**R27. Administrative Services, Fleet Operations.**

**R27-4. Vehicle Replacement and Expansion of State Fleet.**

**R27-4-1. Authority.**

(1) This rule is established pursuant to Subsections 63A-9-401(1)(a), 63A-9-401(1)(c)(v), 63A-9-401(1)(c)(ix), 63A-9-401(1)(c)(x), 63A-9-401(1)(c)(xi) and 63A-9-401(1)(c) (xii), which require the Division of Fleet Operations (DFO) to: coordinate all purchases of state vehicles; make rules establishing requirements for the procurement of state vehicles, whether for the replacement or upgrade of current fleet vehicles or fleet expansion; make rules establishing requirements for cost recovery and billing procedures; make rules establishing requirements for the disposal of state vehicles; make rules establishing requirements for the reassignment and reallocation of state vehicles and make rules establishing rate structures for state vehicles.

(a) All agencies exempted from the DFO replacement program shall provide DFO with a complete list of intended vehicle purchases prior to placing the order with the vendor.

(b) DFO shall work with each agency to coordinate vehicle purchases to make sure all applicable mandates, including but not limited to alternative fuel mandates, and safety concerns are met.

(c) DFO shall assist agencies, including agencies exempted from the DFO replacement program, in their efforts to insure that all vehicles in the possession, control, and/or ownership of agencies are entered into the fleet information system.

(2) Pursuant to Subsection 63-38-3.5(8)(f)(ii), vehicles acquired by agencies, or monies appropriated to agencies for vehicle purchases, may be transferred to DFO and, when transferred, become part of the Consolidated Fleet Internal Service Fund.

**R27-4-2. Fleet Standards.**

(1) Prior to the purchase of replacement and legislatively approved expansion vehicles for each fiscal year, the Fleet Vehicle Advisory Committee (FVAC) shall, on the basis of input from user agencies, recommend to DFO a standard vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.

(2) DFO shall, after reviewing the recommendations made by the FVAC, determine and establish, for each fiscal year, the standard replacement vehicle, along with included features and miscellaneous equipment for each vehicle class in the fleet.

(3) DFO shall establish lease rates designed to recover, in addition to overhead and variable costs, the capital cost associated with acquiring a standard replacement vehicle for each vehicle class in the fleet.

(4) DFO shall establish replacement cycles according to vehicle type and expected use. The replacement cycle that applies to a particular vehicle supposes that the vehicle will be in service for a specified period of time and will be driven an optimum number of miles within that time. Whichever of the time or mileage criterion is reached first shall result in the vehicle's replacement.

**R27-4-3. Agreements made pursuant to Section 63A-9-401(7).**

(1) Agreements made pursuant to Section 63A-9-401(7) shall be permitted only in cases where the vehicles that are the subject matter of the agreements were, or are, funded from sources other than state appropriations.

(2) Agreements made pursuant to Section 63A-9-401(7) shall, at a minimum, contain:

(a) a precise definition of each duty or function that is being allowed to be performed; and

(b) a clear description of the standards to be met in performing each duty or function allowed; and

(c) a provision for periodic administrative audits by either the DFO or the Department of Administrative Services; and

(d) a representation that the procurement or disposal of the vehicles that are the subject matter of the agreement shall be coordinated with DFO, and that alternative fuel vehicles shall be purchased by the agency or institution of higher education, when necessary, to insure state compliance with federal AFV mandates; and

(e) a representation that the purchase price is less than or equal to the state contract price for the make and model being purchased; and in the event that the state contract price is not applicable, that the provisions of Section 63-56-1 shall be complied with; and

(f) a representation that all the information whose entry into DFO's fleet information system would be required if the vehicles that are the subject matter of the agreement were funded with state appropriations, shall be entered into DFO's fleet information system; and

(g) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(3) An agreement made pursuant to Section 63A-9-401(7) may be terminated by DFO if the results of administrative audits conducted by either DFO or the Department of Administrative Services reveal a lack of compliance with the terms of the agreement.

**R27-4-4. Vehicle Replacement.**

(1) All state fleet motor vehicles shall, subject to budgetary constraints, be replaced when the vehicle meets the first of either the mileage or time component of the established replacement cycle criteria.

(2) Prior to the purchase of replacement motor vehicles, DFO shall provide each agency contact with a list identifying all vehicles that are due for replacement, and the standard replacement vehicle for the applicable class that has been established by DFO after reviewing the recommendations of the FVAC that will be purchased to take the place of each vehicle on the list.

(3) Agencies may request that state fleet motor vehicles in their possession or control that have a history of excessive repairs, but have not reached either the mileage or time component of the applicable replacement cycle, be replaced. The request to replace motor vehicles with a history of excessive repairs is subject to budgetary constraints and the approval of the Director of DFO or the director's designee.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the replacement of motor vehicles with a history of excessive

repairs.

(5) In the event that the replacement vehicle is not delivered to the agency by the vendor, the agency shall have five working days to pick-up the replacement vehicle from DFO, after receiving official notification of its availability. If the vehicles involved are not exchanged within the five-day period, a daily storage fee will be assessed and the agency will be charged the monthly lease fee for both vehicles.

(6) DFO is responsible for insuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. DFO may require that a certain number of replacement vehicles, regardless of the requesting agency, be alternate fuel vehicles to insure compliance with said AFV mandates.

**R27-4-5. Fleet Expansion.**

(1) Any expansion of the state motor vehicle fleet requires legislative approval.

(2) The agency requesting a vehicle that will result in fleet expansion shall be required to provide proof of the requisite legislative approval for the procurement of an expansion vehicle and any additional features and miscellaneous equipment, before DFO is authorized to purchase the expansion vehicle.

(3) For the purposes of this rule, an agency shall be deemed to have the requisite legislative approval under the following circumstances only:

(a) The procurement of expansion vehicles is explicitly authorized by the Appropriations Committee during the general legislative session; or

(b) The procurement of expansion vehicles is explicitly authorized by a special session of the legislature convened for the express purpose of approving fleet expansion.

(4) For the purposes of this rule, only the following shall constitute acceptable proof of legislative approval of the requested expansion:

(a) A letter, signed by the agency's Chief Financial Officer, citing the specific line item in the appropriations bill providing said authorization; or

(b) Written verification from the agency's analyst in the Governor's Office of Planning and Budget (GOPB) indicating that the request for expansion was authorized and funded by the legislature.

(5) Upon receipt of proof of legislative approval of an expansion from the requesting agency, DFO shall provide to the State Division of Finance copies of the proof submitted in order for the Division of Finance to initiate the process for the formal transfer of funds from the requesting agency to DFO. In no event shall DFO purchase expansion vehicles for requesting agencies until the Division of Finance has completed the process for the formal transfer of funds.

(6) When the expansion vehicle is procured, the vehicle shall be added to the fleet and a replacement cycle established.

(7) DFO is responsible for insuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. DFO may require that a certain number of expansion vehicles, regardless of the requesting agency, be alternate fuel vehicles to insure in compliance with said AFV mandates.

**R27-4-6. Vehicle Feature and Miscellaneous Equipment Upgrade.**

(1) Additional feature(s) or miscellaneous equipment to be added to the standard replacement vehicle in a given class, as established by DFO after reviewing the recommendations of the Fleet Vehicle Advisory Committee (FVAC), that results in an increase in vehicle cost shall be deemed a feature and miscellaneous equipment upgrade. A feature or miscellaneous equipment upgrade occurs when an agency requests:

(a) That a replacement vehicle contains a non-standard feature. For example, when an agency requests that an otherwise standard replacement vehicle have a diesel rather than a gasoline engine, or that a vehicle contain childproof locks.

(b) The installation of additional miscellaneous equipment not installed by the vehicle manufacturer. For example, when an agency requests that light bars or water tanks be installed on an otherwise standard replacement vehicle.

(2) Requests for feature and miscellaneous equipment upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs, and

(b) Shall be signed by the requesting agency's director, or the appropriate budget or accounting officer.

(3) All requests for vehicle feature and/or miscellaneous equipment upgrades shall be subject to review and approval by the Director of DFO or the director's designee. Vehicle feature and/or miscellaneous equipment upgrades shall be approved when in the judgment of the Director of DFO or the director's designee, the requested feature and/or miscellaneous equipment upgrades are necessary and appropriate for meeting the agency's needs.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for a feature and/or miscellaneous equipment upgrade.

(5) Agencies obtaining approval for feature and/or miscellaneous equipment upgrades shall, prior to the purchase of the vehicle, pay in full to DFO, a feature and/or miscellaneous equipment upgrade rate designed to recover the total cost associated with providing the additional feature(s) and/or miscellaneous equipment, unless the requesting agency otherwise negotiates an agreement with DFO for payments to be made in installments, and provided that the terms of the installment agreement do not delay the payment of the general fund debt.

(6) In the event that an agreement providing for the payment of a feature and/or miscellaneous equipment upgrade in installments is reached, the agency shall indemnify and make DFO whole for any losses incurred resulting from damage to, loss or return of the vehicle and/or equipment prior to the receipt of all payment installments by DFO.

**R27-4-7. Agency Installation of Miscellaneous Equipment.**

(1) The director of the Division of Fleet Operations, with the approval of the Executive Director of the Department of Administrative Services, may enter into Memoranda of Understanding allowing customer agencies to install miscellaneous equipment on or in state vehicles if:

(a) the agency or institution has the necessary resources and skills to perform the installations; and

(b) the agency or institution has received approval for said miscellaneous equipment as required by R27-4-6.

(2) Each memorandum of understanding for the installation of miscellaneous equipment shall, at a minimum, contain the following:

(a) a provision that monthly lease fees shall be charged to the agency from the date of the agency's receipt of the replacement vehicle as required under R27-4-9(7)(b); and

(b) a provision that said agency shall indemnify and hold DFO harmless for any claims made by a third party that are related to the installation of miscellaneous equipment in or on state vehicles in the agency's possession and/or control; and

(c) a provision that said agency shall indemnify DFO for any damage to state vehicles resulting from installation or de-installation of miscellaneous equipment; and

(d) a provision that agencies with permission to install miscellaneous equipment shall enter into the DFO fleet information system the following information regarding the miscellaneous equipment procured for installation in or on state vehicles, whether the item is held in inventory, currently installed on a vehicle, or sent to surplus;

(i) item description or nomenclature; and

(ii) manufacturer of item; and

(iii) item identification information for ordering purposes; and

(iv) procurement source; and

(v) purchase price of item; and

expected life of item in years; and

(vi) warranty period; and

(vii) serial number;

(viii) initial installation date; and

(ix) current location of item (warehouse, vehicle number); and

(x) anticipated replacement date of item; and

(xi) actual replacement date of item; and

(xii) date item sent to surplus; and SP-1 number.

(e) a provision requiring the agency or institution with permission to install being permitted to install miscellaneous equipment to obtain insurance from the Division of Risk Management in amounts sufficient to protect itself from damage to, or loss of, miscellaneous equipment installed on state vehicles. Agencies or institutions with permission to install miscellaneous equipment shall hold DFO harmless for any damage to, or loss of miscellaneous equipment installed in state vehicles.

(f) a provision that DFO shall provide training and support services for the fleet information system and charge agencies with permission to install miscellaneous equipment an MIS fee to recover these costs.

(g) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(3) Agreements permitting agencies or institutions to install miscellaneous equipment in or on state vehicles may be terminated if there is a lack of compliance with the terms of the agreement by the state agency or institution.

**R27-4-8. Vehicle Class Differential Upgrade.**

(1) For the purposes of this rule, requests for vehicles other than the planned replacement vehicle established by DFO after reviewing the recommendations of the Fleet Vehicle Advisory Committee (FVAC), that results in an increase in vehicle cost shall be deemed a vehicle class differential upgrade. For example, a vehicle class differential upgrade occurs when, regardless of additional features and/or miscellaneous equipment:

(a) The replacement vehicle requested by the agency, although within the same vehicle class as the vehicle being replaced, is not the standard replacement vehicle established by DFO for that class. For example, an agency requests a Ford Focus instead of a Chevrolet Cavalier, the standard vehicle in the compact sedan class for FY 2001.

(b) The agency requests that a vehicle be replaced with a more expensive vehicle belonging to another class. For example, when an agency requests to have a standard 1/2 ton truck replaced with a standard 3/4 ton truck, or a compact sedan be replaced with a mid-size sedan.

(2) Requests for vehicle class differential upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs, and

(b) Shall be signed by the requesting agency's director or the appropriate budget or accounting officer.

(3) All requests for vehicle class differential upgrades shall be subject to review and approval by the Director of DFO or the director's designee. Vehicle class differential upgrades shall be approved only when:

(a) In the judgment of the Director of DFO or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting the demands of changing operational needs for which the planned replacement vehicle is clearly inadequate or inappropriate;

(b) In the judgment of the Director of DFO or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting safety, environmental, or health or other special needs for drivers or passengers.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for a vehicle class differential upgrade.

(5) Agencies obtaining approval for vehicle class differential upgrade(s) shall pay to DFO, in full, prior to the purchase of the vehicle, a vehicle class differential upgrade rate designed to recover the difference in cost between the planned replacement vehicle and the actual replacement vehicle when the replacement vehicle is a more expensive vehicle belonging to the same or another class.

**R27-4-9. Cost Recovery.**

(1) State vehicles shall be assessed a lease fee designed to recover depreciation costs, and overhead costs, including AFV and MIS fees, and where applicable, the variable costs, associated with each vehicle.

(2) Lease rates are calculated by DFO according to vehicle cost, class, the period of time that the vehicle is expected to be in service, the optimum number of miles that the vehicle is

expected to accrue over that period, and the type of lease applicable:

(a) A capital only lease is designed to recover depreciation plus overhead costs, including AFV and MIS fees, only. All variable costs, such as fuel and maintenance, are not included in the lease rate.

(i) Capital only leases are subject to DFO approval; and

(ii) Shall be permitted only when the requesting agency provides proof that its staffing, facilities and other infrastructure costs, and preventive maintenance and repair costs are less than, or equal to those incurred by DFO under the current preventive maintenance and repair services contract.

(iii) DFO shall, upon giving approval for a capital only lease, issue a delegation agreement to each agency.

(b) A full-service lease is designed to recover depreciation and overhead costs, including AFV and MIS fees, as well as all variable costs.

(3) DFO shall review agency motor vehicle utilization on a quarterly basis to identify vehicles in an agency's possession or control that, on the basis of the applicable replacement cycle, are either being under-utilized or over-utilized.

(4) DFO shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to insure full utilization of all state fleet motor vehicles in its possession or control.

(5) In the event that a vehicle is turned in for replacement as a result of reaching the optimum mileage allowed under the applicable replacement cycle mileage schedule, prior to the end of the period of time that the vehicle is expected to be in service, a rate containing a shorter replacement cycle period that reflects actual utilization of the vehicle being replaced may be implemented for said vehicle's replacement.

(6) In the event that a vehicle is turned in for replacement as scheduled, but is not in compliance with optimum mileage allowed under the applicable replacement cycle, a rate containing a longer replacement cycle period that reflects actual utilization of the vehicle being replaced may be implemented for said vehicle's replacement.

(7) DFO shall begin the monthly billing process when the agency receives the vehicle.

(a) Agencies that choose to keep any vehicle on the list of vehicles recommended for replacement after the receipt of the replacement vehicle, pursuant to the terms of a memorandum of understanding between the leasing agencies and DFO that allows the agency to continue to possess or control an already replaced vehicle, shall continue to pay a monthly lease fee on the vehicle until it is turned over to the Surplus Property Program for resale. Vehicles that are kept after the receipt of the replacement vehicle shall be deemed expansion vehicles for vehicle count report purposes.

(b) Agencies that choose to install miscellaneous equipment to the replacement vehicle, in house, shall be charged a monthly lease fee from date of receipt of the replacement vehicle. If DFO performs the installation, the billing process shall not begin until the agency has received the vehicle from DFO.

**R27-4-10. Executive Vehicle Replacement.**

(1) Executive Vehicles shall be available to only those with employment positions that have an assigned vehicle as part of a compensation package in accordance with state statute.

(a) Each fiscal year DFO shall establish a standard executive vehicle type and purchase price.

(b) Executives may elect to replace their assigned vehicle at the beginning of each elected term, or appointment period, or as deemed necessary for the personal safety and security of the elected or appointed official.

(c) When the executive leaves office, the vehicle shall be sold in accordance with State Surplus Property Program policies and procedures.

(2) Executives shall have the option of choosing a vehicle other than the standard executive vehicle.

(a) The alternative vehicle selection should not exceed the standard executive vehicle price parameter guidelines.

(b) In the event that the agency chooses an alternative vehicle that exceeds the standard vehicle guidelines, the agency shall pay for the difference in price between the vehicle requested and the standard executive vehicle.

**R27-4-11. Reservation of Vehicle Allocation for Surrendered Vehicles.**

(1) This section implements that part of Item 59 of S.B. 1 of the 2002 General Session which requires the Division of Fleet Operations to "create a capitalization credit program that will allow agencies to divest themselves of vehicles without seeing a future capitalization cost if programs require replacement of the vehicle."

(2) Except as provided in paragraph 3 of this section, DFO shall, in the event that an agency voluntarily surrenders a vehicle to DFO, hold the vehicle allocation open for the surrendering agency, for a period not to exceed the remainder the fiscal year within which the surrender takes place.

(3) The surrendering agency's failure to request the return of the vehicle surrendered prior to the end of the fiscal year within which the surrender took place, shall result in the removal of the surrendered vehicle or allotment from the state fleet and effect a reduction in state fleet size.

(4) DFO shall not hold vehicle allocations for an agency when the vehicle that is being surrendered:

(a) has been identified for removal from the state fleet in order to comply with legislatively mandated reductions in state fleet size; or

(b) is identified as a "do not replace" vehicle in the fleet information system; or

(c) is a state vehicle not purchased by DFO; or

(d) is a seasonal vehicle that has already been replaced.

(5) Any agency that fails to request the return of a voluntarily surrendered vehicle prior to the end of the fiscal year within which the surrender took place, must comply with the requirements of R27-4-5, Fleet Expansion, to obtain a vehicle to replace the one surrendered.

**R27-4-12. Inter-agency Vehicle Reassignment or Reallocation Guidelines.**

(1) DFO is responsible for state motor vehicle fleet management, and in the discharge of that responsibility, one of DFO's duties is to insure that the state is able to obtain full utilization of, and the greatest residual value possible for state

vehicles.

(2) DFO shall, on a quarterly basis, conduct a review of state fleet motor vehicle utilization to determine whether the vehicles are being utilized in accordance with the mileage requirements contained in the applicable replacement cycles.

(3) DFO shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to insure full utilization of all state fleet vehicles in its possession or control.

(4) In conducting the review, DFO shall collect the following information on each state fleet vehicle:

(a) year, make and model;

(b) vehicle identification number (VIN);

(c) actual miles traveled per month;

(d) driver and/or program each vehicle is assigned to;

(e) location of the vehicle;

(f) class code and replacement cycle.

(4) Agencies shall be responsible for verifying the information gathered by DFO.

(5) Actual vehicle utilization shall be compared to the scheduled mileage requirements contained in the applicable replacement cycle, and used to identify vehicles that may be candidates for reassignment or reallocation, reclassification, or elimination.

(6) In the event that intra-agency reassignment or reallocation of vehicles fails to bring vehicles into compliance with applicable replacement cycle mileage schedules within a replacement cycle, DFO may, in the exercise of its state motor vehicle fleet management responsibilities, reassign, reallocate or eliminate the replacement vehicles for vehicles that are chronically out of compliance with applicable replacement cycle mileage requirements to other agencies to ensure that all vehicles in the state fleet are fully utilized.

(7) Agencies required to relinquish vehicles due to a reassignment or reallocation may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review of the reallocation or reassignment made by DFO. However, vehicles that are the subject matter of petitions for review shall remain with the agencies to which they have been reassigned or reallocated until such time as the Executive Director of the Department of Administrative Services or the executive director's designee renders a decision on the matter.

**R27-4-13. Disposal of State Vehicles.**

(1) State vehicles shall be disposed of in accordance with the requirements of Section 63A-9-801 and Rule R28-1.

**KEY: fleet expansion vehicle replacement**

**September 9, 2002** **63A-9-401(1)(a)**
**63A-9-401(c)(v)**
**63A-9-401(c)(ix)**
**63A-9-401(c)(xi)**
**63A-9-401(c)(xii)**

**R51. Agriculture and Food, Administration.**
**R51-2. Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food.**
**R51-2-1. Authority.**

A. These rules establish and govern the administrative proceedings before the Utah Department of Agriculture and Food, as required by Sections 63-46b-5 and 4-1-3.5.

B. These rules govern all adjudicative proceedings commencing on or after January 1, 1988. Adjudicative proceedings commencing prior to January 1, 1988, are governed by procedures presently in place.

**R51-2-2. Designation of Formal and Informal Proceedings.**

A. Emergency Orders: The Department may issue an order on an emergency basis without complying with these rules under the circumstances and procedures set forth in Section 63-46b-20.

B. All adjudicative proceedings of the Utah Department of Agriculture and Food here designated will be conducted as informal proceedings including the following, under the Utah Agricultural Code, Title 4:

1. Applications for permits, licenses, or certifications which include:

Produce Dealer
Dealer's Agent
Broker/Agent
Produce Broker
Livestock Dealer
Livestock Dealer/Agent
Livestock Auction Market
Auction Weighperson
Temporary Livestock Sale
Manufacturers of Bedding or Upholstered Furniture
Wholesale Dealer
Supply Dealer
Manufacturers of Quilted Clothing
Upholsterer With Employees
Upholsterer Without Employees
Test Milk For Payment
Operate Milk Manufacturing Plant
Make Butter
Haul Farm Bulk Milk
Make Cheese
Operate a Pasteurizer
Operate a Milk Processing Plant
Weighing and Measuring Devices/Individual Servicemen
Weighing and Measuring Devices/Agency
Nursery
Nursery Agent
Nursery Outlet
Commercial Feed
Custom Mixing of Feeds
Pesticide Product Registration
Pesticide Dealers
Pesticide Applicators
Fertilizer Registration
Fertilizer Blenders
Beekeepers
Salvage Wax
Control Atmosphere
Farm Custom Slaughter
Feed Garbage To Swine
Operate Hatchery
Meat Packing Plant
Custom Exempt Plant
Custom Slaughter Plant
Horse Show and Seasonal Permits
Cattle Show and Seasonal Permits
Lifetime Horse Permit
Lifetime Transfer Horse Permit
Brand Recording
Brand Transfer
Brand Renewal

2. Actions contesting initial agency determinations of eligibility for any of the permits, licenses, or certifications listed in R51-2-2(B)(1).

3. All adjudicative proceedings to deny, revoke, suspend, modify, annul, withdraw or amend any permit, license, or certification listed in R51-2-2(B)(1).

4. All adjudicative proceedings commenced pursuant to any notice of violation or order for corrective action outlined in 4-2-12 or 4-2-2.

5. All categories not designated as formal will be conducted as informal proceedings.

**R51-2-3. Definitions.**

A. "Adjudicative Proceeding" means a department action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all Department actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend the authority, right, or license; and judicial review of all actions. Any matters not governed by Title 63, Chapter 46b shall not be included within this definition.

B. "Department" means the Utah Department of Agriculture and Food.

C. "Staff" means the Utah Department of Agriculture and Food staff.

D. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food.

E. "Person" means an individual group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivisions or its units, public or private organization or entity of any character, or other agency.

F. "Presiding Officer" means the Commissioner or an individual or body of individuals designated by the Commissioner, by the Department's rules, or by statute to conduct a particular adjudicative proceeding.

G. "Party" means the Department or other person commencing an adjudicative proceeding, all respondents, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

H. "Respondent" means any person against whom an adjudicative proceeding is initiated, whether by the Department or any other person.

I. "Application" means any application for a license, permit or certification.

J. "Applicant" is a person filing an application.

K. The meaning of any other words used herein relating to agriculture shall be as defined in Title 4, or any rules promulgated thereunder.

**R51-2-4. Construction.**

A. These rules shall be construed in accordance with Title 63, Chapter 46b.

B. These rules shall be liberally construed to secure just, speedy, and economical determination of all issues presented to the Department.

C. Deviation from Rules

The Department may permit a waiver from these rules if:

1. The waiver is not precluded by statute;

2. No party will be prejudiced by the waiver;

3. When no health hazard will result; and

4. The Department determines that it would be in the best interest or temporary convenience of the State.

D. Computation of Time

All adjudicative proceedings commenced by this rule and which incorporate a time frame, shall have the time frame measured in calendar days. The time frame shall be measured by excluding the first day and including the last, unless the last day is a Saturday, Sunday or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday nor State holiday.

**R51-2-5. Commencement of Proceedings.**

A. Proceedings commenced by the Department.

All informal adjudicative proceedings commenced by the Department shall be initiated as provided by applicable statute, and Section 63-46b-3(2)(a).

B. Proceedings Commenced by Persons Other Than the Department.

All informal adjudicative proceedings commenced by persons other than the Department shall be commenced by submitting in writing a request for agency action in accordance with Section 63-46b-3(2)(c).

**R51-2-6. Hearings.**

A. The Department or a presiding officer shall hold a hearing if a hearing is required by statute, or if a hearing is permitted by statute and is requested by a party within 30 days of the commencement of the adjudicative proceeding. The Department or a presiding officer may at their discretion initiate a hearing to determine matters within their authority.

B. Notice of the hearing shall be mailed to all parties by regular mail at least ten days prior to the hearing.

C. If no hearing is held in a particular adjudicative proceeding, the presiding officer shall within a reasonable time issue a decision pursuant to Section 63-46b-5(1)(i).

**R51-2-7. Intervention.**

Intervention is prohibited except where a federal statute or rule requires that a state permit intervention.

**R51-2-8. Pre-hearing Procedure.**

The presiding officer may, upon written notice to all parties of record, hold a pre-hearing conference for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement thereof.

**R51-2-9. Continuance.**

If application is made to the presiding officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties, the presiding officer may grant a continuance of the hearing.

**R51-2-10. Parties to a Hearing.**

A. All persons defined as a "party" are entitled to participate in hearings before the Department.

B. All parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding. The presiding officer can, for good cause, limit evidence, examination, and cross examination of witnesses and arguments.

**R51-2-11. Appearances and Representation.**

A. Taking Appearances

Parties shall enter their appearances at the beginning of a hearing or at a time as may be designated by the presiding officer by giving their names and addresses and stating their positions or interests in the proceeding.

B. Representation of Parties

1. An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent interest in the proceeding.

2. Any party may be represented by an attorney licensed to practice in the State of Utah.

**R51-2-12. Testimony, Evidence and Argument.**

A. Testimony

At the hearing, the presiding officer shall accept oral or written testimony from any party. Further, the presiding officer shall have the right to question and examine any witnesses called to present testimony at a hearing.

B. Order of Presentation of Evidence

Unless otherwise directed by the presiding officer at a hearing, the presentation of evidence shall be as follows:

1. When agency action is initiated by a person other than the Department:

a. the applicant,

b. respondent,

c. staff.

2. When the Department initiates agency action:

a. staff,

b. respondent,

c. other interested parties.

During any hearing a party may offer rebuttal evidence.

C. Rules of Evidence

A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence shall be excluded. The weight to be given to evidence shall be determined by the presiding officer. Any relevant

evidence may be admitted if it is the type of evidence commonly relied upon by prudent persons in the conduct of their affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible in a judicial proceeding.

D. Documentary Evidence

Duplicate copies may be received as documentary evidence. However, upon request, parties shall be given an opportunity to compare the copy with the original, if available.

**R51-2-13. Decisions and Orders.**

A. Report and Order

After the presiding officer has reached a final decision upon any adjudicative proceeding, he shall make and enter a signed order in writing that states the decision, the reasons for the decision, a notice of the rights of the parties to request Department reconsideration or judicial review, as appropriate, and notice of the time limits for filing a request for reconsideration or a judicial review. The order shall be based on the facts appearing in any of the Department's files and on the facts presented in evidence at any hearings.

B. Service of Decisions

A copy of the presiding officer's order shall be promptly mailed by regular mail to each of the parties.

**R51-2-14. Request for Reconsideration.**

A. Who may file

Within ten days after the date that an order on review is issued, any aggrieved party may file a request for reconsideration by following the procedures of Section 63-46b-13 and the following additional rules. A request is not a prerequisite for judicial review.

B. Action on the Request.

The Commissioner shall issue a written order granting or denying the request for reconsideration. If an order is not issued within 20 days after the filing of the request, the request for rehearing shall be considered denied. Any order granting rehearing shall be strictly limited to the matter specified in the order.

**KEY: government hearings, appellate procedures**
**1988 4-1-3.5**
**Notice of Continuation September 17, 2002 63-46b-5**

**R58. Agriculture and Food, Animal Industry.**
**R58-19. Compliance Procedures.**
**R58-19-1. Authority.**

This rule is promulgated by the Division of Animal Industry (Division), within the Department of Agriculture and Food (Department) under authority of Section 4-2-2(j).

**R58-19-2. Definition of Terms.**

(A) An Emergency Order means a written action by the Division, which is issued to a person, as a result of information that is known by the Division, which identifies an immediate and significant danger to the public's health, animal health, safety or welfare, and warrants prompt action pursuant to Section 63-46b-20.

Emergency orders include: "quarantine", "seized", "Utah Inspection and Condemned", "sealed", "reject", "retain", "denatured", "detained", and "suspect", and may be issued when division action is warranted to stop the sale of a product, or halt an immediate condition or service from occurring, pursuant to Sections 4-32-7, 4-32-16, 4-32-17, 4-31-17, 4-39-107, and 9 CFR-III 303.1 through 381.207.

(B) A Citation means a lawful notice, issued by the division, which is intended to immediately remedy a violation of agricultural statutes or rules by a person, business, operator, etc. Pursuant to Section 4-2-15, a citation may include a penalty assessment, or provide for a fine to take effect within a stated time period.

