition. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet individual needs.

L. Exits: There shall be at least two means of exit on each level of the foster home.

R501-12-8. Safety.

A. Foster families shall conduct and document fire drills at least quarterly.

B. Foster parents shall provide training to children regarding response to fire warnings and other instructions for life safety.

C. The foster home shall have a telephone. Telephone numbers for emergency assistance shall be posted next to the telephone.

D. The foster home shall have an adequately supplied first aid kit.

E. Foster parents who have firearms or ammunition shall assure that they are inaccessible to children at all times. Firearms and ammunition that are stored together shall be kept securely locked in security vaults or locked cases, not in glass fronted display cases. Firearms that are stored in display cases shall be rendered inoperable with trigger locks, bolts removed or other disabling methods. Ammunition for those firearms shall be kept securely locked in a separate location. This does not restrict constitutional or statutory rights regarding concealed weapons permits, pursuant to UCA 53-5-701 et seq.

F. No firearms shall be allowed in foster homes that contract with DYC.

G. Foster parents who have alcoholic beverages in their home shall assure that the beverages are kept inaccessible to children at all times.

H. There shall be locked storage for hazardous chemicals and materials.

R501-12-9. Emergency Plans.

A. Foster parents shall have a written plan of action for emergencies and disaster to include the following:

1. evacuation with a pre-arranged site for relocation,

2. transportation and relocation of children when necessary,

3. supervision of children after evacuation or relocation, and

4. notification of appropriate authorities.

B. Foster parents shall have a written plan for medical emergencies, including arrangements for medical transportation, treatment and care.

C. Foster parents shall immediately report any serious illness, injury or death of a foster child to the appropriate Division or Agency and the Office.

R501-12-10. Infectious Disease.

Foster parents shall abide by policies and procedures designed to prevent or control infectious and communicable diseases in the home.

R501-12-11. Medication.

A. Foster parents shall administer prescribed medication, according to the written directions of a licensed physician. Medicine shall only be given to the child for whom it was prescribed.

B. Medication shall not be discontinued without the approval of the licensed physician, side effects shall be reported to the licensed physician.

C. Non-prescriptive medications may be administered by foster parents according to manufacturer's instructions.

D. Medications shall not be administered by the foster child.

E. Medication shall not be used for behavior management or restraint unless prescribed by a licensed physician with notification to the Division or Agency worker.

F. There shall be locked storage for medication.

R501-12-12. Transportation.

A. Foster parents shall provide routine transportation. In case of an emergency a means of transportation shall be arranged by the foster parents.

B. Drivers of vehicles shall have a valid Utah Drivers License and follow safety requirements of the State.

C. Transportation shall be provided in an enclosed vehicle which has been safety inspected and equipped with seatbelts and an appropriate restraint for infants and young children.

D. An emergency telephone number shall be in the vehicle used to transport children.

E. Each vehicle shall be equipped with an adequately supplied first aid kit.

R501-12-13. Behavior Management.

A. Foster parents shall provide appropriate supervision at all times.

B. Foster parents shall not use, nor permit the use of corporal punishment, physical or chemical restraint, infliction of bodily harm or discomfort, deprivation of meals, rest or visits with family, humiliating or frightening methods to control the actions of children.

C. The foster parents' methods of discipline shall be constructive. In exercising discipline, the child's age, emotional make-up, intelligence and past experiences shall be considered.

D. Passive restraint shall be used only in behaviorally related situations as a temporary means of physical containment to protect the child, other persons, or property from harm. Passive restraint shall not be associated with punishment in any way.

E. Foster parents shall inform the Division or Agency worker of any extreme or repeated behavioral problems of a child placed in the foster home.

R501-12-14. Child's Rights in Foster Care.

A. The foster parent shall adhere to the following:

1. allow the child to eat meals with the family, and to eat

the same food as the family unless the child has a special prescribed diet,

2. allow the child to participate in family activities,

3. protect privacy of information,

4. not make copies of the child's records,

5. explain the child's responsibilities, including household tasks, privileges, and rules of conduct,

6. not allow discrimination,

7. treat the child with dignity,

8. allow the child to communicate with family, attorney, physician, clergyman, and others, except where documented otherwise,

9. follow visitation rights as provided by DHS or Agency worker,

10. allow the child to send and receive mail providing that security and general health and safety requirements are met, foster parents may only censor or monitor a foster child's mail or phone calls by court order,

11. provide for personal needs and clothing allowance, and

12. respect the child's religious and cultural practices.

R501-12-15. Record Keeping.

A. Foster parents shall maintain the following:

1. current license certificate,

2. copy of each contract with DHS,

3. record of money provided to each foster child,

4. record of expenditures for each foster child, and

5. documentation of special need payments on behalf of the foster child.

B. Foster parents shall maintain the out of home placement information record for each child in their care to include the following:

1. placement information for each child in out of home care,

2. biographical information, including an emergency contact name and telephone number,

3. documentation of the health care record of each child, including the following;

a. immunizations,

b. physical, mental, visual, and dental examinations,

c. emergencies requiring medical treatment, and

d. medication, when applicable, and

4. summary of family visits and contacts, when appropriate, according to the service plan.

C. Foster parents shall ensure that the out of home record accompanies the child or is returned to the Agency upon relocation of the child.

D. The Office staff shall maintain a separate record for each child foster care home or Agency.

KEY: licensing, human services, foster care
July 12, 2002 62A-2-101 et seq.

R512. Human Services, Child and Family Services.
R512-43. Adoption Assistance.
R512-43-1. Definitions.

In addition to terms defined in Section 62A-4a-902, the following terms are defined for purposes of this rule:

(1) 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.

(2) Child in public foster care means a judicially removed child whose placement resulting 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.

(3) State IV-E agency means the Division of Child and Family Services or a public agency or tribal organization with whom the Division of Child and Family Services has an agreement in effect for foster care maintenance payments in accordance with Title IV-E, Section 42 USC 672.

(4) AFDC means the Aid to Families with Dependent Children program that was in effect on July 16, 1996.

(5) 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 both of the adoptive parents.

R512-43-2. Purpose and Authority.

(1) The purpose of the Adoption Assistance program is to aid an adoptive family to establish and maintain a permanent adoptive living arrangement for a child who qualifies for the program under state and federal law.

(2) The Adoption assistance program is intended to provide a permanent family for a child in public foster care or who receives SSI by providing financial and medical assistance for the child's benefit and best interest to the family who adopts the child.

(3) Title 62A, Chapter 4a, Part 9 authorizes the state to provide adoption assistance and supplemental adoption assistance and Section 473, Social Security Act, authorizes federal adoption assistance. Section 473, Social Security Act (2001), and 45 CFR 1356.40 (2000) and 45 CFR 1356.41 (2000) 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) A child qualifies for adoption assistance if all of the following are met:

(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 in accordance with Section 62A-4a-901, et seq.

(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) In determining eligibility for adoption assistance, there is no income eligibility requirement or means test for the adoptive parents.

(4) A child must be a U.S. citizen or qualified alien to receive adoption assistance.

(5) An application for adoption assistance is submitted to the regional adoption subsidy committee on a form provided by the Division.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) The Division is responsible for notifying a prospective adoptive family of the availability of adoption assistance when the family begins an adoptive placement of a qualified child in public foster care.

(12) The adoptive parents are responsible to notify the Division of any circumstances that may affect the child's eligibility for adoption assistance or eligibility for adoption assistance in a different amount.

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 IV-E Adoption Assistance. The child does not have to be determined Title IV-E eligible for the parents to receive this reimbursement.

R512-43-5. Monthly Subsidy.

(1) Qualifying for a Monthly Subsidy.

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) Guiding Principles for Monthly Subsidies.

(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) 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.

(c) 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.

(d) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and caseworker. The Adoptive Parent Statement of Disclosure items must be reviewed in depth by the caseworker and adoptive parent prior to subsidy negotiation.

(e) 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.

(3) Process for Determining Monthly Subsidy Amount.

(a) Utilizing the level of need criteria specified in R512-43-5(4), the caseworker and adoptive family identify the child's level of need.

(b) The caseworker and adoptive family identify the applicable monthly subsidy payment range, according to the child's specified level of need, as specified in R512-43-5(5).

(c) The caseworker and adoptive family negotiate the amount of monthly subsidy to be requested from the regional adoption subsidy committee. The requested monthly subsidy amount may not exceed the maximum amount for the specific level of need identified for the child nor the maximum amount that the child would receive if placed in a foster family home.

(d) The identified need level for the child and requested amount of monthly subsidy is presented to the regional adoption subsidy committee for approval. If the requested amount is not approved or is reduced by the committee, the Division must send a written notice to the adoptive parents within 30 days informing them of the process to request a fair hearing.

(4) Determining Child's Level of Need.

(a) The level of need is determined by considering the child's age, history, physical, mental, emotional, and social functioning and needs, and any other relevant factors. Frequency of occurrence, duration, severity, and number of needs or problem areas are also considered.

(b) The presence of a particular issue listed within a designated level does not mandate that the child be categorized at that level. The child's needs, taken as a whole, determine the level selected for the child.

(c) Level of need is classified into three categories.

(i) Level One applies to a child with a minimal number and severity of needs. It is expected that most of these issues will improve with time, and significant improvement may be anticipated over the course of the adoption. For children ages five and under issues may include, but are not limited to: feeding problems, aggressive or self destructive behavior, victimization from sexual abuse, victimization from physical abuse; or no more than one developmental delay in fine motor, gross motor, cognitive or social/emotional domains. For children ages 6-18, issues may include but are not limited to: social conflict, physical aggression, minor sexual reactivity, need for education resource classes or tutoring, some minor medical problems requiring ongoing monitoring, or mental health issues requiring time limited counseling.

(ii) Level Two applies to a child with a moderate number and severity of needs. It is expected that a number of these issues are long-term in nature and the adoptive family and child will be working with them over the course of the adoption, and some may intensify or worsen if not managed carefully. Outside provider support will probably continue to be needed during the course of the adoption. For children ages five and under, issues may include, but are not limited to: developmental delays in two or more areas of fine motor, gross motor, cognitive or social/emotional domains; diagnosis of failure to thrive; moderate genetic disease or physical handicapping condition; or physical aggression expressed several times a week, including superficial injury to self or others. For children ages 6-18,

issues may include, but are not limited to: daily social conflict or serious withdrawn behavior; moderate risk of harm to self or others due to physically aggressive behavior; emotional or psychological issues with a DSM-IV diagnosis requiring ongoing counseling sessions over an extended period of time; moderate sexual reactivity or perpetration; chronic patterns of being destructive to items or property; cruelty to animals; mild mental retardation or autism, with ongoing need for special education services; and physical disabilities requiring ongoing attendant care or other caretaker support

(iii) Level Three applies to a child with a significant number or high severity of needs. It is expected that these issues will not moderate and may become more severe over time. The child's level of need may at some time require personal attendant care or specialized care outside of the home, when prescribed by a professional. For children ages five and under issues may include, but are not limited to: severe life threatening medical issues; moderate or severe retardation or autism; serious developmental delays in three or more areas of fine or gross motor, cognitive or social/emotional domains; anticipated need for ongoing support for activities of daily living, such as feeding, dressing and self care; or high levels of threat for harm to self or others due to aggressive behaviors. For children ages 6-18 issues may include, but are not limited to: moderate or severe retardation or autism; life threatening medical issues; severe physical disabilities not expected to improve over time; predatory sexual perpetration; high risk of serious injury to self or others due to aggressive behavior; serious attempts or threats of suicide; severely inhibiting DSM-IV diagnosed mental health disorders diagnosed within the past year that limit normal social and emotional development, such as an Axis 5 GAF score under 50; or need for ongoing self contained or special education services.

(d) The adoption subsidy committee must approve the level of need identified for the child.

(5) Identifying Amount for Monthly Subsidy Based Upon the Child's Level of Need.

(a) Each level of need corresponds to a dollar range in the amount of monthly subsidy that may be paid for a child, with the specific amount based upon the individual child's needs and the family's ability to meet those needs.

(b) The monthly subsidy amount for an individual child may not exceed the maximum amount for the payment range applicable to the child's level of need. A family may choose to defer receipt of a monthly subsidy for which a child qualifies, with the option to initiate a monthly subsidy at a later date, or to receive a lesser amount than would be allowable for the level of need at a given point in time.

(c) Monthly subsidy payments for a child's needs categorized as Level One range from zero to 40 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(d) Monthly subsidy payments for a child's needs categorized as Level Two range from 40 to 70 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(e) Monthly subsidy payments for a child's needs categorized as Level Three range from 70 to 100 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(f) For extraordinary, infrequent, or uncommon documented needs that cannot be covered by a monthly subsidy or state medical assistance, refer to supplemental adoption assistance in R512-43-7.

(6) Funding Sources and Eligibility for Monthly Subsidy.

(a) The two funding sources for the monthly subsidy are Title IV-E adoption assistance and state adoption assistance funds. The child's eligibility determines which funding source is used for payment.

(b) Title IV-E Adoption Assistance shall be considered first for the monthly subsidy. To receive Title IV-E 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 IV-E 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 IV-E adoption assistance.

(7) 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 from $3,000 to $10,000 shall be considered by the appropriate regional advisory committee established under Subsection 62A-4a-905(2).

(6) Supplemental adoption assistance requests exceeding $10,000 shall be considered by a state level advisory committee with the same membership composition as the regional advisory committees established under Subsection 62A-4a-905(2).

(7) Recommendations from the advisory committee are subject to the approval of the regional director or designee.

(8) 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.

(9) 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 is $3,000 to $10,000, the request shall be submitted to the appropriate regional advisory committee established under Subsection 62A-4a-905(2). If the request exceeds $10,000, the request shall be submitted to the state level advisory committee.

(10) 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 five 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-905(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 undeliverable, 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.

R512-43-12. 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 both 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 shall apply for adoption assistance in the parent's State of residence.

(5) An adoption assistance agreement remains in effect regardless of the State of residence of the adoptive parents as long as the child continues to qualify for adoption assistance.

(6) If a needed service specified in the agreement is not funded by the new State of residence, the state making the original adoption assistance payment remains financially responsible for paying for the specific service.

KEY: adoption, child welfare, foster care
July 11, 2002 62A-4a-106
Notice of Continuation March 14, 2001 62A-4a-201 through 62-4a-907

R523. Human Services, Mental Health.

R523-1. Policies and Procedures.

R523-1-1. Board of Mental Health Policies and Procedures.

Legal Authority.

The State Board of Mental Health is the program policy making body for the Division of Mental Health and for programs funded with state and federal monies. The Board has the authority and the responsibility to establish by rule procedures for developing its policies which seek input from local mental health authorities, consumers, providers, advocates, division staff and other interested parties (Section 62A-12-104). In order to ensure public input into the policy making procedure the Board will:

A. Convene an annual meeting, inviting local mental health authorities, consumers, providers, advocates and division staff to provide them an opportunity to comment and provide input on new policy or proposed changes in existing policy.

B. The Board shall include a time on the agenda at each regularly scheduled board meeting to entertain public comment on new policy or proposed changes in existing policy.

C. Public requests to revise existing policy or consider new policy shall be made in writing to the Board in care of the Division of Mental Health.

D. The Division shall prepare, for the Board's review, any comments they are in receipt of relative to public policy which will be addressed at a regularly scheduled board meeting.

E. The Board may direct the Division to follow-up on any unresolved issues raised as a result of policy review and report their findings at the next scheduled board meeting.

R523-1-2. State and Local Relationships.

A. Local Mental Health Authorities (LMHA) are the "service designees" of the State Division of Mental Health. As service designees, LMHAs receive all formula pass-through state and federal mental health funds to provide comprehensive mental health services as defined by state law. Local Mental Health Authorities are considered sole source providers for these services and are statutorily required to provide them (17A-3-602(3)).

B. When the Division of Mental Health requires other services outside the comprehensive range specified by law, it shall provide LMHAs the first opportunity to accept or reject the service contract. If the LMHA rejects the contract in writing or fails to meet the terms of the contract as determined by the Division, the Division may contract with any qualified provider, through a Request For Proposal (RFP) process. If an agency other than the LMHA receives a contract to provide a mandated service, the contracted service provider shall inform the LMHA that they have been awarded the contract and offer to coordinate the service with existing services provided by the LMHA (17A-3-602(3), 62A-12-104(2)(a)).

C. Local Mental Health Authorities must submit an annual local Mental Health Plan of Service to the Division of Mental Health for approval before each contract period. The Plan shall describe the intended use of state and federal contracted dollars.

D. The Division of Mental Health has the responsibility and authority to monitor LMHA contracts to see that they are in compliance with existing laws, policies, standards and rules. Each mental health catchment area shall be visited at least once annually to monitor compliance. The mental health center will be provided preliminary findings from the site review and an opportunity to comment. A written report will be sent to each LMHA describing the findings from the site visit.

R523-1-3. Program Standards.

A. The State Board of Mental Health, in compliance with law, adopts the policy that available state funds will be distributed on a 80% State, 20% local match basis to local mental health authorities which provide the continuum of care and meet the public policy priority adopted by the Board (17A-3-602(3)(i), 62A-1-107(6)). The Division of Mental Health will carry out this policy. A comprehensive mental health program includes:

1. Inpatient care and services (hospitalization)
2. Residential care and services
3. Day treatment and psycho-social rehabilitation
4. Outpatient care and services
5. Twenty-four hour crisis care and services
6. Outreach care and services
7. Follow-up care and services
8. Screening for referral services
9. Consultation, education and preventive services (case consultation, public education and information, etc.)
10. Case management.

B. Each local mental health authority shall be responsible for providing these services directly or contracting for these services.

C. The primary responsibility of the Division of Mental Health will be to insure the provision of services for those citizens who enter the mental health system directly as consumers and to work cooperatively with other agencies. Other public agencies such as Education, Corrections, Health and Social Services will have primary responsibility for arranging for or providing and paying for the mental health needs of citizens served by their agency when the required service directly benefits or is tied to their agency responsibility. The Division of Mental Health will clearly define items 1-9 above so that evaluation and implementation is feasible. These definitions will be approved by the State Board of Mental Health.

R523-1-4. Private Practice.

Private practice policies shall be determined by local community mental health authorities. These policies will be available in written form for State review.

R523-1-5. Fee for Service.

A. All consumers of community mental health centers within the state of Utah shall be charged the actual cost of services rendered to them by personnel of the centers.

B. There shall be a dual fee schedule approved by the State Board of Mental Health:

1. intensive services - uniform fee schedule as attached;

2. outpatient services - Local cost will be based on actual unit cost as determined by the center's annual study and in accordance with the minimum discount fee schedule attached.

3. the mental health center may waive the charging of a fee if they determine that the assessment of a fee would result in a

financial hardship for the recipient of services.

C. Unless otherwise prohibited by law, all differences between the actual cost of services rendered and third-party payments shall be charged to the consumers receiving the service. These charges may not exceed the adjusted fee, if any, based on the above mentioned fee schedules.

D. Fee adjustments may be made following locally determined procedures. The procedures will be available in writing.

E. Except for emergency services, all consumers are to be informed of the actual cost of services to be received and of the adjusted fee, if any, before the commencement of services.

R523-1-6. Priorities for Treatment.

A. Mental health services provided through public funds (federal, state, and local match) will address current mental health priorities listed below. The State Division of Mental Health, in collaboration with the Utah Council of Mental Health Program, Inc.'s evaluation committee (SCHEDULE), will develop or approve procedures and forms for periodic needs assessments.

B. Immediacy of need and severity of the mental illness are the two primary variables considered in developing the following priorities of treatment. It is to be understood that emphasis upon certain under-served age groups may be given as appropriately demonstrated through needs studies.

1. Effective and responsive crisis intervention assessment, direct care, and referral program available to all citizens.

2. Provision of the least restrictive and most appropriate treatment and settings for:

a. severely mentally ill children, youth, and adults;

b. acutely mentally ill children, youth, and adults.

3. Provisions of services to emotionally disabled children, youth and aged citizens who are neither acutely nor severely mentally ill, but whose adjustment is critical for their future as well as for society in general.

4. Provision of services to emotionally disabled adults who are neither acutely nor severely mentally ill, but whose adjustment is critical to their personal quality of life as well as for society in general.

5. Provision of consultation, education and preventive mental health services targeted at high risk groups in particular.

R523-1-7. Collections Carryover.

A. Local center programs may carry collections forward from one fiscal year to another.

B. Centers receive two general types of revenues - appropriations and collections. These terms are defined as follows:

1. Appropriations:

a. State appropriated monies

b. Federal Block Grant dollars

c. County Match of at least 20%

2. Collections:

a. First and third party reimbursements

b. Any other source of income generated by the center.

R523-1-8. Consumers Rights.

A. Each local mental health center shall have a written statement reflecting consumers rights. General areas for consideration should be:

1. consumer involvement in treatment planning.

2. consumer involvement in selection of their primary therapist.

3. consumer access to their individual treatment records.

4. informed consent regarding medication

5. grievance procedures

B. This statement should also indicate the Center's commitment to always treat mental health consumers with dignity and individuality in a positive, supportive and empowering manner. This document is to be shared with the consumer at the time of intake and a signed copy made part of their individual file. The State Division of Mental Health shall periodically review this process to assure appropriate content within the rights statement and proper application of the intent of this policy.

R523-1-9. Statewide Program Evaluation, Research, and Statistics.

A. Responsibility for Statewide program evaluation, research, and statistics belongs to the Division of Mental Health. This responsibility includes data system leadership, coordination, implementation, and monitoring.

B. The Division of Mental Health shall develop and maintain, in collaboration with local mental health providers, a set of data system principles that address at least the following topics: standardization of data variables and definitions; variable integration across data sets; procedures for requesting data from MHOs; procedures for data review and dissemination; MHC participation in planning new statistical reports and requests; cost-effective and practical data collection procedures; confidentiality and data security; accuracy and data quality control; updating regular reports; and procedures for reviewing and updating the principles.

C. The Division of Mental Health, in collaboration with the local Mental Health Authorities and their providers, shall assess service effectiveness (outcomes) and efficiency (productivity) and report the results to the State Board of Mental Health in an annual report. This report or reports shall contain data results on effectiveness and efficiency for the previous year, and a plan for assessing these variables for the following year. Changes in procedures for data collection and analysis for the previous year, and changes in data system principles shall also be reported to the Board.

R523-1-10. Allocation of Utah State Hospital Bed Days to Local Mental Health Authorities.

All adult general psychiatric beds at the Utah State Hospital for individuals who meet the requirements of 62A-12-209(2)(a); shall be provided to mental health catchment areas governed by a local mental health authority or association of local mental authorities; and shall provide for allocation of these beds based on:

A. the percentage of the state's population that is located within a mental health catchment area.

B. a differential to compensate for additional demand of state hospital beds in the urban areas of the state.

R523-1-11. Policies and Procedures Relating to Referrals, Admissions, and Transfers of Mental Health Consumers to the Utah State Hospital and Between Mental Health Center Catchment Areas.

A. All consumers shall be referred into the public mental health system through admission to the local comprehensive community mental health center. For purposes of this document, whenever center is used, it means a local comprehensive community mental health center or agency that provides treatment and services to residents of a designated geographic area, operated by or under contract with a local mental health authority, in compliance with state standards for local comprehensive community mental health centers.

B. In providing services to consumers from other catchment areas, including interstate transient consumers, the Center staff shall have the responsibility to assess the consumer's needs and to provide necessary emergency services consistent with the Center's current emergency procedures. Following such interventions, the Center staff shall assist the consumer in arranging for services from resources near the individual's place of residence.

C. A Center shall utilize the services of the Utah State Hospital (hereinafter referred to as Hospital) when evaluation by the Center staff and the Hospital staff determine such services to be the treatment of choice. In every instance, continuity of consumer care will be a joint responsibility between the Center staff and the Hospital. The Center shall (1) provide information upon transfer to the Hospital; (2) participate in planning for transfer out of the Hospital; and (3) provide appropriate supportive services to the consumer upon their return to the community.

D. The Hospital and the Centers are expected to provide services only within the state mental health systems' limited fiscal capacity.

E. All consumers referred to the Utah State Hospital will have been seen, evaluated, and admitted to the local public mental health center. Prior to the consumer admission to the hospital, the center must follow the procedures specified via the Bed Allocation Policy. If the Hospital has reached maximum bed capacity, referred consumer's shall be placed on the Hospital waiting list.

F. The Hospital, in consultation with the Centers, has the responsibility of prioritizing consumers ready for discharge. In the event of a consumer who is ready for discharge from the Hospital, but is from a different catchment area other than the referring center, the two centers will negotiate and coordinate services. Nevertheless, final discharge coordination remains the responsibility of the referring center. If a suitable placement cannot be achieved, the referring Center may appeal to the Chair of the Continuity of Care Committee for arbitration and resolution.

G. If a consumer arrives at the Hospital without having been referred by a Center, the Hospital shall contact the appropriate Center to insure appropriate disposition. Should an emergency admission occur to the Hospital, the Center shall visit the consumer within three working days to coordinate services.

H. Appropriate information pertaining to the consumer's evaluation, care, and treatment will follow the consumer to and from the Hospital.

I. Each Center will designate a Hospital liaison(s). The Hospital will designate a Center liaison(s) for each of its programs. All consumer transfers between a Center and the Hospital will be managed through the identified Center liaisons.

J. The emergency needs of transient consumers will be met by the Centers and will be consistent with the Centers' current emergency procedures. The Center providing emergency services will follow the appropriate procedures in coordinating the transfer of the consumer to his place of residence. Centers transferring transient consumers to the Hospital will comply with the consumer Continuity of Care procedures defined in this Policy.

K. The Center liaison shall meet at least monthly with Hospital staff to discuss the treatment progress of the consumer and jointly plan with Hospital staff around discharge procedures.

L. When it is agreed by the Hospital and the Center liaison that a consumer has received maximum hospital benefit, it will be the responsibility of the Center to find a satisfactory placement for the consumer within a 15-day period. Written documentation must be submitted to the Hospital when a satisfactory placement cannot be accomplished within 15 days.

M. When resources are available only outside the consumer's catchment area, it will be the responsibility of the original referring Center to negotiate arrangements for an appropriate placement. Within seven days, the receiving center will provide verbal or written acceptance or denial of the consumer transfer. The receiving Center shall accept the consumer on a 30-day trial basis. If during the 30-day trial period, the placement is determined unsuccessful, the initiating Center will assume responsibility for the consumer's care. However, after 30 days, if the consumer's placement is successful, the receiving Center will assume responsibility for the consumer's care; and the consumer becomes a resident of that Center.

N. When referrals involve the placement of consumers outside of a comprehensive community mental health center for time-limited treatment, the Center of origin remains responsible for the consumer's ongoing continuity of care. However, if the consumer wishes to reside in a new catchment area, the receiving center assumes responsibility for the consumer's ongoing continuity of care needs.

O. In the event that either the referring or receiving Center perceive that procedures have not been adhered to, the Center liaisons from the two catchment areas will discuss the continuity of care concerns in an effort to bring about an acceptable resolution to both parties. If the liaisons cannot resolve their concerns, a written compliant may be submitted to the Chair of the Continuity of Care Committee for final arbitration.

P. For the purposes of admitting and discharging children and youth to and from the State Hospital, all continuity of care procedures defined in this Rule will be adhered to.

Q. In addition, the following procedures shall apply for children and youth:

1. The Center will document that less restrictive placement alternatives have been considered and are inadequate to meet the consumer's treatment needs.

2. The Center and the Hospital both agree that restrictive

intermediate care at the Hospital is in the best interest in meeting the treatment needs of the consumer.

3. If an agency other than a local comprehensive community mental health center is seeking to admit a consumer to the hospital, both the referring agency and Center must agree at the time of referral to participate in the child's service plan. Within seven working days, the Center will notify the referring agency regard the status of the referral.

4. If there is a custodial agency other than the Division of Mental Health, the agency agrees at admission to the hospital to retain custody of the consumer.

R523-1-12. Program Standards.

Legal Authority.

The State Board of Mental Health has the power and the duty to establish by rule, minimum standards for community mental health programs (Section 62A-12-104).

A. Each Community Mental Health Center shall have a current license issued by the Office of Licensing, Department of Human Services.

B. Each Center shall have a comprehensive plan of service which shall be reviewed and updated at least annually to reflect changing needs. The plan shall:

1. Be consistent with the "Comprehensive Mental Health Plan For Services To The Seriously Mentally Ill",

2. Designate the projected use of state and federal contracted dollars,

3. Define the Center's priorities for service and the population to be served.

C. Each Center shall provide or arrange for the provision of services within the following continuum of care.

1. Inpatient care and services (hospitalization),
2. Residential care and services,
3. Day treatment and Psycho-social rehabilitation,
4. Outpatient care and services,
5. Twenty-four hour crisis care and services,
6. Outreach care and services,
7. Follow-up care and services,
8. Screening for referral services,
9. Consultation, education and preventive services,
10. Case management.

D. Each Center shall participate in a yearly on-site evaluation conducted by the Division.

E. The local mental health authority shall be responsible for monitoring and evaluating all subcontracts to ensure:

1. Services delivered to consumers commensurate with funds provided,

2. Progress is made toward accomplishing contract goals and objectives.

F. The local mental health authority shall conduct a minimum of one site visit per year with each subcontractor. There shall be a written report to document the review activities and findings, a copy of which will be made available to the Division.

R523-1-13. Mental Health Officer Certification.

Legal Authority.

A "Mental Health Officer" as an individual designated by the Division to interact with and transport persons to any mental health facility (62A-12-202(7)).

A. The Division shall certify that a mental health officer is qualified by training and experience in the recognition and identification of mental illness and in the safe, adequate transportation of the mentally ill to designated mental health facilities with the appropriate assistance of a peace officer. Certification will require at least two years of experience in a mental health related field in addition to successful completion of training provided by the Division.

B. Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application the Director will cause to occur a review and examination of the applicant's qualifications.

C. The applicant must meet the following minimum standards in order to be certified.

1. The applicant must be at least 21 years of age.

2. The applicant must be at least a high school graduate or have passed equivalent examination.

3. The applicant must be a resident of the State of Utah.

4. The applicant must be employed by a public mental health agency that routinely acts as an agent for the Division.

5. The applicant must possess a basic working knowledge of the most current Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, to be determined by training, experience, and written examination.

6. The applicant must demonstrate a basic understanding of abnormal psychology and abnormal behavior, to be determined by training, experience, and written examination.

7. The applicant must demonstrate a fundamental understanding of the mental health law, to be determined by examination.

8. The applicant must demonstrate a working knowledge of safe and acceptable methods and techniques in transporting the mentally ill, to be determined by training, experience and written examination.

D. The Division Director will determine if experience and qualifications are satisfactory to meet the required standards. The Director will also determine if there are any training requirements that may be waived due to prior experience and training.

E. Upon satisfactory completion of the required experience and training the Director will certify the qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a mental health officer and authorize the use of privileges and responsibilities as prescribed by law.

R523-1-14. Designated Examiners Certification.

Legal Authority.

A "Designated Examiner" is a licensed physician or other licensed mental health professional designated by the Division as specially qualified by training or experience in the diagnosis of mental or related illness (62A-12-202(2)).