**R58-19-3. Emergency Order.**

The Division may issue an emergency order when it determines that there is an immediate and significant danger to public health, animal health, safety or welfare may be issued to secure the well-being, safety, or removal of danger to state citizens. Orders are intended to protect the public from unlawful agricultural and food products and services.

When an emergency order is justified, and conditions warrant immediate action by the Division, it shall: Promptly issue a written order, that includes the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) a brief statement of findings of fact as determined by the division,

(3) references to statutes or administrative rules violated,

(4) the reasons for issuance of the emergency order,

(5) the signature of the agency representative, and

(6) a space/line for the signature of the person (a signature is not required if the person refuses).

This order shall be written and no product, condition, or service subject to the order shall be released, except upon the subsequent written release by the department.

**R58-19-4. Citation.**

The Commissioner or persons designated by the Commissioner, may enforce this rule by the issuance of a citation for violation, in order to secure subsequent payments of fines or the imposition of penalties:

The citation will include the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) references to the statutes or rules violated,

(3) a brief statement to the findings of fact as determined by the division,

(4) a penalty or fine amount,

(5) the signature of the agency representative,

(6) a space or line for the signature of the person (a signature is not required if the person refuses),

(7) a statement to the effect that a person is allowed to request an administrative hearing if the person feels that a citation was not warranted.

Fine or penalty amounts will be set by the department or the division, under the direction of the commissioner, for amounts up to $5,000 per violation, or if the citation involves a criminal proceeding, the person may be found guilty of a class B misdemeanor. In accordance with Section 4-2-15, fine or penalty amounts shall be determined according to the following:

TABLE
Penalty Amounts

| | | |
|---|---|---|
| 1 | Citation per violation | $100 |
| 2 | Citation per head | $ 2 |
| (If not paid within 15 days, 2 times citation amount) | | |
| (If not paid within 30 days, 4 times citation amount) | | |

**R58-19-5. Request for Hearing.**

When any order or citation, as defined above, is issued, the person being charged with the violation may elect to file, within allowable time limits, a request for the department to schedule an informal Administrative Hearing in accordance with the provisions of Section 4-1-3.5.

**KEY: agricultural law**
**February 12, 2002 4-2-2(j)**
**Notice of Continuation September 20, 2002**

**R65. Agriculture and Food, Market and Conservation.**
**R65-11. Utah Sheep Marketing Order.**
**R65-11-1. Authority.**

A. Promulgated under authority of Subsection 4-2-2(1)(e), which authorizes issuing marketing orders to promote orderly market conditions for agricultural products.

B. The Commissioner of Agriculture and Food finds that it is in the public interest to establish a marketing order to improve conditions in the sheep producing industry. The commissioner finds that the issuance of this marketing order is approved and favored by at least 50 percent of the producers and handlers voting on the referendum. It is therefore ordered by the commissioner that this Order be established to assure an effective and coordinated program to maintain and expand the Utah sheep industry's market position, and that the producers shall be subject to the terms and provisions of the Order.

**R65-11-2. Definition of Terms.**

A. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food.

B. "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, legal representative, or any other entity.

C. "Sheep" means rams, ewes, or lambs.

D. "Producer" means a person owning at least 100 rams, ewes, or lambs.

E. "Registered producers" means producers who have indicated that they want to be included in the marketing order voting process by registering to vote in the referendum. Registration forms may be mailed out with the ballots.

F. "Handler" means an individual or an organization engaged in the merchandising of sheep or sheep products.

**R65-11-3. Board.**

A. The Utah Sheep Board is hereby established consisting of five members of the sheep industry, plus ex-officio non-voting members from BYU and USU and the Utah Department of Agriculture and Food.

B. The original members of the Board shall be selected by the commissioner from a list submitted by the industry.

C. Successors to original members shall be appointed by the commissioner from names submitted by the industry. Two members shall be appointed for a period of three years. Three members shall be appointed for a period of four years. After the first three years, each appointed member shall serve for a period of four years. This rotation shall be in effect for the term of the marketing order. In the event of a vacancy the commissioner shall appoint a new member from names submitted by the Board.

D. Members of the Board shall only succeed themselves once and not serve on the Board for more that eight consecutive years.

E. The officers of the Board shall be selected from the five Board members at their first meeting after organization. The officers shall consist of a Chairman and a Vice Chairman, to be elected yearly by the members of the Board. In the event of a vacancy or unfilled office, it shall be filled through an election as soon as practical and shall be for the remainder of the unexpired term.

F. The Board shall exercise the following functions, powers and duties:

1. to receive and expend funds collected for the benefit of the Utah sheep producers,

2. to cooperate with any local, state or national organization engaged in activities similar to those of the Sheep Marketing Board,

3. to conduct educational programs and advertizing to promote sheep and sheep products.

4. to conduct research projects to improve the profitability of the Utah Sheep Industry,

5. to engage in any activity to promote the Utah sheep industry.

G. Attendance of three members at a duly called meeting shall constitute a quorum for the transaction of official business. The Board shall meet at least quarterly.

H. Each member of the Board is entitled to per diem and expenses in accordance with Sections 63A-3-106 and 63A-3-107.

I. A financial report will be made available annually for the Board and members of the industry by the Utah Department of Agriculture and Food.

**R65-11-4. Provisions of the Order.**

A. This order provides for:

1. Uniform grading and inspection of sheep products sold or offered for sale by producers or handlers and for the establishment of grading standards of quality, conditions, and size. Such grading standards shall not be established below any minimum standards now prescribed by law for the State.

2. Advertising and sales promotion to create new or larger markets for sheep products produced in Utah, provided that any such plan shall be directed towards increasing the sale of such commodity without reference to particular brand or trade name.

3. The labeling, marketing, or branding of sheep products in conformity with the regulations of the commissioner or the laws of the State of Utah already in existence and written in the Utah Code.

4. Research projects and experiments for the purpose of improving the general condition of the Sheep Industry and for the purpose of protecting the health of the people of Utah.

5. The Board may cooperate with any other state or federal agency whose activities may be deemed beneficial to the purpose of this Order.

B. Expenses - Assessments - Collection and Disbursement.

1. Each producer subject to this Order shall pay to the board his or her pro rata share of such expenses as the commissioner may find necessary to be incurred by the Board for the functioning of said Marketing Order. Each producer shall pay up to 5 cents per pound of wool shorn to the Board annually. The discretionary assessment shall be set by majority vote of the Board, and approved by the commissioner. The initial assessment shall be 2 cents per pound. This assessment levied in the specified amount shall constitute a personal debt of every person so assessed and shall be due and payable upon sale of wool. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative

association of producers.

2. The assessment of each producer shall be deducted from the producer's gross receipt by the wool purchaser or handler. All proceeds from the deducted portion shall be paid at least quarterly to the Sheep Board. Sheep spending part of the year in Utah shall be assessed pro rata based on the time spent in Utah.

3. The Board shall retain records of the receipt of the assessment. The records shall be audited annually by an auditor approved by the commissioner. Copies of the audit shall be available to any contributor upon request.

4. The Board is required to reimburse the commissioner for any funds as are expended by the commissioner in performing his duties, as provided in this Order. Such reimbursement to include only funds actually expended in connection with this Order.

5. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the commissioner. The Board shall receive and disburse all funds received by it pursuant to Section R65-6-5. Any funds remaining at the end of any year over and above the necessary expenses of said Board may be divided among all persons from whom such funds were collected. At the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year.

6. Any producer who wishes a refund of their paid assessment may request such by notifying the Board in writing within thirty days of payment of the assessment subject to approval of the Board.

7. The Order shall become operational only if it is approved by at least 50 percent of the producers and handlers voting in the referendum or by producers and handlers who account for at least two-thirds of the production represented by persons voting in the referendum.

**R65-11-5. Division of Funds.**

Assessments made and monies collected under provisions of this order shall be divided into assessments and funds for:

A. administrative purposes,

B. educational purposes, advertising and promotional purposes, and

C. research purposes. Such assessments and funds shall be used solely for the purposes for which they are collected; provided, that funds remaining at the end of any year may be used in the succeeding year and provided, that no funds be used for political or lobbying activities.

**R65-11-6. Board - Member's Liability.**

No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

**R65-11-7. Complaints for Violations - Producer.**

Complaints for violations shall be handled by the responsible legal agencies and shall be enforced in the civil courts of the state.

**R65-11-8. Termination of Order.**

The commissioner may terminate the Marketing Order at such time as he may determine there is no longer an industry need for such order. A referendum vote may be called at the request of the producers through a petition of 40 percent of the producers.

**R65-11-9. Quarterly Meeting.**

The Board shall meet at least quarterly.

**KEY: promotions**
**March 19, 1998 4-2-2(1)(e)**
**Notice of Continuation September 20, 2002**

**R68. Agriculture and Food, Plant Industry.**
**R68-15. Quarantine Pertaining to Japanese Beetle, (Popillia Japonica).**
**R68-15-1. Authority.**

A. Promulgated under authority of Subsection 4-2-2-(1)(j) and 4-2-2(1)(l)(ii).

B. Refer to the Notice of Quarantine, Japanese Beetle, (Popillia Japonica), Effective January 4, 1993, issued by Utah Department of Agriculture and Food.

**R68-15-2. Pest.**

Japanese beetle, Popillia japonica, a beetle, family Scarabaeidae, which in the larval state attacks the roots of many plants and as an adult attacks the leaves and fruits of many plants.

**R68-15-3. Areas Under Quarantine.**

A. The following states have been placed under a general quarantine to prohibit the entry of Japanese Beetle into Utah through the sale of plants and plant products: the entire states of Alabama, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia.

B. The same general quarantine shall apply to the following states in provinces of Canada:

1. In the Province of Ontario: Lincoln, Welland, and Wentworth.

2. In the Province of Quebec: Missiquoi and St. Jean.

C. Any areas not mentioned above where Japanese Beetle has been found or known to occur, shall also be placed under this same general quarantine.

**R68-15-4. Articles and Commodities Under Quarantine.**

A. The following are hereby declared to be hosts and possible carriers of all stages of the Japanese beetle:

1. Soil, humus, compost and manure (except when commercially packaged and treated);

2. All plants with roots (except bareroot plants free from soil).

3. Grass Sod;

4. Plant crowns or roots for propagation (except when free from soil);

5. Bulbs, corms, tubers, and rhizomes of ornamental plants (except when free from soil);

6. Any other plant, plant part, article, or means of conveyance when it is determined by a Utah State Plant Quarantine Officer to present a hazard of spreading live Japanese beetle due to infestation or exposure to infestation by Japanese beetle.

B. Packing material added to bareroot plants after harvesting would not normally pose a pest risk. Packing material would be covered under (6) above, at the inspector's discretion.

C. Free From Soil - For the purposes of this quarantine, free from soil is defined as soil in amounts that could not contain concealed Japanese beetle larvae or pupae.

**R68-15-5. Restrictions.**

All commodities covered are prohibited entry into Utah from the area under quarantine unless they have the required certification. Plants may be shipped from the area under quarantine into Utah provided such shipments conform to one of the options below and are accompanied by a certificate issued by an authorized state agricultural official at origin. Note that not all protocols approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for Utah. Advance notification of regulated commodity shipment is required. The certificate shall bear the name and address of the shipper and receiver as well as the inspection/certificate date and the signature of state agricultural officer. The certifying official shall mail, FAX or e-mail a copy of the certificate to Director, Plant Industry Division, Utah Department of Agriculture and Food, 350 North Redwood Road, P.O. Box 146500, Salt Lake City, Utah 84114-6500, FAX: (801) 538-7189, e-mail: agmain.dwilson@state.ut.us. The shipper shall notify the receiver to hold such commodities for inspection by the Utah Department of Agriculture and Food. The receiver must notify the Utah Department of Agriculture and Food of the arrival of commodities imported under the provisions of this quarantine and must hold such commodities for inspection. Such certificates shall be issued only if the shipment conforms fully with (a), (b), (c), (d) or (e) below:

(a) Production in an Approved Japanese Beetle Free Greenhouse/Screenhouse. All the following criteria apply: All media must be sterilized and free of soil; All stock must be free of soil (bareroot) before planting into the approved medium; The potted plants must be maintained within the greenhouse/screenhouse during the entire adult flight period; During the adult flight period the greenhouse/screenhouse must be made secure so that adult Japanese beetles cannot gain entry. Security will be documented by the appropriate phytosanitary officials of the origin state department of agriculture and must be specifically approved as a secure area. They shall be inspected by the same officials for the presence of all life stages of the Japanese beetle; The plants and their growing medium must be appropriately protected from subsequent infestation while being stored, packed and shipped; Certified greenhouse/screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved and adequate safeguards are applied to prevent possible infestation; Each greenhouse/screenhouse operation must be approved by the phytosanitary officials as having met and maintained the above criteria, and issued an appropriate certificate bearing the following declaration: "The rooted plants (or crowns) were produced in an approved Japanese beetle free greenhouse or screenhouse." The certificate accompanying the shipment must have the same statement as an additional declaration.

(b) Production During a Pest Free Window. The entire rooted plant production cycle will be completed within a pest free window, in clean containers with sterilized and soilless growing medium, i.e., planting, growth, harvest, and shipment will occur outside the adult Japanese beetle flight period, June through October. The accompanying phytosanitary certificate

shall bear the following additional declaration: "These plants were produced outside the Japanese beetle flight season."

(c) Applications of Approved Regulatory Treatments. All treatments will be performed under direct supervision of a phytosanitary official of the origin state department of agriculture or under a compliance agreement thereof. Treatments and procedures under a compliance agreement will be monitored closely throughout the season. State phytosanitary certificates listing and verifying the treatment used must be forwarded to the receiving state via fax or electronic mail, as well as accompanying the shipment. Note that not all treatments approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for Utah. The phytosanitary certificate shall bear the following additional declaration: " The rooted plants were treated to control "Popillia japonica" according to the criteria for shipment to category 1 states as provided in the U.S. Domestic Japanese Beetle Harmonization Plan and Utah Japanese Beetle Quarantine."

(A) Dip Treatment - B and B and Container Plants. Not approved.

(B) Drench Treatments - Container Plants Only. Not approved for ornamental grasses or sedges. Potting media used must be sterile and soilless, containers must be clean. Field potted plants are not eligible for certification using this protocol. This is a prophylactic treatment protocol targeting eggs and early first instar larvae. If the containers are exposed to a second flight season they must be retreated.

(1) Imidacloprid (Marathon 60WP). Apply one-half (0.5) gram of active ingredient per gallon as a prophylactic treatment just prior to Japanese beetle adult flight season (June 1, or as otherwise determined by the phytosanitary official). Apply tank mix as a drench to wet the entire surface of the potting media. A twenty-four (24) gallon tank mix should be enough to treat 120-140 one-gallon containers. Avoid over drenching so as not to waste active ingredient through leaching. During the adult flight season, plants must be retreated after sixteen (16) weeks if not shipped to assure adequate protection.

(2) Bifenthrin (Talstar Nursery Flowable 7.9%). Mix at the rate of twenty (20) ounces per 100 gallons of water. Apply, as a drench, approximately eight (8) ounces of tank mix per six (6) inches of container diameter.

(C) Media (Granule) Incorporation - Container Plants Only. All pesticides used for media incorporation must be mixed prior to potting and plants potted a minimum of thirty (30) days prior to shipment. Potting media used must be sterile and soilless; containers must be clean. The granules must be incorporated into the media prior to potting. Field potted plants are not eligible for treatment. This treatment protocol targets eggs and early first instar larvae and allows for certification of plants that have been exposed to only one flight season after application. If the containers are to be exposed to a second flight season they must be repotted with a granule incorporated mix or retreated using one of the approved drench treatments. Pesticides approved for media incorporation are:

(1) Imidacloprid (Marathon 1G). Mix at the rate of five (5) pounds per cubic yard.

(2) Bifenthrin (Talstar Nursery Granular or Talstar T and O Granular (0.2)). Mix at the rate of 25 ppm or one-third (0.33) of a pound per cubic yard based on a potting media bulk density of 200.

(3) Tefluthrin (Fireban 1.5 G). Mix at the rate of 25 ppm based on a potting media bulk density of 400.

(D) Methyl Bromide Fumigation. Nursery stock: methyl bromide fumigation at NAP, chamber or tarpaulin. See the California Commodity Treatment Manual for authorized schedules.

(E) Other treatment or protocol not described herein may be submitted for review and approval to the Commissioner of Utah Department of Agriculture and Food.

(d) Detection Survey for Origin Certification. Japanese Beetle Harmonization Plan protocol not approved. Alternative approved protocol: States listed in the area under quarantine may have counties that are not infested with Japanese beetle. Shipments of commodities covered may be accepted from these noninfested counties if annual surveys are made in such counties and adjacent counties and the results of such surveys are negative for Japanese beetle. In addition, the plants must be greenhouse grown or contained in media that is sterilized and free of soil and the shipping nursery must grow all their own stock from seed, unrooted cuttings or bareroot material. A list of counties so approved will be maintained by the Utah Department of Agriculture and Food. Agricultural officials from a quarantined state or province may recommend a noninfested county be placed on the approved county list by writing for such approval and stating how surveys were conducted giving the following information:

(A) Areas surveyed

(B) How survey was carried out

(C) Number of traps

(D) Results of survey

(E) History of survey

If a county was previously infested, give date of last infestation. If infestations occur in neighboring counties, approval may be denied. To be maintained on the approved list, each county must be reapproved every twelve (12) months. Shipments of commodities covered from noninfested counties will only be allowed entry into Utah if the uninfested county has been placed on the approved list prior to the arrival of the shipment in Utah. The certificate must have the following additional declaration: " The plants in this consignment were produced in (name of county), state of (name of state of origin) that is known to be free of Japanese beetle.

(e) Privately owned house plants obviously grown, or certified at the place of origin as having been grown indoors without exposure to Japanese beetle may be allowed entry into this state without meeting the requirements of section (4). Contact the Utah Department of Agriculture and Food for requirements: Director, Plant Industry Division, Utah Department of Agriculture and Food, 350 North Redwood Road, P.O. Box 146500, Salt Lake City, Utah 84114-6500, FAX: (801) 538-7189, e-mail: agmain.dwilson @state.ut.us.

**R68-15-6. Disposition of Violations.**

Any or all shipments or lots of quarantined articles or commodities listed in R68-15-4 above arriving in Utah in violation of this quarantine shall immediately be sent out of the state, destroyed, or treated by a method and in a manner as directed by the Commissioner of the Utah Department of

Agriculture and Food or his agent. Treatment shall be performed at the expense of the owner, or owners, or their duly authorized agent.

**KEY: quarantine**
**March 18, 1999 4-2-2**
**Notice of Continuation September 20, 2002 4-35-9**

**R68. Agriculture and Food, Plant Industry.**
**R68-19. Compliance Procedures.**
**R68-19-1. Authority.**

This rule is promulgated by the Division of Plant Industry (Division), within the Department of Agriculture and Food (Department) under authority of Section 4-2-2 (j).

**R68-19-2. Definition of Terms.**

(A) An Emergency Order means a written action by the division, which is issued to a person, as a result of information that is known by the division, which identifies an immediate and significant danger to the public's health, safety or welfare, and warrants prompt action pursuant to Section 63-46b-20.

Emergency orders include: "stop sale", "stop use", "removal-order", "quarantine ", "regulate-control order", and may be issued when division action is warranted to stop the sale of a product, or halt an immediate condition or service from occurring, pursuant to Sections 4-11-12, 4-12-7(2), 4-13-8(1), 4-14-8(2), 4-15-11(1), 4-16-8(1), and 4-17-3(8).

(B) A Citation means a lawful notice, issued by the division, which is intended to immediately remedy a violation of agricultural statutes or rules by a person, business, operator, etc. Pursuant to Section 4-2-15, a citation may include a penalty assessment, or provide for a fine to take effect within a stated time period.

**R68-19-3. Emergency Order.**

The division may issue an emergency order when it determines that there is an immediate and significant danger to public health, safety or welfare , and may be issued to secure the well-being, safety, or removal of danger to state citizens. Orders are intended to protect the public from unlawful agricultural and food products and services.

When an emergency order is justified, and conditions warrant immediate action by the division, it shall: Promptly issue a written order, that includes the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) a brief statement of findings of fact as determined by the division,

(3) references to statutes or administrative rules violated,

(4) the reasons for issuance of the emergency order,

(5) the signature of the agency representative, and

(6) a space/line for the signature of the person (a signature is not required if the person refuses)

The order shall be written and no product, condition, or service subject to the order shall be released, except upon the subsequent written release by the department.

Pursuant to 4-11-11(3), 4-12-7(2), 4-13-8(2), 4-14-8(2), 4-15-8(2) and 4-17-8(2) the person subject to the written order may be required to pay the expense incurred by the department in connection with the withdrawal of the product, condition or service from the market.

**R68-19-4. Citation.**

The commissioner or persons designated by the commissioner, may enforce this rule by the issuance of a citation for violation, in order to secure subsequent payments of fines or the imposition of penalties:

The citation will include the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) references to the statutes or rules violated,

(3) a brief statement of findings of fact as determined by the division,

(4) a penalty or fine amount

(5) the signature of the agency representative,

(6) a space/line for the signature of the person (a signature is not required if the person refuses)

(7) a statement to the effect that a person is allowed to request an administrative hearing if the person feels that a citation was not warranted.

Fine or penalty amounts will be set by the department or the division, under the direction of the commissioner, for amounts up to $5,000 per violation, or if the citation involves a criminal proceeding, the person may be found guilty of a class B misdemeanor. In accordance with Section 4-2-15, fine or penalty amounts shall be determined according to the following: PENALTY AMOUNTS: Citation per violation up to, but not to exceed $500; if not paid within 15 days, 2 times citation amount; if not paid within 30 days, 4 times citation amount

**R68-19-5. Request for Hearing.**

When any order or citation, as defined above, is issued, the person being charged with the violation may elect to file, within allowable time limits, a request for the department to schedule an informal Administrative Hearing in accordance with the provisions of Section 4-1-3.5.

**KEY: agricultural law**
**April 15, 1998 4-2-2(j)**
**Notice of Continuation September 20, 2002**

**R70. Agriculture and Food, Regulatory Service.**
**R70-201. Compliance Procedures.**
**R70-201-1. Authority.**

This rule is promulgated by the Division of Regulatory Service (Division), within the Department of Agriculture and Food (Department) under authority of Section 4-2-2(j).

**R70-201-2. Definition of Terms.**

(A) An Emergency Order means a written action by the Division, which is issued to a person, as a result of information that is known by the Division, which identifies an immediate and significant danger to the public's health, animal health, safety or welfare, and warrants prompt action pursuant to Section 63-46b-20.

Emergency orders include: "quarantine", "seized", "Utah Inspection and Condemned", "sealed", "reject", "retain", "denatured", "detained", and "suspect", and may be issued when division action is warranted to stop the sale of a product, or halt an immediate condition or service from occurring, pursuant to Sections 4-3-6, 4-3-9, 4-5-5(1)(a), 4-9-6, 4-9-7, 4-10-11(1) and 4-33-8(1).

(B) A Citation means a lawful notice, issued by the division, which is intended to immediately remedy a violation of agricultural statutes or rules by a person, business, operator, etc. Pursuant to Section 4-2-15, a citation may include a penalty assessment, or provide for a fine to take effect within a stated time period.

**R70-201-3. Emergency Order.**

The Division may issue an emergency order when it determines that there is an immediate and significant danger to public health, animal health, safety or welfare may be issued to secure the well-being, safety, or removal of danger to state citizens. Orders are intended to protect the public from unlawful agricultural and food products and services.

When an emergency order is justified, and conditions warrant immediate action by the Division, it shall: Promptly issue a written order, that includes the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) a brief statement of findings of fact as determined by the division,

(3) references to statutes or administrative rules violated,

(4) the reasons for issuance of the emergency order,

(5) the signature of the agency representative, and

(6) a space/line for the signature of the person (a signature is not required if the person refuses).

This order shall be written and no product, condition, or service subject to the order shall be released, except upon the subsequent written release by the department.

**R70-201-4. Citation.**

The Commissioner or persons designated by the Commissioner, may enforce this rule by the issuance of a citation for violation, in order to secure subsequent payments of fines or the imposition of penalties:

The citation will include the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) references to the statutes or rules violated,

(3) a brief statement to the findings of fact as determined by the division,

(4) a penalty or fine amount,

(5) the signature of the agency representative,

(6) a space or line for the signature of the person (a signature is not required if the person refuses),

(7) a statement to the effect that a person is allowed to request an administrative hearing if the person feels that a citation was not warranted.

Fine or penalty amounts will be set by the department or the division, under the direction of the commissioner, for amounts up to $5,000 per violation, or if the citation involves a criminal proceeding, the person may be found guilty of a class B misdemeanor. In accordance with Section 4-2-15, fine or penalty amounts shall be determined according to the following: PENALTY AMOUNTS: Citation per violation up to, but not to exceed $500; if not paid within 15 days, 2 times citation amount; if not paid within 30 days, 4 times citation amount.

**R70-201-5. Request for Hearing.**

When any order or citation, as defined above, is issued, the person being charged with the violation may elect to file, within allowable time limits, a request for the department to schedule an informal Administrative Hearing in accordance with the provisions of Section 4-1-3.5.

**KEY: agricultural law**
**April 15, 1998 4-2-2(j)**
**Notice of Continuation September 20, 2002**

**R152. Commerce, Consumer Protection.**
**R152-34. Postsecondary Proprietary School Act Rules.**
**R152-34-1. Purpose.**

These rules are promulgated under the authority of Section 13-2-5(1) to administer and enforce the Postsecondary Proprietary School Act. These rules provide standards by which institutions and their agents who are subject to the Postsecondary Proprietary School Act are required to operate consistent with public policy.

**R152-34-2. References.**

The statutory references that are made in these rules are to Title 13, Chapter 34, Utah Code Annotated 1953.

**R152-34-3. Definitions in Addition to Those Found in Section 13-34-103.**

(1) "Branch" and "extension" mean a freestanding location that is apart from the main campus, where resident instruction is provided on a regular, continuing basis.

(2) "Correspondence institution" means an institution that is conducted predominantly through the means of home study.

(3) "Course" means a unit subject within a program of education that must be successfully mastered before an educational credential can be awarded.

(4) "Division" means the Division of Consumer Protection.

(5) "Probation" means a negative action of the division that specifies a stated period for an institution to correct stipulated deficiencies; but does not imply any impairment of operational authority.

(6) "Program of education" consists of a series of courses that lead to an educational credential when completed.

(7) "Resident institution" means an institution where the courses and programs offered are predominantly conducted in a classroom or a class laboratory, with an instructor.

(8) "Revocation" means a negative action of the division that orders an institution to surrender its certificate and cease operations, including advertising, enrolling students and teaching classes, for whatever reason.

(9) "Suspension" means a negative action of the division that impairs an institution's operational authority for a stated period of time during which the deficiencies must be corrected or the certificate may be revoked.

**R152-34-4. Rules Relating to the Responsibilities of Proprietary Schools as Outlined in Section 13-34-104.**

(1) In order to be able to award a degree or certificate, a proprietary school must meet the following general criteria:

(a) Its program must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree: associate, 60/90; bachelor's, 120/180; master's, 150/225; and doctorate, approximately 200/300.

(b) The areas of study, the methods of instruction, and the level of effort required of the student for a degree or certificate must be commensurate with reasonable standards established by recognized accrediting agencies and associations.

(c) In order for the proprietary school to award a degree or certificate, the faculty must be academically prepared in the area of emphasis at the appropriate level, or as to vocational-technical programs, must have equivalent job expertise based on reasonable standards established by recognized accrediting agencies and associations. This notwithstanding, credit may be awarded toward degree completion based on (1) transfer of credit from other accredited and recognized institutions, (2) recognized proficiency exams (CLEP, AP, etc.), and (3) in-service competencies as evaluated and recommended by recognized national associations such as the American Council on Education. Such credit for personal experiences shall be limited to not more than one year's worth of work (30 semester credit hours/45 quarter credit hours).

(d) In order to offer a program of study, either degree or non-degree, it must be of such a nature and quality as to make reasonable the student's expectation of some advantage in enhancing or pursuing employment, as opposed to a general education or non-vocational program which is excluded from registration under 13-34-105(g).

(2) The faculty member shall assign work, set standards of accomplishment, measure the student's ability to perform the assigned tasks, provide information back to the student as to his or her strengths and deficiencies, and as appropriate, provide counseling, advice, and further assignments to enhance the student's learning experience. This requirement does not preclude the use of computer assisted instruction or programmed learning techniques when appropriately supervised by a qualified faculty member.

(3) As appropriate to the program or course of study to be pursued, the proprietary school shall evaluate the prospective student's experience, background, and ability to succeed in that program through review of educational records and transcripts, tests or examinations, interviews, and counseling. This evaluation shall include a finding that the prospective student (1) is beyond the age of compulsory high school attendance, as prescribed by Utah law; and (2) has received either a high school diploma or a General Education Development certificate, or has satisfactorily completed a national or industry developed competency-based test or an entrance examination that establishes the individual's ability to benefit. Based on this evaluation, before admitting the prospective student to the program, the institution must have a reasonable expectation that the student can successfully complete the program, and that if he or she does so complete, that there is a reasonable expectation that he or she will be qualified and be able to find appropriate employment based on the skills acquired through the program.