A. The Division shall certify that a designated examiner is qualified by training and experience in the diagnosis of mental or related illness. Certification will require at least five years continual experience in the treatment of mental or related illness

in addition to successful completion of training provided by the Division.

B. Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application the Director will cause to occur a review and examination of the applicants qualifications.

C. The applicant must meet the following minimum standards in order to be certified.

1. The applicant must be a licensed mental health professional.

2. The applicant must be a resident of the State of Utah.

3. The applicant must demonstrate a complete and thorough understanding of abnormal psychology and abnormal behavior, to be determined by training, experience and written examination.

4. The applicant must demonstrate a fundamental and working knowledge of the mental health law. In particular, the applicant must demonstrate a thorough understanding of the conditions which must be met to warrant involuntary commitment, to be determined by training, experience and written examination.

5. The applicant must be able to discriminate between abnormal behavior due to mental illness which poses a substantial likelihood of serious harm to self or others from those forms of abnormal behavior which do not represent such a threat. Such knowledge will be determined by experience, training and written examination.

6. The applicant must be able to demonstrate a general knowledge of the court process and the conduct of commitment hearings. The applicant must demonstrate an ability to provide the court with a thorough and complete oral and written evaluation that addresses the standards and questions set forth in the law, to be determined by experience, training and written and oral examination.

D. The Division Director will determine if experience and qualifications are satisfactory to meet the required standards. The Director will also determine if there are any training requirements that may be waived due to prior experience and training.

E. Upon satisfactory completion of the required experience and training, the Director will certify the qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a designated examiner and authorize the use of privileges and responsibilities as prescribed by law.

R523-1-15. Funding Formula.

A. The Board shall establish by rule a formula for the annual allocation of funds to local mental health authorities through contracts (Section 62A-12-105).

B. The funding formula shall be applied annually to state and federal funds appropriated by the legislature to the Division and is intended for the annual equitable distribution of these funds to the state's local mental health authorities.

1. Appropriated funds will be distributed annually on a per capita basis, according to the most current population data available from the Office of Planning and Budget. New funding and/or decreases in funding shall be processed and distributed through the funding formula.

2. The funding formula shall utilize a rural differential to compensate for additional costs of providing services in a rural area which may consider: the total population of each county, the total population base served by the local mental health center and/or population density.

3. In accordance with UCA Section 62A-12-105 the funding formula may utilize a determination of need other than population if the board establishes by valid and acceptable data, that other defined factors are relevant and reliable indicators of need.

4. Each Local Mental Health Authorities shall provide funding equal to at least 20% of the state funds that it receives to fund services described in that local mental health authority's annual plan in accordance with, UCA Section 17A-3-602.

5. Application of the formula for allocation of state and federal funds may be subject to a phase-in plan for FY 03 through FY 06. At the latest, appropriations for FY 06 shall be allocated in accordance with the funding formula without any phase-in provisions.

6. The formula does not apply to:

a. Funds that local mental health authorities receive from sources other than the Division.

b. Funds that local mental health authorities receive from the Division to operate a specific program within its jurisdiction that is available to all residents of the state.

c. Funds that local mental health authorities receive from the Division to meet a need that exists only within the jurisdiction of that local mental health authority.

d. Funds that local mental health authorities receive from the Division for research projects.

R523-1-16. Pediatric Bed Allocation at the Utah State Hospital.

Legal Authority.

This rule establishes the following formula to separately allocate to local mental health authorities, such pediatric beds as have been allocated for persons who meet the requirements of subsection 62A-12-209(2)(b), and pursuant to Section 62A-12-209.6. In addition to terms defined in this rule, other terms used herein are as defined in Section 62A-12-209-101, and Section 62A-12-202.

A. Pediatric beds at the Utah State Hospital are allocated to local mental health authorities based on the 0-18 age population of the state. The allocation shall be reviewed and adjusted as necessary every three years according to the population of persons under 18 years of age, using the most recent population estimates from the Governor's Office of Planning and Budget. Each local mental health authority shall receive not less than one bed under this formula.

B. As of July 1, 1996 beds are allocated according to the formula in the following table:

TABLE

Bear River Mental Health	5
Weber Mental Health	6
Davis Mental Health	8
Wasatch Mental Health	12
Valley Mental Health	31

Central Utah Mental Health	2
Four Corners Mental Health	1
Southwest Center	4
Uintah Basin Counseling	1
San Juan Mental Health	1
Statewide Emergency Bed	1

C. Monthly, a written report shall be issued by the Division through its Continuity of Care Committee as established to operationalize R523-1-11. This report shall detail allocation and utilization by child, adolescent male and adolescent female under each local mental health authority catchment area and will be disseminated to each local mental health center liaison. Review of the report shall be an agenda item at each of the Division's Pediatric Continuity of Care Meetings.

D. The pediatric bed allocation formula and process shall be reviewed at least annually and a written report submitted to the State Board of Mental Health by the Division. Changes or realignments shall be considered at that time.

E. All local mental health authority programs shall follow State Board of Mental Health Policy (Rule R523-1-11) relating to referrals, admissions, and transfers by mental health centers to the Utah State Hospital and between mental health center catchment areas.

F. In the event a local mental health authority requires a bed for a child or adolescent beyond the number allocated, a designated representative from that center may contact another local mental health center to negotiate utilization of one of that center's allocated beds. These negotiations shall be conducted by the two centers. A report of the final agreement for bed exchange shall be made as part of the agenda at the Division's next Pediatric Continuity of Care meeting.

G. In making decisions about the placement of child or youth, centers shall give first priority to the best interests of the child/youth. Allocation and use of the beds shall be monitored monthly by the division's Pediatric Continuity of Care Committee and reported to the board upon request.

R523-1-17. Medication Procedures for Children, Legal Authority.

The Division of Mental Health hereby establishes due process procedures for children prior to the administration of antipsychotic medication, pursuant to Section 62A-12-283.1(3)(a)(i).

A. This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Mental Health.

B. Antipsychotic medication means any antipsychotic agent usually and customarily prescribed and administered in the chemical treatment of psychosis.

C. A legal custodian is one who has been appointed by the Juvenile Court and may include the Division of Child and Family Services, the Division of Youth Corrections, and the Division of Mental Health.

D. A legal guardian is one who is appointed by a testamentary appointment or by a court of law.

E. A person under the age of 18 may be treated with antipsychotic medication when, as provided in this section, any one or more of the following exist:

1. The child and parent/legal guardian/legal custodian give consent.

2. The child or the parent/legal guardian/legal custodian does not give consent, but a Neutral and Detached Fact Finder determines that antipsychotic medication is an appropriate treatment.

3. The medication is necessary in order to control the child's dangerous behavior and it is administered for an exigent circumstance according to this rule.

F. A local mental health authority has the obligation to provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with antipsychotic medications:

1. The nature of the child's mental illness.

2. The recommended medication treatment, its purpose, the method of administration, and dosage recommendations.

3. The desired beneficial effects on the child's mental illness as a result of the recommended treatment.

4. The possible or probable mental health consequences to the child if recommended treatment is not administered.

5. The possible side effects, if any of the recommended treatment.

6. The ability of the staff to recognize any side effects which may actually occur and the possibility of ameliorating or abating those side effects.

7. The possible, if any, alternative treatments available and whether those treatments are advisable.

8. The right to give or withhold consent for the proposed medication treatment.

9. When informing a child and his/her parent/legal guardian/legal custodian that they have the right to withhold consent the staff must inform them that the mental health authority has the right to initiate a medication hearing and have a designated examiner determine whether the proposed treatment is necessary.

G. The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information under subsection F of this section, and that they consent to the proposed medication treatment.

H. If either the child or parent/legal guardian/legal custodian refuses to give consent, the mental health authority may initiate a medication hearing in accordance with subsection J of this rule.

I. Antipsychotic medication may be administered under the following exigent circumstances:

1. A qualified physician has determined and certifies that he/she believes the child is likely to cause injury to him/herself or to others if not immediately treated. That certification shall be recorded in the Physician's Orders of the child's medical record and shall contain at least the following information:

a. A statement by the physician that he/she believes the child is likely to cause injury to himself/herself or others if not immediately restrained and provided medication treatment.

b. The basis for that belief (including a statement of the child's behaviors).

c. The medication administered.

d. The date and time the medication was begun.

J. Involuntary treatment in exigent circumstances may be continued for 48 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall not be involuntarily treated unless a Notice to Convene a Medication Hearing has been prepared and provided to the child pursuant to the provision of subsection K of this section.

K. If the child and/or parent/legal guardian/legal custodian refuse to give consent the treating staff may request a medication hearing be held to determine if medication treatment is appropriate.

1. The treating physician shall document in the child's medical record, the child's diagnosis, the recommended treatment, the possible side effects of such treatment, the desired benefit of such treatment, and the prognosis.

2. The treating staff shall complete a Request to Convene a Medication Hearing form and submit it to the Director/Designee of the local mental health authority who will contact a Neutral and Detached Fact Finder and set a date and time for the hearing. The child and parent/legal guardian/legal custodian shall be provided notice of the medication hearing and the hearing shall be set as soon as reasonably possible after a request has been made, but no sooner than 24 hours of notification being provided to the child and parent/legal guardian/legal custodian.

3. Prior to the hearing, the Neutral and Detached Fact Finder is provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information.

L. Medication hearings shall be conducted by a Neutral and Detached Fact Finder, shall be heard where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

1. The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions. Other persons may attend the hearing if appropriate.

2. The Neutral and Detached Fact Finder shall begin each medication hearing by explaining the purpose and procedure of the hearing to the child, parent/legal guardian/legal custodian, and any other persons present.

3. The Neutral and Detached Fact Finder will review the child's current condition and recommended course of treatment.

4. The child, parent/legal guardian/legal custodian, and others present shall then be afforded an opportunity to comment on the issue of medication treatment.

5. Following the review of the case and hearing of comments, the Neutral and Detached Fact Finder shall render a decision.

6. If needed the Neutral and Detached Fact Finder may ask everyone to leave the room to allow him/her time to deliberate.

M. The Neutral and Detached Fact Finder may order medication treatment of a child if, after consideration of the record and deliberation, the Neutral and Detached Fact Finder finds that the following conditions exist:

1. The child has a mental illness; and

2. The child is gravely disabled and in need of medication treatment for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or

3. Without medication treatment, the child poses a likelihood of serious harm to him/herself, others, or their property. Likelihood of serious harm means either (a) substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which placed another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

4. The proposed medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

5. The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

N. The basis for the decision is supported by adequate documentation. The Neutral and Detached Fact Finder shall complete and sign a Medication Hearing form at the end of the hearing. A copy shall be provided to the child and/or parent/legal guardian/legal custodian.

O. A child and/or parent/legal guardian/legal custodian may appeal the decision of a Neutral and Detached Fact Finder according to the following process, by submitting a written appeal to the Director/Designee of the Local Mental Health Authority providing treatment to the child, within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

1. Upon receipt of the appeal, a panel consisting of two physicians and a non-physician licensed professional (RN, LCSW, PhD, etc.) shall be assigned to hear the appeal.

2. The panel shall review the available documentation and make a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of the date of the appeal.

3. A written decision from the panel shall be provided to the child, the child's parent/legal guardian/legal custodian, the local mental health authority providing treatment to the child, and any other appropriate party.

P. In the event that a significant medication change is proposed, the child and/or parent/legal guardian/legal custodian shall be provided an opportunity to give consent in accordance to subsection F of this section. If the child and parent/legal guardian/legal custodian refuse to give consent, a medication hearing may be initiated in according with subsection K of this section.

Q. Medication treatment ordered pursuant to subsection P of this section may continue after the initial hearing according to the following process:

1. A Neutral and Detached Fact Finder shall review the

case within 180 days of the initial hearing.

2. The Neutral and Detached Fact Finder shall review the medical record before rendering a decision to continue medication treatment.

3. The Neutral and Detached Fact Finder may order continued medication treatment if he/she finds the following conditions are met:

a. The child is still mentally ill; and

b. Absent continued medication treatment, the child will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in his/her ability to function in the least restrictive environment, thereby making him/her a substantial danger to him/herself or others, and

c. The medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

d. The medication treatment is in accordance with prevailing standards of accepted medical practice.

4. If the neutral and Detached Fact Finder approves continued medication treatment, he/she shall complete a Review of Continued Medication form, which shall be placed in the child's medical record. A copy shall be provided to the child and/or parent/legal guardian/legal custodian.

5. At the end of 12 months, the case shall again be reviewed as outlined in this subsection (Q), and shall be reviewed every 6 months while the course of treatment is being administered.

R523-1-18. Psychosurgery and Electroshock Therapy Procedures for Children, Legal Authority.

By this rule, the Division of Mental Health establishes the following due process procedure for children prior to their being administered psychosurgery or electroshock therapy as provided by Section 62A-12-283.1(3)(a)(ii).

A. This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Mental Health. The following terms are herein defined:

B. ECT means electroconvulsive therapy.

C. A Legal Custodian means a person who is appointed by the juvenile court. Such a person may have been selected from the Division of Child and Family Services, the Division of Youth Corrections, or the Division of Mental Health.

D. A Legal Guardian means a person who holds a testamentary appointment or is appointed by a court of law.

E. Psychosurgery means a neurosurgical intervention to modify the brain to reduce the symptoms of a severely ill psychiatric patient.

F. A local mental health authority has the obligation to provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with ECT or Psychosurgery:

1. The nature of the child's mental illness;

2. The recommended ECT/Psychosurgery treatment, its purpose, the method of administration, and recommended length of time for treatment;

3. The desired beneficial effects on the child's mental illness as a result of the recommended treatment

4. The possible or probable mental health consequences to the child if recommended treatment is not administered

5. The possible side effects, if any, of the recommended treatment

6. The ability of the staff to recognize any side effects, should any actually occur, and the possibility of ameliorating or abating those side effects

7. The possible, if any, alternative treatments available and whether those treatments are advisable

8. The right to give or withhold consent for the proposed ECT/psychosurgery.

9. When informing a child and his/her parent/legal guardian/legal custodian they have the right to withhold consent, the local mental health authority must inform them that regardless of whether they give or withhold consent, a due process procedure will be conducted before two designated examiners to determine the appropriateness of such treatment.

G. The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information listed in subsection E of this section, and that they consent or do not consent to the proposed treatment.

H. If the parent/legal guardian/legal custodian refuses to consent to ECT/psychosurgery, the local mental health authority shall consider a treatment team dispositional review to determine whether the child is appropriate for treatment through their services.

I. Regardless of whether the child or parent/legal guardian/legal custodian agrees or disagrees with the proposed ECT/psychosurgery, a due process procedure shall be conducted before the treatment can be administered.

J. A physician shall request ECT or psychosurgery for a child by completing a Request to Treat With ECT or Psychosurgery form and submitting to the Director/Designee of the Local Mental Health Authority providing treatment.

K. Upon receipt of the request, the Director/Designee shall contact two Designated Examiners, one of which must be a physician, and set a date and time for an ECT/Psychosurgery Hearing.

L. The child and parent/legal guardian/legal custodian shall be provided notice of the hearing.

M. Prior to the hearing, the two designated examiners shall be provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information. The attending physician shall document his/her proposed course of treatment and reason(s) justifying the proposal in the medical record.

N. ECT/psychosurgery hearings shall be conducted by two Designated Examiners, one of whom is a physician, Hearings shall be held where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

1. The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions.

2. If the child or others become disruptive during the hearing, the Designated Examiners may request that those persons be removed. The hearing shall continue in that person's

absence.

3. The hearing shall begin with the child, parent/legal guardian/legal custodian, and any others being informed of the purpose and procedure of the hearing.

4. The record shall be reviewed by the Designated Examiners and the proposed treatment shall be discussed.

5. The child, parent/legal guardian/legal custodian, and others present shall be afforded an opportunity to comment on the issue of ECT or psychosurgery.

6. Following the review of the case and the hearing of comments, the Designated Examiners shall render a decision

7. If needed the Designated Examiners may ask everyone to leave the room to allow them time to deliberate.

O. The Designated Examiners may order ECT or psychosurgery if, after consideration of the record and deliberation, they both find that the following conditions exist:

1. The child has a mental illness as defined in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM); and

2. The child is gravely disabled and in need of ECT or Psychosurgery for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or

3. Without ECT or psychosurgery, the child poses a likelihood of serious harm to self, others, or property. Likelihood of serious harm means either (a) substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which has placed another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

4. The proposed treatment is an appropriate and accepted method of treatment for the patient's mental condition; and

5. The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

P. The basis for the decision shall be supported by adequate documentation. The Designated Examiners shall complete and sign an ECT or Psychosurgery form at the end of the hearing. A copy of the decision shall be provided to the child and/or parent/legal guardian/legal custodian.

Q. The child and/or parent/legal guardian/legal custodian may request a second opinion of a decision to treat with ECT or psychosurgery by filing a Request for a Second Opinion form with the Clinical Director/designee of the Division of Mental Health within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

R. ECT or psychosurgery may be commenced within 48 hours of the decision by the Designated Examiners, if no request for a second opinion is made. If a request is made, treatment may be commenced as soon as the Clinical Director/designee physician renders his/her decision if he/she agrees with the decision.

S. Upon receipt of a Request, the Clinical Director/designee will review the record, consult with whomever he/she believes is necessary, and render a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of receipt of the Request. The Clinical Director/designee shall sign a Second Opinion for Decision to Treat with ECT/Psychosurgery form which is placed in the child's record. A copy shall be provided to the child and the parent/legal guardian/legal custodian prior to the commencement of treatment.

T. If a child has been receiving ECT treatment and requires further treatment than that outlined in the original ECT plan, the procedures set forth in subsections F through S of this section shall be followed before initiating further treatment.

R523-1-19. Prohibited Items and Devices on the Grounds of Public Mental Health Facilities.

Pursuant to the requirements of Subsection 62A-12-202 (9), and Sections 76-10-523.5, 76-8-311.1, and 76-8-311.3, all facilities owned or operated by community mental health centers that have any contracts with local mental health authority and/or the Utah State Division of Mental Health are designated as secure areas. Accordingly all weapons, contraband, controlled substances, implements of escape, ammunition, explosives, spirituous or fermented liquors, firearms, or any other devices that are normally considered to be weapons are prohibited from entry into community mental health centers. There shall be a prominent visual notice of secure area designation. Law enforcement personnel are authorized to carry firearms while completing official duties on the grounds of those facilities.

KEY: bed allocations, due process, prohibited items and devices, fees

July 2, 2002 62A-12-102
Notice of Continuation December 17, 1997 62A-12-104
62A-12-209.6(2)
62A-12-283.1(3)(a)(i)
62A-12-283.1(3)(a)(ii)

R590. Insurance, Administration.
R590-122. Permissible Arbitration Provisions.
R590-122-1. Authority.

This rule is promulgated by the commissioner of Insurance under the general authority granted under Section 31A-2-201(3).

R590-122-2. Purpose and Scope.

This rule recognizes the emergence of arbitration as a speedy and inexpensive method of alternative dispute resolution. The rule is not intended to create procedural guidelines for the administration of arbitration proceedings once commenced. This rule is intended to:

1. define the term "permissible arbitration provision" as set forth in Sections 31A-21-313(3)(c) and 31A-21-314(2);

2. provide guidelines upon which disclosure of a contract arbitration provision is to be made. This rule is applicable to both individual and group contracts and to all classifications or lines of insurance.

R590-122-3. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and in addition the following:

1. Those certain definitions set forth in Section 78-31a-2 of the "Utah Arbitration Act."

2. "Compulsory non-binding arbitration" means a contract provision requiring an insured to exhaust a procedure of extra-judicial arbitration as a condition precedent to the pursuit of an otherwise available judicial remedy.

3. "Compulsory binding arbitration" means a contract provision requiring arbitration as an automatic and exclusive remedy for any dispute involving a contract of insurance to the exclusion of any otherwise available judicial remedy, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

4. "Optional binding arbitration" means a contract provision requiring any party to an insurance contract to submit to arbitration as set forth in such contract at the election of any contracting party, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

R590-122-4. Rule.

1. Compulsory non-binding arbitration is contrary to the public interest and is not a "permissible arbitration provision."

2. Optional binding arbitration at the exclusive election of an insured party is a "permissible arbitration provision," in which case the disclosure provisions in paragraph 5 below may not be applicable.

3. Both compulsory and optional binding arbitration at the election of either the insured or the insurer are "permissible arbitration provisions."

4. Policy forms containing optional binding arbitration provisions for the exclusive election of an insurer will be disapproved under Section 31A-21-201(3)(a)(iv). Such provisions in previously approved forms are declared not enforceable. They will be construed under Section 31A-21-107 and applied as if in compliance with the Insurance Code.

5. Except as excluded in paragraph 2 above, each application or binder pertaining to an insurance policy which contains a permissible arbitration provision must include or have attached a prominent statement substantially as follows:

ANY MATTER IN DISPUTE BETWEEN YOU AND THE COMPANY MAY BE SUBJECT TO ARBITRATION AS AN ALTERNATIVE TO COURT ACTION PURSUANT TO THE RULES OF (THE AMERICAN ARBITRATION ASSOCIATION OR OTHER RECOGNIZED ARBITRATOR), A COPY OF WHICH IS AVAILABLE ON REQUEST FROM THE COMPANY. ANY DECISION REACHED BY ARBITRATION SHALL BE BINDING UPON BOTH YOU AND THE COMPANY. THE ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES IF ALLOWED BY STATE LAW AND MAY BE ENTERED AS A JUDGEMENT IN ANY COURT OF PROPER JURISDICTION.

Such statement must be disclosed prior to the execution of the insurance contract between the insurer and the policy holder and, in the case of group insurance, shall be contained in the certificate of insurance or other disclosure of benefits.

6. Both compulsory binding arbitration provisions and optional binding arbitration provisions may not be construed to preclude any dispute resolution by any small claims court having jurisdiction.

7. All arbitration provisions contained in insurance policies shall be in compliance with the "Utah Arbitration Act" (Title 78, Chapter 31a).

8. Any such agreement for arbitration may not obligate any insured to pay more than 50% of the advance payments required to begin the arbitration process.

9. No arbitration provision may require that arbitration be held at a place further from the residence of the insured than the nearest location of a State Court of General Jurisdiction.

KEY: insurance law
October 8, 1997 31A-2-201
Notice of Continuation July 12, 2002

R590. Insurance, Administration.
R590-149. ADA Complaint Procedure Rule.
R590-149-1. Authority and Purpose.

A. This rule is promulgated pursuant to Section 63-46a-3(2) of the State Administrative Rulemaking Act. The Insurance Department, pursuant to 28 CFR 35.107, 1992 edition, 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.

B. The provisions of 28 CFR 35, 1992 edition, implements the provisions 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 the Insurance Department, or be subjected to discrimination by this or any such entity.

R590-149-2. Definitions.

A. "The ADA Coordinator" means the Insurance 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.

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 Resources 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 Insurance Department, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

R590-149-3. 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 Insurance Department's ADA Coordinator in writing or in another acceptable 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.

R590-149-4. 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 Insurance Department's legal, human resource and budget staffs 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 appropriate authority;
(2) facility modifications; or
(3) reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

R590-149-5. Issuance of Decision.

A. Within 15 working days after receiving the complaint, the ADA Coordinator shall issue a decision outlining in writing or in another 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.

R590-149-6. 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 Insurance 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, including 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 any decision that would involve:

(1) an expenditure of funds which is not absorbable and would require appropriation authority;

(2) facility modification or

(3) reclassification or reallocation in grade; the executive director or designee shall also consult with the State ADA Coordinating Committee.

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

G. If the 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.

R590-149-7. 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.

R590-149-8. 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, 1992 edition); or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: insurance
1992 63-46a-3(2)
Notice of Continuation July 12, 2002

R590. Insurance, Administration.
R590-173. Credit For Reinsurance.
R590-173-1. Authority.

This rule is promulgated pursuant to the authority granted by Section 31A-2-201 of the Insurance Code.

R590-173-2. Purpose.

The purpose of this rule is to set forth requirements the commissioner deems necessary to carry out the provisions of Section 31A-17-404. The actions and information required by this rule are necessary and appropriate to the public interest and for the protection of the ceding insurers in this state.

R590-173-3. Definitions.

A. "Accredited Reinsurer" means an insurer that has, by order of the commissioner, been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied in that it is an authorized insurer in at least one state as provided for in Subsection 31A-17-404(3)(e).

B. "Beneficiary" means the entity for whose benefit a trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, including conservator, rehabilitator or liquidator.

C. "Grantor" means the entity that has established a trust for the benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited, untrusteed assuming insurer.

D. "Liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers that are not otherwise secured by acceptable means and includes:

(1) For business ceded by domestic insurers authorized to write disability or property and casualty insurance:

(a) losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer:

(b) reserves for losses reported and outstanding;

(c) reserves for losses incurred but not reported;

(d) reserves for allocated loss expenses; and

(e) unearned premiums.

(2) For business ceded by domestic insurers authorized to write life, disability or annuity insurance:

(a) aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums:

(b) aggregate reserves for disability policies;

(c) deposit funds and other liabilities without life or disability contingencies; and

(d) liabilities for policy and contract claims.

E. "Mortgage-related security" means an obligation that is rated AA or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC) and that either:

(1) represents ownership of one or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation, that:

(a) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S. C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(b) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S. C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S. C.A. Section 1703; or

(2) is secured by one or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes, and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Items (1)(a) and (1)(b) of this subsection.

F. "Obligations," means:

(a) reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(b) reserves for reinsured losses reported and outstanding;

(c) reserves for reinsured losses incurred but not reported; and

(d) reserves for allocated reinsured loss expenses and unearned premiums.

G. "Promissory note," when used in connection with a manufactured home, includes a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

H.(1) "Qualified United States financial institution" for the purposes of Section R590-173-7 and Subsection R590-173-8.A.(3) means an institution that:

(a) is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(b) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(2) "Qualified United States financial institution," for general purposes of this rule, means an institution that is eligible to act as a fiduciary of a trust that:

(a) is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed,

under the laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers; and

(b) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

I. "Trusteed Reinsurer" means an alien insurer which by order of the commissioner has been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied through a trust fund provided for in Subsection 31A-17-404(3)(d).

R590-173-4. Credit for Reinsurance - Reinsurer Licensed in this State.

The commissioner shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers authorized to do business in this state as of the date of the ceding insurer's statutory financial statement.

R590-173-5. Credit for Reinsurance - Accredited and Trusteed Reinsurers.

The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been granted accredited or trusteed reinsurer status in this state as of the date of the ceding insurer's statutory financial statement.

R590-173-6. Credit for Reinsurance - Reinsurer Domiciled and Licensed in Another State.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:

(1) is domiciled and licensed in a state which employs standards regarding credit for reinsurance substantially similar to those applicable under Section 31A-17-404 and this rule;

(2) maintains total adjusted capital above the Company Action Level RBC; and

(3) files a properly executed Certificate of Assuming Insurer, Form AR-1, with the commissioner as evidence of its submission to this state's authority to examine its books and records.

B. The provisions of this section relating to surplus as regards policyholders will not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same insurance holding company system.

R590-173-7. Credit for Reinsurance - Reinsurers Maintaining Trust Funds.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement maintains a trust fund in an amount prescribed below in a qualified United States financial institution, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

(1) the trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and in addition, a trusteed surplus of not less than $20,000,000. For purposes of this section, liabilities attributable to business written in the United States means the liabilities attributable to reinsurance ceded by United States domiciled insurers.

(2)(a) The trust fund for a group of incorporated and individual unincorporated underwriters shall consist of:

(i) for reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, funds in trust in an amount not less than the group's aggregate liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(ii) for reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the group's aggregate insurance and reinsurance liabilities attributable to business written in the United States; and

(iii) in addition to these trusts, the group shall maintain a trusteed surplus of which $100,000,000 shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.

(b) The incorporated members of the group will not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(i) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(ii) if a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

(3)(a) The trust fund for a group of incorporated insurers under common administration shall:

(i) consist of funds in trust in an amount not less than the assuming insurers' aggregate liabilities attributable to business ceded by United States domiciled insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group and;

(ii) maintain a joint trusteed surplus of which $100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(iii) file a properly executed Certificate of Assuming Insurer, Form AR-1, as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined shall bear the expense of any such examination.

(b) Within 90 days after the statements are due to be filed

with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C.(1) Credit for reinsurance will not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

(a) contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

(b) legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest;

(c) the trust shall be subject to examination as determined by the commissioner;

(d) the trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

(e) no later than February 28 of each year the trustee of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(2)(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(b) The assets shall be distributed by and claims of United States trust beneficiaries shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part of the trust fund are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part of the assets, to the trustee for distribution in accordance with the trust agreement.

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

D. Assets deposited in the trust shall be valued according to their fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a qualified United States financial institution, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust will not exceed 5% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under Subsection R590-173-7.D.(1)(e), (3), (5)(b) or (6), and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. A depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust shall be invested only as follows:

(1) government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

(a) the United States or by any agency or instrumentality of the United States;

(b) a state of the United States;

(c) a territory, possession or other governmental unit of the United States;

(d) an agency or instrumentality of a governmental unit referred to in Subsections R590-173-7.D.(1)(b) and (c) if the obligations shall be by law payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but will not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or

(e) the government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(2) obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution, other than an insurance company, or that are assumed or guaranteed by a solvent United States institution, other than an insurance company, and that are not in default as to principal or interest if the obligations:

(a) are rated A or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

(b) are insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(c) have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(3) obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(4) an investment made pursuant to the provisions of Subsection R590-173-7.D. (1), (2) or (3) shall be subject to the following additional limitations:

(a) an investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities will not exceed 5% of the assets of the trust;

(b) an investment in any one mortgage-related security will not exceed 5% of the assets of the trust;

(c) the aggregate total investment in mortgage-related securities will not exceed 25% of the assets of the trust; and

(d) preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under Subsections R590-173-7.D.(2)(a) and (2)(c), but will not exceed 2% of the assets of the trust.

(5) Equity interests

(a) Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(i) its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(ii) the equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S. C. Sections 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc. A trust will not invest in equity interests under this subsection an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

(b) investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(i) all its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(ii) the equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

(c) an investment in or loan upon any one institution's outstanding equity interests will not exceed 1% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subsection, when added to the aggregate cost of other investments in equity interests then held pursuant to this subsection, will not exceed 10% of the assets in the trust;

(6) obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(7) Investment companies

(a) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S. C. Section 802, are permissible investments if the investment company:

(i) invests at least 90% of its assets in the types of securities that qualify as an investment under Subsection R590-173-7.D. (1), (2) or (3) or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in Subsection R590-173-7.D.(1), (2) or (3); or

(ii) invests at least 90% of its assets in the types of equity interests that qualify as an investment under Subsection R590-173-7.D.(5)(a);

(b) investments made by a trust in investment companies under this subsection will not exceed the following limitations:

(i) an investment in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(i) will not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies will not exceed 25% of the assets in the trust; and

(ii) investments in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(ii) will not exceed 5% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Subsection R590-173-7.D.(5)(a).

E. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 8 of this rule shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

R590-173-8. Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections 4 Through 7.

A. The commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of any of the following:

(1) cash;

(2) securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets;

(3) clean, irrevocable, unconditional and "evergreen" letters of credit that comply with Rule R590-114 issued or confirmed by a qualified United States financial institution; or

(4) any other form of security acceptable to the

commissioner.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of the applicable portions of Sections R590-173-9 and 10 of this rule have been satisfied.

R590-173-9. Trust Agreements Qualified under Section 8.

A. Required conditions

(1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States financial institution.

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(4) The trust agreement shall provide that:

(a) the beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(b) no other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(c) it is not subject to any conditions or qualifications outside of the trust agreement; and

(d) it will not contain references to any other agreements or documents except as provided for in Subsection R590-173-9.A.(11).

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(a) receive assets and hold all assets in a safe place;

(b) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary may, whenever necessary, negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(c) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(d) notify the grantor and the beneficiary within 10 days, of any deposits to or withdrawals from the trust account;

(e) upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(f) allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(7) The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(10) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith.

(11) Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and disability, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(b) to make payment to the assuming insurer any amounts held in the trust account that exceed 102 % of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(c) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in Subsections R590-173-9.A.(11)(a) and (b) as may remain executory after such withdrawal and for any period after the termination date.

(12) Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Section R590-173-8. in conjunction with a reinsurance agreement covering life, annuities or disability risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for:

(i) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(ii) the assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(b) to pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding

insurer; or

(c) where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in Subsections R590-173-9.A.(12)(a) and (b) as may remain executory after withdrawal and for any period after the termination date.

(13) The reinsurance agreement may, but need not, contain the provisions required in Subsection R590-173-9.C.(1)(b), so long as these required conditions are included in the trust agreement.

(14) Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that all or part of the trust assets are not necessary to satisfy claims of the United States beneficiaries of the trust, all, or any part of the assets shall be returned to the trustee for distribution in accordance with the trust agreement.

B. Permitted conditions.

(1) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(2) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in Subsection R590-173-9.C.(1)(b).

(4) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered to the grantor.

C. Additional conditions applicable to reinsurance agreements:

(1) A reinsurance agreement may contain provisions that:

(a) require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specify what the agreement is to cover;

(b) stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust will not exceed 5% of total investments. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and disability, then the trust agreement may contain the provisions required by this subsection in lieu of including such provisions in the reinsurance agreement;

(c) require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(d) require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(e) stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) to pay or reimburse the ceding insurer for:

(I) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies

reinsured under the reinsurance agreement because of cancellations of such policies;

(II) the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(III) any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(ii) to make payment to the assuming insurer, amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(2) The reinsurance agreement also may contain provisions that:

(a) give the assuming insurer the right to seek approval from the ceding insurer, which will not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(ii) after withdrawal and transfer, the market value of the trust account is no less than 102 % of the required amount;

(b) provide for the return of any amount withdrawn in excess of the actual amounts required for Subsection R590-173-9.C.(1)(e), and for interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to Subsection R590-173-9.C.(1)(e); and

(c) permit the award by any arbitration panel or court of competent jurisdiction of:

(i) interest at a rate different from that provided in Subsection R590-173-9.C.(2)(b);

(ii) court or arbitration costs;

(iii) attorney's fees; and

(iv) any other reasonable expenses.

(3) Financial reporting

A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction will be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(4) Existing agreements

Any trust agreement or underlying reinsurance agreement in existence prior to the effective date of this rule shall continue to be acceptable until January 1, 1999, at which time the agreements must fully comply with this rule for the trust agreement to be acceptable.

(5) The failure of any trust agreement to specifically identify the beneficiary will not be construed to affect any actions or rights that the commissioner may take or possess pursuant to the provisions of the laws of this state.

R590-173-10. Other Security.

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

R590-173-11. Contracts Affected.

All new and renewal reinsurance transactions entered into after the effective date of this rule shall conform to the requirements of this rule if credit is to be given to the ceding insurer for such reinsurance.

R590-173-12. Severability.

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons or circumstances are not affected.

KEY: insurance
July 16, 1997 **31A-2-201**
Notice of Continuation July 12, 2002

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.

(6) "Money market mutual fund" means a mutual fund that is registered and authorized under applicable federal and state securities laws to sell its shares to the public and managed to maintain a par value of $1 per share.

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:

(A) 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.

(B) shares in a money market mutual fund that only holds obligations of the U.S. Treasury or Agencies of the U.S. Government, 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) Authorization and Disclosure Obligation. Any depositor who uses an account described in Subsection R590-212-5.(4)(b) must:

(a) receive written authorization from those persons on whose behalf the funds are deposited state that the depositor may receive all earnings which may be realized from the trust fund deposit; and

(b) provide full written disclosure to all persons on whose behalf the funds are deposited, explaining the characteristics of a sweep account deposit as described in U.A.C. Rule R590-212-5(4)(b).

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
July 12, 2002 **31A-2-201**
31A-23-310

R612. Labor Commission, Industrial Accidents.
R612-2. Workers' Compensation Rules-Health Care Providers.
R612-2-1. Definitions.

A. All definitions in Rule R612-1 apply to this section.

B. "Medical Practitioner" - means any person trained in the healing arts and licensed by the State in which such person practices.

C. "Global Fee Cases" - are those flat fee cases where fees include pre-operative and follow-up or aftercare.

R612-2-2. Authority.

This rule is enacted under the authority of Section 34A-1-104.

R612-2-3. Filings.

A. Within one week following the initial examination of an industrial patient, physicians and chiropractors, shall file "Form 123 - Physicians' Initial Report" with the carrier/self-insured employer, employee, and the division. This form is to be completed in as much detail as feasible. Special care should be used to make sure that the employee's account of how the accident occurred is completely and accurately reported. All questions are to be answered or marked "N/A" if not applicable in each particular instance. All addresses must include city, state, and zip code. If modified employment in #29 is marked "yes," the remarks in #29 must reflect the particular restrictions or limitations that apply, whether as to activity or time per day or both. Estimated time loss must also be given in #29. If "Findings of Examination" (#17) do not correctly reflect the coding used in billing, a reduction of payment may be made to reflect the proper coding.

B. 1. Any medical provider billing under the restorative services section of the Labor Commission's adopted Resource-Based Relative Value Scale (RBRVS) or the Medical Fee Guidelines shall file the Restorative Services Authorization (RSA) form with the insurance carrier or self-insured employer (payor) and the division within ten days of the initial evaluation.

2. Upon receipt of the provider's RSA form, the payor has ten days to respond, either authorizing a specified number of visits or denying the request. No more than eight visits may be incurred during the authorization process.

3. After the initial RSA form is filed with the payor and the division, an updated RSA form must be filed for approval or denial at least every six visits until a fixed state of recovery has been achieved as evidenced by either subjective or objective findings. If the medical provider has filed the RSA form per this rule, the payor is responsible for payment, unless compensability is denied by the payor. In the event the payor denies the entire compensability of a claim, the payor shall so notify the claimant, provider, and the division, after which the provider may then bill the claimant.

4. Any denial of payment for treatment must be based on a written medical opinion or medical information. The denial notification shall include a copy of the written medical opinion or information from which the denial was based. The payor is not liable for payment of treatment after the provider, claimant, and division have been notified in writing of the denial for authorization to pay for treatment. The claimant may then become responsible for payment.

5. Any dispute regarding authorization or denial for treatment will be determined from the date the division received the RSA form or notification of denial for payment of treatment.

6. The claimant may request a hearing before the Division of Adjudication to resolve compensability or treatment issues.

7. Subjective objective assessment plan/procedure (SOAP notes) or progress notes are to be sent to the payor in addition to the RSA form.

8. Any medical provider billing under the Restorative Services Section of the RBRVS or the Commission's Medical Fee Guidelines who fails to submit the required RSA form shall be limited to payment of up to eight visits for a compensable claim. The medical provider may not bill the patient or employer for any remaining balances.

C. S.O.A.P. notes or progress reports of each visit are to be sent to the payor by all medical practitioners substantiating the care given, the need for further treatment, the date of the next treatment, the progress of the patient, and the expected return-to-work date. These reports must be sent with each bill for the examination and treatment given to receive payment. S.O.A.P. notes are not to be sent to the division unless specifically requested.

D. "Form 110 - Release to Return to Work" must be mailed by either the medical practitioner or carrier/employer to the employee and the division within five calendar days of release.

E. The carrier/employer may request medical reports in addition to regular progress reports. A charge may be made for such additional reports, which charge should accurately reflect the time and effort expended by the physician.

R612-2-4. Hospital or Surgery Pre-Authorization.

Any ambulatory surgery or impatient hospitalization other than a life or limb threatening admission, allegedly related to an industrial injury or occupational disease, shall require pre-authorization by the employer/insurance carrier. Within two working days of a telephone request for pre-authorization, the employer/carrier shall notify the physician and employee of approval or denial of the surgery or hospitalization, or that a medical examination or review is going to be obtained. The medical examination/review must be conducted without undue delay which in most circumstances would be considered less than thirty days. If the request for pre-authorization is made in writing, the employer/carrier shall have four days from receipt of the request to notify the physician and employee. If the employee chooses to be hospitalized and/or to have the surgery prior to such pre-authorization or medical examination/review, the employee may be personally responsible for the bills incurred and may not be reimbursed for the time lost unless a determination is made in his/her favor.

R612-2-5. Regulation of Medical Practitioner Fees.

Pursuant to Section 34A-2-407:

A. The Labor Commission of Utah:

1. Establishes and regulates fees and other charges for medical, surgical, nursing, physical and occupational therapy, mental health, chiropractic, naturopathic, and osteopathic services, or any other area of the healing arts as required for the

treatment of a work-related injury or illness.

2. Adopts and by this reference incorporates the National Health Care Financing Administration's (HCFA) "Resource-Based Relative Value Scale" (RBRVS), 2002 edition, as the method for calculating reimbursement and the American Medical Association's CPT-4, 2002 edition, coding guidelines. The non-facility total unit value will apply in calculating the reimbursement, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge. The CPT-4 coding guidelines are subject to the Utah Labor Commission's Medical Fee Guidelines and Codes and the following Labor Commission conversion factors for medical care rendered for a work-related injury or illness, effective June 1, 2002:

Anesthesiology $41.00 (1 unit per 15 minutes of anesthesia);

Medicine $40.00;

Pathology and Laboratory 150% of Utah's published Medicare carrier;

Radiology $53.00;

Restorative Medicine $40.00, with Utah code 97001 at a 0.8 relative value unit and Utah code 97002 at a 0.5 of relative value unit.

Surgery $37.00;

All 20000 codes, codes 49505 thru 49525 and all 60000 codes of the CPT-4 coding guidelines $58.00.

3. Adopts and incorporates by this reference the Utah Labor Commission's Medical Fee Guidelines and Codes, as of June 1, 2002. The Utah Medical Fee Guidelines and Codes can be obtained from the division for a fee sufficient to recover costs of development, printing, and mailing.

4. Decides appropriate billing procedure codes when disputes arise between the medical practitioner and the employer or its insurance carrier. In no instance will the medical practitioner bill both the employer and the insurance carrier.

B. Employees cannot be billed for treatment of their work-related injuries or illnesses.

C. Discounting from the fees established by the Labor Commission is allowed only through specific contracts between a medical provider and a payor for treatment of work-related injury or illness.

D. Restocking fee 15%. Rule R612-2-16 covers the restocking fee.

E. Dental fees are not published. Rule R612-2-18 covers dental injuries.

F. Ambulance fees are not published. Rule R612-2-19 covers ambulance charges.

R612-2-6. Fees in Cases Requiring Unusual Treatment.

The RBRVS scheduled fees are maximum fees except that fees higher than RBRVS scheduled may be authorized by the Commission when extraordinary difficulties encountered by the physician justify increased charges and are documented by written reports.

R612-2-7. Insurance Carrier's Privilege to Examine.

The employer or the employer's insurance carrier or a self-insured employer shall have the privilege of medical examination of an injured employee at any reasonable time. A copy of the medical examination report shall be made available to the Commission at any time upon request of the Commission.

R612-2-8. Who May Attend Industrial Patients.

A. The employer has first choice of physicians; but if the employer fails or refuses to provide medical attention, the employee has the choice of physicians.

B. An employee of an employer with an approved medical program may procure the services of any qualified practitioner for emergency treatment if a physician employed in the program is not available for any reason.

R612-2-9. Changes of Doctors and Hospitals.

A. It shall be the responsibility of the insurance carrier or self-insured employer to notify each claimant of the change of doctor rules. Those rules are as follows:

1. If a company doctor, designated facility or PPO is named, the employee must first treat with that designated provider. The insurance carrier or self-insured employer shall be responsible for payment for the initial visit, less any health insurance copays and subject to any health insurance reimbursement, if the employee was directed to and treated by the employer's or insurance carrier's designated provider, and liability for the claim is denied and if the treating physician provided treatment in good faith and provided the insurance carrier or self-insured employer a report necessary to make a determination of liability. Diagnostic studies beyond plain x-rays would need prior approval unless the claimed industrial injury or occupational illness required emergency diagnosis and treatment.

2. The employee may make one change of doctor without requesting the permission of the carrier, so long as the carrier is promptly notified of the change by the employee.

(a) Physician referrals for treatment or consultation shall not be considered a change of doctor.

(b) Changes from emergency room facilities to private physicians, unless the emergency room is named as the "company doctor", shall not be considered a change of doctor. However, once private physician care has begun, emergency room visits are prohibited except in cases of:

(i) Private physician referral, or

(ii) Threat to life.

3. Regardless of prior changes, a change of doctor shall be automatically approved if the treating physician fails or refuses to rate permanent partial impairment.

B. Any changes beyond those listed above made without the permission of the carrier/self-insurer may be at the employee's own expense if:

1. The employee has received notification of rules, or

2. A denial of request is made.

C. An injured employee who knowingly continues care after denial of liability by the carrier may be individually responsible for payment. It shall be the burden of the carrier to prove that the patient was aware of the denial.

D. It shall be the responsibility of the employee to make the proper filings with the division when changing locale and doctor. Those forms can be obtained from the division.

E. Except in special cases where simultaneous attendance by two or more medical care practitioners has been approved by

the carrier/employer or the division, or specialized services are being provided the employee by another physician under the supervision and/or by the direct referral of the treating physician, the injured employee may be attended by only one practitioner and fees will not be paid to two practitioners for similar care during the same period of time.

F. The Commission has jurisdiction to decide liability for medical care allegedly related to an industrial accident.

R612-2-10. One Fee Only to be Paid in Global Fee Cases.

In a global fee case which is transferred from one doctor to another doctor, one fee only will be paid, apportioned at the discretion of the Commission. Adequate remuneration shall also be paid to the medical practitioner who renders first aid treatment where the circumstances of the case require such treatment.

R612-2-11. Surgical Assistants' Fees.

Fees, in accordance with the Commission's adopted Resource-Based Relative Value Scale (RBRVS), in addition to the global fee for surgical services, will be paid surgical assistants only when specifically authorized by the employer or insurance carrier involved, or in hospitals where interns and residents are not available and the complexity of the surgery makes a surgical assistant necessary.

R612-2-12. Separate Bills.

Separate bills must be presented by each surgeon, assistant, anesthetist, consultant, hospital, special nurse, or other medical practitioner within 30 days of treatment on a HCFA 1500 billing form so that payment can be made to the medical practitioner who rendered the service. All bills must contain the federal ID number of the person submitting the bill.

R612-2-13. Interest for Medical Services.

A. All hospital and medical bills must be paid promptly on an accepted liability claim. All bills which have been submitted properly on an accepted liability claim are due and payable within 45 days of being billed unless the bill or a portion of the bill is in dispute. Any portion of the bill not in dispute is payable within 45 days of the billing.

B. Per Section 34A-2-420, any award for medical treatment made by the Commission shall include interest at 8% per annum from the date of billing for the medical service.

R612-2-14. Hospital Fees Separate.

Fees covering hospital care shall be separate from those for professional services and shall not extend beyond the actual necessary hospital care. When it becomes evident that the patient needs no further hospital treatment, he/she must be discharged. All billings must be submitted on a UB92 form and be properly itemized and coded and shall include all appropriate documentation to support the billing. There shall not be a separate fee charged for the necessary documentation in billing for payment of hospital services. The documentation of hospital services shall include at a minimum the discharge summary. The insurance carrier may request further documentation if needed in order to determine liability for the bill.

R612-2-15. Charges for Ordinary Supplies, Materials, or Drugs.

Fees covering ordinary dressing materials or drugs used in treatment shall not be charged separately but shall be included in the amount allowed for office dressings or treatment.

R612-2-16. Charges for Special or Unusual Supplies, Materials, or Drugs.

A. Charges for special or unusual supplies, materials, or drugs not included as a normal and usual part of the service or procedure shall, upon receipt of an itemized and coded billing, be paid at cost plus 15% restocking fees.

B. For purposes of part A above, the amount to be paid shall be calculated as follows:

1. Applicable shipping charges shall be added to the purchase price of the product;

2. The 15% restocking fee shall then be added to the amount determined in sub part 1;

3. The amount of taxes paid on the purchase of the supplies, materials, or drugs shall then be added to the amount determined in sub part 2, which sum shall constitute the total amount to be paid.

R612-2-17. Fees for Unscheduled Procedures.

Fees for medical or surgical procedures not appearing in the Commission's adopted RBRVS current fee schedule are subject to the Commission's approval and should be submitted to the Commission when the physician and employer or insurance carrier do not agree on the value of the service. Such fees shall be in proportion as nearly as practicable to fees for similar services appearing in the RBRVS.

R612-2-18. Dental Injuries.

Where a worker sustains an accident in the course of his employment resulting in the loss of or injury to teeth, making dental work necessary, the injured worker shall consult a dental surgeon and receive such first aid as may be necessary to preserve, if possible, the normal function of the injured teeth. The dental surgeon shall then file with the insurance carrier a report setting forth the nature of the injury together with an estimate of the cost of restoration. The dental surgeon shall not proceed with the restoration until authority has been granted by the insurance carrier, provided, however, that if an employer maintains a medical staff or designates a company doctor, the employee shall first report to that medical staff or medical officer and be guided by directions then given. If the carrier refuses payment at the level estimated by the dental surgeon, the employee may choose to pay the difference and seek adjudication by Application for Hearing. A dental surgeon may choose to settle for the payment allowed, or the carrier shall direct the employee to a dental surgeon who will provide his services at the payment level specified by the carrier.

R612-2-19. Ambulance Charges.

Ambulance charges must not exceed the rates adopted by the State Emergency Medical Service Commission for similar services.

R612-2-20. Travel Allowance and Per Diem.

A. An employee who, based upon his/her physician's advice, requires hospital, medical, surgical, or consultant services for injuries arising out of and in the course of employment and who is authorized by the self-insurer, the carrier, or the Commission to obtain such services from a physician and/or hospital shall be entitled to:

1. Subsistence expenses of $6 per day for breakfast, $9 per day for lunch, $15 per day for dinner, and actual lodging expenses as per the state of Utah's in-state travel policy provided:

(a) The employee travels to a community other than his/her own place of residence and the distance from said community and the employee's home prohibits return by 10:00 p.m., and

(b) The absence from home is necessary at the normal hour for the meal billed.

2. Reasonable travel expenses regardless of distance that are consistent with the state of Utah's travel reimbursement rates, or actual reasonable costs of practical transportation modes above the state's travel reimbursement rates as may be required due to the nature of the disability.

B. This rule applies to all travel to and from medical care with the following restrictions:

1. The carrier is not required to reimburse the injured employee more often than every three months, unless:

(a) More than $100 is involved, or

(b) The case is about to be closed.

2. All travel must be by the most direct route and to the nearest location where adequate treatment is reasonably available.

3. Travel may not be required between the hours of 10:00 p.m. and 6:00 a.m., unless approved by the Commission.

4. Requests for travel reimbursement must be submitted to the carrier for payment within one year of the authorized medical care.

5. Travel allowance shall not include picking up prescriptions unless documentation is provided substantiating a claim that prescriptions cannot be obtained locally within the injured worker's community.

6. The Commission has jurisdiction to resolve all disputes.

R612-2-21. Notice to Health Care Providers.

Any notice from a carrier denying further liability must be mailed to the Commission and the patient on the same day as it is mailed to the health care provider. Where it can be shown, in fact, that a medical care provider and the injured employee have received a denial of further care by the insurance carrier or self-insured employer, further treatment may be performed at the expense of the employee. Any future ratification of the denial by the Commission will not be considered a retroactive denial but will serve to uphold the force and effect of the previous denial notice.

R612-2-22. Medical Records.

A. When any medical practitioner provides copies of medical records to the parties of an industrial case, the following charges are presumed reasonable:

1. A search fee of $15 payable in advance of the search,

2. Copies at $0.50 per page including copies of microfilm payable after the records have been prepared, and

3. Actual costs of postage payable after the records have been prepared. Actual costs of postage are deemed to be the cost of regular mail unless the requesting party has requested the delivery of the records by special mail or method.

B. Those persons or entities who are entitled to copies of medical records involving an industrial case are:

1. The injured employee or his/her dependents,

2. The employer of the injured worker,

3. The employer's workers' compensation insurance carrier,

4. The Uninsured Employers' Fund,

5. The Employers' Reinsurance Fund,

6. The Commission, and

7. Any attorney representing any of the above in an industrial injury or occupational disease claim.

C. No other person or entity is entitled to medical records unless ordered by a Court or provided with a notarized release executed by the injured worker.

D. The Commission will operate in the release of its records to the parties/entities as specified above unless the information is classified as confidential under the Government Records Access and Management Act (GRAMA).

E. No fee shall be charged when the RBRVS requires specific documentation for a procedure or when physicians and surgeons are required to report by statute or rule.

F. An injured worker may obtain one of each of the following records related to the industrial injury or occupational disease, at no cost, when the injured worker or his/her dependents have a signed form by the division to substantiate his/her industrial injury/illness claim:

1. History and physical,

2. Operative reports of surgeries,

3. Discharge summary, and

4. Emergency room records,

5. Radiological reports,

6. Specialized testing results,

7. Physician SOAP notes, progress notes or specialized reports.

(a) Alternatively, a summary of the patient's record may be made available to the claimant at the discretion of the physician.

8. And such other records as may be requested by the Commission in order to make a determination of liability.

R612-2-23. Adjusting Resource-Based Relative Value Scale (RBRVS) Codes.

A. When adjusting any medical provider's bill who has billed per the Commission's adopted RBRVS the adjusting entity shall provide one or more of the following explanations as applies to the down coding when payment is made to the medical provider:

1. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of history for the code billed.

2. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of examination for the code billed.

3. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key

components lacking in the level of medical decision making for the code billed.

4. Code 99202, 99203, 99204, or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of history and exam for the code billed.

5. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two key components lacking in the level of history and exam that the code billed.

6. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two key components lacking in the level of history and medical decision making for the code billed.

7. Code 99213, 99214 or 99215 - the submitted documentation for the established patient did not meet the two key components lacking in the level of exam and medical decision making for the code billed.

B. The above explanations may be abbreviated, with a legend provided, to accommodate the space of computerized messages.

R612-2-24. Review of Medical Payments.

A. Health care providers and payors are primarily responsible to resolve disputes over fees for medical services between themselves. However, in some cases it is necessary to submit such disputes to the Division for resolution. The Commission therefore establishes the following procedure for submission and review of fees for medical services.

1. The provider shall submit a bill for services rendered, with supporting documentation, to the payor within one year of the date of service;

2. The payor shall evaluate the bill according to the guidelines contained in the Commission's Medical Fee Guidelines and RBRVS and shall pay the provider the appropriate fee within 45 days as required by Rule R612-2-13.

3. If the provider believes that the payor has improperly computed the fee under the RBRVS, the provider or designee shall request the payor to re-evaluate the fee. The provider's request for re-evaluation shall be in writing, shall describe the specific areas of disagreement and shall include all appropriate documentation. The provider shall submit all requests for re-evaluation to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the written request for re-evaluation, the payor shall either pay the additional fee due the provider or respond with a specific written explanation of the basis for its denial of additional fees. The payor shall maintain proof of transmittal of its response.

B. If the provider continues to disagree with the payor's determination o the appropriate fee, the provider shall submit the matter to the Division by filing with the Division a written explanation of the disagreement. The provider's explanation shall include copies of:

1. The provider's original bill and supporting documentation;

2. The payor's initial payment of that bill;

3. The provider's request for re-evaluation and supporting documentation; and

4. The payor's written explanation or its denial of additional fees.

C. The Division will evaluate the dispute according to the requirements of the Medical Fee Guidelines and RBRVS and, if necessary, by consulting with the provider, payor, or medical specialists. Within 45 days from the date the Division receives the provider's request, the Division will mail its determination to both parties.

D. Any party aggrieved by the Division's determination may file an application for hearing with the Division of Adjudication to obtain formal adjudication of the dispute.

E. A payor seeking reimbursement from a provider for overpayment of a bill shall submit a written request to the provider detailing the circumstances of the payment requested within one year of submission of the bill.

1. Providers should make appropriate reimbursements, or respond in writing detailing the reasons why repayment will not be made, within 90 days or receipt of a written request from a payor.

2. If a dispute as to reimbursement occurs, an aggrieved party may request resolution of the dispute by the Labor Commission.

R612-2-25. Injured Worker's Right to Privacy.

A. No agent of the employer or the employer's insurance carrier shall be present during an injured worker's visit with a medical provider, unless agreed upon by the claimant.

B. If an agent of the employer or the employer's insurance carrier is excluded from the medical visit, the medical provider and the injured worker shall meet with the agent at the conclusion of the visit so as to communicate regarding medical care and return to work issues.

R612-2-26. Utilization Review Standards.

A. As used in this subsection:

1. "Payor" means a workers' compensation insurance carrier, a self-insured employer, third-party administrator, uninsured employer or the Uninsured Employers' Fund, which is responsible for payment of the workers' compensation claim.

2. "Health Care Provider" means a provider of medical services, including an individual provider, a health-service plan, a health-care organization, or a preferred-provider organization.

3. "Request for Authorization" means any request by a physician for assurance that appropriate payment will be made for a course of proposed medical treatment, including surgery or hospitalization, or any diagnostic studies beyond plain X-rays.

4. "Utilization Review," as authorized in Section 34A-2-111, is a process used to manage medical costs, improve patient care, and enhance decision-making. Utilization review includes, but is not limited to, the review of requests for authorization to treat, and the review of bills, for the purpose of determining whether the medical services provided were or would be necessary, to treat the effects of the injury/illness. Utilization review does not include bill review for the purpose of determining whether the medical services rendered were accurately billed. Nor does it include any system, program, or activity in connection with making decisions concerning whether a person has sustained an injury or illness which is compensable under Section 34A-2 or 34A-3.

5. "Reasonable Attempt" is defined as at least two phone calls and a fax, or three phone calls, within five business days from date of the payor's receipt of the physician's request for review.

B. Any utilization review system shall establish an appeals process which utilizes a physician(s) for a final decision by the insurer, should an initial review decision be contested. The payor may establish levels of review that meet the following criteria:

1. Level I--Initial Request and Review. A payor may use medical or non-medical personnel to initially apply medically-based criteria to a request for authorization for payment of a specific treatment. The treating physician must send all the necessary documentation for the payor to make a decision regarding the treatment recommended. The payor must then notify the physician within five business days of the request for authorization of payment for the treatment, by a method which provides certification of transmission of the document, of either an acceptance or a denial of the request. A denial for authorization of payment for a recommended treatment utilizing the Commission's form, Form 223, must be sent to the provider with the criteria used in making the determination to deny payment for the treatment. A copy of the denial must also be mailed to the claimant. Level I--Request and Review does not include authorization requests for services billed from the Restorative section of the Resource-Based Relative Value Scale (RBRVS). Requests for authorization for restorative services are governed by rule R568-2-3(B).

2. Level II--Review. A physician, who has been denied authorization of payment for treatment, or has received no response within five business days from the request for authorization for payment at Level I review, may request a physician's review by sending the completed portion of the Commission form 223 to the payor. Such a request for review may be filed by any physician who has been denied authorization for payment for restorative services beyond the initial eight visits as authorized by Rule R568-2-3(B). The requesting physician must include the times and days that he/she is available to discuss the case with the reviewing physician, and must be reasonably available during normal business hours. The payor's physician representative must complete the review within five business days of the treating physician's request for review. Before the insurer's physician representative may issue a denial of an authorization for payment to treat, a reasonable effort must have made to contact the requesting treating physician to discuss the differing aspects of the case. Failure by the payor to respond within five business days, by a method which provides certification of transmission, to a denial for authorization for payment for treatment, shall constitute an authorization for payment of the treatment. The payor's denial to pay for the recommended treatment must be issued on Commission's form 223, and the denial must be accompanied by the criteria that was used in making the decision to deny authorization, along with the name and speciality of the reviewing physician. The denial to authorize payment for treatment must then be sent to the physician, the claimant, and the Commission. The payor shall notify the Commission if an additional five days is needed in order to contact the treating physician or to review the case. An additional extension of time may be requested from the Commission to accommodate highly unusual circumstances or particularly difficult cases.

C. Upon receipt of denial of authorization for payment for medical treatment at Level II, the Commission will facilitate, upon the request of the claimant, the final disposition of the case. If the parties agree, the medical dispute may be resolved by the Commission through binding mediation or medical review. If there is not agreement among the parties, the Commission will resolve the dispute through formal adjudication. The payor shall be responsible for sending the claimant the Commission appeals information when the denial for authorization for payment for medical treatment is sent to the claimant.

D. If the medical treatment requested is not an emergency, and treatment is rendered by the physician after, receiving notice of the utilization standards encompassed in this rule, the following shall apply:

1. The Commission shall, if the disputed medical treatment is ultimately determined to be compensable as an expense necessary to treat the industrial injury or occupational disease, order that the physician be reimbursed at only 75% of the of the amount otherwise payable had appropriate authorization been timely obtained. The injured worker shall not be liable for any additional payment to the physician above the 75%.

2. Neither the worker's employer or its workers' compensation insurer shall be liable for any portion of the cost of disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat an industrial injury or occupational disease.

3. A worker may become liable for the cost of the disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat the industrial injury or occupational disease.

4. Except for any co-pays or deductibles under the worker's health insurance plan, the penalty provision in D(1) and D(3) shall not apply if the physician performs the medical treatment in question, having been preauthorized in writing to do the same by a health insurer or other non-worker's compensation insurance payor.

5. The penalty provisions in D(1) shall not apply to medical treatment rendered in emergency situations, which are defined as a threat to life or limb.

6. The Commission shall notify a physician, in writing, of reported violations of this rule. Repeated violations of this rule by a physician may result in a report from the Commission to the Department of Commerce, Division of Occupational/Professional Licensing.

KEY: workers' compensation, fees, medical practitioner
August 1, 2002 34A-2-101 et seq.
Notice of Continuation June 15, 1998 34A-3-101 et seq.
34A-1-104

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. 2000 International Building Code.

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
August 1, 2002 34A-1-101 et seq.
Notice of Continuation January 10, 2002

R628. Money Management Council, Administration.
R628-2. Investment of Funds of Member Institutions of the State System of Higher Education and Public Education Foundations established under Section 53A-4-205.
R628-2-1. Authority.

This rule is issued pursuant to Sections 51-7-13(2) and 51-7-18(2)(b).

R628-2-2. Scope of Rule.

This rule relates to all funds of member institutions of the state system of higher education and all funds of public education foundations established under Section 53A-4-205 acquired by gift, devise, or bequest or by federal or private grant and the corpus of funds functioning as endowments. For purposes of this rule, funds functioning as endowments means funds whose corpus is intended to be held in perpetuity by formal institutional designation according to the institution's or public education foundation's policy for designating such funds.

R628-2-3. Investment Directions Contained in Gift or Grant.

If any gift, devise, bequest or grant, whether outright or in trust, is made by a written instrument which contains directions as to investment thereof, the funds embodied within the gift or grant shall be invested in accordance with those directions. Common stock received by donation which is lettered stock, or which is restricted from sale because it is not registered with the Securities and Exchange Commission, may be retained by a member institution and public education foundations and shall be considered to be invested according to the terms of the donation.

R628-2-4. Investment of Funds.

A. Funds within the scope of this rule, except funds described in Section R628-2-3, may be invested in any of the following:

1. in any deposit or investment authorized by Section 51-7-11;

2. in professionally managed pooled or commingled investment funds or mutual funds which:

a) have assets with a market value of at least $100 million; and

b) which conform with all investment limitations established by the Securities and Exchange Commission applicable to such funds; and

c) which assess no load factor or surrender charges for participation in the fund. Use of funds which assess a charge on the purchase or sale of shares is prohibited.

3. in equity securities, including common and convertible preferred stock and convertible bonds, issued by corporations listed on a major securities exchange or in the NASDAQ National Market System, in accordance with the following criteria applied at the time of investment:

a) no more than 20% of all funds invested under R628-2, determined on a cost basis, may be invested in securities listed in the NASDAQ National Market System;

b) no more than 5% of all funds invested under R628-2, determined on a cost basis, may be invested in the securities of any one issuer;

c) no more than 25% of all funds invested under R628-2, determined on a cost basis, may be invested in a particular industry;

d) no more than 5% of all funds invested under R628-2, determined on a cost basis, may be invested in securities of corporations that have been in continuous operation for less than three years;

e) no more than 5% of the outstanding voting securities of any one corporation may be held; and

f) at least 50% of the corporations in which equity investments are made under R628-2-4.(A)(3) must appear on the Standard and Poor's 500 Composite Stock Price Index or the Dow Jones Industrial Average Index;

4. in fixed-income securities, including bonds, notes, mortgage securities and zero coupon securities, issued by corporations rated A or higher by Moody's Investors Service, Inc. or by Standard and Poor's Corporation in accordance with the following criteria applied at the time of investment:

a) no more than 5% of all funds invested under R628-2, determined on a cost basis, may be invested in the securities of any one issuer;

b) no more than 25% of all funds invested under R628-2, determined on a cost basis, may be invested in a particular industry;

c) the dollar-weighted average maturity, determined on a cost basis, of fixed-income securities acquired under R628-2-4.(A)(4) may not exceed ten years; and

5. in fixed-income securities issued by agencies of the United States and United States government-sponsored organizations, including mortgage-backed pass-through certificates, mortgage-backed bonds and collateralized mortgage obligations (CMO's).

B. Investments made under this rule shall observe the following investment percentages for specified subsections;

1. no more than 75% of all funds invested under R628-2, determined on a cost basis, may be invested in equity securities (Subsection R628-2-4(A)(3) investments) at any one time.

2. no more than 5% of all funds invested under R628-2, determined on a cost basis, may be invested in collateralized mortgage obligations (CMO's) (Subsection R628-2-4(A)(5) investments) at any one time.

C. The selection criteria established in Section 51-7-14 shall apply to investments permitted by this rule.

D. Professional asset managers may be employed to assist in the investment of funds under this rule. Compensation to asset managers may be provided from earnings generated by the funds' investments.

R628-2-5. Disposition of Nonqualifying Investments.

A. If at any time securities do not qualify for investment in accordance with this rule, investments shall be disposed of within a reasonable time. In determining what constitutes reasonable time for the disposition of assets, the following factors, among others, shall be given consideration:

1. the legality of sale under the rules and regulations of the Securities and Exchange Commission and the Utah State Securities Commission;

2. the size of the investment held in relation to the normal trading volume therein, and the effect upon the market price of the sale of the investment; and

3. the wishes of the donor respecting the sale of the investment.

B. If, in the opinion of the custodian or investment manager of the funds, an orderly liquidation of a nonqualifying investment cannot be accomplished within a period of two years, a request may be made to the Council for approval of a specific plan of disposition of nonqualifying investments. Nothing contained in this paragraph shall make an investment nonqualifying, if the retention of the investment is specifically authorized or directed under terms of the gift, devise, bequest or grant, or if the security is restricted from sale as provided in this rule.

R628-2-6. Nonqualifying Investments Held on Effective Date.

Any nonqualifying investments held on July 3, 1995 shall be treated as having been received on the effective date and shall be disposed of as provided in Subsection R628-2-5.

R628-2-7. Multiple Funds.

If an institution or a public education foundation has more than one fund or investment pool in which funds covered by this rule are managed, the following rules apply in determining investment percentages:

A. If the investment of any funds is covered by a direction in the instrument creating a gift, devise, bequest or grant, or if the donation consists of securities restricted from sale, the funds shall be excluded from any computation of permitted investments.

B. All other funds within the scope of this rule shall be consolidated for determining the propriety of investments. Any restrictions as to investment percentages shall be determined as provided for in Subsection R628-2-4(B).

R628-2-8. Reporting by Institutions and Public Education Foundations.

Each member institution of the state system of higher education and each public education foundation, having funds acquired by gift, devise, bequest or grant and funds functioning as endowments shall file a written report with the Council on or before September 30 and March 31 of each year containing the following information for investments held on June 30 and December 31 respectively:

A. total amount of funds held under gifts, devise, bequest or grant and funds functioning as endowments;

B. amount invested under this rule;

C. amounts invested under this rule indicating the carrying value and market value of each category of investment; and

D. a list of all nonqualifying assets held under this rule containing the date acquired, the carrying value and market value of each asset.

KEY: public investments, higher education, public education

June 1, 1999	**51-7-11(4)**
Notice of Continuation July 10, 2002	**51-7-13**
	51-7-18(2)

R651. Natural Resources, Parks and Recreation.
R651-611. Fee Schedule.
R651-611-1. Use Fees.

All fees required under this fee schedule are to be paid in advance of occupancy or use of facilities.

A. Fees for services covering one or more months, for docks and dry storage, must be paid in advance for the season as determined by the Division.

B. Fee permits and passes are not refundable or transferable. Duplicate annual permits and special fun tags will be issued only upon completion of an affidavit and payment of the required fee. Inappropriate use of fee permits and passes may result in confiscation by park authorities.

C. Fees shall not be waived, reduced or refunded unless authorized by Division guideline; however, park or unit managers may determine and impose equitable fees for unique events or situations not covered in the current fee schedule. The director has the prerogative to waive or reduce fees.

D. The Multiple Park Permit, Special Fun Tag, Heritage Park Pass, Five Day Pass, Camping Permit and Daily Private Vehicle Permit are good for one (1) private vehicle with up to eight (8) occupants, with the exception of any special charges. Multiple Park Permits, Heritage Park Passes, Special Fun Tags, and Five Day Passes are not honored at This Is The Place State Park or the OHV center at Jordan River State Park.

E. No charge for persons five years old and younger.

F. With the exception of the Multiple Park Permit, Heritage Park Pass, Special Fun Tag, and Five Day Pass, fees are applicable only to the specific park or facility where paid and will not be honored at other parks or facilities.

G. The contract operator, with the approval of the Division director, will set fees for This Is The Place State Park.

R651-611-2. Day Use Entrance Fees.

Permits the use of all day activity areas in a state park. These fees do not include overnight camping facilities or special use fees.

A. Annual Permits

1. $70.00 Multiple Park Permit (good for all parks)

2. Snow Canyon Specialty Permits

a. $15.00 Family Pedestrian Permit

b. $5.00 Commuter Permit

3. Duplicate Annual Permits may be purchased if originals are lost, destroyed, or stolen, upon payment of a $10.00 fee and the submittal of a signed affidavit to the Division office. Only one duplicate is allowed.

B. Special Fun Tag - Available free to Utah residents, 62 years and older or disabled, as defined by Special Fun Tag permit affidavit.

C. Daily Permit - Allows access to a specific state park on the date of purchase.

1. $7.00 per private motor vehicle or $4.00 per person for pedestrians or bicycles for the following parks:

TABLE 1

Dead Horse Point	Deer Creek
Jordanelle	Utah Lake
Willard Bay	

2.$6.00 per private motor vehicle or $3.00 per person for pedestrians or bicycles for the following parks:

TABLE 2

Bear Lake	Quail Creek
Scofield	Yuba

3. $5.00 per private motor vehicle or $3.00 per person for pedestrians or bicycles for the following parks:

TABLE 3

Antelope Island	Coral Pink
East Canyon	Escalante
Goblin Valley	Green River
Gunlock	Huntington
Hyrum	Kodachrome
Lost Creek	Millsite
Minersville	Otter Creek
Palisade	Pineview
Piute	Rockport
Snow Canyon	Starvation
Steinaker	Wasatch Mountain

4. $1.00 per person or $5.00 per family (up to eight (8) individuals. For the following parks:

TABLE 4

Anasazi	Camp Floyd
Edge of the Cedars	Fort Buenaventura
Fremont	Iron Mission
Territorial	Utah Field House

5. $2.00 per person for commercial groups or vehicles with nine (9) or more occupants.

D. Five Day Pass - $15.00 permits day use entrance to all state parks for five (5) consecutive days.

E. Group Site Day Use Fee - Advance reservation only. $2.00 per person, age six (6) and over, for sites with basic facilities. Minimum $50.00 fee established for each facility.

F. Educational Groups - No charge for group visits by Utah public or parochial schools with advance notice to park. When special arrangements or interpretive talks are provided, a fee of $.50 per person may be charged at the park manager's discretion.

G. Heritage Park Pass: $20.00 permits up to five (5) visits to any Heritage Park during the calendar year of issue for up to eight (8) people per private motor vehicle.

H. Antelope Island Wildlife Management Program: A $1.00 fee will be added to the entrance fee at Antelope Island. This additional fee will be used by the Division to fund the Wildlife Management Program on the Island.

R651-611-3. Camping Fees.

Permits overnight camping and day use for the day of arrival until 2:00 p.m. of the following day or each successive day. Camp sites must be vacated by 12:00 noon following the last camping night at Dead Horse Point. Camping is limited to 14 consecutive days at all campgrounds with the exception of Snow Canyon State Park, with a five (5) consecutive day limit.

A. Individual Sites -- One (1) vehicle with up to eight (8) occupants and any attached recreational equipment as one (1) independent camp unit. Any vehicles in addition to the independent camp unit will be charged the full price for a

campsite. Fees for individual sites are based on the following schedule:

1. $8.00 with pit or vault toilets; $11.00 with flush toilets; $14.00 with flush toilets and showers or electrical hookups; $17.00 with flush toilets, showers and electrical hookups; $20.00 with full hookups.

2. Primitive camping fees may be decreased at the park manager's discretion dependent upon the developed state of the facilities to be used by park visitors. Notification of the change must be made to the Division's financial manager and reservations manager before the reduced fee can be made effective.

3. Special Fun Tag holders may receive a $2.00 discount for individual camping sites Monday through Thursday nights, excluding holidays.

4. One-half the campsite fee rounded up to the nearest dollar will be charged per vehicle at all parks and individual camping sites for all additional transportation vehicles that are separate and not attached to the primary vehicle, but are dependent upon that are allowed at any individual camp unite. No more than one additional vehicle is allowed at any individual campsite.

B. Group Sites - (by advance reservation for groups)

1. $2.00 per person, age six (6) and over at sites with vault toilets. Minimum $50.00 fee for each facility.

2. $3.00 per person, age six (6) and over at sites with flush toilets and/or pavilions. Minimum $75.00 fee for each facility, except Dead Horse Point with a minimum of $25.00.

R651-611-4. Special Fees.

A. Golf Course Fees

1. Jordan River rental and green fees

a. Nine holes general public - weekends and holidays - summer - $6.50

b. Nine holes weekdays (except holidays) - summer - $5.50

c. Nine holes Jr/Sr weekdays (except holidays) - summer) - $4.50

d. Nine holes general public (winter) - $4.50

e. Nine holes Jr/Sr (winter) - $3.50

f. All day rate weekdays (winter) - $8.00

g. All day rate weekends and holidays (winter) - $10.00

h. 20 round card pass - $75.00

i. Promotional pass weekdays (except holidays) - $250.00

j. Companion fee - adult - $2.00

k. Companion fee - child - $1.00

l. Motorized cart (9 holes) - Prohibited

m. Pull carts (9 holes) - $1.00

n. Club rental - $3.00

o. Summer season is April through October and the winter season is November through March.

2. Palisade rental and green fees.

a. Nine holes general public - weekends and holidays - $10.00

b. Nine holes weekdays (except holidays) - $9.00

c. Nine holes Jr/Sr weekdays (except holidays) $8.00

d. 20 round card pass - $140.00

e. 20 round card pass (Jr only)- $100.00

f. Promotional pass - single person (any day) - $400.00

g. Promotional pass - single person (weekdays only) - $275.00

h. Promotional pass - couples (any day) - $650.00

i. Promotional pass - family (any day) - $850.00

j. Companion fee - walking, non -player - $4.00

k. Motorized cart (9 holes) - $8.00

l. Motorized cart (9 holes single rider) - $4.00

m. Pull carts (9 holes) - $2.00

n. Club rental (9 holes) - $5.00

o. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.

p. Driving range - small bucket - $2.50

q. Driving range - large bucket - $3.50

3. Wasatch Mountain rental and green fees.

a. Nine holes general public - $11.50

b. Nine holes general public (weekends and holidays) - $12.50

c. Nine holes Jr/Sr weekdays (except holidays) - $10.50

d. 20 round card pass - $210.00 - no holidays or weekends

e. Companion fee - walking, non-player - $4.00

f. Motorized cart (9 holes - mandatory on Mt. course) - $11.00

g. Motorized cart (9 holes single rider - $5.50)

h. Pull carts (9 holes) - $2.25

i. Club rental (9 holes) - $6.00

j. School teams - No fee for practice rounds with coach and team roster (Wasatch Co. only).

Tournaments are $3.00 per player.

k. Tournament fee (per player) - $4.00

l. Driving range - small bucket - $2.25

m. Driving range - large bucket - $4.50

n. Advance tee time booking surcharge - $10.00

4. Green River rental and green fees.

a. Nine holes general public - $9.00

b. Nine holes Jr/Sr weekdays (except holidays) - $8.00

c. Eighteen holes general public - $16.00

d. 20 round card pass - $130.00

e. Promotional pass - single person (any day) - $325.00

f. Promotional pass - single person (Jr/Sr weekdays) - $275.00

g. Promotional pass - couple (any day) - $600.00

h. Promotional pass - family (any day) - $750.00

i. Companion fee - walking, non-player - $4.00

j. Motorized cart (9 holes) - $8.00

k. Motorized cart (9 holes single rider) - $4.00

l. Pull carts (9 holes) - $2.25

m. Club rental (9 holes) - $5.00

n. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.

5. Golf course hours are daylight to dark

6. No private, motorized golf carts are allowed, except where authorized by existing contractual agreement.

7. Jr golfers are 17 years and under. Sr golfers are 62 and older.

B. Boat Mooring and Dry Storage

1. Mooring Fees:

a. Day Use - $5.00

b. Overnight Boat Parking - $7.00 (until 8:00 a.m.)

c. Overnight Boat Camping - $10.00 (until 2:00 p.m.)

d. Monthly - $4.00/ft.
e. Monthly with Utilities - (Bear Lake) $6.00/ft.
f. Monthly with Utilities - (Other Parks) $5.00/ft.
g. Monthly Off Season - $2.00/ft
h. Monthly (Off Season with utilities) - $2.50/ft
2. Dry Storage Fees:
a. Overnight (until 2:00 p.m.) - $5.00
b. Monthly During Season - $50.00
c. Off Season - $25.00
C. Meeting Rooms and Buildings
1. Day Use: 1-4 hours between 8:00 a.m. and 6:00 p.m.
a. Up to 50 persons - $50.00
b. 51 to 100 persons - $70.00
c. 101 to 150 persons - $90.00
d. Add 50% for after 6:00 p.m.
e. Fees include day use fee
2. Overnight Use 2:00 p.m. until 2:00 p.m., up to 100 people.
a. Minimum Fee $200.00
b. November through March - Add 10%
D. Roller Skating Fees

TABLE 5

Public Hours	Territorial Two Hour Sessions
1. Adults	$2.00
2. Children 6 through 11	$1.00
3. Skate Rental	$1.00
4. Ice Skate Sharpening	
5. Group Reservations	
a. First Hour $30.00	
b. Every Hour Thereafter $20.00	

E. Other Miscellaneous Fees
1. Canoe Rental (includes safety equipment).
a. Up to one (1) hour - $ 5.00
b. Up to four (4) hours - $10.00
c. All day to 6:00 p.m. $20.00
2. Paddle boat Rental (includes safety equipment).
a. Up to one (1) hour $10.00
b. Up to four (4) hours $20.00
c. All day to 6:00 p.m. $30.00
3. Cross Country Skiing Trails.
a. $4.00 per person, twelve (12) and older.
b. $2.00 per person, six (6) through eleven (11).
4. Pavilion - 8:00 a.m. - 10:00 p.m. (non -fee areas).
a. $10.00 per day - (single unit).
b. $30.00 per day - (group unit).
5. Recreation Field (non-fee areas) - $25.00.
6. Sports Equipment Rental - $10.00.
7. Life Jacket Rental - $1.00
8. Day Use Shower Fee - $2.00.
(where facilities can accommodate)
9. Application Fees - Non -refundable PLUS Negotiated Costs.
a. Grazing Permit - $20.00
b. Easement - $50.00
c. Construction/Maintenance - $50.00
d. Special Use Permit - $50.00
e. Commercial Filming - $50.00
f. Waiting List - $10.00
10. Assessment and Assignment Fees.
a. Duplicate Document - $10.00
b. Contract Assignment - $20.00
c. Returned checks - $20.00
d. Staff time - $40.00/hour
e. Equipment - $30.00/hour
f. Vehicle - $20.00/hour
g. Researcher - $5.00/hour
h. Photo copy - $ .10/each
i. Fee collection - $10.00
11. Curation Fees.
a. Annual curation agreement $50.00
b. Curation storage Edge of Cedars $400.00/cubic foot.
c. Curation storage other parks $250.00/cubic foot
d. All curation storage fees are one time only.
12. Snowmobile Parking Fee - Monte Cristo Trail head.
a. Day use (6:00 a.m. to 10:00 p.m.) - $3.00
b. Overnight (10:00 p.m. to 10:00 p.m.) - $5.00
c. Season Pass (Day use only) - $30.00
d. Season Pass (Overnight) - $50.00

R651-611-5. Reservations.

A. Camping Reservation Fees.
1. Individual Campsite $7.00
2. Group site or building rental $10.25
3. Fees identified in #1 and #2 above are to be charged for both initial reservations and for changes to existing reservations.

B. All park facilities will be allocated on a first-come, first-serve basis.

C. Selected camp and group sites are reservable in advance by calling 322-3770 or 1-800-322-3770.

D. Applications for reservation of skating rinks, meeting rooms, buildings, mooring docks, dry storage spaces and other sites not covered above, will be accepted by the respective park personnel beginning on the first business day of February for the next 12 months. Application forms and instructions are available at the park.

E. All unreserved mooring docks, dry storage spaces and camp picnic sites are available on a first-come, first-serve basis.

F. The park manager for any group reservation or special use permit may require a cleanup deposit.

G. Golf course reservations for groups of 20 or more and tournaments will be accepted for the calendar year beginning the first Monday of March. Reservations for up to two starting times (8 persons) may be made for Saturday, Sunday and Monday, the preceding Monday; and for Tuesday through Friday, the preceding Saturday. Reservations will be taken by phone and in person during golf course hours.

H. One party will reserve park facilities for more than fourteen (14) consecutive days in any 30-day period.

KEY: parks, fees
August 1, 2002 **63-11-17(2)**
Notice of Continuation August 7, 2001

R657. Natural Resources, Wildlife Resources.
R657-2. Adjudicative Proceedings.
R657-2-1. Purpose and Authority.

(1) This rule sets forth the standards and procedures governing all adjudicative proceedings before the Wildlife Board and the division, except as provided in subsection (2), and specifically governs the following adjudicative proceedings:

(a) requests for agency action;

(b) declaratory orders brought pursuant to Section 63-46b-21;

(c) requests for species reclassification under Section R657-3;

(d) requests for a variance under Section R657-3;

(e) post-issuance requests for a variance or amendment to a license, permit, tag or certificate of registration;

(f) request for review of a division action taken to deny a certificate of registration under Section R657-3;

(g) requests for agency action brought to contest the division's determination of eligibility for issuance or renewal of a license, permit, tag, or certificate of registration;

(h) appeals of divisions actions taken pursuant to Section 23-16-4; and

(i) a petition brought requesting the making, amendment, or repeal of a rule brought pursuant to Section 63-46a-12.

(2)(a) Unless otherwise specifically provided, this rule does not govern actions taken under Sections 23-19-9 and R657-26 to suspend a wildlife license, permit, tag, or certificate of registration.

(b) The hearing officer or Wildlife Board hearing an appeal of a hearing officer's decision to revoke a person's license, permit, tag, or certificate of registration, or to suspend receipt of privileges granted thereunder, may use any of the provisions established in this rule in conducting an adjudicative proceeding to the extent such provisions do not conflict with any of the procedural provisions of Section 23-19-9 or R657-26 and where conducting the proceeding according to this rule would promote fairness and equity to the parties.

(3) All rights, powers, and authorities provided in Chapter 46b, Title 63 are hereby reserved to the division and Wildlife Board in conducting adjudicative proceedings under this rule and to the extent this rule does not address a specific procedural matter, the provisions of Chapter 46b, Title 63 shall govern.

R657-2-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and 63-46b-2.

(2) In addition:

(a)(i) "Adjudicative proceeding" means:

(A) a division or Wildlife Board action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all division or Wildlife Board actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(B) judicial review of any action provided in Subsection (A).

(ii) "Adjudicative proceeding" does not mean any matter not governed by Title 63, Chapter 46b, Utah Administrative Procedures Act.

(b) "Assistant director" means the assistant director of the division.

(c) "Director" means the director of the division.

(d) "Division" means the Utah Division of Wildlife Resources.

(e) "Petitioner" means a person or entity who files a request for agency action initiating an adjudicative proceeding.

(f) "Presiding Officer" means the director, chairman of the Wildlife Board, or an individual or body of individuals designated by the director, the chairman of the Wildlife Board, or by statute or division rule to conduct an adjudicative proceeding.

(g) "Regional advisory council" means the entities created by Section 23-14-2.6.

(h) "Respondent" means any person or entity against whom a proceeding is initiated or whose property interest may be affected by a proceeding initiated by the division, the Wildlife Board or any other person.

R657-2-3. Construction - Deviation From Rule.

(1) This rule shall be construed in accordance with Title 63, Chapter 46b.

(2) This rule shall be liberally construed to secure a just, speedy, and economic determination of issues.

(3)(a) The presiding officer may, for good cause, deviate from the provisions of this rule if:

(i) the presiding officer finds that strict compliance with this rule is impractical or unnecessary; or

(ii) a deviation from the rule promotes the furtherance of justice or the statutory purposes for which the action is brought.

(b) All parties shall be notified by the presiding officer of any deviation from this rule.

R657-2-4. Computation of Time.

The time within which any act shall be done, as provided in this rule, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, in which case it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, or State holiday.

R657-2-5. Commencement of Adjudicative Proceedings.

(1) An adjudicative proceeding may be commenced by either:

(a) a notice of agency action, if the proceeding is commenced by the division or the Wildlife Board; or

(b) a request for agency action, if the proceeding is commenced by a person other than the division or Wildlife Board.

(2) A notice of agency action shall be filed and served according to the requirements of Section 63-46b-3(2).

(3) A request for agency action brought by a person other than the division or Wildlife Board shall be filed and served in accordance with the requirements of Section 63-46b-3(3) and R657-2-6.

R657-2-6. Request for Agency Action.

(1) A request for agency action must be filed with the presiding officer of the entity that has authority to provide relief

to the petitioner. The presiding officer may refuse acceptance of any request for agency action if there is reason to believe:

(a) the request is frivolous or brought in bad faith;

(b) the matter has already been acted upon and further consideration is unnecessary;

(c) the relief sought is beyond the agency's jurisdiction; or

(d) the request fails to comply with the procedural requirements of this rule.

(2) At the time the request for agency action is filed, the petitioner shall also file any motions, affidavits, briefs, or memoranda in support of the request for agency action.

(3) The presiding officer shall review the request for agency action.

(a) If the request for agency action is made to the division, the person designated as the presiding officer shall take action upon the request within a reasonable time.

(b)(i) If the request for agency action is made to the Wildlife Board, and the request concerns a matter over which the Wildlife Board has authority, the presiding officer may:

(A) have the request for agency action placed on the Wildlife Board's agenda for action;

(B) submit the request for agency action to the appropriate regional advisory council or councils, requesting the council or councils to hold public hearings, take input, and make recommendations to the Wildlife Board as provided in Section 23-14-2.6; or

(C) deny the request and notify the requesting party in writing of the denial and that the party may request a hearing before the Wildlife Board to challenge the denial.

(ii) In determining when to schedule the matter for hearing before the Wildlife Board, the presiding officer may consider the following:

(A) If the matter is general in nature, and the Wildlife Board's agenda allows, the matter may be brought at the next regularly-scheduled Wildlife Board meeting;

(B) If the matter involves a serious or irreparable harm to a person or entity that may be resolved by holding a hearing before the next regularly-scheduled meeting, the Wildlife Board may hold an emergency meeting; or

(C) If the matter involves an issue that is part of an annual decision making process, the matter may be scheduled at the next annual meeting where such decisions are made, but no later than one year after the date the request is received.

(4)(a) The presiding officer may schedule the request for agency action on the Wildlife Board agenda for action without regional advisory council input if:

(i) the presiding officer determines that the public interest in deciding the matter without seeking input from the regional advisory councils outweighs the benefit of considering recommendations of the regional advisory councils;

(ii) the request for agency action seeks a remedy that affects only one person or a small number of persons, thus making broad public input unnecessary; or

(iii) the delay associated with seeking regional advisory council input will result in serious or irreparable harm to the petitioner or the respondent, provided the petitioner or respondent has not been negligent in filing the request for agency action in a timely fashion.

(b) Upon a majority vote of the Wildlife Board, any request for agency action submitted to it by the presiding officer that has not been considered by the regional advisory councils may be referred to the regional advisory councils for the purpose of gathering input prior to the Wildlife Board taking further action.

(5) The petitioner shall provide a copy of the request for agency action to any person known by the petitioner to have a direct interest in the proceeding or who will be directly affected by its outcome.

R657-2-7. Designation of Adjudicative Proceedings.

(1) Except as otherwise provided in this rule or at the discretion of the presiding officer, all adjudicative proceedings before the division and the Wildlife Board are designated as informal.

(2) Any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding or a formal adjudicative proceeding to an informal 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.

(3) Any party to an adjudicative proceeding, including the division, may by motion request a formal hearing.

R657-2-8. Pleadings.

(1) Pleadings shall consist of a notice of agency action, a request for agency action, responses, motions and affidavits, briefs, and memoranda of law and fact in support thereof.

(2) A notice of agency action, request for agency action, and any pleadings relative thereto must be double-spaced, typewritten or legibly handwritten, and presented on standard 8 1/2 by 11 inch paper. Pleadings filed relative to a notice of agency action or request for agency action shall contain a clear and concise statement of the matter that is the basis of the pleading, with an appropriate description of the relief sought.

(3) The presiding officer may allow pleadings to be amended at any time. Initiatory pleadings may be amended without leave of the presiding officer at any time before a responsive pleading has been filed. Defects in pleadings which do not affect substantial rights of the parties shall be disregarded.

(4) Motions may be submitted either by written motion or oral argument and the filing of affidavits in support or contravention thereof may be permitted. A written motion must be accompanied by a supporting memorandum of fact and law.

(5) Pleadings shall be signed by the party or the party's representative and shall show the signer's address. The signature shall be deemed to certify that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there is good ground to support it.

(6) Exhibits must be clearly marked to show the party proffering the exhibit, and the exhibit number.

(7) All pleadings shall be submitted to the presiding officer at least 20 days prior to the date upon which the matter that is the subject of the pleadings will be decided.

(8) An original of all pleadings, affidavits, briefs,

memoranda, and exhibits will be filed with the division. The presiding officer may direct any party to provide additional copies as needed.

(9)(a) Upon the issuance of a notice of agency action or after receipt of a request for agency action, the presiding officer shall provide notice to all parties of the pending adjudicative proceeding.

(b) Any response to a notice of agency action or request for agency action must be submitted within 30 days of the mailing date of the notice of agency action or the notice required under Subsection 63-46b-3(3)(d), which shall include:

(i) the docket number or other reference number;

(ii) the name of the adjudicative proceeding;

(iii) a statement of the relief that the respondent seeks;

(iv) a statement of the facts; and

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

(10) The presiding officer may extend the response time for good cause.

R657-2-9. Parties.

(1) Parties to an adjudicative proceeding shall be persons who have a statutory right to be parties and persons who have a legally-protected interest or right in the subject matter which may be affected by the proceeding.

(2) The division will be considered a party to all adjudicative proceedings conducted by the Wildlife Board.

R657-2-10. Appearances and Representation.

(1) Parties shall enter their appearances at the beginning of the hearing or at such time as may be designated by the presiding officer by stating:

(a) the party's full name and address; and

(b) the party's position or interest in the proceeding.

(2) Any individual or an agent designated by an individual, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency, may represent his, her, or its interest in the proceeding.

(3) Any party may be represented by an attorney or legal representative as authorized and permitted by the Utah State Bar and state law.

(4) Subject to the limitations imposed by the presiding officer to ensure the adjudicative proceeding is conducted in an orderly and efficient manner, each party to an adjudicative proceeding may participate in the hearing and may introduce evidence, examine and cross-examine each witness, make arguments, and participate generally in the proceeding.

R657-2-11. Notice and Service.

(1) Timely notice of all proceedings shall be given to all parties and any other person who, in the opinion of the presiding officer, has a direct interest in the proceeding.

(2) When a party is represented by an attorney or other authorized representative, service upon the attorney or representative shall constitute service upon the party.

(3) Any person desiring notification by mail from the Wildlife Board or division of specific matters may request to be notified by filing the name, address, telephone number, and specific matters for which the person seeks notification.