(4) Each proprietary school shall prepare for the use of prospective students and other interested persons a catalog or general information bulletin that contains the following information:

(a) The legal name, address, and telephone number of the institution, also any branches and/or extension locations;

(b) The date of issue;

(c) The names, titles, and qualifications of administrators and faculty;

(d) The calendar, including scheduled state and federal holidays, recess periods, and dates for enrollment, registration, start of classes, withdrawal and completion;

(e) The admission and enrollment prerequisites, both institutional and programmatic, as provided in R152-34-8(1);

(f) The policies regarding student conduct, discipline, and probation for deficiencies in academics and behavior;

(g) The policies regarding attendance and absence, and any provision for make-up of assignments;

(h) The policies regarding dismissal and/or interruption of training and of reentry;

(i) The policies explaining or describing the records that are to be maintained by the institution, including transcripts;

(j) The policies explaining any credit granted for previous education and experience;

(k) The policies explaining the grading system, including standards of progress required;

(l) The policies explaining the provision to students of interim grade or performance reports;

(m) The graduation requirements and the credential awarded upon satisfactory completion of a program;

(n) The schedule of tuition, any other fees, books, supplies and tools;

(o) The policies regarding refunds of any unused charges collected as provided in R152-34-8(3);

(p) The student assistance available, including scholarships and loans.

(q) The name, description, and length of each program offered, including a subject outline with course titles and approximate number of credit or clock hours devoted to each course;

(r) The placement services available and any variation by program;

(s) The facilities and equipment available;

(t) An explanation of whether and to what extent that the credit hours earned by the student are transferable to other institutions; and

(u) Such other information as the division may reasonable require from time to time.

**R152-34-5. Rules Relating to Institutions Exempt Under Section 13-34-105.**

(1) Institutions that provide nonprofessional review courses, such as law enforcement and civil service, are not exempt, unless they are considered as workshops or seminars within the meaning of Section 13-34-105(h).

(2) In order for the church or religious denomination to be "bona fide" such that the institution is exempt from registration, the institution may not be the church or religious denomination's primary purpose, function or asset.

(3) An institution accredited by an accrediting organization recognized by the Commission on Recognition of Postsecondary Accreditation is exempt from registration for the purposes of the Act.

(4) Any institution which claims an accreditation exemption must furnish acceptable documentation to the division upon request.

(5) To be exempt under Section 13-34-105(f), the training or instruction shall not be the primary activity of the organization, association, society, labor union, or franchise system.

(6) Flight schools approved under Part 141, Federal Aviation Regulations (FAR), 14 CFR Chapter 141, are exempt. Schools providing aviation training under Part 61, FAR, 14 CFR Chapter 61, are required to register.

(7) The division shall determine an institution's status in accordance with the categories contained in this section.

(8) An exempt institution shall notify the division within thirty (30) days of a material change in circumstances which may affect its exempt status as provided in this section and shall follow the procedure outlined in Section 13-34-107.

(9) An exempted institution which voluntarily applies for a certificate by filing a registration statement shall comply with all rules as though such institution were nonexempt.

(10) To apply for a certificate of registration, an accredited institution shall submit a completed registration statement application and a copy of such portions of its current accreditation self-evaluation report as are specified by the division.

**R152-34-6. Rules Relating to the Registration Statement Required under Section 13-34-106.**

(1) The registration statement application shall provide the following information and statements made under oath:

(a) The institution's name, address, and telephone number;

(b) The names of all persons involved in the operation of the institution and a stipulation that the resumes are on file at the institution and available to the students.

(c) The name of the agent authorized to respond to students inquiries if the registrant is a branch institution whose parent is located outside of the state of Utah;

(d) A statement that its articles of incorporation have been registered and accepted by the Utah Department of Commerce, Division of Corporations and Commercial Code and that it has a local business license, if required;

(e) A statement that its facilities, equipment, and materials meet minimum standards for the training and assistance necessary to prepare students for employment;

(f) A statement that it maintains accurate attendance records, progress and grade reports, and information on tuition and fee payments appropriately accessible to students;

(g) A statement that its maintenance and operation is in compliance with all ordinances, laws, and codes relative to the safety and health of all persons upon the premises;

(h) A statement that there is sufficient student interest in Utah for the courses that it provides and that there is reasonable employment potential in those areas of study in which credentials will be awarded;

(i) If the registration statement is filed pursuant to Section 13-34-107(3)(b), a detailed description of any material modifications to be made in the institution's operations, identification of those programs that are offered in whole or in part in Utah and a statement of whether the student can complete his or her program without having to take residence at the parent campus; and

(j) A statement that it maintains adequate insurance continuously in force to protect its assets.

(k) Disclosure of whether the institution, or any owner, administrator, faculty, staff, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.

(l) If the registrant is a correspondence institution, whether located within or without the state of Utah, a demonstration that

the institution's educational objectives can be achieved through home study; that its programs, instructional material, and methods are sufficiently comprehensive, accurate, and up-to-date to meet the announced institutional course and program objectives; that it provides adequate interaction between the student and instructor, through the submission and correction of lessons, assignments, examinations, and such other methods as are recognized as characteristic of this particular learning technique; and that any degrees and certificates earned through correspondence study meet the requirements and criteria of R152-34-4(1).

(2) The institution shall provide with its registration statement application copies of the following documents:

(a) A sample of the credential(s) awarded upon completion of a program;

(b) A sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories;

(c) A copy of the student enrollment agreement; and

(d) A financial statement, as described in R152-34-7(5) and Section 13-34-107(6).

(3) If any information contained in the registration statement application becomes incorrect or incomplete, the registrant shall, within thirty (30) days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by the division.

(4) An institution ceasing its operations shall immediately inform the division and provide the division with student records in accordance with Section 13-34-109.

**R152-34-7. Rules Relating to the Operation of Proprietary Schools under Section 13-34-107.**

(1) A change in the ownership of an institution, as defined in Section 13-34-103(8), occurs when there is a merger or change in the controlling interest of the entity or if there is a transfer of more than 50 percent of the its assets within a three-year period.

(2) The institution shall submit to the division its renewal registration statement application, along with the appropriate fee, no later than thirty (30) days prior to the expiration date of the current certificate of registration.

(3) In addition to the annual registration fee, an institution failing to file a renewal registration application by the due date or filing an incomplete registration application or renewal shall pay an additional fee of $25 for each month or part of a month after the date on which the registration statement application or renewal were due to be filed.

(4) Within thirty (30) days after receipt of an initial or renewal registration statement application and its attachments, the division shall do one of the following: (1) issue a certificate of registration; (2) request further information and, if needed, conduct a site visit to the institution as detailed in R152-34-11(1); or (3) refuse to accept the registration statement based on Sections 13-34-107 and 113.

(5) Although a certificate of registration is valid for two (2) years, the division may periodically request updates of financial statements, surety requirements and the following statistical information:

(a) The number of students enrolled from September 1 through August 31;

(b) The number of students who completed and received a credential;

(c) The number of students who terminated or withdrew;

(d) The number of administrators, faculty, supporting staff, and agents; and

(e) The new catalog, information bulletin, or supplements.

(6) The institution must have, in addition to other criteria contained in this rule, sufficient financial resources to fulfill its commitments to students and staff members, and to meet its other obligations as evidenced by the following financial statements:

(a) A current financial statement prepared in accordance with generally accepted accounting principles including a balance sheet and an income statement for the most recent fiscal year with all applicable footnotes;

(b) Pro forma financial statements until actual information is available when an institution has not operated long enough to complete a fiscal year; and/or

(c) A certified fiscal audit of its operations or such other documentation of financial status as may be required by the board.

(7) A satisfactory bond, certificate of deposit, or irrevocable letter of credit must be provided by the institution before a certificate of registration will be issued by the division. The obligation of the surety will be that the institution, its officers, agents, and employees will (1) faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students, and (2) conform to the provisions of the Utah Postsecondary Proprietary School Act and Rules. The bond, certificate of deposit, or letter of credit must be in a form approved by the division and issued by a company authorized to do such business in Utah. The bond must be payable to the division to be used for creating teach-out opportunities or for refunding tuition, book fees, supply fees, equipment fees, and other instructional fees paid by a student or potential student, enrollee, or his or her parent or guardian.

(8) The bond company may not be relieved of liability on the bond unless it gives the institution and the division ninety calendar days notice by certified mail of the company's intent to cancel the bond. The cancellation or discontinuance of bond coverage after such notice does not discharge or otherwise affect any claim filed by a student, enrollee or his/her parent or guardian for damage resulting from any act of the institution alleged to have occurred while the bond was in effect, or for an institution's ceasing operations during the term for which tuition had been paid while the bond was in force. If at any time the company that issued the bond cancels or discontinues the coverage, the institution's registration is revoked as a matter of law on the effective date of the cancellation or discontinuance of bond coverage unless a replacement bond is obtained and provided to the division.

(9) Before an original registration is issued, the institution shall secure and submit to the division a bond, certificate of deposit or letter of credit in an amount of seventy-five thousand dollars ($75,000) for schools expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the first year of operation, fifty thousand dollars

($50,000) for schools expecting to enroll between 50 and 99 separate individual students during the first year, and twenty-five thousand dollars ($25,000) for institutions expecting to enroll less than 50 separate individual students during the first year. Institutions that submit evidence acceptable to the division that the school's gross tuition income from any source during the first year will be less than ten thousand dollars ($10,000) may provide a bond of five thousand dollars ($5,000) for the first year of operation.

(10) The minimum amount of the required surety to be submitted annually after the first year of operation will be based on ten percent of the annual gross tuition income from registered program(s) for the previous year (rounded to the nearest $1,000.00), with a minimum bond amount of five thousand dollars ($5,000) and a maximum bond amount of seventy-five thousand dollars ($75,000). The surety must be renewed each year by the anniversary date of the school's certificate of registration, and also included as a part of each two-year application for registration renewal. No additional programs may be offered without appropriate adjustment to the bond amount.

(11) The institution shall provide a statement by a school official regarding the calculation of gross tuition income and written evidence confirming that the amount of the bond meets the requirements of this rule. The division may require that such statement be verified by an independent certified public accountant if the division determines that the written evidence confirming the amount of the bond is questionable.

(12) An institution with a total cost per program of five hundred dollars or less or a length of each such program of less than one month shall not be required to have a bond.

(13) The division will not register a program at a proprietary school if it determines that the educational credential associated with the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.

(14) Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been satisfied. It does not mean that the division supervises, recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.

**R152-34-8. Rules Relating to Fair and Ethical Practices Set Forth in Section 13-34-108.**

(1) An institution, as part of its assessment for enrollment, shall consider the applicant's basic skills, aptitude, and physical qualifications, as these relate to the choice of program and to anticipated employment and shall not admit a student to a program unless there is a reasonable expectation that the student will succeed, as prescribed by R152-34-4(3).

(2) Financial dealings with students shall reflect standards of ethical practice.

(3) The institution shall adopt a fair and equitable refund policy including:

(a) A three-business-day cooling-off period, commencing with the day an enrollment agreement with the applicant is signed or an initial deposit or payment toward tuition and fees of the institution is made, until midnight of the third business day following such date or from the date that the student first visits the institution, whichever is later, shall be applicable and during this time the contract may be rescinded by the student and all money paid refunded.

(b) A student enrolled for non-traditional instruction may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials or within a ten-day review period after receipt of course materials, whichever comes first, and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than $200 in tuition or fees as registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

(c) After the three-business-day cooling-off period or after a student enrolled for non-traditional instruction has submitted lesson materials or been in receipt of course materials for a period of ten days, the withdrawn or dismissed student shall be refunded, within thirty days of his/her discontinuing, a percentage of all tuition paid over and above a nonrefundable registration fee not to exceed $200 or an alternative amount that the institution can demonstrate to have been expended in undertaking that particular student's instruction. The balance due the student, over and above the nonrefundable registration fee will be calculated using the following schedule:

TABLE

| Date of Withdrawal as a Percent of the Enrollment Period for Which the Student was Obligated | Portion of Tuition and Fees Obligated and Paid that are Eligible to be Retained by the Institution |
|---|---|
| Within 1st 10% | 10% |
| Within 2nd 10% | 25% |
| Within 3rd 10% | 40% |
| Within 4th 10% | 55% |
| Within 5th 10% | 70% |
| Within 6th 10% | 100% |

(d) There shall be a written enrollment agreement, to be signed by the student and a representative of the institution, that clearly describes the cooling-off period, nonrefundable registration fee, and refund policy and schedule, including the rights of both the student and the institution, with copies provided to each, and

(e) There shall be complete written information on repayment obligations to all applicants for financial assistance before an applicant student assumes such responsibilities.

(f) A pay-as-you-learn payment schedule that limits the collection of prepaid or unearned tuition and fees to six months of training, plus registration or start-up costs not to exceed $200 or an alternative amount that the institution can demonstrate to have spent in undertaking a student's instruction.

(4) Following the satisfactory completion of his or her training and education, a student is provided with appropriate educational credentials that show the program in which he or she was enrolled, together with a transcript of courses

completed and grades or other performance evaluations received.

(5) No institution shall use the designation of 'college' nor 'university' in its title nor in conjunction with its operation unless it actually confers a standard college degree as one of its credentials, unless the use of such designation had previously been approved by the Board of Regents prior to July 1, 2002.

(6) The name of the institution shall not contain any reference that could mislead potential students or the general public as to the type or nature of its educational services, affiliations or structure.

(7) Advertising standards consist of the following:

(a) The institution's chief administrative officer assumes all responsibility for the content of public statements made on behalf of the institution and shall instruct all personnel, including agents, as to this rule and other appropriate laws regarding the ethics of advertisement and recruitment;

(b) Advertising shall be clear, factual, supportable, and shall not include any false or misleading statements with respect to the institution, its personnel, its courses and programs, its services, nor the occupational opportunities for its graduates;

(c) The institution shall not advertise in conjunction with any other business or establishment, nor advertise in "help wanted" nor in "employment opportunity" columns of newspapers, magazines or similar publications in such a way as to lead readers to believe that they are applying for employment rather than education and training. It must disclose that it is primarily operated for educational purposes, if this is not apparent from its legal name;

(d) An institution, its employees and agents, shall refrain from other forms of ambiguous or deceptive advertising, such as:

(i) claims as to endorsement by manufacturers or businesses or organizations until and unless written evidence supporting this fact is on file; and

(ii) representations that students completing a course or program may transfer either credits or credentials for acceptance by another institution, state agency, or business, unless written evidence supporting this fact is on file;

(e) An institution shall maintain a file of all promotional information and related materials for a period of three (3) years;

(f) The division may require an institution to submit its advertising prior to its use; and

(g) An institution cannot advertise that it's organization or program is endorsed by the state of Utah other than to state that the school is 'Registered under the Utah Postsecondary Proprietary School Act'.

(8) Recruitment standards include the following:

(a) Recruiting efforts shall be conducted in a professional and ethical manner and free from 'high pressure' techniques; and

(b) An institution shall not use loans, scholarships, discounts, or other such enrollment inducements, where such result in unfair or discriminatory practices.

(9) An agent or sales representative may not be directly or indirectly be portrayed as 'counselor,' 'advisor,' or any other similar title to disguise his or her sales function.

(10) An agent or representative is responsible to have a clear understanding and knowledge of the programs and courses, tuition, enrollment requirements, enrollment agreement, support services, and the general operational procedures thereof;

(11) An institution shall indemnify any student from loss or other injury as a result of any fraud or other form of misrepresentation used by an agent in the recruitment process.

(12) An institution operating in Utah but domiciled outside the state shall designate a Utah resident as its registered agent for purposes of service of legal process.

**R152-34-9. Rules Relating to Discontinuance of Operations Pursuant to Section 13-34-109.**

(1) Institutional closure procedures consist of the following:

(a) The chief administrative officer of each institution subject to the Postsecondary Proprietary Schools Act shall prepare a written plan for access to and the preservation of permanent records in the event the institution closes for whatever reason; and

(b) In the event an institution closes with students enrolled who have not completed their programs, a list of such, including the amount of tuition paid and the proportion of their program completed, shall be submitted to the division, with all particulars.

(2) School records consist of the following permanent scholastic records for all students who are admitted, even though withdrawn or terminated:

(a) appropriate entrance and admission acceptance information;

(b) attendance and performance information, including transcripts which consist of no less than the program for which he enrolled, each course attempted and the final grade earned;

(c) graduation or termination dates of students;

(d) enrollment agreements, tuition payments, refunds, and any other financial transactions;

**R152-34-10. Rules Relating to Suspension, Termination or Refusal to Register under Section 13-34-111.**

(1) The division may perform on-site evaluations to verify information submitted by an institution or an agent, or to investigate complaints filed with the Division.

(2) The division may, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, issue an order to deny, suspend, or revoke a registration, upon a finding that:

(a) the award of credentials by a nonexempt institution without having first duly registered with the division and having obtained the requisite surety;

(b) a registration statement application that contains material representations which are incomplete, improper, or incorrect;

(c) failure to maintain facilities and equipment in a safe and healthful manner;

(d) failure to perform the services or provide materials as represented by the institution, failure to perform any commitment made in the registration statement or permit application, offering programs or services not contained in the registration statement currently on file, or violations of the conditions of the certificate of registration;

(e) failure to maintain sufficient financial capability, as set forth in section R152-34-7;

(f) to confer, or attempt to confer, a fraudulent credential,

as set forth in 13-34-201;

(g) employment of students for commercial gain, if such fact is not contained in the current registration statement;

(h) promulgation to the public of fraudulent or misleading statements relating to a program or service offered;

(g) noncompliance of the Postsecondary Proprietary Schools Act or these rules;

(h) withdrawal of the authority to operate in the home state of an institution whose parent campus or headquarters is not domiciled in this state;

(i) failure to comply with applicable laws in this state or another state where the institution is doing business; and

(j) failure to provide reasonable information to the division as requested from time to time.

**R152-34-11. Rules Relating to Fraudulent Educational Credentials under Section 13-34-201.**

(1) A person may not represent him or herself in a deceptive or misleading way, such as by using the title "Dr." or "Ph.D." if he or she has not satisfied accepted academic or scholastic requirements.

**KEY: education, postsecondary proprietary school, registration**
**August 26, 2002 13-2-5(1)**

**R156. Commerce, Occupational and Professional Licensing.**
**R156-37. Utah Controlled Substances Act Rules.**
**R156-37-101. Title.**

These rules are known as the "Utah Controlled Substances Act Rules."

**R156-37-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 37, as used in Title 58, Chapters 1 and 37, or these rules:

(1) "DEA" means the Drug Enforcement Administration of the United States Department of Justice.

(2) "NABP" means the National Association of Boards of Pharmacy.

(3) "Principle place of business or professional practice", as used in Subsection 58-37-6(2)(e), means any location where controlled substances are received or stored.

(4) "Schedule II controlled stimulant" means any material, compound, mixture or preparation listed in Subsection 58-37-4(2)(b)(iii).

(5) "Unprofessional conduct", as defined in Title 58 is further defined in accordance with Subsections 58-1-203(5) and 58-37-6(1)(a), in Section R156-37-502.

**R156-37-103. Purpose - Authority.**

These rules are adopted by the division under the authority of Subsections 58-1-106(1) and 58-37-6(1)(a) to enable the division to administer Title 58, Chapter 37.

**R156-37-104. 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.

**R156-37-301. License Classifications - Restrictions.**

(1) Consistent with the provisions of law, the division may issue a controlled substance license to manufacture, produce, distribute, dispense, prescribe, obtain, administer, analyze, or conduct research with controlled substances in Schedules I, II, III, IV, or V to qualified persons. Licenses shall be issued to qualified persons in the following categories:

(a) pharmacist;
(b) optometrist;
(c) podiatric physician;
(d) dentist;
(e) osteopathic physician and surgeon;
(f) physician and surgeon;
(g) physician assistant;
(h) veterinarian;
(i) advanced practice registered nurse;
(j) certified nurse midwife;
(k) certified registered nurse anesthetist;
(l) pharmaceutical researcher;
(m) drug outlets located in the state of Utah licensed as a:
(i) retail pharmacy;
(ii) hospital pharmacy;
(iii) institutional pharmacy;
(iv) pharmaceutical manufacturer;
(v) pharmaceutical wholesaler/distributor;
(vi) branch pharmacy;
(vii) nuclear pharmacy; or
(viii) veterinary pharmaceutical outlet;
(n) pharmaceutical dog trainer;
(o) pharmaceutical teaching organization;
(p) analytical laboratory;
(q) out-of-state mail order pharmacy;
(r) pharmaceutical administration facility;
(s) animal euthanasia agency; and
(t) Utah Department of Corrections for the conduct of execution by the administration of lethal injection under its statutory authority and in accordance with its policies and procedures.

(2) A license may be restricted to the extent determined by the division, in collaboration with appropriate licensing boards, that a restriction is necessary to protect the public health, safety or welfare, or the welfare of the licensee. A person receiving a restricted license shall manufacture, produce, obtain, distribute, dispense, prescribe, administer, analyze, or conduct research with controlled substances only to the extent of the terms and conditions under which the restricted license is issued by the division.

**R156-37-302. Qualifications for Licensure - Application Requirements.**

(1) An applicant for a controlled substance license shall:

(a) submit an application in a form as prescribed by the division; and

(b) shall pay the required fee as established by the division under the provisions of Section 63-38-3.2.

(2) Any person seeking a controlled substance license shall:

(a) be currently licensed by the state in the appropriate professional license classification as listed in R156-37-301 and shall maintain that license classification as current at all times while holding a controlled substance license; or

(b) be engaged in the following activities which require the administration of a controlled substance but do not require licensure under Subsection (a):

(i) animal capture for transport or relocation as an employee or under contract with a state or federal government agency;

(ii) providing emergency services to an injured or ill person by an ambulance service; or

(iii) other activity approved by the Division in collaboration with the appropriate board.

(3) The division and the reviewing board may request from the applicant information which is reasonable and necessary to permit an evaluation of the applicant's:

(a) qualifications to engage in practice with controlled substances; and

(b) the public interest in the issuance of a controlled substance license to the applicant.

(4) To determine if an applicant is qualified for licensure, the division may assign the application to a qualified and appropriate licensing board for review and recommendation to the division with respect to issuance of a license.

**R156-37-303. Qualifications for Licensure - Site Inspections - Investigations.**

The division shall have the right to conduct site

inspections, review research protocol, conduct interviews with persons knowledgeable about the applicant, and conduct any other investigation which is reasonable and necessary to determine the applicant is of good moral character and qualified to receive a controlled substance license.

**R156-37-304. Qualifications for Licensure - Examinations.**

Each applicant for a controlled substance license shall be required to pass an examination administered at the direction of the division on the subject of controlled substance laws.

**R156-37-305. Exemption from Licensure - Animal Euthanasia and Law Enforcement Personnel.**

In accordance with Subsection 58-37-6(2)(d), the following persons are exempt from licensure under Title 58, Chapter 37:

(1) Individuals employed by an agency of the State or any of its political subdivisions, who are specifically authorized in writing by the state agency or the political subdivision to possess specified controlled substances in specified reasonable and necessary quantities for the purpose of euthanasia upon animals, shall be exempt from having a controlled substance license if the agency or jurisdiction employing that individual has obtained a controlled substance license, a DEA registration number, and uses the controlled substances according to a written protocol in performing animal euthanasia.

(2) Law enforcement agencies and their sworn personnel are exempt from the licensing requirements of the Controlled Substance Act to the extent their official duties require them to possess controlled substances; they act within the scope of their enforcement responsibilities; they maintain accurate records of controlled substances which come into their possession; and they maintain an effective audit trail. Nothing herein shall authorize law enforcement personnel to purchase or possess controlled substances for administration to animals unless the purchase or possession is in accordance with a duly issued controlled substance license.

**R156-37-401. Grounds for Denial of License - Disciplinary Proceedings.**

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

**R156-37-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) a licensee with authority to prescribe or administer controlled substances:

(a) prescribing or administering to himself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug;

(b) prescribing or administering a controlled substance for a condition he is not licensed or competent to treat;

(2) violating any federal or state law relating to controlled substances;

(3) failing to deliver to the division all controlled substance license certificates issued by the division to the division upon an action which revokes, suspends or limits the license;

(4) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances;

(5) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility;

(6) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(q), except for legitimate medical purposes as permitted by law;

(7) refusing to make available for inspection controlled substance stock, inventory, and records as required under these rules or other law regulating controlled substances and controlled substance records;

(8) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so.

**R156-37-601. Access to Records, Facilities, and Inventory.**

Applicants for licensure and all licensees shall make available for inspection to any person authorized to conduct an administrative inspection pursuant to Title 58, Chapter 37, these rules or federal law, to the extent they exist, during regular business hours and at other reasonable times in the event of an emergency, their controlled substance stock or inventory, records required under the Utah Controlled Substances Act and these rules or under the federal controlled substance laws, and facilities related to activities involving controlled substances.

**R156-37-602. Records.**

(1) Records of purchase, distribution, dispensing, prescribing, and administration of controlled substances shall be kept according to state and federal law. Prescribing practitioners shall keep accurate records reflecting the examination, evaluation and treatment of all patients. Patient medical records shall accurately reflect the prescription or administration of controlled substances in the treatment of the patient, the purpose for which the controlled substance is utilized and information upon which the diagnosis is based. Practitioners shall keep records apart from patient records of each controlled substance purchased, and with respect to each controlled substance, its disposition, whether by administration or any other means, date of disposition, to whom given and the quantity given.

(2) Any licensee who experiences any shortage or theft of controlled substances shall immediately file the appropriate forms with the Drug Enforcement Administration, with a copy to the division directed to the attention of the Investigation Bureau. He shall also report the incident to the local law enforcement agency.

(3) All records required by federal and state laws or rules must be maintained by the licensee for a period of five years. If a licensee should sell or transfer ownership of his files in any

way, those files shall be maintained separately from other records of the new owner.

(4) Prescription records may be maintained electronically so long as:

(a) the original of each prescription, including telephone prescriptions, is maintained in a physical file and contains all of the information required by federal and state law; and

(b) there is a physical printout of the controlled substances dispensed each day that details the prescription number, the quantity of each drug dispensed, the prescribing practitioner and the dispensing pharmacist. Each pharmacist that is documented on the printout as having dispensed a controlled substance shall sign his name to the printout, attesting to the accuracy of the data detailed, or shall make appropriate changes and then sign his name.

(5) All records relating to Schedule II controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

(6) All records relating to Schedules III, IV and V controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

**R156-37-603. Restrictions Upon the Prescription, Dispensing and Administration of Controlled Substances.**

(1) A practitioner may prescribe or administer the Schedule II controlled substance cocaine hydrochloride only as a topical anesthetic for mucous membranes in surgical situations in which it is properly indicated and as local anesthetic for the repair of facial and pediatric lacerations when the controlled substance is mixed and dispensed by a registered pharmacist in the proper formulation and dosage.

(2) A practitioner shall not prescribe or administer a controlled substance without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug.

(3) When writing a prescription for a controlled substance, each prescription shall contain only one controlled substance per prescription form and no other legend drug or prescription item shall be included on that form.

(4) In accordance with Subsection 58-37-6(7)(f)(v)(D), the dispensing date of a second or third prescription shall be no less than 20 days from the dispensing date of the previous prescription, to allow for receipt of the subsequent prescription before the previous prescription runs out.

(5) If a practitioner fails to document his intentions relative to refills of controlled substances in Schedules III through V on a prescription form, it shall mean no refills are authorized. No refill is permitted on a prescription for a Schedule II controlled substance.

(6) Refills of controlled substance prescriptions shall be permitted for the period from the original date of the prescription as follows:

(a) Schedules III and IV for six months from the original date of the prescription; and

(b) Schedule V for one year from the original date of the prescription.

(7) No refill may be dispensed until such time has passed since the date of the last dispensing that 80% of the medication in the previous dispensing should have been consumed if taken according to the prescriber's instruction.

(8) No prescription for a controlled substance shall be issued or dispensed without specific instructions from the prescriber on how and when the drug is to be used.

(9) Refills after expiration of the original prescription term require the issuance of a new prescription by the prescribing practitioner.

(10) Each prescription for a controlled substance and the number of refills authorized shall be documented in the patient records by the prescribing practitioner.

(11) A practitioner shall not prescribe or administer a Schedule II controlled stimulant for any purpose except:

(a) the treatment of narcolepsy as confirmed by neurological evaluation;

(b) the treatment of abnormal behavioral syndrome, attention deficit disorder, hyperkinetic syndrome, or related disorders;

(c) the treatment of drug-induced brain dysfunction;

(d) the differential diagnostic psychiatric evaluation of depression;

(e) the treatment of depression shown to be refractory to other therapeutic modalities, including pharmacologic approaches, such as tricyclic antidepressants or MAO inhibitors;

(f) in the terminal stages of disease, as adjunctive therapy in the treatment of chronic severe pain or chronic severe pain accompanied by depression;

(g) the clinical investigation of the effects of the drugs, in which case the practitioner shall submit to the division a written investigative protocol for its review and approval before the investigation has begun. The investigation shall be conducted in strict compliance with the investigative protocol, and the practitioner shall, within 60 days following the conclusion of the investigation, submit to the division a written report detailing the findings and conclusions of the investigation; or

(h) in treatment of depression associated with medical illness after due consideration of other therapeutic modalities.

(12) A practitioner may prescribe, dispense or administer a Schedule II controlled stimulant when properly indicated for any purpose listed in Subsection (11), provided that all of the following conditions are met:

(a) before initiating treatment utilizing a Schedule II controlled stimulant, the practitioner obtains an appropriate history and physical examination, and rules out the existence of any recognized contraindications to the use of the controlled substance to be utilized;

(b) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant when he knows or has reason to believe that a recognized contraindication to its use exists;

(c) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant in the treatment of a patient who he knows or should know is pregnant; and

(d) the practitioner shall not initiate or shall discontinue prescribing, dispensing or administering all Schedule II controlled stimulants immediately upon ascertaining or having

reason to believe that the patient has consumed or disposed of any controlled stimulant other than in compliance with the treating practitioner's directions.

**R156-37-604. Prescribing of Controlled Substances for Weight Reduction or Control.**

(1) A practitioner shall not prescribe, dispense or administer a Schedule II or Schedule III controlled substance for purposes of weight reduction or control.

(2) A prescribing practitioner may prescribe or administer a Schedule IV controlled substance in treating excessive weight leading to increased health risks only when all the following conditions are met:

(a) medication is used only as an adjunct to a comprehensive weight loss program based on supplemental weight loss activities including, but not limited to, changing lifestyle counseling, nutritional education, and a regular, individualized exercise regimen;

(b) prior to initiating treatment the prescribing practitioner shall:

(i) determine through thorough review of past medical records that the patient has made a substantial good-faith effort to lose weight in a comprehensive weight loss program without the use of controlled substances, and the previous regimen has not been effective;

(ii) obtain a complete history, perform a complete physical examination of the patient, and rule out the existence of any recognized contraindications to the use of the medication(s);

(iii) determine and document this assessment in the patient's medical record, that the health benefit to the patient greatly outweighs the possible risks of the medications prescribed; and

(iv) discuss with the patient the possible risks associated with the medication and have on record an informed consent which clearly documents that the long term effects of using controlled substances for weight loss or weight control are not known;

(c) throughout the prescribing period, the prescribing practitioner shall:

(i) supervise, oversee, and regularly monitor the patient, including his participation in supplemental weight loss activities, efficacy of the medication, and advisability of continuing to prescribe the weight loss or weight control medication; and

(ii) maintain a central medical record, containing at least, the goal of treatment or target weight, the ongoing progress toward that goal or maintenance of the weight loss, the patient's supplemental weight loss activities with documentation of compliance with the comprehensive weight loss program; and

(d) the prescribing practitioner shall immediately discontinue the weight loss medication in any of the following situations:

(i) the practitioner knows or should know that the patient is pregnant;

(ii) the patient has consumed or disposed of any controlled substance other than in compliance with the prescribing practitioner's directions;

(iii) the patient is abusing the controlled substance being prescribed for weight loss;

(iv) the patient develops a contraindication during the course of therapy; or

(v) the medication is not effective or that the patient is not abiding with and following through with the agreed upon comprehensive weight loss program.

**R156-37-605. Emergency Verbal Prescription of Schedule II Controlled Substances.**

(1) Prescribing practitioners may give a verbal prescription for a Schedule II controlled substance if:

(a) the quantity dispensed is only sufficient to cover the patient for the emergency period, not to exceed 72 hours;

(b) the prescribing practitioner has examined the patient within the past 30 days, the patient is under the continuing care of the prescribing practitioner for a chronic disease or ailment, or the prescribing practitioner is covering for another practitioner and has knowledge of the patient's condition; and

(c) a written prescription is delivered to the pharmacist within seven working days of the verbal order.

(2) A pharmacist may fill an emergency verbal or telephonic prescription from a prescribing practitioner for a Schedule II controlled substance if:

(a) the amount does not exceed a 72 hour supply; and

(b) the filling pharmacist reasonably believes that the prescribing practitioner is licensed to prescribe the controlled substances or makes a reasonable effort to determine that he is licensed.

**R156-37-606. Disposal of Controlled Substances.**

(1) Any disposal of controlled substances by licensees shall:

(a) be consistent with the provisions of 1307.21 of the Code of Federal Regulations; or

(b) require the authorization of the division after submission to the division to the attention of Chief Investigator of a detailed listing of the controlled substances and the quantity of each. Disposal shall be conducted in the presence of one of its investigators or a division authorized agent as is specifically instructed by the division in its written authorization.

(2) Records of disposal of controlled substances shall be maintained and made available on request to the division or its agents for inspection for a period of five years.

**R156-37-607. Surrender of Suspended or Revoked License.**

(1) Licenses which have been restricted, suspended or revoked shall be surrendered to the division within 30 days of the effective date of the order of restriction, suspension or revocation. Compliance with this section will be a consideration in evaluating applications for relicensing.

**R156-37-608. Herbal Products.**

The division shall not apply the provisions of the Controlled Substance Act or these rules in restricting citizens or practitioners, regardless of their license status, from the sale or use of food or herbal products that are not scheduled as controlled substances by State or Federal law.

**R156-37-609. Controlled Substance Database - Procedure and Format for Submission to the Database.**

(1) In accordance with Subsections 58-37-7.5(6)(a), the format in which the information required under Section 58-37-7.5 shall be submitted to the administrator of the database is:

(a) electronic data via telephone modem;

(b) electronic data stored on floppy disk; or

(c) electronic data sent via electronic mail (e-mail) if encrypted and approved by the database manager.

(2) The required information may be submitted on paper, if the pharmacy or pharmacy group submits a written request to the division and receives prior approval.

(3) The division will consider the following in granting the request:

(a) the pharmacy or pharmacy group has no computerized record keeping system upon which the data can be electronically recorded; or

(b) the pharmacy or pharmacy group is unable to conform its submissions to the format required by the database administrator without incurring undue financial hardship.

(4) Each pharmacy or pharmacy group may submit the data either weekly, bi-weekly, or monthly. Any pharmacy which does not declare its intention for timely submission of data will be presumed to have chosen monthly submission.

(5) The format for submission to the database shall be in accordance with uniform formatting developed by the American Society for Automation in Pharmacy system (ASAP). The division may approve alternative formats or adjustments to be consistent with database collection instruments and contain all necessary data elements.

(6) The pharmacist-in-charge of each reporting pharmacy shall submit a report on a form approved by the division including:

(a) the pharmacy name;

(b) NABP number;

(c) the period of time covered by each submission of data;

(d) the number of prescriptions in the submission;

(e) the submitting pharmacist's signature attesting to the accuracy of the report; and

(f) the date the submission was prepared.

**R156-37-610. Controlled Substance Database - Limitations on Access to Database Information - Standards and Procedures for Identifying Individuals Requesting Information.**

(1) In accordance with Subsections 58-37-7.5(8)(a) and (b), the division director shall designate in writing those individuals within the division who shall have access to the information in the database.

(2) Personnel from federal, state or local law enforcement agencies may obtain information from the database if the information relates to a current investigation being conducted by such agency. The manager of the database may also provide information from the database to such agencies on his own volition when the information may reasonably constitute a basis for investigation relative to violation of state or federal law.

(3) In accordance with Subsection 58-37-7.5(7)(b), persons may request information from the database either orally or in writing.

(4) The manager of the database may release information upon oral request only if the identity of the person is verified. Identity of a practitioner may be made by use of a DEA number or other verifiable, confidential numbers provided by the division or other government agencies to practitioners.

(5) Any individual may request information in the database relating to that individual's receipt of controlled substances. Upon request for database information on an individual who is the recipient of a controlled substance prescription entered in the database, the manager of the database shall make available database information exclusively relating to that particular individual under the following limitations and conditions:

(a) The requestor seeking database information personally appears before the manager of the database, or a designee, with picture identification confirming his identity as the same person on whom database information is sought.

(b) The requestor seeking database information submits a signed and notarized request executed under the penalty of perjury verifying his identity as the same person on whom database information is sought, and providing their full name, home and business address, date of birth, and social security number.

(c) The requestor seeking database information presents a power of attorney over the person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the grantor of the power of attorney is the same person on whom database information is sought, including the grantor's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the person holding the power of attorney.

(d) The requestor seeking database information presents verification that he is the legal guardian of an incapacitated person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the incapacitated ward of the guardian is the same person on whom database information is sought, including the ward's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the legal guardian of the incapacitated person.

(e) The requestor seeking database information shall present a release-of-records statement from the person on whom database information is sought and further complies with the following:

(i) submits a verification from the person on whom database information is sought consistent with the requirements set forth in paragraph (5)(b);

(ii) submits a signed and notarized release of records statement executed by the person on whom database information is sought authorizing the manager of the database to release the relevant database information to the requestor; and

(iii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the requestor identified in the release of records;

(6) Before data is released upon oral request, a written request may be required and received.

(7) Database information may be disseminated either orally, by facsimile or by U.S. mail.

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**58-37-7.5(7)**

**R156. Commerce, Occupational and Professional Licensing.**
**R156-73. Chiropractic Physician Practice Act Rules.**
**R156-73-101. Title.**

These rules are known as the "Chiropractic Physician Practice Act Rules".

**R156-73-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 73, as used in Title 58, Chapters 1 and 73, or these rules:

(1) "Clinical acupuncture" means the application of mechanical, thermal, manual, and/or electrical stimulation of acupuncture points and meridians, including the insertion of needles, by a chiropractic physician that has demonstrated competency and training by completing a recognized course that is sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b.

(2) "Indirect supervision" means the supervising licensed chiropractic physician shall be available for immediate voice contact by telephone, radio, or other means and shall provide daily face to face consultation and review of cases at the chiropractic facility for the chiropractic intern, temporarily licensed or unlicensed person being supervised.

(3) "Preceptor" means a licensed chiropractic physician who is a supervisor of interns and externs in the professional practice of chiropractic.

(4) "Preceptorship" means a supervised training program established by a written contract between a chiropractic college or university whose program or institution is accredited by the Council on Chiropractic Education, Inc., and a licensee for the purpose of providing chiropractic training to a student enrolled in the chiropractic college or university while under the supervision of a licensee.

(5) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 73, is further defined in accordance with Subsection 58-1-203(5), in Section R156-73-501.

**R156-73-103. 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 73.

**R156-73-104. 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.

**R156-73-302a. Qualifications for Licensure - Education Requirements.**

In accordance with Subsection 58-73-302(1)(d), graduation from a chiropractic college or university whose program or institution is accredited by the Council on Chiropractic Education, Inc., is evidence of having satisfactorily completed at least two years of general study in a college or university.

**R156-73-302b. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsection 58-73-302(1)(f)(i), the approved written clinical competency examination is the National Chiropractic Board Part 3 or the Special Purposes Examination for Chiropractic (SPEC) administered by the National Board of Chiropractic Examiners. The passing score shall be established by the National Board of Chiropractic Examiners.

(2) In accordance with Subsection 58-73-302(1)(f)(iii), the approved practical examination is the National Chiropractic Board Part 4 (practical examination) administered by the National Board of Chiropractic Examiners. The passing score shall be established by the National Board of Chiropractic Examiners.

**R156-73-303. Temporary License.**

In accordance with Subsections 58-1-303(1)(a) and 58-73-302(2), an endorsement applicant may be issued a temporary license under the following conditions:

(1) The licensee shall work under the indirect supervision of a chiropractic physician approved by the division.

(2) The supervising chiropractic physician shall:

(a) be available at all times to provide advice, instruction and consultation;

(b) assume responsibility for all chiropractic activities and services performed by the temporary licensee; and

(c) supervise no more than two persons at any given time.

(3) The temporary license may not be renewed or extended for any purpose.

(4) Any change in supervising chiropractic physician shall be preapproved by the division.

**R156-73-303a. Continuing Education - Renewal Requirement.**

(1) In accordance with Subsection 58-73-303(2), each licensee shall complete 40 hours of continuing education in each preceding two year period of licensure.

(2) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be prorated to the part of that two year period during which the person is licensed.

**R156-73-303b. Continuing Education - Standards.**

(1) The standards for continuing education are as follows:

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

(b) the course must be under the sponsorship of or approved by:

(i) a chiropractic college or university whose doctor of chiropractic program is accredited by the Council on Chiropractic Education, Inc.;

(ii) a professional association or nonprofit organization representing a licensed profession whose program objectives relate to the practice of chiropractic; or

(iii) the licensing agency of another state;

(c) learning objectives must be reasonably and clearly stated;

(d) teaching methods must be clearly stated and appropriate;

(e) faculty must be qualified, both in experience and in teaching expertise;

(f) documentation of attendance must be provided; and

(g) there shall be no more than four clock hours related to

chiropractic practice marketing or practice building.

(2) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of two years after close of the two year period to which the records pertain.

(3) The board may, after review, waive the continuing education requirements for a licensee presenting sufficient evidence of hardship or illness or other reason making it impossible or highly impractical for the licensee to attend or have attended a sufficient number of continuing education classes.

**R156-73-304. Preceptorship - Approved Form of Supervision.**

In accordance with Subsection 58-73-304(2), the approved form of supervision is defined, clarified or established as follows:

(1) The supervising preceptor shall:

(a) be licensed in good standing in Utah and have practiced as a licensed chiropractic physician for the past five years;

(b) have entered into a written contract with an approved college or university to provide chiropractic training to a preceptee; and

(c) provide direct supervision on the premises, either personally or by delegating to another chiropractic physician who is licensed in good standing in Utah and who has practiced as a licensed chiropractic physician for the past five years.

(2) The preceptor or his designee must remain on the premises at all times while the preceptee is performing the following procedures:

(a) adjusting of the articulation of the spinal column;

(b) diagnosis of the articulation of the spinal column;

(c) manipulation of the articulation of the spinal column; and

(d) therapeutic positioning of the articulation of the spinal column.

**R156-73-308. 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 73, is established by rule in Section R156-1-308.

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

**R156-73-501. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) keeping the office, instruments, laboratory, equipment, appliances or supplies in an unsafe or unsanitary condition;

(2) engaging in advertising which is misleading because of omission of necessary material information, which contains false or misleading statements, or which otherwise operates to deceive;

(3) engaging in or abetting deceptive or fraudulent billing practices;

(4) engaging in sexual contact with a patient, with or without patient consent, within 12 months of last treatment;

(5) engaging in sexual activities or contact with a former patient, with or without consent, after 12 months of last treatment if there is a risk of exploitation or potential harm to the former patient;

(6) engaging in behaviors in a patient/doctor relationship, including verbal, intended to sexually arouse any person or encourage sexual activity;

(7) failing to keep the division informed of a current address and telephone number;

(8) advertising acupuncture services or practicing clinical acupuncture techniques beyond the scope of the certification held; and

(9) advertising as an "acupuncturist" either verbally or in print.

**R156-73-502. Chiropractic Assistant.**

In accordance with Subsection 58-73-102(3), a chiropractic assistant may perform activities related to the practice of chiropractic in accordance with the following:

(1) The supervising chiropractic physician shall:

(a) be currently licensed in Utah;

(b) be responsible for the chiropractic activities and services performed by the assistant; and

(c) always be available to provide advice, instruction and consultation.

(2) The supervising chiropractic physician shall never delegate the following to a chiropractic assistant:

(a) adjustment of the articulation of the spinal column;

(b) diagnosis of the articulation of the spinal column;

(c) manipulation of the articulation of the spinal column; and

(d) therapeutic positioning of the articulation of the spinal column.

**R156-73-601. Scope of Practice.**

The requirements to demonstrate competency and training to perform clinical acupuncture include:

(1) completing a recognized course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 100 classroom hours of instruction and passing a certifying examination.

(2) Beginning January 1, 2002, for licensees who have not previously met the requirements listed in Subsection (1), the requirements to demonstrate competency and training to perform clinical acupuncture shall be:

(a) completing a recognized course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 200 classroom hours of instruction and passing a certifying examination; or

(b) completing a recognized course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 100 classroom hours of instruction, passing a certifying examination, and completing 100 hours of clinical experience under the indirect supervision of a licensed health care provider who has met the requirements in Subsection (1) or (2)(a), and has practiced clinical acupuncture for at least two years.

**R156-73-602. Advisory Peer Committee Created - Membership - Duties.**

In accordance with Subsection 58-73-602(3), there is created the Quality and Standards Committee as an advisory peer committee to the Chiropractic Physician Licensing Board consisting of five chiropractic physicians licensed and in good standing in Utah who are qualified by education, training and experience to competently act in quality care review.

**R156-73-603. Standards for Practice of Animal Chiropractic.**

In accordance with Subsection 58-28-8(12)(a), a chiropractic physician practicing animal chiropractic shall have completed an animal chiropractic course approved by the American Chiropractic Veterinary Association (ACVA) or another course that is substantially equivalent to the ACVA course.

**KEY: chiropractors, licensing, chiropractic physician**
**September 5, 2002 58-73-101**
**Notice of Continuation July 5, 2001 58-1-106(1)**
**58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.**
**R156-75. Genetic Counselors Licensing Act Rules.**
**R156-75-101. Title.**

These rules are known as the "Genetic Counselors Licensing Act Rules."

**R156-75-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 75, as defined or used in these rules:

(1) "Active candidate status", as used in Subsection R156-75-302b(1) describes an individual who has been approved by the American Board of Genetic Counseling (ABGC) to sit for the certification exam in genetic counseling.

(2) "General supervision", as used in Section R156-75-302, means the supervisor has the overall responsibility to assess the work of the supervisee including at least twice monthly face to face meetings with chart review and weekly case review. An annual supervision contract signed by the supervisor and supervisee must be on file with both parties.

(3) "Qualified continuing education", as used in these rules, means continuing education that meets the standards set forth in Section R156-75-304.

**R156-75-103. 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 75.

**R156-75-104. 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.

**R156-75-302b. Qualifications for Licensure - Temporary License.**

In accordance with Subsection 58-75-302(2), the requirements for temporary licensure are established as follows:

(1) An applicant shall meet all the qualifications for licensure as established in Subsection 58-75-302(1) with the exception of Subsection 58-75-302(1)(e), and have active candidate status conferred by the American Board of Genetic Counseling.

(2) An individual practicing under the authority of a temporary license must practice under the general supervision of a licensed genetic counselor or a licensed physician certified in clinical genetics by the American Board of Medical Genetics.

(3) A temporary license may be issued for a period up to 42 months. In accordance with Subsection 58-1-303(1)(a), the applicant must take the next available examination. If an applicant fails the first sitting of the American Board of Genetic Counseling certification exam, he may reapply for a second temporary license.

(4) A temporary license will not be issued if the applicant has failed the American Board of Genetic Counseling certification examination more than once.

(5) A temporary license shall expire upon the earliest of one of the following:

(a) issuance of full licensure;

(b) 30 days after failing the certification exam; or

(c) the date printed on the temporary license.

**R156-75-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 75 is established by rule in Section R156-1-308.

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

**R156-75-304. Continuing Education.**

(1) In accordance with Subsections 58-1-203(7), 58-1-308(3)(b) and Section 58-75-303, there is created a continuing education requirement as a condition for renewal or reinstatement of licenses issued under Title 58, Chapter 75.

(2) Continuing education shall consist of 30 hours (3 CEU's) in each preceding two year licensing cycle and must be approved for recertification purposes by the American Board of Genetic Counseling.

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

(4) A licensee who documents he is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may apply to be excused from the requirement for a period of up to two years. It is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

**KEY: licensing, occupational licensing, genetic counselors**
**April 2, 2002** **58-1-106(1)**
**58-1-202(1)(a)**
**58-75-302(2)**
**58-75-303(2)**

**R156. Commerce, Occupational and Professional Licensing.**
**R156-76. Professional Geologist Licensing Act Rules.**
**R156-76-101. Title.**

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

**R156-76-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 76, as used in Title 58, Chapters 1 and 76, or these rules:

(1) "ASBOG" means Association of State Boards of Geology.

(2) "Geosciences", as used in Subsection 58-76-302(4)(a), means an earth science degree, which results in sufficient geological knowledge to enable the practice of geology before the public.

(3) "Qualified individual", as used in Section R156-76-302c, means a person who is licensed as a professional geologist in a recognized jurisdiction, or who otherwise meets the requirements for licensure as defined in Sections 58-76-302 and R156-76-302b and R156-76-302c.

(4) "Practice of geology before the public" does not include the following aspects of paleontology:

(a) taxonomy;

(b) biologic analysis of organisms; or

(c) the human context of a site.

(5) "Practice of geology before the public" does not include the following aspects of the practice of anthropology and archeology:

(a) archeological survey, excavation, and reporting;

(b) production of archeological plan views, profiles, and regional overviews; or

(c) investigation and reporting of artifacts or deposits that are modified or affected by past human behavior.

(6) "Principal", as used in Subsection 58-76-603(2), means the licensee assigned to and personally accountable for the production of specified professional geologic projects within an organization.

(7) "Recognized jurisdiction", as used in Subsection R156-76-302d(2), means any state, district or territory of the United States that issues a license for a professional geologist, and whose licensure requirements include:

(a) a bachelors or post graduate degree in the geosciences from an accredited institution or equivalent foreign education as determined by the International Credentialing Association and the Division in collaboration with the board;

(b) documented qualifying experience requirements similar to the experience requirements found in Subsection 58-76-302(5) and Section R156-76-302; and

(c) passing the ASBOG Fundamentals of Geology (FG) and the ASBOG Principles and Practice of Geology (PG) Examination.

(8) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 76, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-76-501.

**R156-76-103. 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 76.

**R156-76-104. 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.

**R156-76-302b. Qualifications for Licensure - Education Requirements.**

(1) In accordance with Section 58-76-302, the education requirements for graduates of an approved geoscience program are as follows:

(a) an earned bachelors or masters degree in geology from an accredited institution; or

(b) an earned bachelor or post-graduate degree in the geosciences from an accredited institution including the completion of a minimum of 24 semester or 36 quarter hours in upper level or graduate geology courses, which includes one or more of the following subject areas:

(i) structural geology;

(ii) geophysics;

(iii) sedimentology/stratigraphy/paleontology;

(iv) mineralogy/petrology/geochemistry;

(v) engineering geology/environmental geology;

(vi) hydrogeology/hydrology;

(vii) geomorphology/remote sensing;

(viii) economic geology/petroleum geology; and

(ix) field geology.

(2) In accordance with Section 58-1-302, an applicant who has been educated in a foreign country shall submit a course-by-course accreditation evaluation completed by International Credentialing Associates to determine program equivalency.

**R156-76-302c. Qualifications for Licensure - Experience Requirements.**

In accordance with Subsection 58-76-302(5), active professional practice requirements are clarified or established as follows:

(1) Professional practice shall be obtained after completing the minimum educational requirement for licensure.

(2) One year of active professional practice shall consist of a minimum of 2,000 hours of geological work experience under the supervision of a qualified individual, or in responsible charge as permitted by law.

(3) No more than 2,000 hours of active professional practice may be gained in any 12 month period of time.

(4) Qualifying work engagements consist of a range of activities included in the practice of geology consisting of more than the performance or supervision of geological work activities that are routine, such as routine sampling, laboratory work, or geological drafting, where the elements of initiative, scientific judgment and decision-making are lacking.

(5) Three years of geologic research or teaching activity in upper division or graduate level geology classes at an accredited university is equivalent to one year of qualifying experience.

**R156-76-302d. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsection 58-76-302(6), except as otherwise provided in Subsection (2) or(3), the examination requirements for licensure as a professional geologist after January 1, 2004 are established as follows:

(a) the ASBOG Fundamentals of Geology ("FG") Examination with a passing score as recommended by the ASBOG; and

(b) the ASBOG Principles and Practice of Geology ("PG") Examination with a passing score as established by the ASBOG.

(2) The ASBOG FG Examination shall not be required for an applicant who:

(a) has practiced as a principal for five years of the last seven years preceding the date of the license application;

(b) was not required to pass the ASBOG FG Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed; and

(c) has passed the ASBOG PG Examination.

(3) The ASBOG FG and PG Examinations shall not be required for an applicant who:

(a) has practiced as a principal for five years during the last seven years preceding the date of the license application;

(b) has been licensed for 20 years preceding the date of the license application; and

(c) who was not required to pass the ASBOG FG and PG Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed, but was required to pass a predecessor exam established by the recognized jurisdiction.

**R156-76-303. Renewal Cycle - Procedures.**

In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 76, is established by rule in Section R156-1-308.

**R156-76-304. Exemption from Licensure.**

The exemption from licensure in Subsection 58-76-304(1) is defined or clarified as follows: An "employee" or "subordinate", as used therein and elsewhere in Title 58, Chapter 76, or these rules, means an individual who:

(1) is not licensed as a professional geologist;

(2) works with, for, or provides professional geologic services on work initiated by a person licensed as a professional geologist; and

(3) works only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed as a professional geologist.

**R156-76-501. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of plans to be complete and final; or

(b) to a government official for the purpose of obtaining a 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 "American Geological Institute's Guidelines for Ethical Professional Conduct", April 2, 1999, which is hereby incorporated by reference.

**R156-76-601. Seal Requirements.**

(1) In accordance with Section 58-76-601, the seal design and implementation shall be:

(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 "Licensed Professional Geologist";

(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 geologic map, cross-section, sketch, drawing, plan, or report prepared, 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; and

(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 are permitted, if the seal, signature and date is clearly recognizable.

**KEY: licensing, professional geologists, geology**

**September 5, 2002** **58-1-106(1)**
**58-1-202(1)(a)**
**58-76-101**

**R162. Commerce, Real Estate.**
**R162-201. Residential Mortgage Definitions.**
**R162-201-1. De Minimus.**

An unsolicted gift, compensation, or other things of value may be given by a person transacting the business of residential mortgage loans if it is given in appreciation for having used the services of the person giving the gift, compensation, or other thing of value and it does not exceed $50.00.

**KEY: residential mortgage loan origination**
**December 24, 2001** **61-2c-301(1)(a)**
**61-2c-301(1)(i)**
**61-2c-302**

**R162. Commerce, Real Estate.**
**R162-202. Residential Mortgage Renewal Period.**
**R162-202-1. Residential Mortgage Renewal Period.**

A registration under the Utah Residential Mortgage Practices Act shall be valid for a period of two years from the date of registration.

**KEY: residential mortgage loan origination**
**December 24, 2001 61-2c-103(3)**

**R162. Commerce, Real Estate.**
**R162-203. Changes to Residential Mortgage Registration Statement.**
**R162-203-1. Changes to Residential Mortgage Registration Statement.**

An individual registered under the Utah Residential Mortgage Practices Act must notify the Division on the form required by the Division of any entity for which that individual shall conduct residential mortgage lending before acting on behalf of that entity.

**KEY: residential mortgage loan origination**
**December 24, 2001 61-2c-205(3)**

**R162. Commerce, Real Estate.**
**R162-204. Residential Mortgage Record Keeping Requirements.**
**R162-204-1. Residential Mortgage Record Keeping Requirements.**

A person registered under the Utah Residential Mortgage Practices Act must maintain for the period set forth in Utah Code Section 61-2c-302 the following records:

(a) Application forms;
(b) Disclosure forms;
(c) Truth-in-Lending forms;
(d) Credit reports and the explanations therefor;
(e) Conversation logs;
(f) Verifications of employment, paycheck stubs, and tax returns;
(g) Proof of legal residency, if applicable;
(h) Appraisals, appraisal addenda, and records of communications between the appraiser and the registrant or lender;
(i) Underwriter denials;
(j) Loan approval; and
(k) All other records required by underwriters involved with the transaction.

**KEY: residential mortgage loan origination**
**December 24, 2001 61-2c-302**

**R162. Commerce, Real Estate.**
**R162-205. Residential Mortgage Unprofessional Conduct.**
**R162-205-1. Residential Mortgage Unprofessional Conduct.**

Unprofessional conduct includes the following acts:

(a) conducting the business of residential mortgage lending under any name other than a name under which the entity or individual conducting such business is registered with the Division;

(b) Failing to remit to the appropriate third parties appraisal fees, inspection fees, credit reporting fees, insurance premiums, or similar fees which have been collected from a borrower;

(c) Charging for services not actually performed; and

(d) Charging a borrower more for third party services than the actual cost of those services.

**KEY: residential mortgage loan origination**
**December 24, 2001 61-2c-301(1)(i)**

**R203. Community and Economic Development, Community Development, Energy Services.**

**R203-3. Utah Commercial/Industrial Energy Loan Program.**

**R203-3-1. Authority.**

The promulgation of this rule is authorized under a negotiated settlement of litigation known as "In re The Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan. 1986)", which allows the State of Utah, Department of Community and Economic Development, Office of Energy Services to receive funds for and administer energy programs.

**R203-3-2. Purpose.**

The purpose of this rule is to:

(1) Establish procedures related to use of Office funds to promote commercial and industrial lighting and electric motor system retrofit projects.

(2) Establish criteria and conditions for advertisement of Program.

(3) Establish criteria and conditions for providing no-cost auditing services.

(4) Establish criteria and conditions for loan application and application review processes.

(5) Establish criteria and conditions for loan disbursement process.

(6) Establish criteria and conditions for loan repayment and collection processes.

(7) Establish criteria and procedures for project evaluation and reporting processes.

**R203-3-3. Definitions.**

(1) "Program" means the Utah Commercial/Industrial Energy Loan Program.

(2) "Fund" means the Revolving Industrial Loan Fund of $1,000,000 obligated under the Alternative Energy Tech Demo Stripper Fund Program.

(3) "Office" means the Utah Office of Energy Services, Utah Division of Community Development, Utah Department of Community and Economic Development.

(4) "Applicant" means any owner/manager/leaser, representing a private for-profit company or not-for-profit organization owning, managing or leasing a facility located within the boundaries of the state of Utah, that submits an application requesting Program funds.

(5) "Owner/Manager/Leaser" means an entity that owns, manages or leases a commercial or industrial building, plant or facility.

(6) "Loan Application" means the document submitted by an owner/manager/leaser to show interest in receiving a loan by notifying the Office in person, by postal service, by electronic mail, by FAX, or by telephone.

(7) "Efficient Lighting System" means state-of-the-art lighting technologies that are energy efficient without compromising the quality of lighting.

(8) "Lighting Audit" means a preliminary survey of a facility's existing lighting system that determines types and number of lighting technologies, including energy usage. The audit provides recommendations regarding installation of state-of-the-art technologies including energy savings.

(9) "Efficient Electric Motor System" means state-of-the-art energy efficient technology which pertains to electric motors/drives and related components.

(10) "Electric Motor Systems Audit" means a preliminary survey of a facility's existing motor systems and related components that determines the type, number, configuration and energy usage of related system. The audit provides recommendations regarding installation of state-of-the-art technologies including energy savings.

(11) "Project Design" means the plans for installing Efficient Lighting or Efficient Electric Motor technology.

**R203-3-4. Announcement.**

Office staff may notify Utah businesses of the availability of Program funds. This may be done in the following manner:

(1) by issuing a state-wide news release announcing availability of Program; and

(2) by issuing a direct mailing to Utah businesses found in the "Utah Directory of Businesses and Industry".