R657-2-12. Discovery.

(1)(a) Discovery for informal hearings is prohibited and the division or Wildlife Board may not issue subpoenas or other discovery orders.

(b) Upon motion by a party to a formal hearing, and for good cause shown, the presiding officer may authorize discovery against another party to a formal hearing, including the division, as provided in the Utah Rules of Civil Procedure.

(2) All parties may have access, upon request, to information contained in division files and all materials and information gathered in any investigation pertinent to the adjudicative proceeding, to the extent permitted under Title 63, Chapter 2 - Governmental Records Access and Management Act and under Title 63, Chapter 46b - Administrative Procedures Act.

(3) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer at the presiding officer's discretion in the interest of just, fair, and economic decision making.

R657-2-13. Prehearing Procedure.

The presiding officer may, upon written notice to all parties of record, hold a prehearing conference to:

(1) formulate or simplify the issues;

(2) obtain admission of fact and documents that will avoid unnecessary introduction of evidence or other efforts of establishing proof of a matter asserted;

(3) arrange for the exchange of proposed exhibits; and

(4) agree to matters that may expedite the orderly conduct of the proceedings or its settlement.

R657-2-14. Continuance.

(1) Any party may, by filing a motion, request the presiding officer to continue an adjudicative proceeding, provided the motion is filed within a reasonable time prior to the date of the hearing and proper notice is given to the other parties to the proceeding. The presiding officer may grant such a request and continue the proceeding until the next regularly scheduled meeting, or another more convenient time, unless in the presiding officer's judgement, it would be contrary to the just and fair resolution of the proceeding.

(2) The Wildlife Board, on its own motion, or on the motion of the division, may order the continuance of any proceeding until the next regularly scheduled meeting of the Wildlife Board in order to allow adequate time for division staff to evaluate any evidence presented during a hearing.

R657-2-15. Intervention.

(1) A person may not intervene in an informal adjudicative proceeding, unless allowed by the presiding officer for good cause.

(2) A person may file a petition for an order granting leave to intervene in a formal adjudicative proceeding as provided in Section 63-46b-9 and in accordance with the following:

(a) Any petition to intervene or materials filed after the

date a response is due may be considered at the next regularly scheduled meeting only upon separate motion of the intervenor made at or before the hearing for good cause shown.

(b) Any party to a formal adjudicative proceeding in which intervention is sought may make an oral or written response to the petition for intervention. The response shall:

(i) state the basis for opposition to intervention and may suggest limitations to be placed upon the participation of the intervenor if intervention is granted; and

(ii) be presented or filed at or before the hearing.

(3) The presiding officer will consider the petition for an order granting leave to intervene and any response in determining whether to allow a party to intervene.

(4) 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 in the hearing, the presiding officer may dismiss the intervenor from the proceeding.

(5) Where two or more intervenors have substantially the same interests and positions in the proceeding the presiding officer may at any time during the proceeding limit the number of intervenors who will be permitted to testify, cross-examine witnesses, or make and argue motions and objections.

R657-2-16. Hearings, Evidence, and Argument.

(1)(a) After the commencement of an adjudicative proceeding, the presiding officer may hold a hearing if:

(i) a hearing is required by statute or rule; or

(ii) a hearing is requested by a party within 30 days after the commencement of the adjudicative proceeding.

(b) The presiding officer may, at the presiding officer's discretion, initiate a hearing to determine matters within the presiding officer's authority.

(2) Notice of the hearing shall be served on all parties by regular mail at least 10 days prior to the hearing.

(3) If the hearing is informal, it shall be conducted in accordance with the provisions of Section 63-46b-5. If the hearing is formal it shall be conducted in accordance with the provisions of Section 63-46b-8.

(4)(a) An informal hearing may be conducted without adherence to the rules of evidence required in judicial proceedings. The Utah Rules of Evidence shall be used as a guide for evidentiary matters in formal hearings.

(b) The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence from the hearing.

(c) The weight given to evidence shall be determined by the presiding officer.

(5) Hearsay evidence is admissible in informal and formal hearings consistent with Utah law governing the admissibility of such in administrative adjudicative proceedings.

(6) Documentary evidence may be received in the form of copies or excerpts and, upon request, parties shall be given an opportunity to compare the copy with the original.

(7) Upon the conclusion of taking evidence, the presiding officer may, in the presiding officer's discretion, permit the parties to make closing oral arguments.

R657-2-17. Burden of Proof.

The petitioner shall have the burden of proof by preponderance of the evidence in all adjudicative proceedings.

R657-2-18. Record of Hearing.

(1) The division or Wildlife Board may record any informal hearing. The division or Wildlife Board shall record formal hearings.

(2)(a) Any party, at the party's own expense, may have a reporter, approved by the division or Wildlife Board, prepare a transcript from the record of the hearing and shall furnish a transcript of the testimony to the division or Wildlife Board free of charge.

(b) This transcript shall be available at the Salt Lake division office to any party to the hearing.

R657-2-19. Failure to Appear - Default.

(1) When a party or the party's authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the presiding officer may:

(a) continue the matter;

(b) enter an order of default as provided by Section 63-46b-11; or

(c) hear the matter in the absence of the defaulting party.

R657-2-20. Decisions and Orders.

(1) After the presiding officer has reached a final decision upon the adjudicative proceeding, the presiding officer shall issue a signed order in writing:

(a) in accordance with Section 63-46b-5(1)(c) for orders issued at the conclusion of an informal hearing; and

(b) in accordance with Section 63-46b-10 for orders issued at the conclusion of a formal hearing.

R657-2-21. Agency Review.

(1)(a) When a division action is taken by a division employee, other than the director acting as the presiding officer, any aggrieved party may seek review of the order.

(b) The request for review shall be made to the director in accordance with Section 63-46b-12(1).

(c) Except as provided in Section 63-46b-14(2), review by the director is a prerequisite for judicial review.

(2) Requests for review of an action within the statutory or regulatory purview of the division shall:

(a) be filed with the director within 30 days after the issuance of the order; and

(b) be sent to each party.

(3) The request for review shall be reviewed by the director or the assistant director, when designated by the director.

(4)(a) Unless otherwise provided by law, all reviews shall be based on the record before the presiding officer.

(b) In order to assist in review, parties, upon request, may be allowed to file briefs or other documents explaining their position.

(5) Parties are not entitled to a hearing on review unless:

(a) specifically allowed by statute; or

(b) the director grants a hearing to assist the review.

(6) Notice of any hearing shall be mailed to all parties within 10 days of the hearing.

(7)(a) Within a reasonable time after the filing of any

response, other filings, or after any hearing, the director shall issue a written order on review and mail a copy of the order on review to each party.

(b) The order on review shall contain the items, findings, conclusions, and notices set forth in Subsection 63-46b-12(6)(c).

R657-2-22. Judicial Review.

(1) Any party aggrieved by final division or Wildlife Board action may obtain judicial review of such action pursuant to Sections 63-46b-14, 63-46b-15, and 63-46b-16, except where judicial review is expressly prohibited by statute.

(2) A petition for judicial review shall be filed within 30 days after the date the order constituting final agency action is issued.

(3) A party may seek judicial review of an action taken by the division or Wildlife Board only after exhausting all administrative remedies available, including those available through the Wildlife Board and the regional advisory councils, as required herein, unless a court of competent jurisdiction makes a finding that requiring exhaustion:

(a) would result in irreparable injury; or

(b) would serve no useful purpose.

R657-2-23. Declaratory Orders.

(1) Pursuant to Section 63-46b-21, any person may file a request for agency action requesting that the division or Wildlife Board issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the division or Wildlife Board.

(2) A request for a declaratory order shall set forth:

(a) the specific statute, rule, or order which is in question;

(b) the specific facts for which the order is requested;

(c) the manner in which the person making the request claims the statute, rule, or order may affect him or her; and

(d) the specific questions for which a declaratory order is requested.

(3) The division or Wildlife Board may, in their discretion, decline to issue declaratory orders where they deem the facts presented to be conjectural, or where the public interest would best be served by not issuing such an order.

R657-2-24. Emergency Orders.

The division or Wildlife Board may issue an order on an emergency basis without complying with this rule under the circumstances and procedures set forth in Section 63-46b-20.

KEY: wildlife, administrative procedures
July 3, 2002 63-46b-5
Notice of Continuation May 15, 2002 23-14-2.1

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation and the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.

(l) "Hunter's choice" means either sex may be taken.

(m) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(n)(i) "Resident" for purposes of this rule means a person who:

(A) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license or permit; and

(B) does not claim residency for hunting, fishing, or trapping in any other state or country.

(ii) A Utah resident retains Utah residency if that person leaves this state:

(A) to serve in the armed forces of the United States or for religious or educational purposes; and

(B) complies with Subsection (m)(i)(B).

(iii)(A) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(I) is not on temporary duty in this state; and

(II) complies with Subsection (m)(i)(B).

(iv) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(v) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(A) has been present in this state for 60 consecutive days immediately preceding the purchase of the license or permit; and

(B) complies with Subsection (m)(i)(B).

(vi) A Utah resident license or permit is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(vii) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(o) "Spike bull" means a bull elk which has at least one antler having no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

R657-5-3. License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or their parts in accordance with Section 23-19-1 and the rules or proclamations of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

R657-5-4. Age Requirements and Restrictions.

(1)(a) A person 14 years of age or older may purchase a permit and tag to hunt big game. A person 13 years of age may purchase a permit and tag to hunt big game if that person's 14th birthday falls within the calendar year for which the permit and tag are issued.

(2)(a) A person at least 14 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License and Permit.

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office, for five dollars or half of the price of the original license, or permit, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or Certificate of Registration provided the person did not receive the original license, permit, tag or certificate of registration.

R657-5-6. Companion Hunting.

(1) A person may take a deer or elk for a person who is

legally blind or quadriplegic provided the blind or quadriplegic person:

(a) meets hunter education requirements as provided in Section 23-19-11 and Rule R657-23;

(b) purchases the appropriate permit and tag;

(c) obtains a certificate of registration from the division; and

(d) is accompanied by a companion hunter who has completed a division approved hunter education course as provided in Section 23-19-11 and Rule R657-23.

(2) A person who is legally blind may obtain a certificate of registration from the division by submitting a signed statement by a licensed ophthalmologist, optometrist, or physician verifying that the applicant:

(a) has no more than 20/200 visual acuity in the better eye when corrected; or

(b) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of vision 20 degrees or less.

(3) A person who is quadriplegic may obtain a certificate of registration from the division by submitting a signed statement by a licensed physician verifying that the applicant is quadriplegic.

(4) The blind or quadriplegic person must be accompanied by the companion hunter at the time of kill and while transporting the deer or elk.

R657-5-7. Special Season Extension for Disabled Persons.

(1) A certificate of registration may be obtained from a division office requesting an extension of 30 days for any limited entry hunt, provided the person requesting the extension:

(a) is quadriplegic or permanently confined to a wheelchair;

(b) meets hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate permit and tag.

R657-5-8. Hunting Hours.

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

R657-5-9. Temporary Game Preserves.

(1)(a) A person who does not have a valid permit to hunt on a temporary game preserve may not carry a firearm or archery equipment on any temporary game preserve while the respective hunts are in progress.

(b) "Carry" means having a firearm on your person while hunting in the field.

(2) As used in this section, "temporary game preserve" means all bull elk, buck pronghorn, moose, bison, bighorn sheep, Rocky Mountain goat, limited entry buck deer areas and cooperative wildlife management units, excluding incorporated areas, cities, towns and municipalities.

(3) Weapon restrictions on temporary game preserves do not apply to:

(a) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game and waterfowl;

(b) livestock owners protecting their livestock;

(c) peace officers in the performance of their duties; or

(d) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-10. Prohibited Weapons.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

R657-5-11. Rifles and Shotguns.

(1) The following rifles and shotguns may be used to take big game:

(a) any rifle firing centerfire cartridges and expanding bullets; and

(b) a shotgun, 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

R657-5-12. Handguns.

(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at 100 yards.

R657-5-13. Muzzleloaders.

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

(a) can be loaded only from the muzzle;

(b) has open sights, peep sights, or a fixed non-magnifying 1x scope;

(c) has a single barrel;

(d) has a minimum barrel length of 18 inches;

(e) is capable of being fired only once without reloading;

(f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;

(g) is loaded with black powder or black powder substitute, which must not contain nitrocellulose based somkeless powder.

(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.

(b) A 170 grain or heavier bullet, including sabots must be used for taking deer and pronghorn.

(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit may not possess or be in control of any firearm other than a

muzzleloading rifle or have a firearm other than a muzzleloading rifle in his camp or motor vehicle during a muzzleloader hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-14. Archery Equipment.

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

(a) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded; and

(d) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) The following equipment or devices may not be used to take big game:

(a) a crossbow; except as provided in Section R657-5-15.

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw;

(d) a release aid that is not hand held or that supports the draw weight of the bow; or

(e) a bow with an attached electronic range finding device or a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit may not possess or be in control of a firearm or have a firearm in his camp or motor vehicle during an archery hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-15. Crossbows.

(1)(a) A disabled person who has a permanent, physical disability may use a crossbow to hunt deer, elk or pronghorn during the respective archery hunt dates provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, provided that person:

(i) applies for and obtains a certificate of registration authorizing the use of a crossbow; and

(ii) provides a physician's statement confirming the disability as defined in Subsection (b).

(b) "Disabled person" means a person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be unable to use conventional archery equipment.

(2)(a) Any crossbow used to hunt deer, elk or pronghorn must have:

(i) a stock that is at least 18 inches long;

(ii) a minimum draw weight of 125 pounds;

(iii) a draw length that is at least 18 inches from the front of the crossbow to the back of the string in a cocked position; and

(iv) a positive safety mechanism.

(b) Arrows or bolts used must be at least 18 inches long and must have a broadhead with two or more sharp cutting edges that cannot pass through a 7/8 inch ring.

(3) The following equipment or devices may not be used to take big game:

(a) arrows with chemically treated or explosive arrowheads; or

(b) a bow with an attached electronic range finding device or a magnifying aiming device.

(4) Arrows or bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(5) A cocked crossbow may not be carried in or on a vehicle.

R657-5-16. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-603-5.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks and monuments unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may not:

(a) hunt big game or discharge a shotgun or archery equipment within 600 feet of a road, house, or any other building; or

(b) discharge a rifle, handgun, shotgun firing slug ammunition, or muzzleloader within one mile of a cabin, house, or other building regularly occupied by people, except west of I-15 a muzzleloader may not be discharged within one-half mile of a cabin, house, or other building regularly occupied by people.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the proclamation of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Matheson Wetlands.

R657-5-17. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of headlights or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-5-18. Use of Vehicle or Aircraft.

(1)(a) A person may not use an airplane or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by an aircraft or any other vehicle or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2)(a) A person may not use any type of aircraft from 48 hours before any big game hunt begins through 48 hours after any big game hunting season ends to:

(i) transport a hunter or hunting equipment into a hunting area;

(ii) transport a big game carcass; or

(iii) locate, or attempt to observe or locate any protected wildlife.

(b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).

(3) The provisions of this section do not apply to the operation of an aircraft in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

R657-5-19. Party Hunting and Use of Dogs.

(1) A person may not take big game for another person, except as provided in Section R657-5-6.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game.

R657-5-20. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or their parts; and

(2) offers cash or prizes totaling more than $500.

R657-5-21. Tagging.

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

R657-5-22. Transporting Big Game Within Utah.

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

R657-5-23. Exporting Big Game From Utah.

(1) A person may export big game or their parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

R657-5-24. Purchasing or Selling Big Game or Their Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or their parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only between February 15 through August 9;

(b) Untanned hides of legally taken big game may be purchased or sold only between August 20 through February 15;

(c) Inedible byproducts, excluding hides, antlers and horns, or legally possessed big game as provided in Subsection 23-20-3(1)(d), may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(3) Subsection (2) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-25. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully purchased as provided in Section R657-5-24; or

(c) shed antlers or horns.

(2) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(3) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-26. Poaching-Reported Reward Permits.

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn under Section 23-20-4 for any once-in-a-lifetime species or within any limited entry area may receive a permit from the division to hunt for the same species and on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the division may issue a permit as outlined in Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(3)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(4)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(5) Any person who receives a poaching-reported reward permit must be eligible to hunt and obtain big game permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

(6) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

R657-5-27. Application Process for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and Application Process for General Buck Deer and General Muzzleloader Elk Permits.

(1)(a) A person may obtain only one permit per species of big game, including premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, sportsman, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(2) Applications are available from license agents, division offices, and through the division's Internet address.

(3) A resident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - limited entry and cooperative wildlife management unit; or

(iii) special limited entry archery elk; or

(iv) buck pronghorn - limited entry and cooperative

wildlife management unit; and

(b) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits, except as provided in Section R657-5-66(2)(b).

(4) A nonresident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry and limited entry; or

(ii) bull elk - limited entry; or

(iii) special limited entry archery elk; or

(iv) buck pronghorn - limited entry; and

(b) only one once-in-a-lifetime permit.

(5) A resident or nonresident may apply in the big game drawing for:

(a) a general buck deer permit - statewide general archery, or by region for general season or general muzzleloader; and

(b) a general muzzleloader elk permit.

(6) A person may not submit more than one application per species as provided in Subsections (3) and (4), and Subsection (5) in the big game drawing.

(7)(a) Applications must be mailed by the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(8)(a) Late applications, received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation, will not be considered in the drawing, but will be processed, for the purpose of entering data into the division's draw database to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The $5 handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.

(9) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(10) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-30(4) and R657-5-32(1).

(12) To apply for a resident permit, a person must establish residency at the time of purchase.

(13) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-28. Fees for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and for General Buck Deer and General Muzzleloader Elk Permits.

(1) Each premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime application must include:

(a) the highest permit fee of any permits applied for;

(b) a $5 nonrefundable handling fee for one of the following permits:

(i) buck deer;

(ii) bull elk; or

(iii) buck pronghorn; and

(c) a $5 nonrefundable handling fee for a once-in-a-lifetime permit; and

(d) the $5 nonrefundable handling fee, if applying only for a bonus point.

(2) Each general buck deer and general muzzleloader elk application must include:

(a) the permit fee, which includes the $5 nonrefundable handling fee for each species applied for; or

(b) the $5 nonrefundable handling fee per species, if applying only for a preference point.

R657-5-29. Applying as a Group for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and for General Buck Deer and General Muzzleloader Elk Permits.

(1)(a) Up to four people may apply together for premium limited entry, limited entry, and resident cooperative wildlife management unit deer, elk or pronghorn permits in the big game drawing and in the antlerless drawing.

(b) Up to four people may apply together for general elk permits in the big game drawing.

(c) Up to ten people may apply together for general deer permits in the big game drawing.

(2)(a) Applicants must indicate the number of hunters in the group by filling in the appropriate box on each application form.

(b) If the appropriate box is not filled out with the number of hunters in the group, each hunter in that group shall be entered into the drawing as individual hunters, and not as a group.

(3) Group applicants must submit their applications together in the same envelope.

(4) Residents and nonresidents may apply together.

(5)(a) Group applications shall be processed as one single application.

(b) Any bonus points used for a group application, shall be averaged and rounded down.

(6) When applying as a group:

(a) if the group is successful in the drawing, then all applicants with valid applications in that group shall receive a permit;

(b) if the group is rejected due to an error in fees and only one species is applied for, then the entire group is rejected;

(c) if the group is rejected due to an error in fees and more than one species is applied for, the group will be kept in the drawing for any species with sufficient fees, using the draw

order; or

(d) if one or more members of the group are rejected due to an error other than fees, the members with valid applications will be kept in the drawing, unless the group indicates on the application that all members are to be rejected.

(i) The applicant whose application is on the top of all the applications for that group, will be designated the group leader.

(ii) If any group member has an error on their application that is not corrected during the correction process, the reject box on the group leader's application will determine whether the entire group is rejected.

R657-5-30. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime and General Buck Deer and General Muzzleloader Elk Drawings.

(1)(a) Big game drawing results may be posted at the Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center, 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.

(b) Applicants shall be notified by mail of draw results by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits for the big game drawing shall be drawn in the following order:

(a) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(b) limited entry, special limited entry and cooperative wildlife management unit bull elk;

(c) limited entry and cooperative wildlife management unit buck pronghorn;

(d) once-in-a-lifetime;

(e) general buck deer; and

(f) general muzzleloader elk.

(3) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(a) a premium limited entry, limited entry or cooperative wildlife management unit buck deer;

(b) a limited entry, special limited entry, or cooperative wildlife management unit bull elk; or

(c) a limited entry or cooperative wildlife management unit buck pronghorn.

(4) If any permits listed in Subsection (2)(a) through (2)(d) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-31. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime, and General Buck Deer and General Muzzleloader Elk Application Refunds.

(1)(a) Unsuccessful applicants who applied in the initial big game drawing and who applied with a check or money order will receive a refund in May.

(b) Unsuccessful applicants, who applied for remaining permits in the big game drawing and who applied with a check or money order, will receive a refund in July.

(2)(a) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(b) Unsuccessful applicants, who applied as a group, will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for.

(c) If group members have other financial arrangements between themselves, group members should be prepared to reallocate each group member's individual refunds among themselves.

(3) The handling fees are nonrefundable.

R657-5-32. Permits Remaining After the Drawing.

(1) Permits remaining after the big game drawing are sold only by mail or on a first-come, first-served basis beginning and ending on the dates provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents, except nonresidents may not purchase resident cooperative wildlife management unit permits.

(2) Applications are available from division offices, through the division's Internet address, and license agents.

(3) The same application form used for premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime permits, and for general buck deer and general muzzleloader elk permits in the big game drawing must be used when applying for remaining permits by mail. The handling fees are nonrefundable.

R657-5-33. Waiting Periods for Deer.

(1) A person who obtained a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process during the preceding two years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process, may not apply for any of these permits again for a period of two years.

(3) A waiting period does not apply to:

(a) general archery, general season, general muzzleloader, antlerless deer, conservation, sportsman and poaching-reported reward deer permits; or

(b) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

R657-5-34. Waiting Periods for Elk.

(1) A person who obtained a limited entry or cooperative wildlife management unit bull elk permit through the big game drawing process during the preceding four years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a limited entry or cooperative wildlife management unit bull elk permit through the big game drawing, may not apply for any of these permits for a period of five years.

(3) A waiting period does not apply to:

(a) general archery, general season, general muzzleloader,

special limited entry archery, antlerless elk, cooperative wildlife management unit spike bull elk, conservation, sportsman and poaching-reported reward elk permits; or

(b) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

R657-5-35. Waiting Periods for Pronghorn.

(1) A person who obtained a buck pronghorn permit through the big game drawing process in the preceding four years, may not apply in the big game drawing for a buck pronghorn permit during the current year.

(2) A person who obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing, may not apply for any of these permits for a period of five years.

(3) A waiting period does not apply to:

(a) doe pronghorn, pronghorn conservation, sportsman and poaching-reported reward permits; or

(b) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner.

R657-5-36. Waiting Periods for Antlerless Moose.

(1) A person who obtained an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process during the preceding four years, may not apply for an antlerless moose permit during the current year.

(2) A person who obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process in the current year, may not apply for an antlerless moose permit for a period of five years.

(3) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

R657-5-37. Waiting Periods for Once-In-A-Lifetime Species.

(1) Any person who has obtained a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep, or Rocky Mountain goat may not apply for a once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(2) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

R657-5-38. Waiting Periods for Permits Obtained After the Drawing.

(1) Waiting periods provided in Sections R657-5-33 through R657-5-36 do not apply to the purchase of the remaining permits sold over the counter.

(2) However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

R657-5-39. Cooperative Wildlife Management Unit Permits and Landowner Permits.

(1)(a) A waiting period or once-in-a-lifetime status does not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (b).

(b) Waiting periods are incurred for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

R657-5-40. Bonus Point System and Preference Point System.

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for permits in the big game drawing; or

(ii) each valid application when applying for bonus points in the big game drawing.

(b) Bonus points are awarded by species.

(c) Bonus points are awarded for:

(i) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(ii) limited entry and cooperative wildlife management unit bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn; and

(iv) all once-in-a-lifetime species.

(d) Bonus points shall not be awarded for special limited entry archery bull elk or cooperative wildlife management unit spike bull elk.

(3) A person may apply for a bonus point for:

(a) only one of the following species:

(i) buck deer - premium limited entry, limited entry and Cooperative Wildlife Management unit;

(ii) bull elk - limited entry and Cooperative Wildlife Management unit; or

(iii) buck pronghorn - limited entry and Cooperative Wildlife Management unit; and

(b) only one once-in-a-lifetime, including once-in-a-lifetime Cooperative Wildlife Management unit.

(4)(a) A person may not apply in the drawing for both a premium limited entry or limited entry bonus point and a premium limited entry or limited entry permit.

(b) A person may not apply in the drawing for a once-in-a-lifetime bonus point and a once-in-a-lifetime permit.

(c) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(d) A person may only apply for bonus points in the initial big game drawing.

(e) Group applications will not be accepted when applying for bonus points.

(5)(a) Fifty percent of the permits for each hunt unit and species will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be

designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the initial drawing.

(6)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(7) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species as provided in Subsection (2)(c), including any permit obtained after the drawing.

(8) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit or sportsman permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner;

(c) a person obtains a poaching-reported reward permit; or

(d) a person obtains a special limited entry archery elk permit.

(9) Bonus points are not transferable.

(10) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(11) Bonus points are tracked using social security numbers or division-issued hunter identification numbers.

(12) Preference points are used in the big game drawing for general buck deer and general muzzleloader elk permits to ensure that applicants who are unsuccessful in the drawing for general buck deer permits and general muzzleloader elk permits, will have first preference in the next year's drawing for the respective species.

(13) A preference point is awarded for:

(a) each valid unsuccessful application when applying for:

(i) a general buck deer permit;

(ii) a general muzzleloader elk permit; or

(iii) each valid application when applying only for preference points in the initial drawing.

(b) Preference points are awarded by species.

(14)(a) A person may not apply in the drawing for both a general buck deer preference point and a general buck deer permit.

(b) A person may not apply in the drawing for both a general muzzleloader elk preference point and a general muzzleloader elk permit.

(c) A person may not apply for a preference point if that person is ineligible to apply for a permit for the respective species.

(d) Preference points shall not be used when applying for or obtaining remaining permits after the initial drawing.

(15) Preference points are forfeited if:

(a) a person obtains a general buck deer permit through the drawing; or

(b) a person obtains a general muzzleloader elk permit through the drawing.

(16)(a) Preference points are not transferable.

(b) Preference points shall only be applied to the initial drawing.

(17) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(18) Preference points are tracked using social security numbers or division-issued hunter identification numbers.

R657-5-41. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit may use archery equipment to take:

(a) one buck deer statewide within a general hunt area, except premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within the Wasatch Front extended archery area as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(c) a deer of hunter's choice within the Uintah Basin extended archery area.

(3) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within the Wasatch Front and Uintah Basin extended archery areas.

(4) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may take a deer of hunter's choice within the Northern Region general hunt area.

(5) A person who has obtained a general archery deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

(6)(a) Any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the statewide general archery, or by region the general season and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-10 through R657-5-15, respectively, for each respective season, provided that person obtains a general season or general muzzleloader deer permit for a specified region.

(b) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season.

(7) Hunter orange fluorescent material must be worn if a centerfire rifle hunt is also in progress in the same area. Archers are cautioned to study rifle hunt tables and identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-42. General Season Buck Deer Hunt.

(1) The dates for the general season buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general season buck

permit may use any legal weapon to take one buck deer within the hunt area specified on the permit, except premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) A person who has obtained a general season buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general season and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-10 through R657-5-15, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season.

R657-5-43. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general muzzleloader buck permit may use a muzzleloader to take one buck deer within the general hunt area specified on the permit, except premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) A person who has obtained a general muzzleloader deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general season and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-10 through R657-5-15, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season.

(4) Hunter orange fluorescent material must be worn if a centerfire rifle hunt is also in progress in the same area. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-44. Limited Entry Buck Deer Hunts.

(1) To hunt in a premium limited entry or limited entry area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck, general season buck, or general muzzleloader buck hunting, except as specified in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, except deer cooperative wildlife management units located within the limited entry unit.

(3) A person who has obtained a limited entry buck permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

R657-5-45. Antlerless Deer Hunts.

(1) To hunt an antlerless deer, a hunter must obtain an antlerless deer permit.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer, per antlerless deer tag, using any legal weapon within the area and season as specified on the permit and in the antlerless addendum.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless deer permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permit.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general muzzleloader deer;

(iii) limited entry archery deer; or

(iv) limited entry muzzleloader deer.

R657-5-46. General Archery Elk Hunt.

(1)(a) The dates of the general archery elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) The San Juan unit east of U.S. 191 is closed to general archery and general season bull elk hunting.

(2)(a) A general archery elk permit allows a person using archery equipment to take one elk of hunter's choice in a general season elk unit, except on elk cooperative wildlife management units.

(b) On a spike bull elk unit, archers may take an antlerless elk or a spike bull elk.

(c) In Salt Lake County south of I-80 and east of I-15, archers may take an antlerless elk or any bull elk.

(3) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(3).

(4) Hunter orange fluorescent material must be worn if a centerfire rifle hunt is also in progress in the same area. Archers are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-47. General Season Bull Elk Hunt.

(1) The dates for the general season bull elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within general season elk units, except in the following areas:

(a) Salt Lake County south of I-80 and east of I-15;

(b) elk cooperative wildlife management units; and

(c) the San Juan unit east of US-191.

(2)(a) General season elk hunters may purchase either a spike bull permit or an any bull permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull units are closed to spike bull permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk on a general season any bull elk unit. Spike bull units are closed to any bull permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull or any bull elk as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(3).

R657-5-48. General Muzzleloader Elk Hunt.

(1) The dates of the general muzzleloader elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within the general season elk units, except in the following closed areas:

(a) Salt Lake County south of I-80 and east of I-15;

(b) elk cooperative wildlife management units; and

(c) the San Juan unit east of US-191.

(2)(a) A person who has obtained a general muzzleloader elk permit may take one elk of hunter's choice, except a hunter may take only a spike bull or an antlerless elk in a spike bull unit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may hunt only on a spike bull elk unit and may take only a spike bull elk. Any bull units are closed to spike bull permittees.

(3) A person who has obtained a general muzzleloader elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(3).

R657-5-49. Limited Entry Bull Elk Hunt and Special Limited Entry Archery Bull Elk Hunt.

(1) To hunt in a limited entry bull elk area, a hunter must obtain a limited entry elk permit.

(2) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3) A person who has obtained a limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (4)(a) and R657-5-50(3).

(4)(a) A hunter who obtains a limited entry bull elk permit for one of the hunt units listed in Subsection (b), may also purchase an auxiliary permit to hunt within the area specified on the permit using archery equipment during the established general archery elk season, or using muzzleloader equipment during the established general muzzleloader deer season.