**R203-3-5. Auditing Services.**

(1) An Owner/Manager/Lesser shall make its interest in securing auditing services known by notifying the Program Manager. Notification shall be made in person, by postal services, by electronic mail, by FAX or by telephone. The Office may log all requests based on date received.

(2) Auditing Services shall be available to all Owners/Managers of for-profit and not-for-profit organizations on a first-come-first-serve basis.

(3) Auditing Services shall be made available at least until November 1, 1997, and may continue to be available based on funding availability.

**R203-3-6. Application.**

All Owners/Managers/Lessers wishing to receive Program funds shall apply in the following manner:

(1) Complete and file an application provided by the Office. The following information may be necessary:

(a) name of Applicant;

(b) address phone and fax number of Applicant;

(c) contact person;

(d) cost of project;

(e) federal identification number;

(f) amount requested;

(g) estimated electric savings per year in dollars;

(h) estimated electric savings per year in KWH; and

(i) audit results.

**R203-3-7. Application Review.**

(1) The Program administrator shall, upon the proper submission of the application, make a determination of eligibility no later than 45 days from receipt of the application. This decision may be based upon the following:

(a) Applicant's compliance with all aspects of the application process; and

(b) Applicant's meeting of all project eligibility requirements defined in Section R203-3-8 and all program limitations defined in Section R203-3-9.

(2) All applications may be numbered in order of their

receipt by the Office and may be acted upon in that order. Resubmitted applications may be numbered in order of their resubmission.

(3) If the application meets all Program criteria under Sections R203-3-8 and R203-3-9, the application may be granted approval and the Applicant shall be notified according to Section R203-3-10.

**R203-3-8. Project Eligibility.**

(1) Once an application has been submitted to the Office, it may be analyzed to determine whether it meets Program eligibility criteria. Concurrently, the application may be analyzed to determine whether it meets the program limitations as specified in Section R203-3-9. This analysis may provide the basis for application approval.

(2) The data provided by the Applicant under Section R203-3-6 may be used by the Office to establish program eligibility. Projected simple payback figures may be used to determine eligibility. Simple payback figures may be no longer than five years for lighting projects and five years for electric motor projects.

(3) In determining the maximum loan payback period, the following data may be identified and used:

(a) simple payback figures as determined by auditing figures.

(4) Eligible projects shall:

(a) reduce energy consumption; and

(b) maintain or increase the quality of performance.

(5) An Applicant may submit only one application and may be considered for only one loan per fiscal year. Multiple buildings or projects may be covered under one application.

(6) One loan may be used to fund a project consisting of both Energy Efficient Lighting Systems and Energy Efficient Motor Systems.

(7) Requested Loan amount may include Project Design costs and labor costs.

(8) A credit check may be made by the Office on all Applicants.

(9) The Office may request, at any time during the application approval process, additional information or data from the Applicant necessary for this evaluation.

(10) The loan interest rate shall be equal to the annual return earned in the Utah State Treasurer's Public Treasurer's Pool as determined the month immediately preceding the closing date of the loan.

**R203-3-9. Program Limitations.**

Under no circumstance shall the Program administrator approve an application if:

(1) it would result in the Office's inability to fulfill its obligations under this Program or this rule;

(2) the Applicant does not meet the application requirements of Section R203-3-8;

(3) there would be no practical improvement in quality of lighting or electric motor system performance;

(4) the total requested cost, including Project Design cost and labor cost, is less than $5,000 or exceeds $100,000;

(5) if the requested amount of the loan exceeds an aggregate limit of $400,000 awarded in any fiscal year.

(6) the Fund balance is $150,000 or less, or by awarding a loan to an Applicant would result in the Fund balance being equal to or less than $150,000.

**R203-3-10. Finalization of Loan Contract/Notification.**

After review of an application and determination of approval or rejection under this rule, the manager of the Office or the Program administrator shall notify that Applicant:

(1) If approved, the Applicant may be notified of the maximum loan amount approved and shall begin to comply with the provisions of this rule and assurances outlined in the State loan agreement/promissory note.

(2) If rejected at any stage of the process, the denied Applicant may file an application for reconsideration. An application for reconsideration may be reviewed only if it includes changes that correct or remove the reasons for denial of the original application.

(3) A loan agreement, including budget, assurances, promissory note and repayment schedule may be finalized and signed by authorized representatives of the Office and Applicant.

**R203-3-11. Fund Transfer Process.**

Once an application has been approved to receive a loan under this Program, notice of approval and loan document may be transmitted by the Office to the Applicant. The Applicant must submit to the Office a request for payment or reimbursement. Subsequently, the Division may issue the loan to the successful Applicant.

**R203-3-12. Loan Repayment.**

(1) The annual energy savings computed under Subsection R203-3-8 may provide the basis for the quarterly loan repayment to the Division of Finance. Repayment period will be determined by adding 20-30 percent to the simple payback period estimated in the audit. Payment plus interest shall be sent to the Division of Finance and may be credited to the approved Applicant's account as provided in Section R203-3-11. The interest added to the quarterly payment may be determined based upon the annual return earned in the Utah State Treasurer's Public Treasurer's Pool as determined for the month immediately preceding the closing date of the loan.

(2) Upon an individual's reimbursement account balance reaching zero, the payment may cease.

(3) There may be no penalty for early repayment of the loan.

**R203-3-13. Review.**

The Office reserves the right to review all data and Applicants for continuing compliance with this rule during the period the Applicant has an outstanding loan obligation. The Office further reserves the right to request supplemental information it may deem necessary from an Applicant in order to effectively administer the Program and this rule.

**R203-3-14. Indemnification.**

The state government of Utah, any subdivision, or any agent of state government with responsibility for, or obligation to the Program, cannot be held liable for injury or damage to

persons or property caused by or involved with any action related to retrofits in this Program.

**R203-3-15. Notices.**

An application, notice, report or data submitted under this Program may be addressed in the following manner:

Utah Office of Energy Services
ATT: Utah Commercial/Industrial Energy Loan Program
324 S. State, Suite 500
Salt Lake City, UT 84111
(801) 538-8690

**KEY: commerical, industrial, loan program**
**December 30, 1997 653 F. Supp. 108 (D. Kan. 1986)**
**Notice of Continuation September 20, 2002**

**R203. Community and Economic Development, Community Development, Energy Services.**

**R203-4. Utah Public Building Energy Loan and Grant Programs.**

**R203-4-1. Authority.**

The promulgation of this rule is authorized under a negotiated settlement of litigation known as "In re The Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan. 1986)", which allows the State of Utah, Department of Community and Economic Development, Office of Energy Services to receive funds for and administer energy programs.

**R203-4-2. Purpose.**

The purpose of this rule is to:

(1) Establish procedures related to use of Office funds to promote energy efficiency for public facilities.

(2) Establish criteria and conditions for advertisement of Programs.

(3) Establish criteria and conditions for providing no-cost or low-cost auditing services.

(4) Establish criteria and conditions for loan or grant application and application review processes.

(5) Establish criteria and conditions for loan or grant disbursement process.

(6) Establish criteria and conditions for loan repayment and collection processes.

(7) Establish criteria and procedures for project evaluation and reporting processes.

**R203-4-3. Definitions.**

(1) "Program" means the Utah Public Building Energy Loan and Grant Programs.

(2) "Fund" means $2,600,000 obligated under the petroleum violation escrow spending plan approved by the U.S. Department of Energy on August 12, 1996.

(3) "Office" means the Utah Office of Energy Services, Utah Division of Community Development, Utah Department of Community and Economic Development.

(4) "Applicant" means any unit of state and local government or other public non-profit organization, that submits an application requesting Program funds.

(5) "Payback means the average simple payback calculated by taking project costs divided by the estimated annual energy savings.

(6) "Loan or Grant Application" means the document submitted to the Office of Energy Services in person, by postal service, by electronic mail, by FAX, or by telephone and in response to an open solicitation/request for proposal from the Office of Energy Services.

(7) "Efficiency Measures" mean state-of-the-art energy efficiency technologies including energy management controls, lighting upgrades, chiller and boiler upgrades, and insulation.

(8) "Energy Audit" means a preliminary survey of a facility's existing energy using system that assesses energy consumption relative to other similar facilities, recommends operational and maintenance changes for energy savings, and investigates and ranks state-of-the-art energy technologies based upon payback.

**R203-4-4. Announcement.**

Office staff will notify Utah public institutions of the availability of Program loan or grant funds and specify targeted energy technologies and building/facility sectors. The notification will include a due date and a description of application processes. This may be done in the following manner:

(1) By issuing a state-wide news release announcing availability of Program; or

(2) By issuing a direct mailing.

**R203-4-5. Auditing Services.**

(1) An Applicant shall notify the Office regarding energy auditing needs. Notification shall be made in person, by postal services, by electronic mail, by FAX or by telephone. The Office may log and prioritize all requests based on date received.

(2) Auditing Services shall be provided by the Office only as staff time allows.

(3) Applicants will be encouraged to secure energy auditing service from utility companies, vendors and suppliers, and professional consulting engineers listed as "technical energy auditors" under the U.S. Department of Energy's Institutional Conservation Program. Applicants will also be encouraged to attend energy auditor training and complete energy audits with internal staff.

**R203-4-6. Application.**

All Applicants wishing to receive Program funds shall apply in the following manner:

(1) Complete and file an application provided by the Office. The following information may be necessary:

(a) name of Applicant;

(b) address and phone number of Applicant;

(c) contact person;

(d) name of facility/building

(e) cost of project;

(f) audit results and calculations including estimated energy and energy cost savings with simple payback;

(g) federal tax ID #;

(h) loan or grant amount requested (inclusive of project design costs if desired); and

(i) brief description of proposed energy efficiency measures.

**R203-4-7. Application Review.**

(1) The Program administrator shall, upon the proper submission of the application, make a determination of eligibility no later than 45 days from receipt of the application. This decision may be based upon the following:

(a) Applicant's compliance with all aspects of the application process; and

(b) Applicant's meeting of all project eligibility requirements defined in Section R203-4-8 and all program limitations defined in Section R203-4-9.

(2) All applications may be numbered in order of their receipt by the Office. This sequence may be used as a basis for prioritizing applicants for Program funding.

(3) If the application meets all Program criteria under

Sections R203-4-8 and R203-4-9, the application may be granted approval and the Applicant shall be notified according to Section R203-4-10.

**R203-4-8. Project Eligibility.**

(1) Once an application has been submitted to the Office, it will be analyzed to determine Program eligibility. It should be noted that although an application is deemed "eligible", program limitations as specified in Section R203-4-9 may serve as the final basis for approving and obligating Program funds.

(2) The data provided by the Applicant under Section R203-4-6 may be used by the Office to establish program eligibility. Projected simple payback figures may be used to determine eligibility for grants and loans. Average simple payback figures may be no longer than eight years.

(3) In determining eligibility, the Office reserves the right to verify energy audit information and calculations used to calculate the payback period and to independently assess the appropriateness of technologies proposed by the Applicant:

(4) Eligible projects shall:

(a) reduce energy costs;

(b) increase building life; and

(c) improve the working or living environment within the facility.

(5) Where applications for funding exceed the Office's balance of available funds, an Applicant may only receive one loan or grant per fiscal year. Multiple buildings or projects can be covered under one application.

(6) Grant applications must include matching funds including in-kind and cash match of at least a 50-50 level. Hardship criteria set forth under the Institutional Conservation Program may allow for less than a 50-50 applicant match.

(7) Requested loan or grant amounts may include project design costs and labor costs.

(8) The Office may check the Applicant's history of energy project management and history of loan repayments. Instances of gross mismanagement and unreliability may disqualify an Applicant.

(9) The Office may request, at any time during the application approval process, additional information or data from the Applicant necessary for determining eligibility.

(10) The loan interest rate shall be zero percent. However, the Division of State Finance may charge interest for late repayments.

**R203-4-9. Program Limitations.**

Under no circumstance shall the Program administrator approve an application if:

(1) it would result in the Office's inability to fulfill its obligations under this Program or this rule;

(2) the Applicant does not meet the application requirements of Section R203-4-8;

(3) there is no energy cost savings from the measures funded with a loan or grant;

(4) the total requested loan amount, including project design cost and labor cost, is less than $5,000;

(5) the annual energy savings is insufficient to justify a loan repayment of eight years or less..

(6) the Fund balance is zero, or by awarding a loan to an Applicant, the Fund balance is overdrawn;

(7) the Applicant's request for loan or grant funds exceeds fifteen percent of the Office's available funds and funding to the Applicant would limit funding to other applicants.

**R203-4-10. Notification of Award and Executing Loan or Grant Contracts.**

After review of an application and approval or rejection under this rule, the director of the Office or the Program administrator shall notify the Applicant in writing.

(1) If approved, the Applicant may be notified of the maximum loan or grant amount approved.

(2) If rejected, the denied Applicant may file an application for reconsideration. An application for reconsideration may be reviewed only if it includes changes that correct or remove the reasons for denial of the original application.

The loan or grant agreement, including budget, assurances, scope of work and promissory note with repayment schedule (in the case of loan agreements) must be approved and signed by authorized representatives of the Utah Department of Community and Economic Devolvement, the Division of State Finance, the Office, and Applicant.

**R203-4-11. Fund Transfer and Payment Process.**

Once a loan or grant contract has been full executed, the Applicant may proceed with energy efficiency measures authorized by the agreement. Applicants may request up to a 30-day advance for anticipated expenses from the Office for completion of energy efficiency measures or may submit for requests for reimbursement of expenses. Full documentation of expenses must be provided to the Office. Advances and reimbursement payments will only be made to the Applicant, and cannot be assigned unless otherwise directed in writing by the Applicant.

**R203-4-12. Loan Repayment.**

(1) The annual energy savings computed under Subsection R203-4-8 shall serve as the basis for calculating quarterly loan repayment. The repayment period will be determined by dividing the total of funds advanced and reimbursed to the Applicant by the total anticipated annual energy cost savings. Repayments shall be sent to the Division of Finance and will be credited to the approved Applicant's loan account.

(2) As reimbursements occur and when an Applicant's loan account balance reaches zero, the repayments may cease, and the account closed.

(3) Loan recipients may make early repayment of loans or can renegotiate the terms of repayment upon the mutual consent of the Division of Finance and the Office.

**R203-4-13. Review.**

The Office reserves the right to review all data and monitor Applicant progress for compliance with these rules during the loan or grant contract period and for a period of three years after the loan or grant contract period has been closed. The Office further reserves the right to request supplemental information it may deem necessary from an Applicant in order to effectively administer the Program and to meet federal petroleum violation

escrow account reporting requirements.

**R203-4-14. Indemnification.**

The state government of Utah, any subdivision, or any agent of state government with responsibility for, or obligation to the Program, cannot be held liable for injury or damage to persons or property caused by or involved with any action related to retrofits in this Program.

**R203-4-15. Notices.**

An application, notice, correspondence, payment requests, report or data submitted under this Program should be addressed in the following manner:

Utah Office of Energy Services
ATTN: Utah Public Energy Loan Program
324 S. State, Suite 500
Salt Lake City, UT 84111
(801) 538-8690

**KEY: public building, energy loan, grant program**
**December 30, 1997 653 F. Supp. 108 (D. Kan. 1986)**
**Notice of Continuation September 20, 2002**

**R203. Community and Economic Development, Community Development, Energy Services.**

**R203-5. Utah Energy Technology Demonstration Program.**

**R203-5-1. Authority.**

The promulgation of this rule is authorized under a negotiated settlement of litigation known as "Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan. 1986)", which allows the State of Utah, Department of Community and Economic Development, Office of Energy Services to receive funds for and administer energy programs.

**R203-5-2. Purpose.**

The purpose of this rule is to:

(1) Establish procedures related to use of Office funds to promote energy efficiency and the commercialization of new energy technologies.

(2) Establish criteria and conditions for advertisement of Programs.

(3) Establish criteria and conditions for providing technical support.

(4) Establish criteria and conditions for loan or grant application and application review processes.

(5) Establish criteria and conditions for loan or grant disbursement process.

(6) Establish criteria and conditions for loan repayment and collection processes.

(7) Establish criteria and procedures for project evaluation and reporting processes.

**R203-5-3. Definitions.**

(1) "Program" means the Utah Energy Technology Demonstration Program.

(2) "Fund" means $1,300,000 obligated under the petroleum violation escrow spending plan approved by the U.S. Department of Energy on August 12, 1996.

(3) "Office" means the Utah Office of Energy Services, Utah Division of Community Development, Utah Department of Community and Economic Development.

(4) "Applicant" means any unit public or private entity that submits an application requesting Program funds.

(5) "Payback means the average simple payback calculated by taking project costs divided by the estimated annual energy savings.

(6) "Loan or Grant Application" means the document submitted to the Office of Energy Services in person, by postal service, by electronic mail, by FAX, or by telephone and in response to an open solicitation/request for proposal from the Office of Energy Services.

(7) "Energy Technology Demonstration" means state-of-the-art energy efficiency technologies including biomass to energy digesters, solar photovotaics, wind generation equipment, geothermal heat pumps, sulfur lamp technogy, cogeneration, and alternate transportation fuel technogloy. Program funding shall be limited to those new technologies that are readily commercially available and demonstratable.

(8) "Technology Support" means in-house or consulting engineering assistance to an Applicant in determining the applicability, reliablity, sizing, and integration of a new technology into the Applicant's operation or facilities.

**R203-5-4. Announcement.**

Office staff will notify Utah public and private entities of the availability of Program loan or grant funds and specify targeted energy technologies and sectors. The notification will include a due date and a description of application processes. This may be done in the following manner:

(1) by issuing a state-wide news release announcing availability of Program; or

(2) by issuing a direct mailing

**R203-5-5. Technigcal Support Services.**

(1) An Applicant shall notify the Office regarding technical support needs. Notification shall be made in person, by postal services, by electronic mail, by FAX or by telephone. The Office may log and prioritize all requests based on date received.

(2) Auditing Services shall be provided by the Office, its consultants, or other state agencies only as staff time and funding allows.

(3) Applicants will be encouraged to secure technical support service from utility companies, vendors and suppliers, federal laboraories, and professional consulting engineers.

**R203-5-6. Application.**

All Applicants wishing to receive Program funds shall apply in the following manner:

(1) Complete and file an application provided by the Office. The following information may be necessary:

(a) name of Applicant;

(b) address and phone number of Applicant;

(c) contact person;

(d) name of facility/operation

(e) cost of project;

(f) technical performance data and project economics including estimated energy and energy cost savings with savings-to-investment ratio;

(g) federal tax ID No.;

(h) loan or grant amount requested (inclusive of project design costs if desired); and

(i) brief description of proposed project.

**R203-5-7. Application Review.**

(1) The Program administrator shall, upon the proper submission of the application, make a determination of eligibility no later than 45 days from receipt of the application. This decision may be based upon the following:

(a) Applicant's compliance with all aspects of the application process; and

(b) Applicant's meeting of all project eligibility requirements defined in Section R203-5-8 and all program limitations defined in Section R203-5-9.

(2) All applications may be numbered in order of their receipt by the Office. This sequence may be used as a basis for prioritizing applicants for Program funding.

(3) If the application meets all Program criteria under Sections R203-5-8 and R203-5-9, the application may be granted approval and the Applicant shall be notified according to Section R203-5-10.

**R203-5-8. Project Eligibility.**

(1) Once an application has been submitted to the Office, it will be analyzed to determine Program eligibility. It should be noted that although an application is deemed "eligible", program limitations as specified in Section R203-5-9 may serve as the final basis for approving and obligating Program funds.

(2) The data provided by the Applicant under Section R203-5-6 may be used by the Office to establish program eligibility. Project economics may be used to determine eligibility for grants and loans. Project savings to investment ratios should exceed 1.0 by year eight of project operation.

(3) In determining eligibility, the Office reserves the right to review technical performance data and project economics and to independently assess the appropriateness and appliation of technologies proposed by the Applicant:

(4) Eligible projects shall:

(a) reduce energy costs;

(b) increase faciltiy life or improve operations; and

(c) contribute to a better Utah environment by reducing pollutants.

(5) Where applications for funding exceed the Office's balance of available funds, an Applicant may only receive one loan or grant per fiscal year.

(6) Grant applications must include matching funds including in-kind and cash match of at least a 50-50 level. The Office may require federal partnering as a condition for Program eligibility.

(7) Requested loan or grant amounts may include project design costs and labor costs.

(8) The Office may check the Applicant's history of energy project management and history of loan repayments. Instances of gross mismanagement and unreliability may disqualify an Applicant.

(9) The Office may request, at any time during the application approval process, additional information or data from the Applicant necessary for determining eligibility.

(10) The loan interest rate shall be determined by the Office in conjunction with the Division of State Finance. Additional interest may be charged late repayments.

**R203-5-9. Program Limitations.**

Under no circumstance shall the Program administrator approve an application if:

(1) it would result in the Office's inability to fulfill its obligations under this Program or this rule;

(2) the Applicant does not meet the application requirements of Section R203-5-8;

(3) there is no energy cost savings from the measures funded with a loan or grant;

(4) the total requested loan amount, including project design cost and labor cost, is less than $5,000;

(5) the annual energy cost savings is insufficient to justify a loan repayment of eight years or less..

(6) the Fund balance is zero, or by awarding a loan to an Applicant, the Fund balance is overdrawn;

(7) the Applicant's request for loan or grant funds exceeds fifteen percent of the Office's available funds and funding to the Applicant would limit funding to other applicants.

**R203-5-10. Notification of Award and Executing Loan or Grant Contracts.**

After review of an application and approval or rejection under this rule, the manager of the Office or the Program administrator shall notify the Applicant in writing.

(1) If approved, the Applicant may be notified of the maximum loan or grant amount approved.

(2) If rejected, the denied Applicant may file an application for reconsideration. An application for reconsideration may be reviewed only if it includes changes that correct or remove the reasons for denial of the original application.

The loan or grant agreement, including budget, assurances, scope of work and promissory note with repayment schedule (in the case of loan agreements) must be approved and signed by authorized representatives of the Utah Department of Community and Economic Devolvement, the Division of State Finance, the Office, and Applicant.

**R203-5-11. Fund Transfer and Payment Process.**

Once a loan or grant contract has been full executed, the Applicant may proceed with energy efficiency measures authorized by the agreement. Applicants may request up to a 30-day advance for anticipated expenses from the Office for completion of energy efficiency measures or may submit for requests for reimbursement of expenses. Full documentation of expenses must be provided to the Office. Advances and reimbursement payments will only be made to the Applicant, and cannot be assigned unless otherwise directed in writing by the Applicant.

**R203-5-12. Loan Repayment.**

(1) The annual energy savings computed under Subsection R203-5-8 shall serve as the basis for calculating quarterly loan repayment. The repayment period will be determined by dividing the total of funds advanced and reimbursed to the Applicant by the total anticipated annual energy cost savings. Repayments shall be sent to the Division of Finance and will be credited to the approved Applicant's loan account.

(2) As reimbursements occur and when an Applicant's loan account balance reaches zero, the repayments may cease, and the account closed.

(3) Loan recipients may make early repayment of loans or can renegotiate the terms of repayment upon the mutual consent of the Division of Finance and the Office.

**R203-5-13. Review.**

The Office reserves the right to review all data and monitor Applicant progress for compliance with these rules during the loan or grant contract period and for a period of three years after the loan or grant contract period has been closed. The Office further reserves the right to request supplemental information it may deem necessary from an Applicant in order to effectively administer the Program and to meet federal petroleum violation escrow account reporting requirements.

**R203-5-14. Indemnification.**

The state government of Utah, any subdivision, or any agent of state government with responsibility for, or obligation

to the Program, cannot be held liable for injury or damage to persons or property caused by or involved with any action related to retrofits in this Program.

**R203-5-15. Notices.**

An application, notice, correspondence, payment requests, report or data submitted under this Program should be addressed in the following manner:

Utah Office of Energy Services
ATT: Utah Commercial/Industrial Energy Loan Program
324 S. State, Suite 500
Salt Lake City, UT 84111
(801) 538-8690

**KEY: public building, energy loan, grant program**
**December 30, 1997 653 F. Supp. 108 (D. Kan. 1986)**
**Notice of Continuation September 19, 2002**

**R212. Community and Economic Development, Community Development, History.**
**R212-7. Cultural Resource Management.**
**R212-7-1. Scope and Applicability.**

Purpose: to establish time frames and procedures in response to state and federal agency requests in conformance with applicable state and federal cultural resource management laws, rules, and regulations contained in Section 9-8-404, Utah Code; 36 CFR 800 (01-11-2001 edition) and 16 USC 470 Section 110 of the National Historic Preservation Act as amended. These federal laws and regulations are incorporated by reference in this rule.

**R212-7-2. Definitions.**

A. Terms used in this rule are defined in Section 9-8-302, 36 CFR 800 (01-11-2001 edition), and 16 USC 470 Section 110 of the National Historic Preservation Act as amended.

B. In addition:

1. "division" means the Division of State History;

2. "director" means the director of the Division of State History;

**R212-7-3. Conformance of Division to State Rules and Federal Regulations.**

A. The Division of State History will follow applicable regulations pursuant to an annually executed agreement with the National Park Service and state rules to insure that its activities take into account the effect on cultural resources.

1. The division shall seek creative solutions to avoid or minimize adverse effects on cultural resources and seek ways to allow adverse effects to be mitigated creatively when they cannot be avoided.

B. In that regard, the division shall encourage alternative proposals which may allow for the destruction of a site(s) or area(s) when alternative mitigation or treatment plans can be made which will allow for the development, endowment, promotion, scientific investigation of other resources more suited to public education, education involvement, appreciation and science.

**R212-7-4. Division Responsibility to Other Agencies.**

1. The division may consult with or provide professional information to state and federal agencies requesting consultation under Section 9-8-404, Utah Code and under 16 USC 470 Sections 106 and 110 the Historic Preservation Act of 1966 as amended. These federal regulations are incorporated by reference in this rule.

2. The information provided to a consulting person or entity will be limited to standards and regulations as issued by the U.S. Secretary of the Interior.

3. If the division responds, then it shall state that the federal or state agency shall take into account the comments.

4. Responses may be provided within 30 days of receipt of request.

5. Adequate completion of permit requirements for excavation on lands may satisfy mitigation as far as the State Historic Preservation Officer is concerned.

**KEY: historic preservation, cultural resources, management**
**May 21, 2002 9-8-302**
**Notice of Continuation September 26, 2001 9-8-404**
**16 USC 470 Sec. 106**
**16 USC 470 Sec. 110**

**R212. Community and Economic Development, Community Development, History.**

**R212-12. Computerized Record of Cemeteries, Burial Locations and Plots, and Granting Matching Funds.**

**R212-12-1. Scope and Applicability.**

To provide grants to assist cemeteries, computerize their records, and to develop a centralized database of names, dates of death, burial locations, and other information. This data base will include data on individuals interred in cemeteries and burial locations where a previous record exists regarding the burial in accordance with UCA 9-8-203(3)(c).

**R212-12-2. Definitions.**

1. "Board" means the Board of State History.

2. "Burial locations" means locations of human burials outside of established cemeteries where written records exist on the deceased.

3. "Burial Plot" means the burial location of an individual within a cemetery.

4. "Cemeteries" means formal groupings of burial locations, including public and private facilities, whether abandoned or currently used and maintained.

5. "Director" means the Director of the Division of State History.

6. "Division" means the Division of State History.

7. "Eligible Organizations" means cemeteries, genealogical associations, and other nonprofit groups interested in cemeteries and burial locations.

8. "GIS" means Geographic Information System. A system that links information to geographic locations.

9. "In kind" means volunteer hours, labor, equipment, etc., to match grant contributed after July 1, 1997.

10. "Matching grants" means grants made to eligible organizations that are matched, ordinarily on a fifty/fifty basis, through cash or in kind.

11. "Record" means existing record of name and other available information on the interred individual.

12. "Computerized record" means an electronic version of a record meeting the standards established by the Division.

**R212-12-3. Application and Distribution of Funds.**

Eligible organizations may apply for matching grants on a form approved by the Division. Matching grants shall be provided beginning no later than the fall of 1997. No grant will be awarded to any single cemetery for more than $10,000. Larger cemeteries needing more than $10,000 may reapply in phases. Successful applicants may request fifty percent of the funds at the time of approval of the contract. The second fifty percent will be distributed upon receipt of acceptable final report and computerized records in the format agreed upon.

Grants will be allocated to applying eligible organizations on a first come, first served basis. The Division will award the grants and provide a list of successful applicants to the Board.

**R212-12-4. Reports and Deliverables.**

The grantee must submit complete computer files for the project in a format approved by the Division. The Division may verify the accuracy of the information prior to making final payment. In addition, a final report shall be completed by the grantee in a format designated by the Division. The report shall include a summary of the project, an accounting of matching share contributions, and a request for final payment.

**KEY: burial, cemetery, plots**
**March 10, 1998 9-8-203(3)(c)**
**Notice of Continuation September 10, 2002**

**R251. Corrections, Administration.**
**R251-401. Supervision Fees.**
**R251-401-1. Authority and Purpose.**

(1) This rule is authorized under Section 64-13-21.

(2) The purpose of this rule is to define the UDC's policy regarding offenders' monthly supervision fees including criteria for the suspension or waiver of fees and the circumstances under which an offender may request a hearing.

**R251-401-2. Definitions.**

(1) "Board" means Board of Pardons and Parole.

(2) "Fee suspension" means temporary, time-limited suspension of required fee payment when inability to pay is a result of short-term, substantial hardship.

(3) "Fee waiver" means long-term waiver of fee payment when the substantial hardship causing an inability to pay is highly unlikely to change during the period of supervision.

(4) "Substantial hardship" means any condition which would cause gross monthly household income to be below the Federal Poverty Level.

(5) "UDC" means Utah Department of Corrections.

**R251-401-3. Policy.**

It is the policy of the Department that:

(1) in accordance with Section 64-13-21, offenders on probation or parole shall be assessed a monthly supervision fee of $30.00 if the offense was committed after May 3, 1993;

(2) court- or Board-ordered supervision fees may be waived if the order would create a substantial hardship as determined by the supervising agent and a supervisor;

(3) if the offender disagrees with a non-hardship finding, the decision may be appealed up to the appropriate Regional Administrator, whose decision shall be binding;

(4) offenders required to pay supervision fees shall be provided with written procedures regarding the appeal process;

(4) former offenders who had a fee suspension or waiver when their supervision ended, shall not automatically assume the same status if placed on probation or parole again;

(5) offenders who obtain a suspension or waiver shall not be eligible for a refund of any fees previously paid; and

(6) eligible offenders shall reapply for a suspension or waiver of supervision fees each time they are placed on probation or parole.

**KEY: fees, supervision, offender**
**1994 64-13-21**
**Notice of Continuation September 11, 2002**

**R277. Education, Administration.**
**R277-101. Public Participation in Utah State Board of Education Decisions.**
**R277-101-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Chair" means duly elected Chairman of the Board, Vice-chair, or Chair of a Board standing committee.

**R277-101-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 52-4-1 which directs that the actions of the Board be taken openly and that its deliberations be conducted openly and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to describe procedures to be followed by the Board in its conduct of the public's business in order to:

(1) hear from those who desire to be heard on public education matters in the state;

(2) conserve the time of the Board;

(3) enable staff to provide timely and essential information; and

(4) balance desire for public information with other demands on the Board's time.

**R277-101-3. Public Participation.**

A. Citizens may attend meetings of the Board.

B. Citizens may speak to the Board:

(a) to issues not on the agenda during the time designated for public comment.

(i) Priority shall be given to those individuals or groups who, prior to the meeting, have submitted a written request to address the Board, including a brief description of the issue to be addressed.

(ii) No action shall be taken by the Board on issues raised during the public comment portion of the meeting.

(iii) At the Board's discretion, a Board member may request that an item raised during public comment be placed on a future agenda for possible action.

(iv) The Chair may limit the time available for individual comments; number of comments and time limits shall be stated prior to the public comment portion of the agenda.

(v) The Chair may request groups to designate a spokesperson.

(b) to items on the agenda during the time designated for public comment, or at the discretion of and as invited by the Chair, when the item is properly before the Board or committee. The Chair may request that public comments be provided in writing.

C. All presentations to the Board or one of its committees shall exemplify courteous behavior and appropriate language.

D. Following any presentation to the Board or one of its committees, individuals and groups may remain as spectators to the meeting.

E. Additional comments to the Board or committees may only be made as recognized and invited by the Chair.

**KEY: school boards, open government**
**May 17, 2002 Art X Sec 3**
**Notice of Continuation September 12, 2002 52-4-1**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-103. USOE Government Records and Management Act.**
**R277-103-1. Definitions.**

A. "USOE" means the Utah State Office of Education.

B. "GRAMA" means the Government Records and Management Act as enacted by the 1992 Utah Legislature, Sections 63-2-101 through 63-2-909.

C. "Board" means the Utah State Board of Education.

D. "Superintendent" means the State Superintendent of Public Instruction.

**R277-103-2. Authority and Purpose.**

A. This rule is authorized by Section 63-2-204 which allows a governmental entity to make rules regarding the entity's records and by Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide procedures for appropriate access to government records.

**R277-103-3. Allocation of Responsibilities Within the USOE.**

Both the USOE and the Board shall be considered a single governmental entity for the purposes of this rule and the Superintendent shall be considered the head of the entity.

**R277-103-4. Requests for Access.**

A. Requests for access to USOE government records should be written and directed to the USOE Records Officer, 250 East 500 South, Salt Lake City, Utah 84111.

B. Response to a request submitted to persons other than the designee or not made in writing may be delayed.

C. Appeals to access determinations shall be directed to the Deputy Superintendent of Public Instruction according to time limits and provisions of Section 63-2-401.

**R277-103-5. Fees.**

A. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the USOE by contacting the designated Records Officer locate at 250 East 500 South, Salt Lake City, Utah 84111.

B. Payment of past fees or future estimated fees expected to exceed $50.00 or both may be required before the USOE Records Officer begins to process a request.

C. There shall be no charge made by the Board or the USOE for:

(1) inspection of records;

(2) a reasonable request that requires the segregation of records; or

(3) an inspection of the requested records to determine the requester's right to access.

D. Waiver of Fees

(1) Fees for duplication and compilation of a record may be waived under the circumstances described in Section 63-2-203(3) or other circumstances as determined by the USOE on a case by case basis, including accumulative costs of less than $2.00, for use by school districts or other entities controlled by the Board, or any affidavit from the requester claiming impecuniosity.

(2) Requests for waivers shall be made to the designated USOE Records Officer.

**R277-103-6. The USOE as Custodian of District Records.**

A. When the USOE acts as the custodian of local school district records and does not regularly use or access that school district's data or information, the USOE may refer requests for that information to the local school district.

B. If the USOE acts as a custodian of records, information or data for local school districts, the USOE shall request from those districts the following:

(1) Designation of what data may be provided to whom upon request;

(2) Notice of classification(s) if the data are classified; and

(3) The name and title of a school district records officer or contact person to whom the USOE shall direct requests for access to the information or records.

**R277-103-7. Other Requests.**

A. For Research Purposes

(1) Access to private or controlled records for research purposes is allowed by Section 63-2-202(8).

(2) Such requests shall be made to the designated Records Officer.

B. To Amend a Record

(1) An individual may contest the accuracy or completeness of a document pertaining to him owned by the USOE pursuant to Section 63-2-603.

(2) The request to amend shall be made in writing to the designated Records Officer.

(3) Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act, Section 63-46b.

**KEY: student records, public schools**

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|---|---|
| **1992** | **63-2-101 through 909** |
| **Notice of Continuation September 10, 2002** | **63-2-204** |
| | **63-46b** |
| | **53A-1-401(3)** |

**R277. Education, Administration.**
**R277-112. Prohibiting Discrimination in the Public Schools.**
**R277-112-1. Definitions.**

"Board" means the Utah State Board of Education.

**R277-112-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board.

B. The purpose of this rule is to establish standards prohibiting discrimination in the public school system.

**R277-112-3. Standards.**

A. The Board does not advocate, permit, or practice discrimination on the basis of race, creed, color, national origin, religion, age, sex, or handicap. This rule incorporates by reference the following:

(1) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance;

(2) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance;

(3) Title IV of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000c et seq., which provides standards and training for educators relative to the desegregation of schools receiving Federal financial assistance;

(4) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., which prohibits discrimination in employment based on race, color, religion, sex, or national origin in programs and activities receiving Federal financial assistance;

(5) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance;

(6) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance;

B. The Board shall take action consistent with:

(1) all regulations, guidelines, and standards lawfully adopted under the statutes named in Subsections 3(A)(1) through (6) and effective as of July, 1993;

(2) all state laws prohibiting discrimination on the basis of race, creed, color, national origin, religion, age, sex, or handicap and effective as of July, 1993.

C. All programs, activities, schools, institutions, and school districts under the general control and supervision of the Board shall adopt policies and rules prohibiting discrimination on the basis of race, creed, color, national origin, religion, age, sex, or handicap.

**KEY: educational policy, civil rights**
**1987 Art X Sec 3**
**Notice of Continuation September 12, 2002**

**R277. Education, Administration.**
**R277-115. Copyrighting Material Developed with Funds that Flow Through the Board.**
**R277-115-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Reprint" means a verbatim copy of the original of any material protected by copyright notices.

C. "Published" means distribution of a copy of a work by sale, lease, rental, lending, or other transfer of ownership or the offering to distribute copies to anyone for purposes of further distribution.

D. "Material" means all copyrightable works, including writings, lectures, musical or dramatic compositions, sound recordings, films, videotapes and other pictorial reproductions, computer programs, listings, flow charts, manuals, codes, instructions, and software.

E. "Formula grant basis" means federal or state funds that are distributed through the Board on the basis of a formula without competitive application for the funds. The Board has no discretion in awarding the funds if the recipient qualifies under the formula and meets other standards of that particular program.

F. "Discretionary grant basis" means federal or state funds that are distributed by the Board on the basis of competitive application or contract.

**R277-115-2. Authority and Purpose.**

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify an orderly means for regulating copyrighted material.

**R277-115-3. Reprints of Material Copyrighted by the Board.**

A. The Board or its designee may grant permission to reprint published material of the Board that is protected by a copyright notice.

B. Requests for permission to reprint shall be submitted to the Board in writing and shall describe:

(1) the specific published material to be reprinted;

(2) the work in which the copyrighted material will appear; and

(3) the general use to be made of the work.

C. For permission for a reprint to be granted, full credit shall be given to the Board and the author either on the copyright page or section of the work or immediately preceding each use of the material covered by the permission. This credit shall appear on every copy of the work reproduced.

D. The Board may make a charge for the right to use substantial portions of published material of the Board if the use substantially enhances the marketability of the work with the potential of substantial profits to the work's author and publisher. Charges shall be negotiated between the Board and the party seeking to use Board materials on a case-by-case basis.

E. One copy of the work within which the reprinted material appears shall be sent to the Board upon its publication.

F. The Board or its designee shall develop forms and accounting procedures to carry out the purposes of this section.

**R277-115-4. Copyrighting Materials.**

A. In order to protect the public interest in the cost of the development, distribution, and use of original materials, a local school district may copyright any original material that it develops with formula grant basis funds.

B. The Board reserves the right to obtain copyrights for original materials developed on projects funded with discretionary grant basis funds which it controls or which it allots to others.

C. The Board may relinquish its copyright authority by written agreement. If the Board relinquishes its rights, it shall require a written agreement providing an irrevocable, nonexclusive, and royalty-free license to reproduce and publish the copyrighted materials, including the right to sublicense for all Utah school districts and state education institutions. Use of such materials under this exclusion is limited to public institutions in Utah.

**KEY: copyright, educational policy**
**1987 Art X Sec 3**
**Notice of Continuation September 12, 2002 53A-1-401(3)**

**R277. Education, Administration.**
**R277-116. USOE Internal Audit Procedure.**
**R277-116-1. Definitions.**

A. "Audit" means performance audits, including economy and efficiency audits and program audits or financial-related audits as outlined in GOVERNMENT AUDITING STANDARDS, Comptroller General of the United States, 1988 revision which is hereby incorporated by reference, and available from the USOE Internal Auditor and at the Utah Attorney General's Office.

B. "Board" means the 15 member elected Utah State Board of Education/Utah State Board for Applied Technology Education.

C. "Yellow Book Standards" means the auditing standards outlined in the GOVERNMENT AUDITING STANDARDS (complete citation above).

D. "Internal Auditor" means the Board's Internal Auditor who is direct staff, has a personal and confidential relationship to the Board, and who is appointed by the Board for the purpose of conducting performance audits, including economy and efficiency audits and program audits or financial-related audits as outlined in GOVERNMENT AUDITING STANDARDS. The Internal Auditor may conduct other auditing assignments as directed by the Board. The Internal Auditor cooperates and coordinates with the Audit Committee. The Internal Auditor's performance is evaluated by the Board or a committee of Board members.

E. "Audit Committee" means the audit committee of the Board composed of the Chairman, Vice Chairman and three Standing Committee Chairs of the Board given the responsibility to determine the relative importance of audit requests, receive reports from the internal auditor, and release audit reports to Board members and other interested parties.

F. "USOE" means the Utah State Office of Education.

G. "LEA" means any local education agency under the supervision of the Board including local school districts, regional service centers, area technology centers and vocational programs.

**R277-116-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, Section 53A-1-401(4) which directs the Board to adopt rules to promote quality, efficiency and productivity and to eliminate unnecessary duplication in the public education system, Section 53A-1-405 which makes the Board responsible for verifying audits of local school districts, Section 53A-1-402(1)(f) which directs the Board to develop rules and minimum standards regarding cost effectiveness measures, school budget formats and financial accounting requirements for the local school districts and by Section 53A-17a-147(2) which directs the Board to assess the progress and effectiveness of local school districts and programs funded under the Minimum School Program and report its findings to the Legislature.

B. The purpose of this rule is to outline the Board's criteria and procedures for internal audits of programs under its supervision.

**R277-116-3. Audit Committee Responsibilities.**

The Audit Committee shall:

A. determine the priority for audits to be performed based on recommendations from the Internal Auditor, Audit Committee requests or correspondence, other Board member requests, or USOE staff recommendations;

B. distribute drafts or preliminary versions of audits only to other Board members, as requested, or auditees. Internal audits that have not been reviewed in final form by the Audit Committee and the auditee are drafts and, as such, are not public records;

C. determine the distribution of audit findings in any or all stages or reports to other Board members as well as to other interested parties;

D. review the findings and recommendations of the Internal Auditor and make recommendations for action on the findings to the Board.

**R277-116-4. Internal Auditor Authority and Responsibilities.**

A. The Internal Auditor reports directly to and is responsible solely to the Board, in cooperation with the Audit Committee.

B. The Internal Auditor shall conduct audits as may be recommended by the Audit Committee, and as directed by the Board, including economy and efficiency audits, program audits, and financial-related audits of any program, function, LEA, or division under the Board's supervision, or as otherwise directed by the Board.

C. The Internal Auditor shall have access to all records, personnel, and physical materials relevant and necessary to conduct audits of all programs and agencies supervised by the Board.

D. The Internal Auditor shall notify the Audit Committee and the Board in a timely manner of any irregularity or serious deficiency discovered in the audit process.

E. The Internal Auditor shall submit a written report to the Audit Committee and the Board of each authorized audit within a reasonable time after completion of the audit.

F. The Internal Auditor shall review, upon the Board's direction, the implementation of recommendations or alternative actions taken as a result of an audit.

**R277-116-5. Scope of Internal Audits.**

A. An audit conducted by the Internal Auditor may include any or all of the following:

(1) an examination of any Board-supervised program or entity records or financial books to determine the accuracy and completeness of fiscal affairs, the accuracy and reliability of financial statements and reports, and the adequacy and effectiveness of financial controls to properly and professionally record the acquisition, custody, and use of public funds;

(2) an examination to determine whether program or entity administrators and staff have adhered to state law and Board rules;

(3) an examination to determine if operations of a program or entity have been accomplished lawfully and efficiently; and

(4) an examination to determine whether management control and information systems are adequate to guarantee

compliance with the law and Board rules.

**KEY: educational administration**

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| **June 17, 1998** | **Art X Sec 3** |
| **Notice of Continuation September 12, 2002** | **53A-1-401(3)** |
| | **53A-1-401(4)** |
| | **53A-1-405** |
| | **53A-1-402(1)(f)** |
| | **53A-17a-147(2)** |

**R277. Education, Administration.**
**R277-400. School Emergency Response Plans.**
**R277-400-1. Definitions.**

A. "Emergency" means a natural or man-made disaster, accident, act of war, or other circumstance which could reasonably endanger the safety of school children or disrupt the operation of the school.

B. "Emergency Preparedness Plan" means policies and procedures developed to promote the safety and welfare of students, protect district property, or regulate the operation of schools during an emergency occurring within a district or a school.

C. "Board" means the Utah State Board of Education.

D. "Emergency Response Plan" means a plan developed by a school district or school to prepare and protect students and staff in the event of school violence emergencies.

**R277-400-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities and Section 53A-1-402(1)(b) directs the Board to adopt rules for student health and safety.

B. The purpose of this rule is to establish general criteria for both Emergency Preparedness and Emergency Response plans required of schools and districts in the event of natural disasters or school violence emergencies. This rule also directs school districts to develop prevention, intervention, and response measures and to prepare staff and students to respond promptly and appropriately to school violence emergencies.

**R277-400-3. Establishing District Emergency Preparedness and Emergency Response Plans.**

A. By July 1, 2000, each local board of education shall adopt, maintain, and provide a copy to the USOE, its Emergency Preparedness and Emergency Response plans or a comprehensive plan that prepares and trains students and staff for natural disaster and school violence emergencies.

B. As a part of a local board of education's annual application for Safe and Drug Free School funds, the local board shall reference its Emergency Response plan.

C. The plan(s) shall be designed to meet individual school needs and features. A district may direct schools within the district to develop and implement individual plans.

D. The local board shall appoint a committee to prepare plan(s) or modify existing plan(s) to satisfy this rule. The committee shall consist of appropriate school and community representatives which may include school and district administrators, teachers, parents, community and municipal governmental officers, and fire and law enforcement personnel. Governmental agencies and bodies vested with responsibility for directing and coordinating emergency services on local and state levels shall be included on the committee.

E. The local board shall appoint appropriate persons at least once every three years to review the plan(s).

F. The Board shall develop Emergency Response plan models under Section 53A-3-402(17)(d).

**R277-400-4. Notice and Preparation.**

A. A copy of the plan(s) for each school within a district shall be filed in the district superintendent's office.

B. At the beginning of each school year, parents and staff shall receive a written notice of relevant sections of district and school plans which are applicable to that school.

C. Each school shall designate an Emergency Preparedness/Emergency Response week prior to April 30 of each school year. Community, student, teacher awareness, training, or inservice, such as those outlined in R277-400-7 and 8, would be appropriate activities offered during the week.

**R277-400-5. Plan(s) Content--Educational Services and Student Supervision.**

The plan shall contain measures which assure that, during an emergency, school children receive reasonably adequate educational services and supervision during school hours.

A. Evacuation procedures shall assure reasonable care and supervision of children until responsibility has been affirmatively assumed by another responsible party.

B. Release of a child below ninth grade at other than regularly scheduled hours is prohibited unless the parent or another responsible person has been notified and has assumed responsibility for the child. An older child may be released without such notification if a school official determines that the child is reasonably responsible and notification is not practicable.

C. School districts shall, to the extent reasonably possible, provide educational services to school children whose regular school program has been disrupted by an extended emergency.

**R277-400-6. Emergency Preparedness Training.**

The plan shall contain measures which assure that school children receive emergency preparedness training.

A. School children shall be provided with training appropriate to their ages in rescue techniques, first aid, safety measures appropriate for specific emergencies, and other emergency skills.

B. Fire drills:

(1) During each school year, elementary schools shall conduct fire drills at least once each month during school sessions. A fire drill in secondary schools shall be conducted at least every two months, for a total of four fire drills during the nine month school year. The first fire drill shall be conducted within the first two weeks of the school year for both elementary and secondary schools. An exception may be made, subject to the approval of the local fire chief, to postpone a fire drill due to severe weather conditions.

(2) Fire drills shall include the complete evacuation of all persons from the school building or portion thereof used for educational purposes. An exception may be made for the staff member responsible for notifying the local fire department and handling emergency communications.

(3) When required by the local fire chief, the local fire department shall be notified prior to each drill.

(4) When a fire alarm system is provided, fire drills shall be initiated by activation of the fire alarm system.

C. Schools shall hold at least one drill for other emergencies during the school year.

D. Resources and materials available for training shall be identified in the plan.

**R277-400-7. Emergency Response Training.**

A. Each district shall provide an annual inservice for district and school building staff on employees roles, responsibilities and priorities in the emergency response plan.

B. Districts shall require schools to conduct at least one annual drill for school violence emergencies.

C. Districts shall require schools to review existing security measures and procedures within their schools and make adjustments as needs demonstrate and funds are available.

D. Districts shall develop standards and protections to the extent practicable for participants and attendees at school-related activities, with special attention to those off school property.

E. Districts and schools shall coordinate with local law enforcement and other public safety representatives in appropriate drills for school safety emergencies.

**R277-400-8. Prevention and Intervention.**

A. Districts shall provide schools, as part of their regular curriculum, comprehensive violence prevention and intervention strategies such as resource lessons and materials on anger management, conflict resolution, and respect for diversity and other cultures.

B. Districts shall also develop, to the extent resources permit, student assistance programs such as care teams, school intervention programs, and interagency case management teams.

C. In developing student assistance programs, districts are encouraged to coordinate with and seek support from other state agencies and the Utah State Office of Education.

**R277-400-9. Cooperation With Governmental Entities.**

A. As appropriate, a local board may enter into cooperative agreements with other governmental entities to assure proper coordination and support during emergencies.

B. A school district shall cooperate with other governmental entities, as reasonably feasible, to provide emergency relief services. The plan(s) shall contain procedures for assessing and providing district facilities, equipment, and personnel to meet public emergency needs.

C. The plan(s) shall delineate communication channels and lines of authority within the district, city, county, and state.

(1) the Board, through its superintendent, is the chief officer for emergencies involving more than one district or state or federal aid;

(2) the local board, through its superintendent, is the chief officer for district emergencies;

(3) direction and control of emergency operations shall be exercised by the executive heads of government and school districts. Local governments and school districts retain their autonomy and identity throughout all levels of emergency operations;

(4) personnel and resources received from outside sources shall be incorporated into the structure of the local government and school district.

**R277-400-10. Fiscal Procedures.**

The plan(s) shall address procedures for recording district funds expected for emergencies, for assessing and repairing damage, and for seeking reimbursement for emergency expenditures.

**KEY: emergency preparedness, disasters, safety, safety education**

**August 1, 2000 Art X Sec 3**
**Notice of Continuation September 12, 2002 53A-1-401(3)**
**53A-1-402(1)(b)**

**R277. Education, Administration.**
**R277-401. Child Abuse-Neglect Reporting by Education Personnel.**

**1987 Art X Sec 3**
**Notice of Continuation September 12, 2002 53A-1-401(3)**

**R277-401-1. Definitions.**

A. This rule uses the definition of neglected child found in Section 78-3a-103(1)(q).

B. This rule uses the definition of abused child found in Section 78-3a-103(1)(a).

C. "Board" means the Utah State Board of Education.

**R277-401-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to clarify:

(1) the Board's support of early intervention in the child abuse-abuser cycle and of taking early protective measures. The daily contact of education personnel with children places them in an ideal position for identifying and referring suspected cases of abuse.

(2) the role of school employees in reporting and participating in investigations of suspected child abuse as required by Section 62A-4a-403.

**R277-401-3. Procedures.**

A. Any school employee who knows or reasonably believes that a child has been neglected, or physically or sexually abused, shall immediately notify the nearest peace officer, law enforcement agency, or office of the State Division of Child and Family Services (DCFS).

B. It is not the responsibility of school employees to prove that the child has been abused or neglected, or determine whether the child is in need of protection. Investigations are the responsibility of the Division of Child and Family Services. Investigation by education personnel prior to submitting a report should not go beyond that necessary to support a reasonable belief that a reportable problem exists.

C. School officials shall cooperate with social service and law enforcement agency employees authorized to investigate charges of child abuse and neglect, assisting as asked as members of interdisciplinary child protection teams in providing protective, diagnostic, assessment, treatment, and coordination services.

D. Persons making reports or participating in an investigation of alleged child abuse or neglect in good faith are immune from any civil or criminal liability that otherwise might arise from those actions, as provided by law.

E. District policies shall ensure that the anonymity of those reporting or investigating child abuse or neglect is preserved in a manner required by Section 62A-4a-412.

F. A district policy may direct a school employee to notify the building principal of the neglect or abuse. Such a report to a principal, supervisor, school nurse or psychologist does not satisfy the employee's personal duty to report to law enforcement or DFS.

**KEY: child abuse, incest, faculty, students**

**R277. Education, Administration.**
**R277-407. School Fees.**
**R277-407-1. Definitions.**

A. Fee: Any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods. Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through a school. For purposes of this policy, charges related to the National School Lunch Program are not fees.

B. Provision in Lieu of Fee Waiver: An alternative to fee payment and waiver of fee payment. A plan under which fees are paid in installments or under some other delayed payment arrangement is not a waiver or provision in lieu of fee waiver.

C. Student Supplies: Items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities. The term includes pencils, papers, notebooks, crayons, scissors, basic clothing for healthy lifestyle classes, and similar personal or consumable items over which a student retains ownership. The term does not include items such as the foregoing for which specific requirements such as brand, color, or a special imprint are set in order to create a uniform appearance not related to basic function.

D. Optional Project: A project chosen and retained by a student in lieu of a meaningful and productive project otherwise available to the student which would require only school-supplied materials.

E. Textbook: Book, workbook, and materials similar in function which are required for participation in a course of instruction.

F. Waiver: Release from the requirement of payment of a fee and from any provision in lieu of fee payment.

**R277-407-2. Authority and Purpose.**

A. This rule is authorized under Article X, Sections 2 and 3 of the Utah Constitution which vests general control and supervision of the public education system in the State Board of Education and provides that public elementary and secondary schools shall be free except that fees may be imposed in secondary schools if authorized by the Legislature. Section 53A-12-102(1) authorizes the State Board of Education to adopt rules regarding student fees. This rule is consistent with the State Board of Education document, Principles Governing School Fees, adopted by the State Board of Education on March 18, 1994.

B. The purpose of this rule is to permit the orderly establishment of a reasonable system of fees, while prohibiting practices that would exclude those unable to pay from participation in school-sponsored activities.

**R277-407-3. Classes and Activities During the Regular School Day.**

A. No fee may be charged in kindergarten through sixth grades for materials, textbooks, supplies, or for any class or activity, including assemblies and field trips.

B. Textbook fees may only be charged in grades seven through twelve.

C. If a class is established or approved which requires payment of fees or purchase of materials, tickets to events, etc., in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the class shall be subject to the fee waiver provisions of R277-407-6.

D. Students of all grade levels may be required to provide materials for their optional projects, but a student may not be required to select an optional project as a condition for enrolling in or completing a course. Project-related courses must be based upon projects and experiences that are free to all students.

E. Student supplies must be provided for elementary students. A student may, however, be required to replace supplies provided by the school which are lost, wasted, or damaged by the student through careless or irresponsible behavior.

F. Secondary students may be required to provide their own student supplies, subject to the provisions of Section R277-407-6.

**R277-407-4. School Activities Outside of the Regular School Day.**

A. Fees may be charged, subject to the provisions of Section R277-407-6, in connection with any school-sponsored activity which does not take place during the regular school day, regardless of the age or grade level of the student, if participation is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.

B. Fees related to extracurricular activities sponsored by the Utah High School Activities Association may not exceed limits established by the Association. Schools shall collect these fees consistent with school district policies and state law.

**R277-407-5. General Provisions.**

A. No fee may be charged or assessed in connection with any class or school-sponsored or supported activity, including extracurricular activities, unless the fee has been set and approved by the local board of education and distributed in an approved fee schedule or notice in accordance with this rule.

B. Fee schedules and policies for the entire district shall be adopted at least once each year by the local board of education in a regularly scheduled public meeting of the board. Provision shall be made for broad public notice and participation in the development of fee schedules and waiver policies. Minutes of board meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, shall be kept on file by the board of education and made available upon request.

C. Each district shall adopt procedures to reasonably ensure that the parent or guardian of each child who attends school within the district receives written notice of all current and applicable fee schedules and fee waiver policies, including easily understandable procedures for obtaining waivers and for appealing a denial of waiver, as soon as possible prior to the time when fees become due. Copies of the schedules and waiver policies shall be included with all registration materials provided to potential or continuing students.

D. No present or former student may be denied receipt of transcripts or a diploma for failure to pay school fees. A reasonable charge may be made to cover the cost of duplicating or mailing transcripts and other school records. No charge may be made for duplicating or mailing copies of school records to an elementary or secondary school in which the student is enrolled or intends to enroll.

E. To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each district's fee policies shall be designed to limit student expenditures for school-sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations, whether local, state, or national.

F. Donations or contributions may be solicited and accepted in accordance with district policies, but all such requests must clearly state that donations and contributions are voluntary. A donation is a fee if a student must make a donation in order to participate in an activity.

G. In the collection of school fees, districts must comply with statutes and State Tax Commission rules regarding the collection of state sales tax.

**R277-407-6. Waivers.**

A. A board of education shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions in lieu of fee waivers to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.

The waiver policy shall include procedures to ensure that:

(1) a person is designated in each school to administer the policy and grant waivers;

(2) the process for obtaining waivers or pursuing alternatives is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and parents;

(3) students who have been granted waivers or provisions in lieu of fee waivers are not treated differently from other students or identified to persons who do not need to know;

(4) fee waivers or other provisions in lieu of fee waivers are available to any student whose parent is unable to pay the fee in question;

(5) Eligibility

(a) inability to pay is presumed for those who are in state custody or foster care, or receiving public assistance in the form of Aid to Families with Dependent Children, or Supplemental Security Income, or are eligible for free school lunch; and

(b) CASE BY CASE DETERMINATIONS ARE MADE FOR THOSE WHO DO NOT QUALIFY UNDER ONE OF THE FOREGOING STANDARDS but who, because of extenuating circumstances such as, but not limited to, exceptional financial burdens such as loss or substantial reduction of income or extraordinary medical expenses, are not reasonably capable of paying the fee;

(6) textbook fees are waived for all eligible students in accordance with Sections 53A-12-201 and 53A-12-204 of the Utah Code and this Section;

(7) parents are given the opportunity to review proposed alternatives to fee waivers;

(8) a timely appeal process is available, including the opportunity to appeal to the board or its designee;

(9) any requirement that a given student pay a fee is suspended during any period during which the student's eligibility for waiver is being determined or during which a denial of waiver is being appealed; and

(10) the board provides for balancing of financial inequities among district schools so that the granting of waivers and provisions in lieu of fee waivers do not produce significant inequities through unequal impact on individual schools.

B. Expenditures for uniforms, costumes, clothing, and accessories, other than items of typical student dress, which are required for participation in choirs, pep clubs, drill teams, athletic teams, bands, orchestras, and other student groups, and expenditures for student travel as part of a school team, student group, or other school-approved trip, are fees requiring approval of the local board of education, and are subject to the provisions of this section.

C. The requirements of fee waiver and availability of other provisions in lieu of fee waiver do not apply to charges assessed pursuant to a student's damaging or losing school property. Schools may pursue reasonable methods for obtaining payment for such charges, but may not exclude students from school or withhold UNOFFICIAL transcripts or diplomas to obtain payment of those charges, consistent with Section 53A-11-806(2), and the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 USC 1232g, which regulation is hereby incorporated by reference within this rule.