(b)(i) Book Cliffs, Little Creek;

(ii) Book Cliffs, Bitter Creek-South;

(iii) Box Elder, Grouse Creek;

(iv) Cache, Meadowville;

(v) Cache, North;

(vi) Cache, South;

(vii) LaSal, LaSal Mountains;

(viii) Manti, Manti;

(ix) Manti, Nebo;

(x) Nine-Mile, Anthro;

(xi) Oquirrh-Stansbury, North;

(xii) Oquirrh-Stansbury, South Oquirrh;

(xiii) South Slope, Diamond Mountain;

(xiv) Wasatch Mountain;

(xv) West Desert, Deep Creek.

(c) If an elk is not taken during this period, any legal weapon may be used during the dates specified on the limited entry bull elk permit.

(5) To hunt in a special limited entry archery elk area, a hunter must obtain a special limited entry archery elk permit.

(6)(a) A special limited entry archery bull elk permit allows a person, using archery equipment, to take one hunter's choice elk, during the season specified on the permit and within the following units:

(i) Beaver;

(ii) Cache, North;

(iii) Chalk Creek;

(iv) East Canyon;

(v) Kamas;

(vi) LaSal, LaSal Mountains;

(vii) Morgan-South Rich;

(viii) Mt. Dutton;

(ix) Nine-Mile, Range Creek;

(x) North Slope, Summit-West Daggett;

(xi) North Slope, Three Corners;

(xii) Ogden;

(xiii) Paunsaugunt;

(xiv) Plateau, Boulder;

(xv) San Rafael, North;

(xvi) San Rafael, South;

(xvii) South Slope, Yellowstone-Vernal; and

(xviii) Zion.

(b) A person may not hunt in any elk Cooperative Wildlife Management unit located within the units as provided in Subsection (6)(a). Spike bull elk restrictions do not apply to special limited entry archery elk permittees.

(7) A person who has obtained a special limited entry archery bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(3).

(8) Bonus points shall not be awarded or utilized when

applying for, or in obtaining, special limited entry archery elk permits.

R657-5-50. Antlerless Elk Hunts.

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one or both of the elk permits is an antlerless elk permit.

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general archery elk;

(iii) general muzzleloader deer;

(iv) general muzzleloader elk;

(v) limited entry archery deer;

(vi) limited entry archery elk;

(vii) limited entry muzzleloader deer; or

(viii) limited entry muzzleloader elk.

R657-5-51. Buck Pronghorn Hunts.

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3) A buck pronghorn permit allows a person using any legal weapon to take one buck pronghorn within the area and season specified on the permit, except during the buck pronghorn archery hunt, only archery equipment may be used.

R657-5-52. Doe Pronghorn Hunts.

(1) To hunt a doe pronghorn, a hunter must obtain a doe pronghorn permit.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless moose permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained a doe pronghorn permit may not hunt during any other pronghorn hunt or obtain any other pronghorn permit.

R657-5-53. Antlerless Moose Hunts.

(1) To hunt an antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management unit unless that person obtains an antlerless moose cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt during any other moose hunt or obtain any other moose permit.

R657-5-54. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, except in bull moose cooperative wildlife management units located within a limited entry unit.

R657-5-55. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal weapon to take a bison within the area and season as specified on the permit.

(4)(a) An orientation course is required for bison hunters who draw a an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation. Hunt fees include the handling fee, permit, and transportation on the island. Permittees are required to use these contract services. Permittees are required to furnish their own living quarters and food during their stay.

(c) Individuals accompanying the permittee must pay an additional fee and provide their own reliable four-wheel drive vehicle. Prior arrangements need to be made through the Division of Parks and Recreation.

(5) An orientation course is required for bison hunters who draw Henry Mountain cow bison permits. Hunters will be notified of the orientation date, time and location.

R657-5-56. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

R657-5-57. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) Any goat may be legally taken, however, permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

R657-5-58. Depredation Hunter Pool Permits.

(1) When deer, elk or pronghorn are causing damage, antlerless control hunts not listed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Hunters are called from a list of unsuccessful permittees or other resident hunters who have applied for depredation hunts.

(3)(a) Application does not affect eligibility for antlerless or other type hunts. However, hunters who participate in any deer, elk, or pronghorn depredation hunt may not possess an additional antlerless permit for that species during the same year except as provided in Subsection R657-5-50(3).

(b) Hunters with depredation permits for doe pronghorn, antlerless deer or antlerless elk may not possess any other permit for those species, except as provided in Subsections R657-5-27(1)(a) and R657-5-50(3), or the proclamation of the Wildlife Board for taking big game.

(4) The division may contact hunters to participate in a depredation hunt prior to the general hunt for a given species of big game. Hunters who do not possess an antlerless deer, elk, or pronghorn permit may purchase an appropriate permit.

(5) Applications must be sent to the appropriate regional division office for the area requested.

(6) Applications must be received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-59. Antlerless Application - Deadlines.

(1) Applications are available from license agents, division offices, and through the division's Internet address.

(2) Residents may apply for, and draw the following permits, except as provided in Subsection (4):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose.

(3) Nonresidents may apply in the drawing for, and draw the following permits, except as provided in Subsection (4):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose, if permits are available during the current year.

(4) Any person who has obtained any elk permit, a pronghorn permit, or a moose permit may not apply for an antlerless elk permit, doe pronghorn permit, or antlerless moose permit, respectively, except as provided in Section R657-5-63.

(5) A person may not submit more than one application in the initial drawing per each species as provided in Subsections (2) and (3).

(6) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-61(3) and R657-5-63(4).

(7)(a) Applications must be mailed by the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(8)(a) Late applications, received by the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-

Lifetime Proclamation, will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw data base to provide:

(i) future pre-printed applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The $5 handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.

(9) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(10) To apply for a resident permit, a person must establish residency at the time of purchase.

(11) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-60. Fees for Antlerless Applications.

Each application must include the permit fee and a nonrefundable handling fee for each species applied for, except when applying with a credit card, the permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

R657-5-61. Antlerless Big Game Drawing.

(1) The antlerless drawing results are posted at the Lee Kay Center, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits are drawn in the order listed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-62. Antlerless Application Refunds.

(1)(a) Unsuccessful applicants, who applied in the initial drawing and who applied with a check or money order will receive a refund in September.

(b) Unsuccessful applicants, who applied for remaining permits and who applied with a check or money order will receive a refund in October.

(2)(a) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(b) Unsuccessful applicants, who applied as a group, will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for in accordance with Section R657-5-29(6).

(3) The handling fees are nonrefundable.

R657-5-63. Drawing for Remaining Antlerless Permits and Over-the-counter Permit Sales After the Antlerless Drawings.

(1) The list of remaining permits will be available by the date provided in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Residents and nonresidents may apply for, and draw any of the following remaining permits, except as provided in Subsection (3):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose.

(3) Any person who has obtained:

(a) an antlerless deer permit may not apply for an antlerless deer permit;

(b) two elk permits may not apply for an antlerless elk permit;

(c) a pronghorn permit may not apply for a doe pronghorn permit; or

(d) a moose permit may not apply for an antlerless moose permit.

(4) Residents and nonresidents may apply for any remaining permits.

(5) The same application form used for the antlerless drawing must be used when applying for remaining permits. The handling fees are nonrefundable.

(6) Applications for remaining permits must be mailed by the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected.

(7) Applicants who apply for remaining permits will not be provided an opportunity to correct a rejected or invalid application on the drawing for remaining antlerless permits.

(8) The drawing results for remaining antlerless permits will be posted at the Lee Kay Center, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(9) Permits remaining after both drawings will be sold over-the-counter, in person, or through the mail, on a first-come, first-served basis only at the Salt Lake Division office beginning on the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-64. Application Withdrawal.

(1)(a) A person may withdraw their application for premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime, and general buck deer

and general muzzleloader elk permits from the big game drawing, or antlerless drawing by requesting such in writing by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(c) An applicant may reapply in the antlerless drawing provided:

(i) the original application is withdrawn;

(ii) the new application is submitted with the request to withdraw the original application;

(iii) both the new application and request to withdraw the original application are received by the initial application deadline; and

(iv) both the new application and request to withdraw the original application are submitted to the Salt Lake Division office.

(d) Handling fees will not be refunded.

(2)(a) An applicant may amend their application for the antlerless drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

(c) The applicant must identify in their statement the requested amendment to their application.

R657-5-65. Special Hunts.

(1)(a) In the event that wildlife management objectives are not being met for once-in-a-lifetime, premium limited entry, or limited entry species, the division may recommend that the Wildlife Board authorize a special hunt for a specific species.

(b) The division will only utilize Subsection (1)(a) if the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game has been published and the Bucks, Bulls and Once-In-A-Lifetime and Antlerless drawings have been completed.

(2) The special hunt season dates, areas, number of permits, methods of take, requirements and other administrative details shall be provided in an addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Wildlife Board for taking big game.

(3) Permits will be allocated through a special drawing for the pertinent species.

R657-5-66. Special Hunt Application - Deadlines.

(1) Applications are available from license agents and division offices.

(2)(a) Residents and nonresidents may apply.

(b) Any person who was unsuccessful in the Bucks, Bulls and Once-In-A-Lifetime or Antlerless drawing may apply. However, any person who has obtained a permit may not apply, unless otherwise provided in this rule and the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) Applications must be mailed by the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected. Late applications will be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

(4) Bonus points will be used in the special hunt drawings to improve odds for drawing permits as provided in Section R657-5-40. However, bonus points will not be awarded for unsuccessful applications in the special hunt drawings.

(5) Any person who obtains a special hunt permit is subject to all rules and regulations provided in this rule, the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, unless otherwise provided in Sections R657-5-65 through R657-5-70.

R657-5-67. Fees for Special Hunt Applications.

(1) Each application must include:

(a) the permit fee for the species applied for; and

(b) a $5 nonrefundable handling fee.

(2)(a) Personal checks, money orders, cashier's checks and credit cards are accepted from residents.

(b) Money orders, cashier's checks and credit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(3)(a) Credit cards must be valid at least 30 days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit card.

(c) Handling fees are charged to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) Payments to correct an invalid or refused credit card must be made with a cashier's check or money order for the full amount of the application fees plus any permits requested.

(4) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

R657-5-68. Special Hunt Drawing.

(1) The special hunt drawing results are posted at the Lee Kay Center, Cache Valley Hunter Education Center and division offices on the date published in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-69. Special Hunt Application Refunds.

(1) Unsuccessful applicants, who applied on the initial drawing and who applied with a check or money order will receive a refund within six weeks after posting of the drawing results.

(2) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

R657-5-70. Permits Remaining After the Special Hunt Drawing.

Permits remaining after the special hunt drawing may be sold by mail or on a first-come, first-served basis as provided in the addendum to the Bucks, Bulls and Once-In-A-Lifetime or Antlerless Addendum of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents.

KEY: wildlife, game laws, big game seasons*

July 3, 2002	**23-14-18**
Notice of Continuation November 30, 2000	**23-14-19**
	23-16-5
	23-16-6

R657. Natural Resources, Wildlife Resources.

R657-14. Commercial Harvesting of Protected Aquatic Wildlife.

R657-14-1. Purpose and Authority.

(1) Under authority of Sections 23-14-3, 23-14-18, and 23-14-19, and Sections 23-15-7 through 23-15-9, this rule provides the procedures, standards, and requirements for:

(a) harvesting protected aquatic wildlife for use as fish bait;

(b) commercially harvesting brine shrimp and brine shrimp eggs; and

(c) seining protected aquatic wildlife.

(2) To the extent that this rule applies to the commercial harvest of brine shrimp and brine shrimp eggs, the objective of this rule is to protect, manage, and conserve the brine shrimp resource based upon the best available data and information and adequately preserve the Great Salt Lake ecosystem while recognizing the economic value of allowing the harvest of brine shrimp and brine shrimp eggs and maintaining a sustainable brine shrimp population.

R657-14-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Alternate seiner" means the person in charge of and responsible for supervising a crew of helpers harvesting authorized species of protected aquatic wildlife in the absence of the primary seiner.

(b) "Certified bait dealer" means a person who has obtained a certificate of registration authorizing the harvest, possession, or sale of protected aquatic wildlife for use as live or dead fish bait.

(c) "Harvest" means to seine, or gather in protected aquatic wildlife and reduce it to possession.

(d) "Harvest location" means the location where the gathering or harvesting of protected wildlife takes place. For purposes of harvesting brine shrimp, a harvest location is a 300 yard radius from the location of the Certificate of Registration marker as required under Subsection R657-14-16(2).

(e) "Helper" means a person aiding a certificate of registration holder in the harvesting, transporting, or selling of protected aquatic wildlife, including any employee, agent, family member, or donated labor.

(f) "Helper card" means a card authorizing a person to act as a helper.

(g) "Nongame fish" means all species of fish, except:

(i) any species or hybrid species of trout, including albino, brook, brown, cutthroat, golden, grayling, kokanee salmon, lake or mackinaw, rainbow, splake, and tiger;

(ii) Bonneville cisco;

(iii) bluegill;

(iv) bullhead;

(v) catfish;

(vi) crappie;

(vii) green sunfish;

(viii) northern pike;

(ix) largemouth bass;

(x) Sacramento perch;

(xi) smallmouth bass;

(xii) striped bass;

(xiii) tiger muskellunge;

(xiv) walleye;

(xv) white bass;

(xvi) whitefish;

(xvii) wiper; and

(xviii) yellow perch.

(h) "Primary seiner" means the person in charge of and responsible for supervising a crew of helpers harvesting protected aquatic wildlife.

(i) "Purchase" means to buy, acquire, or obtain from sale, exchange, barter, or trade protected aquatic wildlife for pecuniary consideration or advantage.

(j) "Seining" means to harvest protected aquatic wildlife with the use of a net or other similar device.

(k) "Wildlife registration office" means the division office in Salt Lake responsible for processing applications and issuing certificates of registration.

R657-14-3. Certificate of Registration Required.

(1)(a) A person may not harvest, possess, or transport protected aquatic wildlife without first obtaining a certificate of registration and a helper card for each individual assisting that person.

(b) The original copy of the certificate of registration must be present at the harvest location while harvesting protected aquatic wildlife.

(2) Except as provided in Subsection R657-14-13(4), a person must obtain a separate certificate of registration to engage in the following activities:

(a) harvesting or selling designated species of fish, salamanders, leeches, and crayfish for use as fish bait;

(b) seining and selling protected aquatic wildlife for any purpose other than for use as fish bait; and

(c) harvesting brine shrimp and brine shrimp eggs.

(3) A certificate of registration is not required:

(a) for the retail sale of protected aquatic wildlife imported into Utah, provided the product is clearly labeled as to its out-of-state origin;

(b) to process brine shrimp or brine shrimp eggs; or

(c) to sell brine shrimp or brine shrimp eggs, provided the brine shrimp or brine shrimp eggs were taken in accordance with the provisions of this rule by a person who has obtained a certificate of registration or as provided in Subsection R657-3-18(4).

(4) Certificates of registration are not transferable, except as provided in Section R657-14-21.

(5) Any certificate of registration issued to a business or any other commercial organization shall be void upon the termination of the business or organization or upon bankruptcy.

(6)(a) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(b) Any person accepting a certificate of registration under this rule acknowledges the necessity for close regulation and monitoring by the division.

(7) Any certificate of registration issued or renewed by the division under this rule to harvest brine shrimp or brine shrimp

eggs is a privilege and not a right. The certificate of registration authorizes the holder to harvest brine shrimp or brine shrimp eggs subject to all present and future conditions, restrictions, and regulations imposed on such activities by the division, the Wildlife Board, the state of Utah, or the United States.

(8) A certificate of registration to harvest brine shrimp or brine shrimp eggs does not guarantee or otherwise legally entitle the holder to any of the following:

(a) a minimum harvest quota in any given season or seasons;

(b) a quota or percentage of the harvestable surplus as determined by the division;

(c) a particular harvesting or processing method;

(d) a particular harvest season duration, commencement date, or termination date;

(e) access to any particular area or site on the Great Salt Lake or on other waters in the state, regardless of historical authorization or use;

(f) marina access on the Great Salt Lake or elsewhere in the state, regardless of historical authorization or use;

(g) an increase, stabilization, or reduction in the number of certificates of registration issued by the division to harvest brine shrimp and brine shrimp eggs;

(h) an exclusive opportunity to harvest;

(i) a particular quantity or quality of brine shrimp or brine shrimp eggs;

(j) a particular water condition or salinity level conducive to brine shrimp production, brine shrimp egg production, or harvest success;

(k) any particular level of protection for brine shrimp or brine shrimp eggs from disease, pesticides, or predators; or

(l) any other right or management philosophy beneficial to harvesting or production of brine shrimp and brine shrimp eggs.

(9) The procedures and processes outlined in this rule regulating the harvest of brine shrimp and brine shrimp eggs are all subject to change as the division and the Wildlife Board gather greater information and data on the impact current harvest regulations have on the sustainability of brine shrimp populations, the Great Salt Lake ecosystem, and the economic viability of the industry.

R657-14-4. Application for Certificate of Registration.

(1) Applications for certificates of registration are available at division offices.

(2)(a) Applications for commercial seining or harvesting protected aquatic wildlife for use as fish bait may be submitted any time during the year.

(b) Applications for harvesting brine shrimp and brine shrimp eggs may be submitted May 1 through May 31. Applications may be submitted by mail if postmarked no later than midnight on the last day of the application period.

(3)(a) If an application for a certificate of registration is made in the name of a commercial organization, the applicant must specify the person responsible for that entity.

(b) All commercial organization applicants must provide on or with the application, a written statement designating the responsible person as its legal agent in all matters before the division relating to brine shrimp and brine shrimp egg harvesting.

(4)(a) Completed applications must be submitted to the wildlife registration office.

(b) The division may return any application that is incomplete or completed incorrectly.

(5)(a) The application review process may require up to 45 days.

(b) The division may deny issuing a certificate of registration to any applicant for any of the following reasons:

(i) the applicant has previously been issued a certificate of registration and has failed to submit any report required by this rule, the division, or the Wildlife Board;

(ii) the applicant has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(iii) the applicant has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife.

(6) The division may limit the number of certificates of registration issued or deny any application in the interest of wildlife, wildlife habitat, serving the public, or public safety.

(7) If an application is approved, the division shall issue the applicant a certificate of registration that specifies:

(a) the species and amounts of protected aquatic wildlife that may be harvested or sold;

(b) the water and locations where protected aquatic wildlife may be harvested;

(c) the gear that may be used;

(d) the hours during which protected aquatic wildlife may be harvested;

(e) the means and amounts of protected aquatic wildlife that may be transported; and

(f) any restriction imposed on the applicant in addition to the provisions of this rule.

(8)(a) Certificates of registration for seining or harvesting protected aquatic wildlife for use as fish bait are valid for a calendar year.

(b) Certificates of registration for harvesting brine shrimp and brine shrimp eggs are valid only during the harvest season as provided in Subsection R657-14-14(2).

R657-14-5. Use of Helpers.

(1)(a) Except as provided in Subsections (2) and R657-14-14(6), any person aiding the certificate of registration holder in seining protected aquatic wildlife or harvesting brine shrimp and brine shrimp eggs shall be in possession of a helper card.

(b) A helper card shall be deemed to be in possession if it is on the person or on the boat from which the person is working.

(2) A helper card is not required of any person engaged only in the retail sale or transportation of protected aquatic wildlife, except as provided in Subsection R657-14-14(7).

(3) Helper cards are issued in the name of the certificate of registration holder and are transferable among individuals assisting the certificate of registration holder.

(4)(a) A helper may assist in the harvest of protected aquatic wildlife only while working under the direct supervision

of a primary or alternate seiner.

(b) For purposes of this rule, "direct supervision" means to be physically present, either on a boat with the helper or within close proximity so as to be able to provide direct instructions to the helper.

(5) Twelve additional helper cards for each Certificate of Registration may be obtained from the wildlife registration office at any time during the year.

R657-14-6. Records -- Report of Activities.

(1) Each person who has been issued a certificate of registration authorizing the harvest or sale of protected aquatic wildlife shall keep accurate records of the number or weight harvested and to whom the products were sold.

(2) The records required under Subsection (1) shall be retained for at least five years and must be available for inspection upon division request.

(3)(a) A person who has been issued a certificate of registration for seining or harvesting protected aquatic wildlife for use as fish bait shall include the following information, broken down by month, in an annual report to the division:

(i) the species of protected aquatic wildlife harvested;

(ii) the water from which the protected aquatic wildlife were harvested; and

(iii) the total number or weight of protected aquatic wildlife harvested.

(b) A person who has been issued a certificate of registration for the retail sale of protected aquatic wildlife shall include the following information, broken down by month, in an annual report to the division:

(i) the name and address of each person from which protected aquatic wildlife was purchased or sold;

(ii) the species of protected aquatic wildlife purchased or sold; and

(iii) the weight and number of protected aquatic wildlife purchased or sold.

(c)(i) A person who has been issued a certificate of registration for harvesting brine shrimp and brine shrimp eggs must submit a weekly harvest report to the Great Salt Lake Ecosystem Project office. The report shall include the total amount of brine shrimp and brine shrimp eggs, by raw weight, harvested each day. The reports must be prepared by a person working for the reporting company. The reports must be received or postmarked by Monday of each week.

(ii) A daily harvest report must be filed with the Great Salt Lake Ecosystem Project office. The report must be filed not later than 12 hours after the end of the previous calendar day. The report may be filed utilizing a voicemail system linked to a dedicated phone number provided or the report may be filed by fax to a dedicated phone number. The report shall include the total amount of brine shrimp and brine shrimp eggs, by raw weight, harvested each day. The report must be prepared or given by a person working for the reporting company.

(iii) When brine shrimp and brine shrimp eggs are being transported away from the lakeshore to a processing plant, a landing receipt form must be prepared and in possession of the transport driver before leaving the loading site. The form shall include the certificate of registration numbers, certificate of registration holders, harvest dates, harvest areas, landing dates, container numbers and weights as determined by certified scales for lake harvested brine shrimp and brine shrimp eggs, container numbers and weight estimates for shore harvested brine shrimp and brine shrimp eggs and names of individuals who landed and weighed the product. The reports must be received or postmarked by Monday of each week.

(iv) Report forms are provided by the division.

R657-14-7. Species of Protected Aquatic Wildlife That May Be Harvested.

(1)(a) The division may authorize a person to harvest or sell nongame fish, salamanders, leeches, crayfish, brine shrimp or brine shrimp eggs, or overabundant nuisance game species as determined by the division.

(b) The certificate of registration shall identify those species of protected aquatic wildlife that may be harvested or sold.

(2) Any species of protected aquatic wildlife caught that is not authorized for harvest must be immediately returned alive and unharmed to the water from which it was harvested.

R657-14-8. Prohibited Nongame Species.

The following species of protected aquatic wildlife may not be harvested, and if caught must be immediately returned alive and unharmed to the water from which it was taken:

(1) bonytail chub (Gila elegans);
(2) Colorado squawfish (Ptychocheilus lucius);
(3) flannelmouth sucker (Catostomus latipinnis);
(4) gizzard shad (Dorosoma cepedianum);
(5) grass carp (Ctenopharyngodon idella);
(6) humpback chub (Gila cypha);
(7) June sucker (Chasmistes liorus);
(8) least chub (Iotichthys phlegethontis);
(9) leatherside chub (Gila cypha);
(10) razorback sucker (Xyrauchen texanus);
(11) roundtail chub (Gila robusta);
(12) Virgin River chub (Gila robusta seminuda);
(13) Virgin spinedace (Lepidomeda mollispinis); and
(14) woundfin (Plagopterus argentissimus).

R657-14-9. Harvest Hours.

(1) Protected aquatic wildlife, except brine shrimp and brine shrimp eggs, may be harvested from 5 a.m. to 10 p.m. year-round, unless otherwise specified on the certificate of registration.

(2) Brine shrimp and brine shrimp eggs may be harvested 24 hours during the calendar day.

(3) When the harvest season is suspended or closed, all harvest activity shall cease at official sunset.

R657-14-10. Identification of Traps and Nets.

(1) A metal tag or plate stamped with the owner's name and certificate of registration number must be securely attached to each seine, trap and net.

(2) Any improperly tagged seine, trap, or net may be seized by the division.

R657-14-11. Transportation, Purchase, or Sale of Live Protected Aquatic Wildlife.

(1) A person may not have in possession any live species of protected aquatic wildlife, except as provided in Subsection R657-14-12(1), or as otherwise provided in Rules R657-3 or R657-16.

(2) A person may not purchase any live protected aquatic wildlife from or sell any live protected aquatic wildlife to any person or entity who has not obtained a certificate of registration to possess or sell live protected aquatic wildlife, except as provided in Subsection R657-14-3(3).

R657-14-12. Certified Bait Dealers.

(1) The division may authorize a person to:

(a) harvest salamanders or leeches and retain them alive as fish bait;

(b) transport live or dead salamanders or leeches into or out of Utah;

(c) establish an outlet for the sale of live or dead salamanders or leeches; or

(d) harvest or sell designated species of dead protected aquatic wildlife for use as fishing bait, including cut baits.

(2) The division may allow a person to harvest, possess, or sell the following species of protected aquatic wildlife for use as dead fish bait:

(a) nongame fish, except those prohibited species described in Section R657-14-8;

(b) crayfish;

(c) salamanders;

(d) leeches; or

(e) any overabundant game species as determined by the division and indicated on the certificate of registration.

(3)(a) A person may not purchase dead fish bait from any person who has not obtained a certificate of registration from the division.

(b) Subsection (a) does not preclude commerce with out-of-state sellers of dead, prepared fish baits if the dead fish bait is clearly labeled as to its origin.

(4)(a) Only a person who has obtained a certificate of registration from the division may harvest, sell, or trade protected aquatic wildlife for use as fish bait.

(b) Any protected aquatic wildlife sold for use as fish bait must be packaged in a suitable container, and have securely attached a clearly discernable business label on each package that provides the brand or business name, business address, type of product, and certificate of registration number.

(5) A person may not purchase or sell any dead fish bait that does not have a label attached to the package as provided in Subsection (4)(b).

R657-14-13. Commercial Seining.

(1) The division may issue a certificate of registration authorizing a person to harvest designated species of protected aquatic wildlife by seining.

(2)(a) Three helper cards are issued with the certificate of registration.

(b) Additional helper cards may be obtained from the division.

(3) A seiner may harvest any species of nongame fish, except those prohibited species as designated in Section R657-14-8, and any overabundant game species as determined by the division and indicated on the certificate of registration.

(4) A seiner may harvest or sell protected aquatic wildlife for use as fish bait as provided in Section R657-14-12, if authorization is obtained from the division and indicated on the certificate of registration.

R657-14-14. Harvesting Brine Shrimp and Brine Shrimp Eggs --Certificate of Registration -- Helper Cards.

(1)(a) The division may issue a certificate of registration authorizing a person to harvest brine shrimp and brine shrimp eggs.

(b) A separate certificate of registration and the corresponding certificate of registration marker are required for each harvest location.

(c)(i) The provisions of this rule do not apply:

(A) to the harvest of 200 pounds or less of brine shrimp or brine shrimp eggs, during a single calendar year, for culturing ornamental fish, provided the brine shrimp eggs are not sold, bartered, or traded; or

(B) for the retail sale of brine shrimp or brine shrimp eggs.

(ii) A certificate of registration is required for the activities described in Subsection (i) as provided in Rule R657-3-18.

(2) Except as provided in Subsections R657-14-19(4) and (5), the certificate of registration is valid for harvesting brine shrimp and brine shrimp eggs only during the harvest season beginning October 1 and ending January 31. If October 1 falls on a Sunday, the harvest season shall begin on the following Monday. In the interest of the wildlife resources of the Great Salt Lake, the harvest season may be delayed up to 10 days provided the harvesting companies are notified seven days in advance of the delay. After the season has opened, harvesting may be suspended two times during the season, for up to seven days each time, in the interest of the wildlife resources of the Great Salt Lake, provided the harvesting companies are notified at least 24 hours in advance of the suspension date.

(3) The Wildlife Board, after considering the best available biological data and other information received from the division and the public, has determined that:

(a) a limitation on the number of certificates of registration issued by the division to harvest brine shrimp and brine shrimp eggs, is currently necessary to protect the brine shrimp resource and the Great Salt Lake ecosystem;

(b) additional research and scientific data is necessary to adequately understand the dynamics of the brine shrimp populations, the Great Salt Lake ecosystem, and the impact harvesting has on the sustainability of the resource;

(c) given the current number of certificates of registration, the need for additional scientific data, and the increasing efficiency in the industry's ability to harvest large quantities of brine shrimp and brine shrimp eggs in short periods, the issuance of additional certificates at this point in time may compromise the division's ability to effectively regulate the harvest to avoid jeopardizing resource sustainability; and

(d) given these factors and the harvest restrictions adopted in this rule, a total of 79 certificates of registration may be issued.

(4) Certificates of registration that may become available for issuance through revocation, expiration, nonrenewal, or surrender may either be retired by the division or reallocated to

eligible persons and entities through random drawings conducted at the Division of Wildlife Resources, Salt Lake City office.

(5) All persons or entities applying for a certificate of registration to harvest brine shrimp and brine shrimp eggs made available for issuance through Subsection (4) shall satisfy the following requirements:

(a) submit a certificate of registration application to the wildlife registration office consistent with the requirements set forth in R657-14-4; and

(b) submit a cashiers check to the division in the amount of $10,000 for each certificate of registration applied for.

(6)(a) One certificate of registration is required for each harvest location.

(b) The original certificate of registration must be in possession at the harvest location and available for inspection by the division or any peace officer upon demand.

(7)(a) Three individual helper cards are issued with the certificate of registration and are transferable.

(b) Additional helper cards may be obtained from the division.

(c) Any crew member harvesting or transporting brine shrimp or brine shrimp eggs from the harvest location must have a helper card in possession. A primary or alternate seiner does not have to be present while transporting brine shrimp or brine shrimp eggs from the harvest location.

(d) An employee directing harvest operations from a plane does not have to have a helper card.

(e) The driver of a truck transporting brine shrimp or brine shrimp eggs from the lake to a storage or processing plant does not have to have a helper card. Any crew member loading brine shrimp and brine shrimp eggs into a truck must have a helper card in possession.

(8)(a) A primary seiner and an alternate seiner card are issued with the certificate of registration and are transferable within the entity holding the certificate of registration.

(b) A primary seiner or an alternate seiner must be present and directly supervise the harvest activity.

(c) The primary or alternate seiner must have a primary or alternate seiner card in possession at the harvest location.

R657-14-15. Certificate of Registration Renewal for Brine Shrimp and Brine Shrimp Egg Harvesting.

(1) Each certificate of registration to harvest brine shrimp and brine shrimp eggs issued under this rule may be renewed by the division on an annual basis consistent with the provisions in this section.

(2) Persons or business entities issued certificates of registration by the division in the harvest year immediately preceding the harvest year for which renewal is sought will have a preference for the same number of certificates of registration, provided the applicant satisfies the renewal criteria for each certificate of registration.

(3) The annual expiration date of a certificate of registration shall be shown on the certificate of registration. A certificate of registration that is not renewed prior to the expiration date shown on the certificate of registration automatically expires.