D. Charges for class rings, letter jackets, and similar articles not required for participation in a class or activity are not fees and are not subject to the waiver requirements.

**R277-407-7. Fee Waiver Reporting Requirements.**

Beginning with fiscal year 1990-91, each school district shall attach to its annual S-3 statistical report for inclusion in the State Superintendent of Public Instruction's annual report the following:

(1) a summary of the number of students in the district given fee waivers, the number of students who worked in lieu of a waiver, and the total dollar value of student fees waived by the district;

(2) a copy of the district's fee and fee waiver policies;

(3) a copy of the district's fee schedule for students; and

(4) the notice of fee waiver criteria provided by the district to a student's parent or guardian.

**KEY: education, educational tuitions, education finance**

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| **1994** | **Art X Sec 3** |
| **Notice of Continuation September 12, 2002** | **53A-12-102** |
| | **53A-12-201** |
| | **53A-12-204** |
| | **53A-11-806(2)** |

**R277. Education, Administration.**
**R277-408. Expenditures for Instructional Supplies Required in Utah Public Schools.**
**R277-408-1. Definitions.**

A. "Audiovisual materials" means nonprint items which, with reasonable care and use, may be expected to last for more than one year. This includes such items as tapes and discs, slides and transparencies, films and filmstrips, maps, globes and charts, prints and photographs, and models and mockups.

B. "Board" means the Utah State Board of Education.

C. "Instructional supplies" means instructional computer software, teaching supplies, laboratory materials, student supplies, other instructional materials used by teachers and students in the instructional process and those items that would be coded to the following designations in the Form F-4 Report:

(1) Fund 10 Maintenance and Operation

(a) Function 1000 Instruction Object Codes

(i) 610 Supplies

(ii) 641 Textbooks

(iii) 670 Computer Supplies

(b) Function 2200 Support Services (Instructional) Object Codes

(i) 600 Supplies and Materials

(ii) 644 Library Books

(iii) 650 Periodicals

(iv) 660 Audiovisual Materials

(2) Fund 32 Capital Projects (10 Percent of Basic Levy)

(a) Function 1000 Instruction Object Codes

(i) 610 Supplies

(ii) 641 Textbooks.

D. "Instructional computer supplies" means items that are used in the course of instruction or student use of computers in an instructional or research setting. These supplies include:

(1) software programs that provide instruction, practice or research;

(2) storage devices such as floppy disks, tapes or CD's; and

(3) printing supplies such as toner, paper and inks.

E. "Laboratory materials" means items which are required of students as an integral part of a course, subject, or grade, or those items which are consumed in the teaching-learning process but not considered personal property of students. These may include:

(1) teaching materials: glue, sandpaper, nails, and other such items; thread, needles, bobbins, and similar items for general practice and instruction; flour, sugar, spices, and other food items used in instruction;

(2) instructional media materials: required literary magazines, weekly readers, and other such materials. These may also be classified as textbooks depending on their use and application; and

(3) other: towels, if school towels are required to be used; choir, band, and orchestra robes or capes which have little use to students except for a particular activity; drama costumes other than typical student dress; gym clothing, if required to be uniform or purchased from a particular location; workbooks, resource files, and supplementary text materials which may enrich and individualize the classroom instruction program.

F. "Library books" means books provided for enrichment, extension, or study in depth. They may be general or specialized. They include reference sets and dictionaries, but not textbooks and periodicals.

G. "Periodicals" means serial materials published at fixed intervals, including both the regular published format and microfilm format for permanent collections.

H. "Student supplies" means items which are retained by and become the personal property of the student. These include:

(1) paper, pencils, pens, notebooks, and similar items;

(2) supplies and materials to construct personal items that are retained by the student;

I. "Teaching supplies" means expendable items that may:

(1) be consumed, worn out, or deteriorated in use such as paper, pencils, notebooks, workbooks, chemicals, paints, tests or answer sheets, bulbs, or tubes, or

(2) lose their identity through fabrication or incorporation into a different or more complex unit or substance such as transparency acetate, camera film, laminating supplies, chart paper, mounting or framing materials, or other similar items.

J. "Textbooks" means systematically arranged text materials, in harmony with the state curriculum framework and courses of study, which may be used by students as principal sources of study and which cover a significant portion of the course. These materials:

(1) are designed for student use;

(2) are accompanied by or contain teaching guides and study helps;

(3) may be programmed or self-instructional; and

(4) must appear on the list of state-adopted texts or be approved for pilot or trial use by the State Textbook Commission.

K. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of determining the costs of a program on a uniform basis for each district.

L. "ADM" means Average Daily Membership of students.

M. "USOE" means the Utah State Office of Education.

**R277-408-2. Authority and Purpose.**

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board, Section 53A-1-402(1)(f) which directs the Board to adopt rules regarding the minimum school program, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the amount of funds to be spent by the state and school districts to meet the mandates of Sections 53A-1-402(1)(f) and 53A-1-402(2).

**R277-408-3. Standards.**

A. A school district shall spend a per pupil amount computed as 5.5 percent of the current year's WPU value rounded to the nearest whole dollar times the prior year ADM. School districts may use a two year averaging procedure.

B. A school district shall annually report to the Utah State Office of Education, as directed by the USOE, the expenditures it makes, by category, in any fiscal year for textbooks, library books and materials, periodicals, instructional supplies and audiovisual materials.

C. On-site accreditation visits shall evaluate the

availability of textbooks and educational supplies in the classrooms.

D. Minimum school program funds shall be expended for adequate amounts of textbooks and educational supplies for students before those funds are used to supplement secondary school student activities.

E. The Board may review hardship and inequity situations and may exempt school districts from the minimum expenditure requirement for one year when emergencies exist.

School districts desiring Board review of cases of hardship and inequity may make application to the State Superintendent of Public Instruction for review.

**KEY: educational expenditures, textbooks**
**March 10, 1997** **Art X Sec 3**
**Notice of Continuation September 12, 2002** **53A-1-402(1)(f)**
**53A-1-402(2)**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-410. Accreditation of Schools.**
**R277-410-1. Definitions.**

A. "Accreditation" means formal Board approval of a school that has met standards considered by the Board to be essential for the operation of a quality school program.

B. "Board" means the Utah State Board of Education.

C. "USOE" means the Utah State Office of Education.

**R277-410-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-402(1)(c) which directs the Board to adopt rules for school accreditation, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify accreditation procedures for public and private schools which voluntarily request Board accreditation.

**R277-410-3. Accreditation of Public Schools.**

A. The accreditation program of the Northwest Association of Schools and Colleges is the accreditation program for high schools, special purpose schools, schools containing grades kindergarten through twelve, elementary schools, junior high schools, and middle schools.

B. Elementary schools, junior high schools, and middle schools may instead elect to be accredited in accordance with the standards and procedures adopted in R277-411 or R277-412.

C. All schools, except non-accredited elementary schools, shall complete the annual accreditation report and file it in accordance with USOE procedures.

D. Application for actual accreditation is voluntary.

**R277-410-4. Transfer of Credit.**

A. If a school is accredited by any member of the International Council of School Accreditation Commissions, credit earned at that school is accepted at face value in the public schools in Utah.

B. Credit shall be accepted at face value in the public schools of Utah if a private school is evaluated under the credit approval criteria as established by the Board. Criteria shall include:

(1) Application for credit approval to the Board;

(2) Accreditation by a regional or national organization representing the category of the applicant school. The school's accreditation team shall include a representative from the USOE and shall have included at least the following:

(a) a written self evaluation;

(b) a listing of the school's course offerings;

(c) a description of the process for appointment and evaluation of faculty;

(d) a review of finance, governance, faculty and long range planning;

(3) A description of how the subject matter credits requested for transfer relate to the State Core Curriculum standards.

C. If a school is not accredited, the school district to which the credit is to be transferred may decide whether or not to accept the credit earned at the non-accredited school consistent with Section R277-700-6.

**KEY: accreditation, public schools, private schools**
**November 3, 1998 Art X Sec 3**
**Notice of Continuation September 12, 2002 53A-1-402(1)(c)**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-411. Elementary School Accreditation.**
**R277-411-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Accreditation" means formal Board approval of a school that has met standards considered by the Board to be essential for the operation of a quality school program.

C. "State Committee" means the State Elementary Accreditation Committee.

D. "USOE" means the Utah State Office of Education.

**R277-411-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-402(1)(c) which directs the Board to adopt rules for school accreditation, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) specify the standards and procedures by which elementary schools may become accredited by the Board; and

(2) establish an accreditation program of appropriate and high standards of attainment to assist schools in maintaining and improving education programs.

**R277-411-3. Accreditation Classifications; Reports.**

A. The state accreditation program for elementary schools has two classification categories: accredited and non-accredited. An accreditation rating continues from year to year unless evaluation data, the annual report, and on-site visits justify a change in rating.

B. Within the accredited classification are the following ratings:

(1) fully approved: the school is in compliance with minimum standards. This rating does not infer that improvement cannot be made.

(2) approved with comment: one or two deviations from the standards have appeared for the first time or there are deviations of a minor nature;

(3) approval with advice: the school deviates substantially from one or more standards or no observable effort has been made in the second year to correct deviations from a standard upon which comment was previously made. Approved with comment does not necessarily precede approved with advice;

(4) approved with warning: a serious deviation from one or more standards exists. This rating is usually issued after a school has received the advised or comment status and no improvement is shown. A school may be dropped from fully approved to warned when, in the opinion of the State Committee, the violation is such that it shall not be allowed to persist beyond the current year. If a warned status is recommended by the State Committee, a special meeting shall be held with local school officials prior to making a final recommendation.

C. Schools on warned status may be dropped to a non-accredited status unless significant progress toward overcoming deviations is shown on the next report. An accredited school may not be dropped to a non-accredited status without first receiving a warned status.

D. Deviations from accreditation standards because of hardship, for the purposes of pilot programs and experimentation, or for other reasons may be approved upon proper written application to the State Committee.

E. All accredited elementary schools shall submit an annual accreditation report to the USOE in the fall.

**R277-411-4. Procedures for Evaluation and Classification.**

A. The evaluation of an elementary school for purposes of accreditation and classification is a cooperative activity in which the school, the local district, and the USOE share the major responsibility. Basic to the operation of the program is self-evaluation and self-initiated improvement on the part of the individual school.

B. The procedures for elementary school accreditation are as follows:

(1) application for accreditation is voluntary;

(2) a school planning for accreditation must submit a formal application to the USOE;

(3) school personnel may request the state specialist for accreditation to meet with them in an orientation session to discuss accreditation standards and evaluation procedures;

(4) a school shall complete a self-evaluation. The school may use one of the following documents for its self-evaluation or other means approved by the State Committee:

(a) Evaluative Criteria for Elementary Schools in Utah, Utah State Board of Education, Revised, 1977;

(b) Elementary School Evaluative Criteria, National Study of School Evaluation, Second Edition.

(5) a school, in coordination with the State Committee, sets a date for a two day on-site evaluation by a team appointed by the State Committee. The on-site visit takes place after the self-evaluation is completed and prior to April 15. The visiting team represents a cross section of professional educators from throughout the state and staff members from the USOE. The school staff may recommend individuals to serve on the visiting team.

(6) written evaluation results from the on-site visit and other pertinent information, including the self-evaluation, are presented to the State Committee. After review of all information, the State Committee makes a recommendation to the Board relative to an accreditation status. The Board is the final accrediting authority.

(7) continuing accreditation is subject to a review of annual reports by the State Committee, and to periodic visits by representatives of the State Committee.

(8) annual reports for purposes of accreditation are due to the school district office by February 1 of each year and to the USOE by February 15.

**R277-411-5. Accreditation Standard I: The Education Program.**

A. An elementary school shall develop a written philosophy of education consistent with the goals and priorities of the local board of education and the Board. It shall be implemented by specific objectives which delineate the purposes and scope of the school's education program.

B. A school shall conduct a balanced learning program for its students in accordance with the state program of studies for

elementary school and district policies.

C. Activities which are an outgrowth of the instruction program shall be available to permit students to perform, lead, and follow on an individual and group basis. Approved activities include government, festivals, assemblies, programs, and physical fitness exercises.

D. A school shall continuously examine its philosophy and objectives and evaluate its instruction program to ensure that basic understanding and skills are learned, maintained, and strengthened.

**R277-411-6. Accreditation Standard II: The Staff; School Atmosphere.**

A(1) All professional personnel shall hold a valid certificate for the position for which employed. The credentials and assignment of each staff member shall be included on the initial accreditation report. On succeeding reports, only staff members who do not meet the certification standard for the positions they fill are required on the report.

(2) teaching loads shall not be excessive and assignments shall be consistent with teacher preparation, experience, and interests. There shall be a planned teacher supervision program. There shall be positive and wholesome teacher-administrator and teacher-pupil relationships.

(3) there shall be no more than normal turnover in the school. Excessive turnover of teachers may be found to exist in schools of 10 or fewer teachers if the rate exceeds 50 percent and in schools of more than 30 teachers if it exceeds 25 percent.

B. Pupil support services shall be available to the elementary school and shall include adequate secretarial assistance, aides, custodial services, lunchroom personnel, and bus drivers.

C. Orientation programs shall be developed for staff new to a school or the district. Formal and informal educational experiences shall be available for new and continuing staff members, including district in-service workshops, curriculum development activities, state workshops, and university workshops.

D. The school shall conduct an effective public relations program to improve school atmosphere. Pupil behavior shall reflect a sound education program.

E. Positive and negative aspects of school atmosphere shall be reported in the annual accreditation report in a narrative form. Extenuating circumstances which may clarify negative factors may be included in the narrative. Indications of school atmosphere shall be evaluated within the school building, on the playground, on locations of school-sponsored activities, and on school transportation facilities.

**R277-411-7. Accreditation Standard III: Instructional Media.**

A. Media shall be used as specific tools of instruction to aid in the achievement of specific curricular aims and unit objectives.

(1) teachers shall be aware of available media and be familiar with proper techniques for their use;

(2) equipment shall be kept in good operating condition. Instruction and assistance shall be provided in the proper utilization and operation of equipment;

(3) all available materials shall be catalogued and indexed.

B(1) A school shall have an instructional media center which shall be used as the hub of instruction in the school. It shall be appropriate and adequate for the number of students enrolled. The area housing the collection of materials in the media center shall provide:

(a) a display area such as bulletin boards or cases;

(b) a means to circulate materials;

(c) a properly maintained and integrated card catalog or comparable electronic alternative;

(d) a processing area for receiving and processing materials;

(e) sufficient shelving or storage facilities to make all materials and equipment readily available to students and faculty;

(f) vertical filing facilities for unbound reference materials;

(g) seating and study facilities which can be used to accommodate at least the largest class in the school, small study groups, or individual study; and

(h) office space for media personnel.

(2) the instructional media center staff shall instruct students in the use of the center and shall schedule time for class research and individual study.

(3) all materials shall be properly inventoried and catalogued. A shelf list of all titles shall be maintained. Proper storage and filing spaces shall be provided for current and back copies of periodicals.

(4) the instructional media center shall maintain an adequate balance of all types of media materials. The distribution of periodicals shall be such that all instruction areas of the school are adequately served.

(5) "The Guidelines for the Development of an Instructional Media System, Part IV" shall be used as an evaluative instrument in examining current status, identifying critical needs, and establishing long and short range goals for a school's media center.

C. School personnel shall be familiar with and follow state laws and Board rules in regard to the adoption of texts from the state adopted textbook list. There shall be evidence of teacher involvement in the evaluation and selection of textbooks on the local level. Adequate funds shall be allocated to purchase textbooks and other learning materials needed for the school. Each student shall be provided with texts and learning materials to satisfy individual needs and abilities in all areas of curriculum.

D. Adequate supplies shall be available for the instructional needs of the curriculum.

**R277-411-8. Accreditation Standard IV: Pupil Personnel Services.**

A. A pupil personnel director shall coordinate and supervise pupil personnel services. Counseling and social services shall be available to the school as needed. Approved pupil personnel services include resource programs, guidance and counseling, psychological services, psychometric services, pupil accounting, social work, school health services, and identification and diagnostic services for special education programs.

B. Pupil personnel services shall be continuously

evaluated and improved.

C. A school shall have a planned program orienting individuals and groups to new education situations and experiences in the school.

**R277-411-9. Accreditation Standard V: Administration.**

A. The principal is the chief administrator of the school. The principal shall:

(1) serve as instructional leader and curriculum consultant;

(2) serve as coordinator of pupil personnel services and as a counselor to students;

(3) assist the district superintendent in selecting and assigning the staff to the school and make recommendations concerning continued employment or reassignment of the school's teachers;

(4) orient the professional staff to and require compliance with school, district, Board, state, and federal laws, rules, and policies;

(5) be responsible for student placement, safety and health, control and discipline, and student accounting;

(6) provide an adequate system of reporting and interpreting student progress and the school program to parents and patrons;

(7) be responsible for the operation and management of the school plant;

(8) be responsible for securing, caring for, and disbursing equipment and school supplies; and

(9) provide overall management for the school and school programs, including completing district, state and federal reports.

B. Supervisory functions performed in the school through the administration shall include:

(1) participating with district personnel in organizing workshops, in-service training programs, inter-school visits, conferences, and individual and school research programs;

(2) assisting teachers in daily instruction activities as needed;

(3) assisting teachers in diagnosing needs and providing programs to meet the needs of individual children;

(4) assisting teachers in understanding and using course guides;

(5) observing and evaluating teacher performance, custodians, lunch personnel, and other school staff;

(6) providing professional and resource materials for staff;

(7) having knowledge of school, district, state, and federal programs;

(8) assisting the staff in self-evaluation; and

(9) performing other supervisory duties assigned by the local board or the district superintendent.

C. Student Records

(1) Complete student permanent records shall be kept where they are protected by a fireproof vault, safe, or filing cabinet.

(2) A duplicate set of records shall be kept in a separate place if fireproof storage is not available.

(3) When a student transfers to another school, a copy of the student's permanent records and other useful data shall be forwarded promptly to the new school upon parental request.

D. An annual inventory of school equipment, supplies, and books shall be maintained.

**R277-411-10. Accreditation Standard VI: School Plant.**

A. The school plant shall be consistent with the philosophy of the school and facilitate the meeting of student needs.

B. Buildings and classrooms shall provide for the school's program. Space shall allow for a variety of classroom and extra-class experiences, recreational uses, and community activities. The plant shall provide adequate illumination, water, heat, ventilation, and sanitation services. It shall be designed, equipped, inspected, and maintained in compliance with required safety standards.

C. Administrative space shall be used for:

(1) meeting the pupils and the public;

(2) conferences;

(3) routine office work;

(4) inside and outside communications; and

(5) keeping and filing records.

D. The school food service areas shall be adequate in size and designed to meet the needs of the program. The facility shall be functional, aesthetic, safe, sanitary, well-maintained, and provide for efficient operation of the program.

**KEY: accreditation**
**1987 Art X Sec 3**
**Notice of Continuation September 12, 200253A-1-402(1)(c)**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-412. Junior High and Middle School Accreditation.**
**R277-412-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Accreditation" means formal Board approval of a school that has met standards considered by the Board to be essential for the operation of a quality school program.

C. "State Committee" means the State Junior High and Middle School Accreditation Committee which is composed of public school principals and school district personnel, private school representatives, special purpose representatives, and USOE personnel.

D. "USOE" means the Utah State Office of Education.

**R277-412-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(c) which directs the Board to adopt rules for school accreditation, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) specify the standards and procedures by which junior high and middle schools may become accredited by the Board; and

(2) establish an accreditation program of appropriate and high standards of attainment to assist schools in maintaining and improving education programs.

**R277-412-3. Accreditation Classifications; Reports.**

A. The state accreditation program for junior high and middle schools has two classification categories: accredited and non-accredited. An accredited rating continues from year to year unless evaluation data, annual reports, and on-site visits justify a change in rating.

B. Within the accredited classification are the following ratings:

(1) accredited with commendation: the school's current practices and plan for improvement are of a superior quality. This rating does not infer that improvement cannot be made;

(2) accredited with full approval: the school is in compliance with minimum standards;

(3) accredited with comment: one or two deviations from the standards have appeared for the first time or there are deviations of a minor nature;

(4) accredited with advice: the school deviates substantially from one or more standards or no observable effort has been made in the second year to correct deviations from a standard upon which comment was previously made. Approved with comment does not necessarily precede approved with advice;

(5) accredited with warning: a serious violation of one or more standards exists. This rating is usually issued after a school has received the advised or comment status and no improvement is shown. A school may be dropped from fully approved to warned when, in the opinion of the State Committee, the violation is such that it shall not be allowed to persist beyond the current year. A warned school is usually dropped to a non-accredited status the following year unless acceptable correction is made. No school is dropped to a non-accredited status unless it was warned the preceding year and a special meeting has been held with local school officials.

C. Schools on warned status may be dropped to a non-accredited status unless significant progress toward overcoming deviations is shown on the next report. An accredited school may not be dropped to a non-accredited status without first receiving a warned status unless there is justification for the exception. Justification may include the blatant disregard by the accredited school for the standards set and provided by the State Committee.

D. All junior high and middle schools seeking or wishing to continue accreditation status shall submit an annual accreditation report to the USOE in the fall.

**R277-412-4. Procedures for Evaluation and Classification.**

A. The evaluation of junior high and middle schools for purposes of accreditation and classification is a cooperative activity in which the school, the local district, and the USOE share the major responsibility. Basic to the operation of the program is self-evaluation and self-initiated improvement on the part of the individual school.

B. The procedures for junior high and middle school accreditation are as follows:

(1) application for accreditation is voluntary;

(2) a school planning for accreditation must submit a formal application to the USOE;

(3) school personnel may request the state specialist for accreditation to meet with them in an orientation session to discuss accreditation standards and evaluation procedures;

(4) a school must complete a self-evaluation. The school may use one of the following documents for its self-evaluation or other means approved by the State Committee:

(a) Junior High/Middle School Evaluative Criteria, National Study of School Evaluation;

(b) Junior High School Evaluative Criteria, Utah State Board of Education.

USOE staff members, parents, students, and community members may be invited to assist in the evaluation process.

(5) A school, in coordination with the State Committee, shall set a date for a two day, on-site evaluation by a team appointed by the State Committee. The on-site visit takes place after the self-evaluation is completed and prior to April 15. The visiting team represents a cross section of professional educators from throughout the state.

(6) Written evaluation results from the on-site visit and other pertinent information, including the self-evaluation, shall be presented to the State Committee. After review of all information, the State Committee shall make a recommendation to the Board or its designee relative to an accreditation status. The Board is the final accrediting authority.

(7) Continuing accreditation is subject to a review of annual reports by the State Committee, and to a complete evaluation at least every ten years, beginning with the 1979-80 to 1989-90 ten year period.

(8) annual reports for purpose of accreditation are due in the local school district office by October 1 of each year and in the USOE by October 15.

**R277-412-5. Accreditation Standard I: The Education Program.**

A. A school shall develop a written philosophy of education consistent with the priorities and goals of the local board of education and the Board.

(1) It shall be implemented by specific objectives which delineate the purposes and scope of the school's education program.

(2) The objectives shall be reflected in practices observable in the total school program.

B. A school shall determine the content of its program of studies by cooperative planning and continuous evaluation.

(1) The state program of studies approved by the Board for junior high and middle schools shall be followed.

(2) A school shall provide evidence of multi-cultural education taking place within the school. Emphasis shall be given to the interdependence of world cultures.

C. Evaluation of a school's philosophy, objectives, and instruction program shall be conducted by the school.

**R277-412-6. Accreditation Standard II: Teaching Personnel; School Atmosphere.**

A. Each teacher shall meet the state certification standards for the position for which the teacher is employed.

B. The school staff shall be adequate in number to provide for individualized student guidance, placement, and instruction.

(1) No school shall show excessive professional staff load. The student-professional staff ratio, the enrollment of students shown in the annual report divided by the full-time equivalency of the professional staff members, shall not be greater than 25 to 1. Professional staff members include teachers, administrators, counselors, and media coordinators.

(2) The number of daily classes taught per teacher shall not exceed six in a seven period day or five in a six period day. The number of daily class preparations for each teacher in the school shall not be excessive. The total number of students instructed by any teacher shall not exceed 160 per day according to the discount formula in Subsection 6(B)(3).

(3) The number of students instructed in a day is the total of the following computations:

(a) Total the number of students in duplicated classes and reduce by ten percent. A class is a duplicate class if one preparation is made for two or more sections;

(b) Compute keyboarding classes at two-thirds of the actual enrollment;

(c) Compute classes in physical education at two-thirds of the actual enrollment;

(d) Compute music classes normally taught in large groups such as band, orchestra, and chorus at one-half of the actual count or 30, whichever is the smaller figure;

(e) Count each supervised study hall period as 15 students, regardless of the number in the class;

(f) Compute all other classes at the actual enrollment.

C. The credentials and assignment of each staff member shall be included on the initial accreditation report. On succeeding reports, only staff members who do not meet the certification standard for the position they fill shall be reported.

D. Positive and negative aspects of school atmosphere shall be reported annually in narrative form in the annual accreditation report. Extenuating circumstances which help clarify the negative factors may be included in the report.

**R277-412-7. Accreditation Standard III: Instructional Media.**

A. The "Guidelines for the Development of an Instructional Media System" shall be used by a school to examine the current status of, identify critical needs of, and establish long range and short range goals for its instructional media system.

B. A school shall include a copy of a completed "School Media Profile--OPSCAN" with the annual report.

C. All schools shall meet the minimum standards for library books, material, periodicals, and teaching supplies adopted by the Board. An adequate accounting system for supplies shall be maintained. Adequate storage space and facilities shall be provided.

D. School personnel shall be familiar with and follow state laws in regard to the adoption of texts.

**R277-412-8. Accreditation Standard IV: Pupil Personnel Services.**

A. Educational, career, and personal counseling services shall be available to all students and provided by qualified, certificated personnel.

(1) There shall be one full-time equivalent guidance specialist for every 20 teachers.

(2) Counselors, social workers, psychologists, and psychiatrists assigned regularly to the school shall be counted in computing the ratio.

(3) Their names shall all appear on the Personnel Schedule and the Professional Preparation Sheet.

(4) Teacher and administrator time devoted to counseling which is not scheduled is not used in computing the ratio.

B. Conferences and reporting services shall include scheduled parent-teacher conferences.

C. Alternative pupil personnel programs shall be explicitly explained in a written statement justifying action for State Committee approval.

**R277-412-9. Accreditation Standard V: Administration, Supervision, and Organization.**

A. Administrative and Supervisory Staff

(1) Administrative and supervisory staff includes:

(a) superintendents;

(b) principals;

(c) assistant principals;

(d) administrative interns;

(e) athletic directors;

(f) attendance directors;

(g) activity directors; and

(h) department heads during released time used for administrative duties.

A person may be counted in only one area at a time. At least one-half of the school day shall be available to the principal for administrative duties.

(2) there shall be at least one administrator for the first 350 students or fraction thereof, and a second for 700 students. Three are recommended for schools with 1050 plus enrollment.

(3) the administrative staff, through cooperative action with the central office staff, shall provide a school climate within which meaningful innovation and reasonable experimentation are encouraged.

B. The principal's primary duty is leadership for the education program. To carry out this duty the principal shall:

(1) actively participate in the recruitment, selection, and assignment of school staff;

(2) effectively utilize staff and motivate administrators and teachers to achieve the highest degree of teaching potential;

(3) coordinate efforts to obtain maximum utilization of existing facilities, equipment, and material, and to acquire facilities, equipment, and materials for the school;

(4) supervise and improve instruction;

(5) become well informed about educational developments that promote dynamic leadership, and know and enforce school, district, and Board rules and policies;

(6) follow accepted budgetary procedures;

(7) provide an adequate system of reporting and interpreting student progress and the school program to the parents and patrons; and

(8) coordinate efforts to establish and maintain good community relations.

C. There shall be one clerical worker for each 350 students or major fraction thereof. No school shall have less than a half-time secretary. Only clerical staff being paid for services may be counted.

D. Student Records

(1) Complete student permanent records shall be filed in one place where they are protected by a fireproof vault, safe, or filing cabinet which meets Underwriters Laboratories Class C specifications.

(2) If fireproof storage is not possible, a duplicate set of records shall be maintained in a separate location.

(3) Records may be placed on computer.

(4) The minimum information contained on student permanent records shall include subjects taken, grades by subject with an explanation of the grading system, credit earned with an explanation of the system for awarding credit, attendance records, and standardized test scores.

(5) When a student transfers to another school, a copy of the student's permanent records and other useful data shall be forwarded promptly to the new school upon parental request.

(6) An annual inventory of equipment, books, and supplies shall be maintained.

**R277-412-10. Accreditation Standard VI: School Plant and Facilities.**

A. The school plant shall be adequate in size and shall provide attractive facilities for offering a modern program of education suited to the needs and interests of the students and community. The building shall be adequately maintained to ensure the health and safety of its occupants.

B. Custodial service, heating, lighting, ventilation, water supply, and lavatories shall be sufficient to ensure hygienic conditions for students and staff.

C. Proper safeguards for the protection of students and staff against hazards such as fires, storms, earthquakes, and acts of war shall be taken throughout the buildings and grounds.

D. An inspection of the school plant and equipment shall be made by an appropriate, approved official each school year. Deficiencies shall be listed on the annual accreditation report.

**KEY: accreditation**
**April 29, 1997** **Art X Sec 3**
**Notice of Continuation September 12, 2002** **53A-1-402(1)(c)**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-433. Disposal of Textbooks in the Public Schools.**
**R277-433-1. Definitions.**

A. "Textbook" means any book, workbook, or materials similar in function which are required for participation in a course of instruction. The term also includes texts approved for pilot or trial use by the State Textbook Commission or books used in classes for which textbooks are generally not adopted at the state level.