(a) A certificate of registration automatically expires prior to the expiration date shown on the certificate of registration upon the dissolution of a holder that is a partnership, corporation, or other business entity.

(b) Upon the death of a certificate of registration holder that is a natural person, the estate may attempt to sell the harvest operation and petition the division, under Section R657-14-21, to transfer the certificate of registration to the respective buyer.

(c)(i) Failure to annually renew a certificate of registration by satisfying all the renewal criteria outlined in this rule prior to the expiration date shown on the certificate of registration shall automatically deprive the prospective holder of a renewal preference in succeeding years.

(ii) Preference forfeiture results whether unsuccessful renewal is the consequence of automatic expiration, applicant neglect, or division denial.

(iii) Failure to renew in years where the harvest of brine shrimp or brine shrimp eggs is closed for regulatory or management purposes will result in preference forfeiture.

(d) Expiration of a certificate of registration is not an adjudicative proceeding under Title 63, Chapter 46b of the Utah Administrative Procedures Act.

(4) Renewal applications for certificates of registration to harvest brine shrimp and brine shrimp eggs are available at the division's wildlife registration office in Salt Lake City.

(a) Completed renewal applications shall be submitted to the wildlife registration office between May 1 and May 31 of each year. Applications are considered "submitted" for purposes of this rule when hand delivered to the wildlife registration office on or before the application deadline, or when mailed to the wildlife registration office and postmarked no later than midnight on the last day of the application period.

(b) Where a certificate of registration renewal application is submitted in the name of a commercial organization, the applicant must specify the person responsible for that entity.

(c) The commercial organization applicant must provide, on or with the renewal application, a written statement designating the responsible person as its legal agent in all matters before the division relating to brine shrimp and brine shrimp egg harvesting.

(d) The division may return any application that is incomplete or completed incorrectly.

(e) Applications for renewal that are filed within the prescribed time period set in this rule but returned as incomplete or completed incorrectly may be granted where the errors are corrected and the application resubmitted to the wildlife registration office within 30 days from the date the initial application was rejected.

(f) The application review process may require up to 45 days.

(5) The criteria for certificate of registration renewal are as follows:

(a) the applicant was issued a certificate of registration to harvest brine shrimp and brine shrimp eggs in the immediate harvest season preceding the application for renewal;

(b) the applicant has accurately and completely filled out the division's renewal application and submitted it to the division within the time period prescribed in this rule;

(c) the applicant has submitted with the renewal application a cashiers check for $10,000 for each certificate of

registration; and

(d) the applicant satisfies all other requirements prerequisite to receiving an initial certificate of registration to harvest brine shrimp or brine shrimp eggs as found in R657-14-4.

(6) The division may refuse to renew a certificate of registration for any of the following reasons:

(a) the applicant has failed to submit any report required by the division in writing, or any report required by this rule or the Wildlife Board;

(b) the applicant has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife;

(c) the applicant has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(d) where the division determines that renewal may significantly damage or is not in the interest of wildlife, wildlife habitat, serving the public, or public safety.

(7) If an application for renewal is approved, the Division shall issue the applicant a new certificate of registration that may specify:

(a) the species and amounts of protected aquatic wildlife that may be harvested or sold;

(b) the water and locations where protected aquatic wildlife may be harvested;

(c) the equipment that may be used;

(d) the hours during which protected aquatic wildlife may be harvested; and

(e) any restriction imposed on the applicant in addition to the provisions of this rule.

(8) Any applicant who has been refused renewal of a certificate of registration may submit a request for agency action to the Wildlife Board, in care of the Division of Wildlife Resources, within 30 days following notification of the refusal to renew. The format and content of the request for agency action and any subsequent proceedings initiated thereunder shall comply with Rule R657-2.

(9) Certificates of registration for harvesting brine shrimp and brine shrimp eggs are valid only during the harvest season as provided in Subsections R657-14-14(2) and R657-14-19(4).

R657-14-16. Harvesting Brine Shrimp and Brine Shrimp Eggs --Identification of Equipment.

(1)(a) Any boat used for harvesting operations must be identifiable from the air, water and land with either the company name, company initials or certificate of registration number. A camp or base of operations located on or near the shoreline must be marked so it is visible from the air and land with either the company name, company initials, or certificate of registration number. Boat markings denoting the company name, company initials or certificate of registration number, must be visible from a distance of 500 yards when on the lake.

(b) The letters or numbers shall be visible at all times, written clearly and shall meet the following requirements:

(i) letters or numbers on the top of a boat shall be at least 36 inches in height;

(ii) letters or numbers used on the sides of a boat shall be at least 24 inches in height, except that boats with inflatable hulls may use letters and numbers that are 12 inches in height;

(iii) letters or numbers used on a camp or base of operations sign shall be at least 24 inches in height; and

(iv) all letters and numbers used for identification purposes shall be of reflective white tape with a solid black background.

(c) Identification may be done with a magnetic sign placed on top of and the sides of the vehicle or boat.

(d) A boom shall be marked with letters and numbers at least three inches in height and marked once on each continuous segment of boom that may be coupled together.

(e) All containers filled or partially filled with brine shrimp or brine shrimp eggs and left unattended on the shore or in a vehicle parked on the shore shall be individually marked with either the company name, company initials or certificate of registration number under which the product was harvested. Each container shall be marked as follows:

(i) the company name, company initials or the certificate of registration number shall be permanently and legibly marked at a visible location on the exterior surface of the container; or

(ii) the company name, company initials or the certificate of registration number shall be permanently and legibly marked on a durable, waterproof tag securely and visibly attached to the exterior surface of the container.

(f) "Shore" for purposes of this section, shall include all lands within one mile of the body of water where the product was harvested. "Shore" does not include permanent structures affixed to the land and operated for purposes of storing or processing brine shrimp and brine shrimp eggs, provided the name of the structure's current owner or tenant is visibly marked on the exterior of the structure.

(2)(a) Only one certificate of registration marker corresponding to each certificate of registration will be displayed at each harvest location as follows:

(i) on the boat with the certificate of registration on board;

(ii) on the harvest boat or attached to the boom;

(iii) in the water at the harvest location; or

(iv) on the shore while harvesting brine shrimp or brine shrimp eggs from shore.

(b) A certificate of registration marker shall consist of a piece of equipment, furnished by the harvesters, with the specifications as provided in Subsection (b)(i) through Subsection (b)(v).

(i) A six foot long piece of tubing with a weight at one end.

(ii) This piece of tubing shall have a fluorescent orange ball that is a minimum of eighteen inches in diameter, mounted in the approximate center of this length of tubing. This fluorescent orange ball shall be marked in two places with indelible black paint, the COR number that is being operated and matches the decal as provided for in Subsection R657-14-16 (2)(b)(iii). These painted COR numbers shall be a minimum of twelve inches in height.

(iii) Mounted above the orange ball towards the un-weighted end of this tubing shall be a decal issued by the division which denotes the certificate of registration in use and corresponding to the certificate of registration marker device.

(iv) Mounted on this tubing between the orange ball and

the un-weighted end of this tubing, shall be an aluminum radar reflector that is a minimum of fifteen inches square.

(v) Mounted above the radar reflector shall be a three-inch wide band of silver reflective tape.

(vi) Mounted on the un-weighted end of this tubing shall be an amber light that at night is visible for up to one-half mile and flashes 30 times per minute, minimum.

(c) The COR marker must be displayed in a manner that is:

(i) visible in all directions at a distance of 500 yards; or

(ii) displayed above the superstructure of any vessel that a certificate of registration is being used from; and

(iii) the amber light must be operating at all times between sunset and until sunrise.

(d) A brine shrimp harvester shall not display an amber light at night, or an orange ball or other device which simulates the certificate of registration marker device, without having the original certificate of registration at the harvest location.

(e) Brine shrimp or brine shrimp eggs may not be harvested in any manner, nor may a harvest location be claimed unless and until an original copy of the certificate of registration is at the harvest location and the corresponding certificate of registration marker is properly deployed as required in R657-14-16(2).

(f) The certificate of registration and corresponding certificate of registration marker shall not be transported to the harvest location by aircraft.

(i) "Aircraft" for purposes of this section, means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

R657-14-17. Harvesting Brine Shrimp and Brine Shrimp Eggs -- Use of Booms.

(1)(a) A primary seiner, alternate seiner, or helper must remain within one mile of any boom attached to the shore, whether open or closed, 24 hours a day so that an officer may easily locate the person tending the boom.

(b) A boom may be left unattended in the open water during the legal harvest season if:

(i) the boom is properly identified as provided in Subsection R657-14-16(1)(b)(iii);

(ii) the boom is closed;

(iii) the boom is marked with a certificate of registration marker as described in Subsection R657-14-16(2)(b); and

(iv) the boom is lighted as described in Subsection R657-14-16(2)(c)(iii).

(2) On a causeway or dike where camping is not allowed, a primary seiner, alternate seiner, or helper must be stationed at the closest possible camping site, not more than 10 miles away, and that location must be clearly identified on a tag securely attached to the shore end of the boom.

(3)(a) A person may not harvest any brine shrimp or brine shrimp eggs within 300 yards of any certificate of registration marker displayed at a harvest location as provided in Subsection R657-14-16(2)(a) without permission from the company that first began harvesting in that location.

(b) The certificate of registration marker must be deployed as provided in Subsection R657-14-16(2) and accompanied by an individual at the harvest location to receive the 300 yard encroachment protection.

(4) Brine shrimp and brine shrimp eggs may be removed from another person's boom only with written permission from the person who owns the boom.

(5) A person may not deploy more than one continuous length of boom for each certificate of registration.

R657-14-18. Harvesting Brine Shrimp and Brine Shrimp Eggs --Unlawful Method -- Use of Equipment.

(1) A person may not intentionally drive a boat through, or create a wake through, a streak of brine shrimp eggs that another person is harvesting.

(2)(a) A person may test the equipment to be used in harvesting brine shrimp from March 1 through September 30.

(b) At least 48 hours before testing the equipment, the person must notify the division's Northern Regional Office.

(c) Any brine shrimp or brine shrimp eggs collected while testing the equipment must be immediately returned within 1/4 mile of the location in which they were collected.

(3) Brine shrimp and brine shrimp eggs may not be taken to a storage facility, test site located greater than 1/4 mile from the location in which they were collected, or to the shore, except as provided in Section R657-14-19(4).

R657-14-19. Harvesting Brine Shrimp and Brine Shrimp Eggs -- Areas of Harvest and Season Dates.

(1) The division may authorize the harvest of brine shrimp and brine shrimp eggs from:

(a) the Great Salt Lake and surrounding areas, including ponds operated in a normal manner for mineral extraction; and

(b) the Sevier River.

(2) The area east of the north-south line from the tip of Promontory Point south along the east shore of Fremont and Antelope Islands and along the dike extending from the south end of Antelope Island to the south shore of the Great Salt Lake is closed to the commercial harvesting of brine shrimp and brine shrimp eggs.

(3) Except as provided in Subsections (4) and (5), brine shrimp and brine shrimp eggs may be harvested only during the harvest season as described in Subsection R657-14-14(2).

(4)(a) Any person who has a valid certificate of registration may cumulatively collect up to 25 pounds of brine shrimp eggs between March 1 and September 30 for the purpose of conducting research.

(b) For the purpose of conducting research, a person may not collect more than one pound of brine shrimp eggs during a single day regardless of the number of certificates of registration issued to that person.

(c) Brine shrimp and brine shrimp eggs collected for research under the authority of this section may not be sold, traded, or bartered.

(5)(a) Brine shrimp and brine shrimp eggs may be harvested from mineral extraction ponds located along the shores of the Great Salt Lake any time during the year.

(b) A pond may not be built solely for the purpose of raising of harvesting brine shrimp or brine shrimp eggs.

(c) Brine shrimp or brine shrimp eggs may not be introduced into the Great Salt Lake or any pond. Brine shrimp and brine shrimp eggs must enter into the pond during normal mineral extraction processes.

(6) All brine shrimp and brine shrimp eggs which have been harvested and placed in containers shall be transported from the lake or lakeshore not later than 21 days after the close of the harvest season. No brine shrimp or brine shrimp eggs may be removed from the surface of the beach and placed in a container after the season has closed.

R657-14-20. Violations.

(1) The penalty for any violation of this rule is a class C misdemeanor as provided in Section 23-13-11(2).

(2) Any violation of, or failure to comply with the provisions of this rule, any requirement contained in a certificate of registration issued pursuant to this rule, any Wildlife Board Order, or any statute related to the harvesting, possession or transfer of brine shrimp or brine shrimp eggs may be grounds for revocation, suspension or denial of future certificates of registration as determined by a division hearing officer.

R657-14-21. Certificate of Registration Transfers.

(1) Pursuant to Section 23-19-1(2), a person may not lend, transfer, sell, give or assign a certificate of registration to harvest brine shrimp and brine shrimp eggs belonging to the person or the rights granted thereby, except as authorized hereafter.

(2) "Business entity" for purposes of this section means any person, proprietorship, partnership, corporation, or other commercial organization that has been issued a certificate of registration by the division to harvest brine shrimp and brine shrimp eggs.

(3)(a) The division may authorize, consistent with the requirements of this section, the transfer of a valid certificate of registration to harvest brine shrimp and brine shrimp eggs from the lawful holder to an other person or entity in the following instances:

(i) where any transaction or occurrence will cause the name of the business entity recorded as the certificate of registration holder to change from that specifically identified on the certificate of registration;

(ii) where any transaction or occurrence will cause the business entity recorded as the certificate of registration holder to permanently reorganize, dissolve, lapse, or otherwise cease to exist as a legal business entity under the laws of the State of Utah or the jurisdiction where the business entity was organized; or

(iii) where any transaction or occurrence effectively transfers a certificate of registration to harvest brine shrimp and brine shrimp eggs in violation of Section 23-19-1(2).

(b) written approval from the division for any certificate of registration transfer permitted under this rule shall be obtained prior to any transfer of the certificate of registration or the rights granted thereunder.

(c) Transferring or selling an ownership interest in a business entity holding a certificate of registration to harvest brine shrimp and brine shrimp eggs does not require division approval provided the transfer of ownership does not cause the business entity to temporarily or permanently change its name, reorganize, dissolve, lapse, or otherwise cease to exist as a legally recognized business entity under the laws of the State of Utah.

(4) Obtaining division approval to transfer a certificate of registration to harvest brine shrimp and brine shrimp eggs shall be initiated by application to the division, as provided in Subsections (a) through (e).

(a) Complete the application prescribed by the division and submit it to the division's wildlife registration office.

(b) Applications may be submitted any time during the year.

(c) Annual applications and fees for certificates of registration renewal shall be submitted between May 1 and May 31, regardless whether a transfer application is contemplated or pending.

(d) If an application to transfer a certificate of registration identifies a business entity as the transferee, the transferee must designate a person responsible for that entity.

(i) The transferee shall provide on or with the application a written statement designating the responsible person as its legal agent in all matters before the division relating to brine shrimp and brine shrimp egg harvesting.

(e) The division may return any application that is incomplete or completed incorrectly.

(5) The division shall respond to the application to transfer a certificate of registration within 20 days of receipt in one of the following forms:

(a) a letter approving the application;

(b) a letter denying the application and identifying the reasons for denial;

(c) a letter identifying deficiencies in the application and requesting additional information from the applicant; or

(d) a letter notifying the applicant that the division requires additional time to process and consider the application with an explanation of the extenuating circumstances necessitating the extension.

(6) The division shall deny an application to transfer a certificate of registration where any of the following exists:

(a) the proposed transferee fails to satisfy all the requirements necessary to obtain an original certificate of registration; or

(b) the applicant transferor fails to demonstrate that the certificate of registration will be transferred in connection with the sale or transfer of the entire brine shrimp harvest operation or the harvesting equipment ordinarily required to effectively utilize a certificate of registration.

(i) Business entities holding no harvesting equipment may be approved for a certificate of registration transfer only where the entire business entity and brine shrimp harvest operation is transferred along with all certificates of registration held by the business entity.

(ii) Business entities changing the official name maintained on division records as the certificate of registration holder shall simply establish that the entity's ownership and business structure will not materially differ under the new business name.

(7) The division may deny authorizing a certificate of registration transfer to any proposed transferee for any of the following reasons:

(a) the applicant transferee has previously been issued a certificate of registration and has failed to submit any report required by this rule, the division, or the Wildlife Board;

(b) the applicant transferee has been found guilty, pleaded

guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(c) the applicant transferee has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife.

(8)(a) If a transfer application is approved, the division shall accept the surrender of the transferor's certificate of registration and reissue it to the proposed transferee within 10 business days of the surrender consistent with the requirements prescribed in this rule.

(b) The proposed transferee may not begin harvesting brine shrimp or brine shrimp eggs until it has received a certificate of registration from the division issued in its name, and only then in conformance with all applicable laws, rules, and orders of the Wildlife Board and division.

(c) In receiving a certificate of registration transferred under this section, the transferee assumes no additional privileges or opportunities with respect to harvesting brine shrimp and brine shrimp eggs than those formerly possessed by the transferor.

KEY: game laws, bait dealers, commercialization of aquatic wildlife

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R657. Natural Resources, Wildlife Resources.
R657-29. Government Records Access Management Act.
R657-29-1. Purpose and Authority.

(1) This rule prescribes where and to whom requests for information shall be directed and provides procedures for access to division records as allowed under Subsection 63-2-204(2).

(2) Specific procedures for requesting division records are provided in Chapter 2, Title 63, Government Records Access and Management Act.

R657-29-2. Definitions.

(1) Terms used in this rule are defined in Section 63-2-103.

(2) In addition:

(a) "Department" means the Department of Natural Resources.

(b) "Division" means the Division of Wildlife Resources

(c) "Records officer" means the individual located in the Salt Lake division office designated by the director of the division to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

R657-29-3. Allocation of Responsibility Within the Division.

The division is considered a governmental entity and the director of the division is considered the head of the governmental entity.

R657-29-4. Requesting Information.

(1) A person making a request for any private, controlled or protected record shall furnish the division with a written request as provided in Subsection 63-2-204(1) on a form provided by the division.

(2)(a) A request for any record shall be made only to the records officer in the Salt Lake division office located at 1594 West North Temple, Salt Lake City, Utah 84114.

(b) Response to a request submitted to any person other than the records officer in the Salt Lake division office may be delayed.

(3)(a) The records officer shall respond to each request according to Section 63-2-204.

(b) Under authority of Subsection 63-2-201(5)(b) the director may, in his discretion, disclose records that are private under Subsection 63-2-302(2) or protected under Section 63-2-304 to persons other than those specified in Section 63-2-202 or 63-2-206 if he determines there is no interest in restricting access to the record, or that the interests favoring access outweighs the interest favoring restriction of access.

R657-29-5. Requests for Access for Research Purposes.

(1) Access to private or controlled records for research purposes is allowed under Section 63-2-202(8).

(2) Requests for access to private or controlled records for research purposes may be made to the records officer in the Salt Lake division office.

R657-29-6. Intellectual Property Records.

(1) The division may duplicate and distribute an intellectual property right that is owned by the division in accordance with Section 63-2-201(10).

(2) Decisions with regard to these rights shall be made by the records officer in the Salt Lake division office.

(3) Any request regarding the duplication and distribution of such materials shall be made in writing to the records officer in the Salt Lake division office.

R657-29-7. Fees.

(1) The division, pursuant to Section 63-2-203, may charge a reasonable fee to cover the actual cost of duplicating a record or compiling a record in a form other than that maintained by the division.

(2) The division shall establish fees in accordance with Subsection 63-38-3.2.

(3) Fees must be paid at the time of the request or before the records are provided to the requester.

(4) The records officer may fulfill a record request without charge according to the guidelines established in Subsection 63-2-203(3).

(5) Requests for a fee waiver may be made to the records officer in the Salt Lake division office.

R657-29-8. Denials.

(1) If the records officer denies a request in whole or in part, he shall send a notice of denial to the requester either in person or by sending the notice to the requester's address.

(2) The notice of denial shall contain the information required in Subsection 63-2-205(2).

R657-29-9. Appeal of Access Determination.

(1) Any person aggrieved by an access determination made by the records officer, including a person not a party to the division proceeding may, within 30 days after the determination, appeal the determination by submitting a notice of appeal in writing to the department executive director.

(2) The notice of appeal shall contain the information provided in Subsection 63-2-401(2).

(3) Upon receiving the notice of appeal, the department executive director shall make a determination according to the guidelines and within the time periods specified in Section 63-2-401.

R657-29-10. Appeal of Request to Amend a Record.

(1) Any individual contesting the accuracy or completeness of any public, private, or protected record concerning him may request the division amend the record according to the guidelines specified in Subsection 63-2-603(2).

(2) The request to amend shall be considered a request for agency action as prescribed in Subsection 63-46b-3 and the adjudicative proceeding shall be conducted informally according to the procedures prescribed in Section 63-46b-5 and R657-2, Adjudicative Proceedings.

(3) Any request to amend a record must be made to the records officer in the Salt Lake division office on a form provided by the division.

KEY: government documents, freedom of information, public records
July 3, 2002 63-2-204

Notice of Continuation May 15, 2002

R657. Natural Resources, Wildlife Resources.

R657-42. Accepted Payment of Fees, Late Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits.

R657-42-1. Purpose and Authority.

(1) Under the authority of Sections 23-19-1 and 23-19-38 the division may issue licenses, permits, tags and certificates of registration in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

(a) exchange of permits;

(b) surrender of licenses, certificates of registration and permits;

(c) refund of licenses, certificates of registration and permits;

(d) reallocation of permits; and

(e) assessment of late fees.

R657-42-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules and proclamations of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Deployed or mobilized" means that a person provides military or emergency services in the interest of national defense or national emergency pursuant to the demand, request or order of their employer.

R657-42-3. Permit Exchanges.

(1)(a) Any person who has obtained a general buck deer or a general bull elk permit may exchange that permit for any other available general permit if both permits are for the same species and sex.

(b) A person must make general buck deer and general bull elk permit exchanges at any division office prior to the season opening date of the permit to be exchanged.

(2) Any person who has obtained a cougar harvest objective unit permit may exchange that permit for any other available cougar harvest objective unit permit as provided in Rule R657-10.

(3) The division may charge a handling fee for the exchange of a permit.

R657-42-4. Surrender of Licenses, Certificates of Registration and Permits.

(1) Any person who has obtained a license, certificate of registration or permit and decides not to use it, may surrender the license, certificate of registration or permit to any division office.

(2) Any person who has obtained a license, certificate of registration or permit may surrender the license, certificate of registration or permit prior to the season opening date of the license, certificate of registration or permit for the purpose of:

(a) waiving the waiting period normally assessed and reinstating the number of bonus points, including a bonus point for the current year as if a permit had not been drawn, if applicable; or

(b) purchasing a reallocated permit or any other permit available for which the person is eligible.

(3) A Cooperative Wildlife Management Unit permit must be surrendered before the following dates:

(a) the opening date for the respective general archery season for buck deer, bull elk or spike bull elk;

(b) September 1 for pronghorn and moose;

(c) August 15 for antlerless deer and elk;

(d) prior to the applicable season date for small game and waterfowl; and

(e) prior to the applicable season date of any variance approved by the Wildlife Board in accordance with Rules R657-21 and R657-37.

(4) Dedicated hunter participants must surrender their permits prior to the general archery deer season.

(5) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-5. Refunds of Licenses, Certificates of Registration and Permits.

(1) The refund of a license, certificate of registration or permit shall be made in accordance with:

(a) Section 23-19-38 and Rule R657-50;

(b) Section 23-19-38.2 and Subsection (3); or

(c) Section 23-19-38 and Subsection (4).

(2)(a) An application for a refund may be obtained from any division office.

(b) All refunds must be processed through the Salt Lake Division office.

(3) A person may receive a refund in accordance with Subsection (3) for a license, permit, or certificate of registration if that person was deployed or mobilized on or after September 11, 2001, in the interest of national defense or national emergency and is thereby completely precluded from participating in the hunting or fishing activity authorized by the license, permit or certificate of registration, provided:

(a) the refund request is made to the division within one year of the end of the hunting or fishing season authorized by the license, permit or certificate of registration;

(b) the person surrenders the license, permit or certificate of registration to the division, or signs an affidavit stating the license, permit or certificate of registration is no longer in the person's possession; and

(c) the person verifies that the deployment or mobilization completely precluded them from participating in the activity authorized by the license, permit or certificate of registration, except as provided in Subsection (5); and

(d) the person provides military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(i) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which they were deployed or mobilized; and

(ii) the nature and length of their duty while deployed or mobilized.

(4) The division may issue a refund for a license, permit or certificate of registration if the person to whom it was issued dies prior to participating in the hunting or fishing activity

authorized by the license, permit or certificate of registration, provided:

(a) The person legally entitled to administer the decedent's estate provides the division with:

(i) picture identification;

(ii) letters testamentary, letters of administration, or such other evidence establishing the person is legally entitled to administer the affairs of the decedent's estate;

(iii) a photocopy of the decedent's certified death certificate; and

(iv) the license, permit or certificate of registration for which a refund is requested.

(5) The director may determine that a person deployed or mobilized, or a decedent did not have the opportunity to participate in the activity authorized by the license, permit or certificate of registration.

(6) The division may reinstate a bonus point or preference point, whichever is applicable, and waive waiting periods, if applicable, when issuing a refund in accordance with Subsection (3).

R657-42-6. Reallocation of Permits.

(1)(a) The division may reallocate surrendered limited entry, once-in-a-lifetime and Cooperative Wildlife Management Unit permits.

(b) The division shall not reallocate resident and nonresident big game general permits.

(2) Permits shall be reallocated through the Salt Lake Division office.

(3)(a) Any limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit surrendered to the division shall be reallocated through the drawing process by contacting the next person listed on the alternate drawing list or as provided in Subsection (b).

(b) A person who is denied a permit due to an error in issuing permits may be placed on the alternate drawing list to address the error, if applicable, in accordance with the Division Error Policy.

(c) The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

(d) The division shall make a reasonable effort to contact the next person on the alternate list by telephone or mail.

(e) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit, does not accept the permit or the division is unable to contact that person, the reallocation process will continue until the division has reallocated the permit or the season closes for that permit.

(4) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit has obtained a permit, that person may be required to surrender the previously obtained permit in accordance with Section R657-42-4(2) and any other applicable rules and proclamations of the Wildlife Board.

(5) Any private Cooperative Wildlife Management Unit permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the division in accordance with Rule R657-37.

(6)(a) The division may allocate additional general deer permits and limited entry permits, if it is consistent with the unit's biological objectives, to address errors in accordance with the Division Error Policy.

(b) The division shall not allocate additional Cooperative Wildlife Management Unit and Once-In-A-Lifetime permits.

(c) The division may extend deadlines to address errors in accordance with the Division Error Policy.

R657-42-7. Reallocated Permit Cost.

(1) Any person who accepts the offered reallocated permit must pay the applicable permit fee.

(2) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-8. Accepted Payment of Fees.

(1) Personal checks, money orders, cashier's checks, and cards are accepted for payment of licenses, permits or certificates of registration.

(2) Personal checks drawn on an out-of-state account are not accepted.

(3) Third-party checks are not accepted.

(4) All payments must be made payable to the Utah Division of Wildlife Resources.

(5)(a) Credit cards must be valid at least 30 days after any drawing results are posted.

(b) Checks and credit cards will not be accepted as combined payment on single or group applications.

(c) If applicable, if applicants are applying as a group, all fees for all applicants in that group must be charged to one credit card.

(d) Handling fees and donations are charged to the credit card when the application is processed. Applicable license and permit fees are charged after the drawings, if successful.

(6)(a) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

(b) The division charges a returned check collection fee for any check returned unpaid.

(7) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit card is invalid or refused.

(8) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(9) The division may require a money order or cashier's check to correct payment for a license, permit, or certificate of registration.

(10) Any person who fails to pay the required fee for any license, permit or certificate of registration, shall be ineligible to obtain any other license, permit, tag, or certificate of registration until the delinquent fees and associated collection costs are paid.

R657-42-9. Assessment of Late Fees.

(1) Any wildlife application submitted under the Utah Administrative Code Rules provided in Subsection (a) through (e), within 30 days of the applicable application deadline established in such rules, in the proclamations of the Wildlife

Board, or by the division may be processed only upon payment of a $10.00 late fee.

(a) R657-14, Commercial Harvesting of Protected Aquatic Wildlife;

(b) R657-21, Cooperative Wildlife Management Units for Small Game;

(c) R657-22, Commercial Hunting Areas;

(d) R657-37, Cooperative Wildlife Management Units for Big Game; or

(e) R657-43, Landowner Permits.

KEY: wildlife, permits

July 3, 2002	**23-19-1**
Notice of Continuation November 30, 2000	**23-19-38**

R657. Natural Resources, Wildlife Resources.
R657-44. Big Game Depredation.
R657-44-1. Purpose and Authority.

Under authority of Section 23-16-2, 23-16-3, 23-16-3.5 and 23-16-4, this rule provides:

(1) the procedures, standards, requirements, and limits for assessing big game depredation; and

(2) mitigation procedures for big game depredation.

R657-44-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Alternate drawing list" as defined in R657-42-2(2)(a).

(b) "Cultivated crops from or upon cleared and planted land" means any crop from or upon cleared and planted land that is routinely irrigated or routinely mechanically or manually harvested, including crop residues that have forage value for livestock, for commercial gain from or upon private land.

(c) "Damage incident period" means the period of time agreed upon between the landowner and division during which big game may be taken to reduce or eliminate depredation. All depredation incidents must end June 30 annually, an incident may be re-initiated July 1.

(d) "Irrigated" means the controlled application of water for agricultural purposes through man-made systems to supply water not satisfied by rainfall.

(e) "Mitigation permit voucher" means a document issued to a landowner or lessee, allowing the landowner or lessee to designate who may purchase a big game mitigation permit.

(f) "Private land" means land in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504.

R657-44-3. Damage to Cultivated Crops.

(1) The owner of cultivated crops from or upon cleared and planted land shall immediately, upon discovery of big game damage, notify the appropriate regional supervisor or division representative.

(2) Notification must be made:

(a) orally to expedite field investigations to one of the regional division offices or division representative; and

(b) in writing to one of the regional division offices or a division representative.

(3) The regional supervisor or division representative shall contact the crop owner within 72 hours of notification to determine the nature of the damage and take appropriate action for the extent of the damage experienced or expected.

(4) The damage incident period shall be determined and agreed upon by the division representative and the crop owner.

(5) Division action may include any of the following:

(a) sending a Division representative onto the premises to control or remove the big game animals, including:

(i) herding;

(ii) capture and relocation;

(iii) temporary fencing; or

(iv) removal, as authorized by the division director or the division director's designee;

(b) recommending to the Wildlife Board an antlerless big game hunt in the next big game season framework;

(c) scheduling a depredation hunter pool hunt as authorized by the Wildlife Board;

(d) issuing big game mitigation permit vouchers to the landowner, allowing the landowner to designate who shall receive the big game mitigation permits to be used for hunting on the owner's or lessee's land during a general or special hunt authorized by the Wildlife Board;

(e) issue big game mitigation permit vouchers to a landowner association that has applied to the division providing a map of the association lands, the signatures of the landowners in the association and designated an association representative to act as liaison with the division, allowing the landowner association to designate who shall receive the big game mitigation permits to be used for hunting on the association's land during a general season or special season as authorized by the Wildlife Board; or

(f) issuing permits to the landowner or lessee for the harvest of big game animals causing depredation. No more than five deer or pronghorn and two elk may be retained by the landowner or lessee.

(6) A landowner or lessee who elects to pursue mitigation through measures in subsections (5) (d) through (5)(f) may not subsequently file a claim under Section 23-16-4, except as provided by an agreement made under Section 23-16-3.5(3)(b)(i).

(7) The options in subsections (5)(b) and (5)(f) are for antlerless animals only. Deer and pronghorn hunts may be August 1 through December 31 and elk hunts may be August 1 through January 31.

(8) The division director must approve any permits or vouchers issued for antlered animals.

(9)(a) The owner of cultivated crops from or upon cleared and planted land is authorized to kill big game animals doing damage to his crops after allowing the division a minimum of 72 hours to remove the offending animals or provide mitigation options after again notifying the division, after the initial 72 hour period, of the necessity of having to remove the animals himself to protect his crops.

(b) Notification must be made:

(i) orally to the appropriate regional division office or division representative; and

(ii) followed in writing to the appropriate regional division office or division representative.

(c) Immediately after making the kill, the crop owner shall notify the appropriate division representative. The carcass of any big game animal killed pursuant to Subsection (8)(a) shall become the property of the division and shall be disposed of by it.

(d) The authority of the owner of cultivated crops from or upon cleared and planted land to remove big game animals continues until the appropriate regional supervisor or division representative and crop owner agree that the damage incident is concluded.

(e) Killing big game animals after the damage incident period has expired is a violation of the Wildlife Code.

(f) The expiration of the damage incident period does not preclude the crop owner from making future claims.

R657-44-4. Damage to Livestock Forage, Fences, or

Irrigation Equipment on Private Lands.

(1) If big game animals are damaging livestock forage, fences, or irrigation equipment on private land or are consuming livestock forage on private land, the landowner or lessee may request the division to take action to prevent depredation.

(2) The request shall be made:

(a) orally to one of the regional division offices or division representative to expedite field investigations; and

(b) in writing to one of the regional division offices or division representative.

(3) The appropriate division representative shall investigate the situation within a reasonable time, not to exceed 72 hours, after receiving the request.

(4) If it appears that depredation by big game will continue, the division may, after consulting with the landowner or lessee, utilize one or any of the following options to address the depredation:

(a) send a Division representative onto the premises to control or remove the big game animals, including:

(i) herding;

(ii) capture and relocation;

(iii) temporary fencing; or

(iv) removal, as authorized by the division director or the division director's designee;

(b) recommend an antlerless big game hunt to the Wildlife Board in the next big game season framework;

(c) schedule a depredation hunter pool hunt, as authorized by the Wildlife Board;

(d) issue big game mitigation permit vouchers to the landowner, allowing the landowner to designate who shall receive the big game mitigation permits to be used for hunting on the owner's or lessee's land during a general season or special hunt as authorized by the Wildlife Board;

(e) issue big game mitigation permit vouchers to a landowner association that has applied to the division providing a map of the association lands, the signatures of the landowners in the association and designated an association representative to act as liaison with the division, allowing the landowner association to designate who shall receive the big game mitigation permits to be used for hunting on the association's land during a general season or special season as authorized by the Wildlife Board; or

(f) issue permits to the landowner or lessee for the harvest of big game animals causing depredation. No more than five deer or pronghorn, and two elk may be retained by the landowner or lessee.

(5) Deer and pronghorn hunts may be August 1 through December 31 and elk hunts may be August 1 through January 31. Antlerless permits shall not exceed ten percent of the animals on the private land. A maximum of twenty permits per landowner is allowed.

(6) The division director must approve any permits or vouchers issued for antlered animals.

(7)(a) The Division may enter into a conservation lease with the owner or lessee of private land for a fee, or other remuneration, as compensation for big game depredation.

(b) Any conservation lease entered into under this rule shall provide that the claimant may not unreasonably restrict hunting on the land, or passage through the land to access public land for the purpose of hunting, if those actions are necessary to control or mitigate damage by big game.

(8) In determining appropriate mitigation, the division shall consider:

(a) the extent of damage experienced or expected;

(b) any revenue the landowner derives from participation in a cooperative wildlife management unit, use of landowner permits, and charging for hunter access; and

(c) the population management objective as established in management plans approved by the Wildlife Board.

(9) The damage incident period shall be determined and agreed upon by the division representative and the landowner or lessee.

(10) A landowner or lessee who elects to pursue mitigation through the measures in Subsections (4)(d) through (4)(e) may not subsequently file a claim under Section 23-16-4, except as provided by an agreement made under Section 23-16-3.5(3)(b)(i).

R657-44-5. Compensation for Damage to Crops, Fences, or Irrigation Equipment.

(1) The Division may provide compensation to claimants for damage caused by big game to:

(a) cultivated crops from or upon cleared and planted land, including crop residues that provide forage value for livestock;

(b) fences on private land; or

(c) irrigation equipment on private land.

(2) To be eligible to receive compensation, the claimant must notify the division of the damage within 72 hours after the damage is discovered.

(3) The appraisal of damage shall be made by the claimant and the division as soon after notification as possible.

(4) The procedures and guidelines for big game damage appraisal adopted by the division director shall be used as the basis for damage appraisal.

(5) If the claimant and the division are unable to agree on a fair and equitable damage payment, they shall designate a third party, consisting of one or more persons familiar with the crops, fences, or irrigation equipment and the type of big game animals doing the damage, to appraise the damage.

(6) Any claim of $500 or less may be paid after appraisal of the damage, unless the claim brings the total amount of claims submitted by the claimant in the fiscal year to an amount in excess of $500.

(7) Any claim in excess of $500 or claim that brings the total amount of claims submitted by the claimant in the fiscal year to an amount in excess of $500 may not be paid until the total amount of the approved claims of all claimants and expenses for fencing materials for the fiscal year are determined. If the total exceeds the amount appropriated by the Legislature, claims in excess of $500, or any claim that brings the total amount of a claimant's claims in a fiscal year to an amount in excess of $500, shall be prorated.

(8) The division may deny or limit compensation if the claimant:

(a) has failed to exercise reasonable care and diligence to avoid the loss or minimize the damage; or

(b) has unreasonably restricted hunting on land under the claimant's control or passage through the land to access public

lands for the purpose of hunting, after receiving written notification from the division of the necessity of allowing such hunting or access to control or mitigate damage by big game.

R657-44-6. Depredation Hunts for Buck Deer, Buck Pronghorn or Bull Elk.

(1)(a) Buck deer, buck pronghorn or bull elk depredation hunts that are not published in the big game proclamations of the Wildlife Board may be held.

(b) Buck deer, buck pronghorn or bull elk depredation hunts may be held when the buck deer, buck pronghorn, or bull elk are:

(i) causing damage to agricultural crops;

(ii) a significant public safety hazard; or

(iii) causing a nuisance in urban areas.

(2) The depredation hunts may occur on short notice, involve small areas, and be limited to only a few hunters.

(3)(a) Depredation buck deer, buck pronghorn or bull elk hunters shall be selected from:

(i) persons that currently possess a limited entry buck deer, buck pronghorn, or bull elk permit; or

(ii) the alternate drawing list for that limited entry unit.

(b) Pre-season depredation hunters shall be selected using hunters possessing a limited entry buck deer, buck pronghorn, or bull elk permit for that unit and secondarily, if necessary, shall use hunters from the alternate drawing list.

(c)(i) Post-season depredation hunters shall be selected using hunters from the alternate drawing list.

(ii) If the depredation hunt is not on a limited entry unit, hunters shall be selected using the alternate drawing list from the nearest adjacent limited entry unit.

(4)(a) The Division may contact hunters from the alternate drawing list to participate in a depredation hunt for a buck deer, buck pronghorn, or bull elk prior to the statewide general hunt for a given species of big game.

(b) Hunters selected for a buck deer, buck pronghorn, or bull elk depredation hunt who do not possess an unfilled, valid buck deer, buck pronghorn, or bull elk permit for the species to be hunted, must purchase the appropriate depredation permit before participating in the depredation hunt.

(5) The buck deer, buck pronghorn, or bull elk harvested during a depredation hunt must be checked with the Division within 72 hours of the harvest.

(6) If a hunter is selected from the alternate drawing list for a depredation hunt in a limited entry unit and harvests a trophy animal as defined in Section 23-13-2(46), that person shall lose their bonus points and incur a waiting period.

(7) A person may not take more than one buck deer, buck pronghorn or bull elk in any year.

R657-44-7. Depredation Hunts for Antlerless Deer, Pronghorn or Elk.

(1) When deer, elk or pronghorn are causing damage, antlerless control hunts not listed in the big game proclamations of the Wildlife Board may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Hunters are called from a list of unsuccessful permittees or other resident hunters who have applied for depredation hunts.

(3)(a) Application does not affect eligibility for antlerless or other type hunts. However, hunters who participate in any deer, elk, or pronghorn depredation hunt may not possess an additional antlerless permit for that species during the same year except as provided in Subsection R657-5-50(3).

(b) Hunters with depredation permits for doe pronghorn, antlerless deer or antlerless elk may not possess any other permit for those species, except as provided in Subsections R657-5-27(1)(a) and R657-5-50(3), or the proclamations of the Wildlife Board for taking big game.

(4) The division may contact hunters to participate in a depredation hunt prior to the general hunt for a given species of big game. Hunters who do not possess an antlerless deer, elk, or pronghorn permit may purchase an appropriate permit.

(5) Applications must be sent to the appropriate regional division office for the area requested.

(6) Applications must be received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-44-8. Appeal Procedures.

(1) Upon the petition of an aggrieved party to a final division action relative to Utah Code Annotated relative to big game depredation and this rule, a qualified hearing examiner shall take evidence and make recommendations to the Wildlife Board which shall resolve the grievance in accordance with Rule R657-2.

KEY: wildlife, big game*, depredation*

November 1, 2001	**23-16-2**
Notice of Continuation July 3, 2002	**23-16-3**
	23-16-3.5
	23-16-4

R708. Public Safety, Driver License.
R708-3. Driver License Point System Administration.
R708-3-1. Purpose.

The purpose of this rule is to establish procedures for the administration of a point system for drivers age 21 and older as mandated by Subsection 53-3-221(4) and a point system for drivers age 20 and younger as mandated by Subsection 53-3-209(2).

R708-3-2. Authority.

This rule is authorized by Subsections 53-3-209(2), 53-3-221(4), and 63-46b-5(1).

R708-3-3. Definitions.

(1) "Defensive driving course" means a course sponsored and conducted by a certified designee of the Utah Safety Council or the National Safety Council which allows the division to grant a 50 point reduction from the driving records of drivers who successfully complete the course.

(2) "Division" means the Driver License Division of the Utah Department of Public Safety.

(3) "License" means the privilege to drive a motor vehicle.

(4) "Probation" means a division sanction whereby a driver is permitted to drive by complying with certain terms and conditions established by the division.

(5) "Provisional license" means a driving privilege issued by the division to a person younger than 21 years of age.

R708-3-4. Point Assignment.

(1) In compliance with Subsection 53-3-221(4), the division shall determine a number of points to be assigned to each moving traffic violation as a measure of the violation's seriousness.

(2) In compliance with Subsection 53-3-221(4)(c), the driving record of the driver will be assessed 35 points for minimum speeding violations, 55 points for intermediate speeding violations, and 75 points for maximum speeding violations. Since excessive speed has been demonstrated by the National Safety Council and the Department of Public Safety's Utah Traffic Accident Summary to be a leading contributing factor in causing vehicular accidents, the division has determined that the assessing of no points for minimum speeding violations would be detrimental to public safety.

(3) This rule incorporates by reference "The Code Violation Table", dated February 01, 2001, published by the Driver License Division, Utah Department of Public Safety, which is available for public review and inspection at the division office, reception desk, 4501 South 2700 West, Salt Lake City, Utah 84130-0560. This document lists the number of points assigned to moving traffic violations and the length of time that the violations remain on the record.

(4) Moving traffic violations which require mandatory sanction by law or rule are assigned 0 points.

R708-3-5. Point Increase or Decrease.

(1) Total points accumulated will be increased or decreased by the following means:

(a) a 10% increase or decrease in points assigned to any moving violation, except speed violations in accordance with Subsection 53-3-221(4)(b);

(b) a 50 point decrease once in a three year period after successfully completing a defensive driving course as defined in this rule;

(c) a 50% point decrease after one year of violation free driving in accordance with Subsection 53-3-221(4)(d); and

(d) a 100% point decrease after two years of violation free driving in accordance with Subsection 53-3-221(4)(d).

(2) The assigned points for any moving traffic violation will be dropped three years after the violation occurred in accordance with Subsection 53-3-221(4)(d).

(3) The point total after a sanction for drivers under age 21 will decrease to 35 points except when the point total is already below 35.

(4) The point total after a sanction for drivers age 21 and older will decrease to 125 points except when the point total is already below 125 in accordance with this rule.

R708-3-6. Point System Thresholds for Drivers Age 21 and Older.

(1) Upon receiving notice of a court conviction of a moving traffic violation, the division will post the violation to the driving record of the individual convicted, along with the points assigned to the violation, as designated in the code violation table.

(2) The division will use the following point thresholds to determine the severity of the sanction to be levied against the driver:

(a) 150 to 199 points: driver is sent a warning letter;

(b) 200 points: driver must appear for a hearing;

(c) 200 to 299 points: driver may be placed on probation or suspended for three months;

(d) 300 to 399 points: driver is suspended for 3 months;

(e) 400 to 599 points: driver is suspended for 6 months; and

(f) 600 or more points: driver is suspended for 1 year.

(3) A driver who is within a designated threshold may be considered for action at a lower threshold if completion of the defensive driving course has lowered the point total to that lower threshold.

(4) The suspension time is doubled, up to a maximum of one year, for a second or subsequent suspension within a three year period.

R708-3-7. Separate Point System for Provisional Licensed Drivers.

(1) In compliance with Subsection 53-3-209(2), a separate point system is established to facilitate behavioral influence upon drivers age 20 and younger. The point thresholds are designed to take remedial action earlier than is provided for drivers who are age 21 and older.

(2) In compliance with Subsection 53-3-209(2), and in conjunction with the consideration of point totals, the division may counsel a driver with regards to the development of safe driving attitudes, habits, and skills.

R708-3-8. Point System Thresholds for Provisional Licensed Drivers.

(1) Upon receiving notice of a court conviction of a

moving traffic violation, the division will post the violation to the driving record of the individual convicted, along with the points assigned to the violation, as designated in the code violation table.

(2) The division will use the following point thresholds to determine the severity of the sanction to be levied against the driver:

(a) 35 to 69 points: driver is sent a warning letter;

(b) 70 points: driver must appear for a hearing;

(c) 70 to 139 points: driver may be placed on probation or denied for 30 days;

(d) 140 to 199 points, or violation of probation for the first time in a three year period: driver may be denied for 30 days;

(e) 140 to 199 points for a second time in a three year period or a second probation violation in a three year period: driver may be denied for 60 days;

(f) 140 to 199 points for a third time in a three year period or a third probation violation in a three year period: driver may be suspended for 90 days;

(g) 200 to 249 points: driver is suspended for 60 days;

(h) 250 to 349 points: driver is suspended for 90 days;

(i) 350 to 449 points: driver is suspended for 6 months; and

(j) 450 or more: driver is suspended for 1 year.

(3) A driver who is within a designated threshold may be considered for action at a lower threshold if completion of the defensive driving course has lowered the point total to that lower threshold.

(4) In accordance with Subsection 53-3-209(2)(b)(iii), the first two sanctions within a three year period will deny a driving privilege unless the point total is 200 or more. A third or additional sanction within a three year period will result in a suspension at the next highest threshold, which doubles in length for each succeeding sanction within the three year period up to a maximum of one year.

R708-3-9. Hearing.

Drivers who are sanctioned under the provisions of this point system rule are entitled to a hearing in accordance with Subsection 53-3-221(5)(a)(i) and R708-35.

KEY: traffic violations, point-system
March 6, 2001 53-3-209(2)
Notice of Continuation July 25, 2002 53-3-221(4)

R708. Public Safety, Driver License.

R708-14. Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs.

R708-14-1. Purpose.

The purpose of this rule is to establish procedures to be used by the Utah Driver License Division for alcohol/drug adjudicative proceedings.

R708-14-2. Authority.

This rule is authorized by Section 53-3-104 and Subsection 63-46b-5(1).

R708-14-3. Definitions.

(1) "Adjudicative proceeding" means any meeting, conference, session or hearing, in person or otherwise, between a person and a presiding officer or designee of the division, that is intended to resolve a dispute.

(2) "Division" means the Driver License Division of the Utah Department of Public Safety.

(3) "Division record" means the entire division file, including written reports received or generated by the division. It also includes, but is not limited to, minutes, written comments, presiding officer's written statements and summaries, testimony, evidence, findings of fact, conclusions of law, recommendations, and orders.

(4) "Hearing" means an alcohol/drug adjudicative proceeding where evidence is considered to determine an issue of fact and to adjudicate a legal right or privilege.

(5) "Presiding officer" means a division employee with authority to conduct alcohol/drug adjudicative proceedings.

(6) "Recording" means documenting, by electronic or other means, the testimony or information presented at an alcohol/drug adjudicative proceeding.

R708-14-4. Designations.

(1) In compliance with Section 63-46b-4, all division alcohol/drug adjudicative proceedings are designated as informal proceedings, unless converted to formal proceedings by a presiding officer or division supervisor.

(2) An informal proceeding may be converted to a formal proceeding only if approved by a division supervisor and only if the conversion will promote efficiency, public safety, and not unreasonably increase cost.

R708-14-5. Authority for Conducting Adjudicative Proceedings.

Alcohol/drug adjudicative proceedings will be conducted in accordance with Sections 41-6-44.10, 53-3-223, 53-3-231, 53-3-418, 63-46b-5, and this rule.

R708-14-6. Commencement of Adjudicative Proceedings.

(1) In accordance with Subsection 63-46b-3(1), alcohol/drug adjudicative proceedings may be commenced by:

(a) a notice of division action, if the proceedings are commenced by the division; or

(b) a request for division action, if the proceedings are commenced by a person other than the division.

(2) A notice of division action and request for division action shall include the information set forth in Subsections 63-46b-3(2)(a) and (3)(a) respectively. In addition, a request for division action shall include the petitioner's full name, date of birth, and the date of arrest or occurrence which prompted the request for division action. A request for division action that is not made timely, in accordance with Subsections 53-3-223(6)(a), 53-3-231(7)(a)(ii), and 53-3-418(9)(b), will not be granted except for good cause as determined by the division.

R708-14-7. Alcohol/Drug Adjudicative Proceedings.

The alcohol/drug adjudicative proceedings deal with the following types of hearings:

(a) driving under the influence of alcohol/drugs (per-se), Section 53-3-223;

(b) implied consent (refusal), Section 41-6-44.10;

(c) measurable metabolite in body, Section 41-6-44.6;

(d) consumption by a minor (not a drop), Section 53-3-231; and

(e) CDL (.04), Section 53-3-418.

R708-14-8. Hearing Procedures.

(1) Time and place. Alcohol/drug adjudicative proceedings will be held in the county of arrest, at a time and place designated by the division, or agreed upon by the parties.

(2) Notice. Notice shall be given as provided in Subsection 53-3-216(3) unless otherwise agreed upon by the parties. Notice shall be given on a form approved by the division and is deemed to be signed by the presiding officer. The notice need only inform the parties as to the date, time, place, and basic purpose of the proceeding. The parties are deemed to have knowledge of the law.

(3) Default. If the driver fails to respond timely to a division request or notice, a default may be entered in accordance with Section 63-46b-11.

(4) Evidence. The parties and witnesses may testify under oath, present evidence, and comment on pertinent issues. The presiding officer may exclude irrelevant, repetitious, immaterial, or privileged information or evidence. The presiding officer may consider hearsay evidence and receive documentary evidence, including copies or excerpts.

(5) Information. The driver shall have access to information in the division file to the extent permitted by law.

(6) Subpoenas. Discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence. Subpoenas may be issued by the division at the request of the driver if the costs of the subpoenas are paid by the driver and will not delay the proceeding.

(7) Administrative notice. The presiding officer has discretion to take administrative notice of records, procedures, rules, policies, technical scientific facts within the presiding officer's specialized knowledge or experience, or of any other facts that could be judicially noticed.

(8) Presiding officer. The presiding officer may:

(a) administer oaths;

(b) issue subpoenas;

(c) conduct prehearing conferences by telephone or in person to clarify issues, dispose of procedural questions, and expedite the hearing;

(d) tape record or take notes of the hearing at his/her discretion;

(e) take appropriate measures to preserve the integrity of the hearing; and

(f) conduct hearings in accordance with division policy III-A-3, III-A-4, and III-A-5.

R708-14-9. Findings, Conclusions, Recommendations and Orders.

(1) Within a reasonable period of time after the close of the hearing, the presiding officer will issue a written decision that may include findings of fact, conclusions of law, and a recommendation.

(2) Statements reflecting findings of fact, conclusions of law, and recommendation may be written on forms that utilize a system of check boxes and fill in blanks. The completed form will be transmitted to the presiding officer's supervisor as soon as possible for the preparation of an order that complies with Subsection 63-46b-5(1)(i).

(3) As provided in Subsection 53-3-216(3), the order will be mailed to the last known address of the driver.

(4) The order shall advise the driver of his/her right to seek a copy of written findings, conclusions, and recommendation of the presiding officer, and these will be made available to the driver only upon written request.

R708-14-10. Reconsideration.

In accordance with Section 63-46b-13 a driver may file a request for reconsideration of the order within 20 days after receiving it. If the division does not issue an amended order within 20 days after receiving the request for reconsideration, the request for reconsideration shall be considered denied, and the driver may seek judicial review in accordance with Section 63-46b-15.

KEY: adjudicative proceedings
February 1, 2000 53-3-104
Notice of Continuation July 25, 2002 63-46b-5(1)

R767. Regents (Board of), College of Eastern Utah.
R767-1. Government Records Access and Management Act.
R767-1-1. Purpose.

The purpose of this rule is to provide procedures for access to the records of the College of Eastern Utah.

R767-1-2. Authority.

The authority for this rule is provided by Section 63-2-204 and by Section 63-2-904 of the Government Records Access and Management Act (GRAMA), effective July 1, 1992.

R767-1-3. Allocation of Responsibilities Within Entity.

College of Eastern Utah (including all campuses, centers, and locations) shall be considered a single governmental entity and the President of College of Eastern Utah shall be considered the head.

R767-1-4. Chief Administrative Officer.

(1) The President of College of Eastern Utah (CEU), is the Chief Administrative Officer at CEU responsible for:

(a) Overall administration of records management programs in satisfying requirements for GRAMA.

(b) Exercise of decision-making authority when a request for access to certain private, controlled or protected records is deemed to outweigh the institution's interests in restricting such access.

(c) Adjudicating appeals by requesters who have been denied access.

(d) Adjudicating appeals by the subject of a record who is requesting an amendment to his/her record.

(e) Deciding requests for information regarding materials of Intellectual Property Rights owned by College of Eastern Utah.

R767-1-5. Records Officer.

(1) The Director of Admissions and Records is the Records Officer for purposes of satisfying GRAMA requirements and is responsible for:

(a) Development and oversight of records management and access.

(b) Serving as liaison with State Archives.

(c) Receiving and processing requests for access of records for all campuses, centers and locations of College of Eastern Utah.

(d) Preparing and maintaining information on records transferred to, and retrieved from the State Archives Division.

(e) Overseeing retention and destruction schedules of various records and record series of the College.

(f) Training of the campus personnel on the requirements of GRAMA.

(g) Other activities consistent with records officer's duties including the designation of records or records series under Section 63-2-306 of GRAMA.

R767-1-6. Request for Access.

(1) Requests for access to government records of College of Eastern Utah shall be in writing and made to the Director of Admissions and Records, Records Office, Administration Building.

(2) Response to a request submitted to other persons within College of Eastern Utah may be delayed in accordance with subsections 63-2-204 (2), (6).

(3) A person making a request for a record shall furnish the governmental entity with a request containing his name, mailing address, daytime telephone number, if available, and a description of the records requested that identifies the record with reasonable specificity in pursuant to section 63-2-204(1).

(4) Subpoenas are not considered written requests under GRAMA.

R767-1-7. Appeals.

(1) Appeals of denied requests will be adjudicated by the President of College of Eastern Utah, or designee.

(2) Requests for appeal should be written and made to the President, President's Office, Administration Building in accordance with Section 63-2-401.

R767-1-8. Fees.

(1) A fee schedule of the direct and indirect costs of duplicating or compiling a record may be obtained from College of Eastern Utah by contacting the Records Office, Administration Building.

(2) College of Eastern Utah may require payment of overdue fees and future estimated fees before beginning to process a request if fees are expected to exceed $50.00.

R767-1-9. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Subsection 63-2-203 (3). Requests for this waiver of fees may be made through the Records Office, Administration Building.

R767-1-10. Request for Access for Research Purposes.

Access to private or controlled records for research purposes is allowed under Subsection 63-2-202 (8). Requests for access to records for research purposes may be made to the Director of Admissions and Records, Records Office, Administration Building.

R767-1-11. Intellectual Property Rights.

The College of Eastern Utah, which may own an intellectual property right may duplicate and distribute such materials in accordance with Subsection 63-2-201 (10). Decisions with regard to these rights will be made by the President, President's Office, Administration Building. Any questions regarding the duplication and distribution of such materials should be addressed to the President.

R767-1-12. Requests to Amend a Record.

(1) An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63-2-603. Such request should be made to the President, President's Office, Administration Building.

(2) Requests to amend a record shall be conducted in accordance with the steps outlined in Section 63-2-603 of the GRAMA Act.

R767-1-13. Appeals of Requests to Amend a Record.

Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act. Appeals may be filed with the President, President's Office, Administration Building.

KEY: government documents, confidentiality of information, public records, records access*, GRAMA*
1994 63-2-204
Notice of Continuation July 18, 2002 63-2-904

R810. Regents (Board of), University of Utah, Parking and Transportation Services.
R810-2. Parking Meters.
R810-2-1. Parking Meters.

Payment for the use of meters is required whether or not the vehicle displays a current University permit.

Parking at a broken meter is restricted to the time shown on the meter. Violators will be ticketed. Enforcement hours for University parking meters are 8 a.m. to 6 p.m. Monday through Friday, or from 9:00 a.m. to 10:00 p.m. Monday through Friday where posted.

KEY: parking facilities
July 10, 2002 53B-3-103
Notice of Continuation February 27, 2002 53B-3-107

R850. School and Institutional Trust Lands, Administration.
R850-100. Trust Land Management Planning.
R850-100-100. 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-2-201(3) which require that planning procedures be developed for trust lands, and for the opportunity for the public to participate in the planning process.

R850-100-200. Simultaneous Use of Trust Land Assets.

The agency shall encourage the simultaneous use of compatible, revenue generating activities on trust lands.

R850-100-300. Joint Planning.

The agency may participate in joint planning with other land management agencies when the director determines that the commitment of agency resources is justified.

R850-100-400. Assessments of Natural and Cultural Resources.

1. The Resource Development Coordinating Committee (RDCC) process provides a natural resource assessment for purposes of trust land management. No other natural resource analysis is required beyond consultation with the RDCC. The public may comment on proposed trust land uses through the RDCC process.

2. Cultural resource analysis on specific actions shall be conducted pursuant to R850-60.

KEY: management, natural resource assessment, land use
July 16, 2002 53C-1-302(1)(a)(ii)
Notice of Continuation August 18, 1997 53C-2-201(3)

R994. Workforce Services, Workforce Information and Payment Services.

R994-306. Charging Benefit Costs to Employers.

R994-306-101. Reduction in Force Separations.

When a worker is separated due to a reduction of the workforce, regardless of business conditions requiring the separation, the worker is eligible for benefits and the employer is liable for charges. This is true even if the separation is the end of a temporary assignment or seasonal employment and both parties agreed to the arrangement at the time of hire.

R994-306-201. Notice to Employers and Time Limitation for Protests.

All base period employers and all employers for which a claimant worked after the base period but prior to when the claim is filed, shall be notified prior to the payment of benefits that a claim has been filed.

(a) All employers who receive this notice may protest payment of benefits to former employees and all contributing employers may request relief of charges.

(i) All protests and requests must be made in writing to the Department within ten days after the notice is issued and must state in detail the circumstances which are alleged by the employer to justify a denial of benefits to the claimant, or relief of charges to the employer.

(ii) If the employer's request for relief of charges would justify the relief requested but the employer fails to provide separation information within the time limits of the request or to make a timely protest against the payment of benefits, the employer's request to be relieved of those charges will be adjudicated pursuant to R994-306-202.

R994-306-202. Relief of Charges Decisions.

When an employer makes a written request for relief of charges, a decision is made as to the employer's liability for benefit costs.

(a) The employer is notified of the decision and if an appeal is not filed, the decision becomes final and binding on both the employer and the Department.

(b)(i) A request for relief of charges or appeal that is filed after the expiration of the applicable time limit may be considered by the Department if:

(A) the employer has good cause for the late request or appeal as provided in R994-406-308;

(B) relief of charges was denied due to a mistake as to the facts and the Department did not rely on the requesting or appealing employer's failure to submit correct information in determining a claimant's eligibility for benefits. However, the Department will not consider such a request after September 30 with respect to benefits paid in the fiscal year that ended the prior June 30, even if there was a mistake as to facts.

(c) If the Department fails to give the relief of charges granted by a previous decision, the employer must request a correction of this error in accordance with Section R994-303-103.

R994-306-301. Benefit Cost Calculation Errors.

(1) Employers will be notified of benefit costs as they accrue at the end of each quarter. The notice used is called the "Statement of Unemployment Benefit Costs" (Form 66). This statement notifies the employer of the amount of benefits paid during the preceding quarter and gives the employer an opportunity to advise the Department of any errors. Upon written request from the employer, corrections will be made for all quarters not yet used to determine the employer's contribution rate. The following are examples which may occur:

(a) The employer is charged for costs for which the Department should have granted relief in accordance with Section R994-307-101.

(b) The employer did not receive prior notice that a claim had been filed or the determination of the claimant's eligibility and therefore did not have an opportunity to request relief of charges.

R994-306-401. Annual Notice of Contribution Rate.

(1) When the "Contribution Rate Notice" (Form 45) is issued at the end of the year, as per Subsection R994-303-103, the employer will have 30 days to protest the rate. When this decision, which establishes the contribution rate for the next year, becomes final it will not be changed even upon a showing of a mistake as to facts.

KEY: unemployment compensation, rates

January 1, 2002	**35A-4-303**
Notice of Continuation June 12, 1998	**35A-4-306**
	35A-4-405(2)(a)
	35A-4-502(1)(b)