B. "Useable textbooks" means a set of at least 25 textbooks, as defined above, that are not badly damaged, worn out or outdated.

C. "USOE" means the Utah State Office of Education

**R277-433-2. Authority and Purpose.**

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public school system under the Board and by Section 53A-12-207, U.C.A. 1953, which requires the USOE to make rules providing for the disposal or reuse of textbooks in the public schools.

B. The purpose of this rule is to facilitate the reuse or disposal of textbooks in the public schools.

**R277-433-3. Disposal Procedure.**

A. Public school districts shall notify the USOE in writing by April 1 of each year of their intent to dispose of useable textbooks.

B. The USOE shall compile and distribute to all public school districts a list of available useable textbooks by June 1 of each year.

C. A school district or a school that desires to obtain books from another school district shall notify the district that owns the books within four months of the publication and distribution of the books-available list.

D. Schools and school districts are responsible for negotiating the exchange of the books.

**R277-433-4. Final Disposal of Textbooks.**

If a school district does not receive timely notice, as defined above, of another district's interest in available books, the local district may dispose of the books consistent with district policy.

**KEY: textbooks**
**1991 Art X Sec 3**
**Notice of Continuation September 12, 2002 53A-12-207**

**R277. Education, Administration.**
**R277-445. Classifying Small Schools as Necessarily Existent.**
**R277-445-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "USOE" means the Utah State Office of Education.

C. "WPU" means weighted pupil unit: the basic unit used to calculate the amount of state funds a school district may receive.

D. "Superintendent" means the State Superintendent of Public Instruction.

E. "ADM" means average daily membership.

**R277-445-2. Authority and Purpose.**

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-109(2) which directs the Board to adopt standards to classify schools as necessarily existent small rural schools.

B. The purpose of this rule is to specify the standards by which the Board classifies schools as necessarily existent. Schools so classified may receive state funds which are in addition to those received on the basis of the regular WPU formula.

**R277-445-3. Standards.**

A. A school may be classified as necessarily existent if it meets the following standards:

(1) the average daily membership for the school does not exceed:

(a) 160 for elementary schools, including kindergarten at a weighting of .55 per average daily membership; or

(b) 300 for one or two-year secondary schools; or

(c) 450 for three-year secondary schools; or

(d) 550 for four-year secondary schools; or

(e) 600 for six-year secondary schools.

(2) the school meets the criteria of Subsection 3(A)(1) and one-way bus travel over Board approved bus routes from the school to the nearest school within the district of the same type requires:

(a) students in kindergarten through grade six to travel more than 45 minutes;

(b) students in grades seven through twelve to travel more than one hour and 15 minutes.

(3) the school meets the criteria of Subsection 3(A)(1) for grades K-6 if it is an elementary school or grades 7-12 if it is a secondary school except as provided below:

(a) schools with less than six grades are not recognized as necessarily existent small schools if it is feasible in terms of school plant to consolidate them into larger schools and if consolidated would not meet the criteria listed in Subsections 3(A)(1) and 3(A)(2) above;

(b) a secondary complex or attendance area which when analyzed on a 7-12 grade basis, meets the criteria of necessarily existent, shall not have its qualifying status invalidated by a reorganization pattern determined by a district;

(c) in unusual circumstances, where in the judgment of a panel of at least five USOE staff members designated by the Superintendent, the existing conditions warrant approval of a middle school, such a school may be designated by the Superintendent as a necessarily existent small school, provided it meets the criteria listed in Subsection 3(A)(1) above or 3(A)(4) below.

(4) the school meets the criteria of Subsection 3(A)(1), may not meet the criteria of Subsection 3(A)(2), but is in a district which has been consolidated to the maximum extent possible, and activities in cooperation with neighboring districts within or across county boundaries are appropriately combined;

(5) the school meets the criteria of Subsection 3(A)(1), does not meet the criteria of Subsections 3(A)(2), but there is evidence acceptable to the Superintendent of increased growth in the school sufficient to take it out of the small school classification within a period of three years.

(a) The school may be classified as necessarily existent until its ADM surpasses the size standard for small schools of the same type.

(b) The school's ADM shall be annually compared to the school's projected ADM to determine increases or decreases in enrollment.

(c) An increase in the school's ADM shall be 80 percent of the projected annual increase. If the assessment for the first or second year shows the increase in the ADM is less than 80 percent, the school shall no longer be classified as necessarily existent;

(6) the school meets both the criteria of Subsection 3(A)(1) and at least the accredited with comment level of Board accreditation standards (as provided in R277-410, R277-411, and R277-412), does not meet the criteria of Subsections 3(A)(2), 3(A)(3), 3(A)(4), or 3(A)(5), but there is evidence as determined by the Superintendent that consolidation may result in undesirable social, cultural, and economic changes in the community, and:

(a) the school has a safe and educationally adequate school facility with a life expectancy of at least ten years, as judged, at least every five years, by the USOE after consultation with the district; or

(b) the district shall incur construction costs by combining a school seeking necessarily existent small school status with an existing school and such construction and land costs exceed the insurance replacement value of the exiting school by 30 percent. The existing school shall have a life expectancy of at least ten years. In the event that the ADM from the school seeking necessarily existent small school status when combined with the ADM at the existing school exceed criteria in R277-445-3A(1), the existing school would be disqualified.

(c) schools qualifying under standard (b) above shall be evaluated every five years.

(7) the school meets the criteria of Subsection 3(A)(1), does not meet the criteria of Subsections 3(A)(2), 3(A)(3), 3(A)(4), 3(A)(5), or 3(A)(6), and the removal of the necessarily existent status results in capital costs which the school district cannot meet within three years when utilizing all funds available from local, state, or federal sources or a combination of the sources.

B. Additional WPU funds allocated to school districts for necessarily existent small schools shall be utilized for programs at the school for which the units were allocated. The funds must

supplement and not supplant other funds allocated to special schools by the local board of education.

C. Schools shall be classified after consultation with the district and in accordance with applicable state statutes and Board standards.

**KEY: school enrollment, educational facilities**
**September 1, 2000 Art X Sec 3**
**Notice of Continuation September 12, 2002 53A-1-401(3)**

**R277. Education, Administration.**
**R277-459. Teachers' Supplies and Materials Appropriation.**
**R277-459-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Classroom teacher" means a permanent teacher position filled by one or more teachers employed by a school district, the Utah Schools for the Deaf and the Blind, the Edith Bowen Laboratory School, and charter schools and paid on the teachers' salary schedule or a charter school salary schedule. Teachers shall be employed for an entire contract period and shall provide instructional services to students.

C. "Field trip" means a district, or school authorized excursion for educational purposes.

D. "Teaching supplies and materials" means both expendable and nonexpendable items that are used for educational purposes by teachers in classroom activities and may include such items as:

(1) paper, pencils, workbooks, notebooks, supplementary books and resources;

(2) laboratory supplies, e.g. photography materials, chemicals, paints, bulbs (both light and flower), thread, needles, bobbins, wood, glue, sandpaper, nails and automobile parts;

(3) laminating supplies, chart paper, art supplies, and mounting or framing materials;

(4) This definition should be broadly construed in so far as the materials are used by the teacher for instructional purposes in classrooms, lab settings, or in conjunction with field trips.

E. "USOE" means the Utah State Office of Education.

**R277-459-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, by Section 53A-1-402(1)(b) which directs the Board to establish rules and minimum standards for school programs, and by state legislation which provides a designated appropriation for teacher classroom supplies and materials.

B. The purpose of this rule is to distribute money through school districts, the Utah Schools for the Deaf and the Blind, the Edith Bowen Laboratory School, and charter schools to classroom teachers for school materials and supplies and field trips.

**R277-459-3. Distribution of Funds.**

A. Each school district, the Utah Schools for the Deaf and the Blind, the Edith Bowen Laboratory School, and charter schools shall provide the USOE with a teacher count of full-time classroom teachers, as defined above, as of October 1 of each year.

B. The USOE shall distribute funds through each school district, the Utah Schools for the Deaf and the Blind, the Edith Bowen Laboratory School, and charter schools proportionally per eligible position to the extent of the appropriation.

C. Individual teachers shall designate the uses for their allocations within the criteria of this rule. Districts and other eligible schools shall develop procedures and timelines to facilitate the intent of the appropriation.

D. Each school district shall ensure that each eligible individual has the opportunity to receive the proportionate share of the appropriation.

E. If a teacher has not spent or committed to spend the individual allocation by April 1, the school or district may make the excess funds available to other teachers or may reserve the money for use by teachers the following years.

F. These funds are to supplement, not supplant, existing funds for these purposes.

G. These funds are to be accounted for by the district or eligible school using state or district procurement and accounting policies.

**R277-459-4. Other Provisions.**

A. Districts, the Utah Schools for the Deaf and the Blind, the Edith Bowen Laboratory School, and charter schools shall allow, but not require, teachers to jointly use their allocations.

B. Districts, the Utah Schools for the Deaf and the Blind, the Edith Bowen Laboratory School, and charter schools shall allow part-time or job-sharing teachers a proportionate allocation.

**KEY: teachers, supplies**
**August 1, 2002** **Art X Sec 3**
**Notice of Continuation July 12, 2000** **53A-1-402(1)(b)**

**R277. Education, Administration.**
**R277-478. Block Grant Funding.**
**R277-478-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Core Curriculum (Core)" means minimum academic standards provided through courses as established by the Board which shall be mastered by all students K-12 as a requisite for graduation from Utah's secondary schools.

C. "Fiscal Year (FY)" means the twelve month period from July 1 through June 30 during which state funds are distributed.

D. "Limited English proficient (LEP)" means a student who:

(1) is aged 3 through 21;

(2) was not born in the United States or whose native language is a language other than English and comes from an environment where a language other than English is dominant; or

(3) is a Native American or Alaska Native or who is a native resident of the outlying areas and comes from an environment where a language other than English has had a significant impact on such individual's level of English language proficiency; or

(4) is migratory and whose native language is other than English and comes from an environment where a language other than English is dominant; and

(5) has sufficient difficulty speaking, reading, writing, or understanding the English language and whose difficulties may deny such individual the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

E. "USOE" means the Utah State Office of Education.

**R277-478-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish criteria and procedures for distributing block grant funds and to provide for appropriate monitoring, reporting, and accountability.

**R277-478-3. Local Discretionary Block Grant Programs.**

A. Districts and charter schools shall use Local Discretionary Block Grant funds for:

(1) maintenance and operation costs;

(2) capital outlay; and

(3) debt service.

B. Local Discretionary Block Grant funds shall be distributed using the following formula:

(1) Eight percent of the total local discretionary block grant appropriation shall be divided into 41 equal shares.

(2) Each district shall receive one share.

(3) One share shall be divided equally among all charter schools except charter schools which were once existing district schools.

(4) The remaining portion of the local discretionary block grant appropriation (ninety two percent)shall be divided among the districts and charters based upon their total WPUs in K-12, and the necessarily existent small schools portion of the Minimum School Basic program.

C. Local discretionary program expenditures shall:

(1) meet criteria and accountability standards consistent with the purposes of this rule.

(2) be reported to the Board in annual budget and financial reports.

**R277-478-4. Interventions for Student Success Block Grant.**

A. Districts and charter schools shall use Interventions for Student Success Block Grant funds to improve student academic success, with priority given to interventions on behalf of students not performing to standards as determined by U-PASS test results.

B. Each school district and charter school governing board shall develop a plan for the expenditure of Interventions for Student Success Block Grant funds. In developing the plan, districts should consider involving educators from Core areas identified in R277-700.

C. The plan shall specify anticipated results; it may include continuing existing programs to improve students' academic success for which funds were appropriated before FY 2003.

D. Each local school board and charter school governing board shall approve its plan for the expenditure of the block grant funds in an open public meeting under Sections 52-4-1 through 10 before the funds are designated for specific programs.

E. By September 1 of each year, each local school board and charter school governing board shall submit a copy of its plan, a letter of assurance to the Board that its plan was approved in an open and public meeting, and a copy of the local board minutes of the meeting in which the plan was approved.

F. If a local school board or charter school governing board fails to submit the documents specified in R277-478-4E to the Board by September 1, the Board shall withhold the distribution of Interventions for Student Success Block Grant funds until documentation required under this rule is provided.

G. Interventions for Student Success Block Grant funds shall be distributed using the following formula:

(1) Seventy seven percent of the total student success block grant appropriation shall be allocated using the Local Discretionary Block Grant formula as outlined in R277-478-3B.

(2) The remaining portion of the Interventions for Student Success Block Grant funds (twenty three percent) shall be allocated on the basis of the number of LEP students as determined by Title IX, Part A, Section 9101(25) in each district or charter school for the prior fiscal year.

**R277-478-5. Quality Teaching Block Grant.**

A. Districts and charter schools shall use Quality Teaching Block Grant funds to implement school and school district comprehensive, long-term professional development plans required under Section 53A-3-701.

B. Each local school board shall, as provided by Section 53A-3-701, review and either approve or recommend modifications for each school's comprehensive, long-term professional development plan within the district so that each school's plan is compatible with the district's comprehensive,

long-term professional development plan.

C. Each local school board and charter school governing board shall approve in an open public meeting a plan to spend Quality Teaching Block Grant funds to implement the school district's or charter school's comprehensive, long-term professional development plan. In developing the plan, districts and charter schools should consider involving educators from every core area.

D. By September 1 of each year, the local school board and charter school governing board shall submit a copy of its plan, a letter of assurance to the Board that the plan was approved in an open and public meeting, and a copy of the local board minutes of the meeting in which the plan was approved.

E. If a local school board or charter school governing board fails to submit the documents specified in R277-478-5D to the Board by September 1, the Board shall withhold the distribution of Quality Teaching Block Grant funds until documentation required under this rule is provided.

F. Career Ladder Programs

(1) Districts and charter schools may choose to implement a career ladder program of their own design with money received under the Quality Teaching Block Grant.

(2) If a career ladder program is funded, districts and charter schools shall ensure that their school and district professional development plans are consistent with Section 53A-3-701(2)(iv).

(3) Districts and charters shall also report to the Board how the career ladder funds were spent consistent with Section 53A-9-106.

G. Quality Teaching Block Grant funds shall be distributed using the following formula: thirty percent of the total Quality Teaching Block Grant funds shall be distributed on the basis of the number of full-time equivalent teachers employed by the district or charter school for the immediately previous school year. The remaining seventy percent of the funds shall be distributed on the basis of the number of WPUs in the basic programs of the Minimum School Program for the immediately previous school year.

**KEY: educational expenditures, block grant funding**
**September 4, 2002** **Art X Sec 3**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-502. Educator Licensing and Data Retention.**
**R277-502-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Utah Professional Educator License (license)" means authorization issued by the Board which attests to the fact that the holder has satisfied the requirements for employment in the public school system.

C. "License areas of concentration (license areas)" means specific areas identified by the Board in which an individual has adequate training as determined by the USOE authorizing the person to teach in that area. Completion of a particular preparation program offered by a university/college or of a Board-approved program verifies that qualifications for a license area are satisfied.

D. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.

E. "Renewal" means reissuing or extending the length of a license consistent with R277-501.

F. "Appropriate employment" means full-time experience, in the field for which the license is issued, in a public or accredited private or parochial school.

G. "Special assignment teacher" means a teacher assigned to:

(1) alternative school settings in which the teacher must teach three or more subjects;

(2) teach homebound students with the expectation that several subjects may be covered by the same teacher; or

(3) necessarily existent small or rural schools with limited faculty and enrollment in which teachers may teach three or more core subjects.

H. "Letter of Authorization" means a temporary license or approval issued to a district for an individual who has not completed the requirements for a level 1, 2, or 3 license, such as a student teacher or a person hired to perform professional services on a limited basis when licensed or properly endorsed personnel are not available.

I. "Professional development" means locally or Board-approved education-related training or activities that enhance an educator's background. Professional development points are required for periodic educator license renewal.

J. "State Approved Endorsement Plan (SAEP)" means a plan in place for a licensed educator working to complete the requirements of an endorsement.

**R277-502-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-6-104 which gives the Board power to issue licenses, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule specifies the types of license levels and license areas available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah. All licensed educators employed in the Utah public schools shall be licensed consistent with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

**R277-502-3. Program Approval.**

A. The Board uses the approved program approach to educator preparation and licensing which includes:

(1) the development of educator preparation programs by post-secondary institutions in accordance with established rules and procedures;

(2) the official review and evaluation of each institutional program in accordance with standards adopted by the Board and the subsequent approval of a program if standards are met;

(3) approval of applicants for licensing, whether students in post-secondary institutions, individuals with out-of-state licenses, or individuals in other circumstances, prior to their significant unsupervised access to students.

(4) licensing by the Board of an applicant upon completion of an approved program;

(5) the issuance, by the Board, of an educator license. The initial level 1 license may be converted to a level 2 or level 3 license upon demonstration of competence during employment.

B. The Board, or its designee, shall establish deadlines and uniform forms and procedures for all aspects of licensing.

**R277-502-4. Professional Development Requirements/Procedures for Temporary License Holders.**

A. Temporary license holders authorized by the Board upon request of a school district shall be responsible for professional development consistent with this rule.

(1) Individuals authorized by the Board shall complete professional development annually.

(a) The proposed credit shall be approved by the supervising principal.

(b) Individuals who do not meet the minimum yearly requirement shall not be approved by the Board for employment in successive years by a school district.

(c) Professional development credit for educators employed under letters of authorization shall be completed by August 15 of each year for which the individual was employed and shall be submitted to the employing school district on a form provided by the USOE.

B. Individuals employed under letters of authorization and working toward a level 1 license or an endorsement may use the same credit or activities for required professional development.

**R277-502-5. License Levels, Procedures, and Periods of Validity.**

A. An initial license, the level 1 license, is issued to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program.

(1) The recommendation indicates that the individual has satisfactorily completed the programs of study required for the preparation of educators and met licensing standards in the license areas for which the individual is recommended.

(2) The level 1 license is issued for three years.

(3) Employing school districts and educator preparation institutions shall cooperate in making special assistance available for educator level 1 license holders. The resources of both may be used to assist those educators experiencing

significant problems. The institution in closest proximity to the employing school district is the first choice for district involvement; however, the school district is encouraged to make a cooperative arrangement with the institution from which the educator graduated.

B. A level 2 license may be issued by the Board to a level 1 license holder upon the recommendation of the employing school district.

(1) The recommendation shall be made following the completion of three years of successful, professional growth and educator experience and before the level 1 license expires.

(2) A level 2 license shall be issued for five years and shall be valid unless suspended or revoked for cause by the Board.

(3) The level 2 license shall be renewed for successive five year periods consistent with R277-501.

C. A level 3 license may be issued by the Board to a level 2 license holder who has achieved National Board Professional Teaching Standards Certification or who holds a doctorate in the educator's field of practice.

(1) It is valid for seven years unless suspended or revoked for cause by the Board.

(2) The level 3 license shall be renewed for successive seven year periods consistent with R277-501.

D. Licenses expire on June 30 of the year shown on the face of the license and may be renewed any time after January of that year. Responsibility for securing renewal of the license rests upon the holder.

**R277-502-6. Professional Educator License Areas and Approved Programs.**

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following license areas, a person shall hold a valid license issued by the Board in the respective license areas:

(1) Preschool Special Education;

(2) Early Childhood Education;

(3) Elementary Education;

(4) Secondary Education;

(5) Administrative/Supervisory;

(6) Special Education;

(7) Communication Disorders;

(8) School Counselor, School Psychologist, and School Social Worker; and

(9) Applied Technology Education

B. Licensed educators may be authorized by the Board for employment in the public schools under the following programs:

(1) a license earned through a Board-approved post-secondary educator education program.

(a) The individual seeking a license shall be approved by the post-secondary program personnel following completion of a USOE-approved license area program;

(b) The program shall require university/college students to satisfy the requirements of Section 53A-3-410, criminal background check, prior to having significant unsupervised access to students. This may include review and approval by the Utah Professional Practices Advisory Commission (UPPAC), consistent with its rules and policies, prior to classroom experience.

(2) alternative educator preparation consistent with R277-503.

(3) eminence, consistent with R277-511.

(4) applied technology, consistent with R277-518.

C. Under prepared educators:

(1) If a licensed secondary or middle education educator is assigned in a subject area for which that educator is not endorsed, the employing school district shall request a Letter of Authorization from the Board to continue the educator's assignment.

(2) Educators who are licensed but working out of their endorsement area shall request and prepare a State Approved Endorsement Plan (SAEP) to complete the requirements of an endorsement with a USOE education specialist.

D. Special assignment educators or educators in other similar circumstances shall hold a license with endorsement(s) in one or more core curriculum subjects plus have completed not fewer than six semester hours of state-approved college/university or 100 professional development points in the subject areas in which they are assigned.

E. Special assignment educators not meeting the minimum professional development requirements, shall be placed on an SAEP.

F. Individuals applying for a license with a specific license area shall meet the specific requirements for the designated program.

G. Licenses may be endorsed to indicate qualification in a subject or content area. An endorsement without a current license is not valid for employment purposes.

H. Student teachers and interns shall also hold valid temporary student teacher or intern licenses issued by the Board.

**R277-502-7. Professional Educator License Reciprocity.**

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A level 1 license may be issued to a graduate of an educator preparation program in another state which was, at the time of the applicant's graduation, approved by that state on the basis of standards contained in Standards for State Approval of Teacher Education, or equivalent standards.

(1) Standards are available in the USOE Licensing Section or on the NCATE website.

(2) The institution conducting the teacher preparation program must be accredited by the National Council for Accreditation of Teacher Education (NCATE) or one of the six major regional accrediting associations.

(3) If the applicant has one or more years of previous educator experience, a level 2 license may be issued upon the recommendation of the employing Utah school district after at least one year, but no more than three years, of educator experience in the state.

**R277-502-8. Renewal of Professional Educator Licenses.**

A. The level 1 license shall be issued for three years and renewed consistent with R277-501-4.

B. The level 2 or level 3 license may be renewed in five or seven year cycles consistent with R277-501-4 or R277-501-5.

**R277-502-9. Computer-Aided Credentials of Teachers in**

**Utah Schools (CACTUS).**

A. CACTUS maintains public and protected and private information on licensed Utah educators.

(1) Public information includes name, educational qualifications, degrees earned, and current assignment (if applicable).

(2) Private or protected information includes such items as home address, date of birth, social security number, and any disciplinary action taken against an individual's license.

B. A CACTUS file is opened on a licensed Utah educator when:

(1) the individual's fingerprint cards are submitted to the USOE, or

(2) the USOE receives an application for a license from an individual seeking licensing in Utah.

C. The data in CACTUS may be changed as follows:

(1) Authorized USOE staff or designated school district staff, if data is demographic;

(2) licensing information including endorsements, license areas, degrees, by USOE staff;

(3) work experience by employing school district for current school year only;

D. Licensed individuals may view personal data if registered with the Utah Education Network (UEN). An individual may not change or add data.

E. Individuals currently employed by public, private or parochial schools under letters of authorization are included in CACTUS. Interns may be included on CACTUS.

F. Designated individuals have access to CACTUS data:

(1) A licensed individual may view his own file;

(2) Designated USOE staff may view or change CACTUS files on a limited basis with specific authorization;

(3) For employment or assignment purposes only, designated district or school staff members may access data on individuals employed by their own districts or data on licensed individuals who are not currently employed by public schools, charter schools, some private and parochial schools and ATCs.

**R277-502-10. Professional Educator License Fees.**

A. The Board, or its designee, shall establish a fee schedule for the issuance and renewal of licenses and endorsements consistent with 53A-6-105. All endorsements to which the applicant is entitled may be issued or renewed with the same expiration date for one licensing fee. The renewal of endorsements at different times may require the payment of a renewal fee for each endorsement.

B. A fee may be charged any time credit is submitted for license renewal.

C. An endorsement may be added at any time, and unless the license is reprinted, there shall be no charge. If a new license is issued, a fee shall be charged.

**KEY: professional competency, educator licensing**
**January 4, 2002 Art X Sec 3**
**Notice of Continuation September 12, 2002 53A-6-104**
**53A-1-401(3)**

**R277. Education, Administration.**

**R277-505. Administrative/Supervisory Certificates and Programs.**

**R277-505-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Basic Administrative/Supervisory Certificate" means the initial certificate issued by the Board which permits the holder to be employed in a public school position which requires administration or supervision of kindergarten, elementary, middle, or secondary levels.

C. "Standard Administrative/Supervisory Certificate" means a certificate issued by the Board after a holder has demonstrated competence under the Basic Administrative/Supervisory Certificate.

D. "Acceptable professional experience" means successful, full-time experience in public or accredited private or parochial schools in an area for which certification is required for employment in the public schools.

E. "USOE" means the Utah State Office of Education.

F. "Internship" means an on-site supervised experience in an accredited public or private school or other approved location.

**R277-505-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53A-6-101(1) and (2) which permit the Board to issue certificates for educators, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) specify the requirements for Administrative/Supervisory Certificates; and

(2) specify the standards which shall be met by a teacher preparation institution in order to receive Board approval of its program for administrators and supervisors.

**R277-505-3. Positions Requiring an Administrative/Supervisory Certificate.**

A. An individual shall hold either a Basic or a Standard Administrative/Supervisory Certificate if the individual supervises educators who hold Basic or Standard Certificates. The following positions require a person to hold an Administrative/Supervisory Certificate:

(1) superintendent;

(2) principal, all levels; and

(3) assistant/associate/vice principal whose administrative duties utilize fifty percent or more of their school time.

B. Unless only non-certificated employees are supervised, the following district positions also require a person to hold an Administrative/Supervisory Certificate:

(1) assistant superintendent;

(2) administrative assistant;

(3) director;

(4) specialist;

(5) subject matter supervisor; and

(6) curriculum coordinator.

C. A principal of an elementary or middle school with fewer than six FTE teachers, including the principal, may perform duties appropriate to the position while holding a Basic or Standard Teaching Certificate.

D. Holders of administrative endorsements issued before the date of approval of this policy are not required to hold the new Administrative/Supervisory Certificate unless their assignment is changed to areas not covered by their current endorsement.

E. Administrative or supervisory interns currently registered for academic credit for the internship are not required to hold an Administrative/Supervisory Certificate but shall be issued an Intern Certificate by the respective institution in accordance with Board standards.

**R277-505-4. Certification Requirements.**

A. An applicant for the Basic Administrative/Supervisory Certificate shall have done all of the following:

(1) hold a teaching, special education, school counselor, school psychologist, or school social worker certificate;

(2) complete at least a fifth year of training in a Board approved administrative-supervisory certification program, including a master's degree in administration or supervision or a related area;

(3) complete not fewer than two years of acceptable full-time professional experience in an education-related area in a public or accredited private or parochial school. Appropriate experiences that may be substituted for up to one-half of this requirement include:

(a) alternative school and similar type professional experience;

(b) community college, trade-technical college, and other post-secondary professional experience;

(c) headstart and preschool professional experience;

(d) college of education or state education agency professional experience; and

(e) professional experience in academic departments of colleges or universities if there has been sufficient involvement with public school programs and curriculum.

(4) be recommended by an institution whose program of preparation has been approved by the Board.

B. In addition to Subsection A, above, an applicant for the Basic Administrative/Supervisory Certificate shall complete an administrative internship. The internship shall satisfy the following criteria:

(1) The internship shall consist of a minimum of 450 hours of supervised clinical experiences.

(2) Additional hours required by a university for seminars or discussion sessions shall not be included in the required 450 hours.

(3) A minimum of 225 of the required 450 hours shall take place in a school setting which offers the opportunity of working with a properly certificated principal, students, faculty, classified employees, parents and patrons.

(4) The remainder of the required internship hours may include experience in school district offices, the USOE or other approved and appropriate agencies.

(5) The majority of the school-level supervised experience shall take place during the regular school day in concentrated blocks of a minimum of three hours each when students are present.

(6) Interns' involvement in extracurricular activities is expected.

(7) Internships shall include experiences at both elementary and secondary school levels.

(8) Interns shall have clinical experience in a different school than where the intern is employed as a teacher.

C. The holder of a Basic Administrative/Supervisory Certificate who does not have the opportunity to function in an administrative or supervisory position may, upon request, have the Basic Certificate renewed once for an additional three-year period. Subsequent renewals will require evidence of continued professional growth, e.g., college course work or professional experience related to administration or supervision. If a recommendation for Standard Certification is not received after three years of administrative or supervisory experience, the Basic Certificate may not be renewed.

D. An applicant for the Standard Administrative/Supervisory Certificate shall have done all of the following:

(1) complete three years of successful, acceptable, professional experience in school administration or supervision under a Basic Administrative/Supervisory Certificate or its equivalent;

(2) be recommended by the employing school district with input from a teacher education institution.

E. Districts may employ administrators on a limited basis subject to the provisions of R277-511, Eminence and Special Qualification Authorization or R277-512, Letters of Authorization.

**R277-505-5. Standards for the Approval of Programs for the Preparation of Administrators/Supervisors.**

The administrator/supervisor preparation program of an institution may be approved if it meets the standards prescribed in the Standards for State Approval of Teacher Education for Supervisory and Administrative Specialization.

**KEY: professional competency, teacher certification, accreditation**

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| **1993** | **Art X Sec 3** |
| **Notice of Continuation September 12, 2002** | **53A-6-101(1)** |
| | **53A-6-101(2)** |
| | **53A-1-401(3)** |

**R277. Education, Administration.**

**R277-506. School Counselors, School Psychologists, and School Social Workers Certificates and Programs.**

**R277-506-1. Definitions.**

A. "Provisional Certificate" means a designation that an applicant has met all requirements of Section 3A(1), below.

B. "Basic Certificate" means the initial certificate issued by the Board which permits the holder to be employed as an educator in the public schools.

C. "Standard Certificate" means a certificate issued by the Board after a holder has demonstrated competence under the Basic Certificate.

D. "Practicum" means a practical, usually simulated, application of previously studied theory, monitored by a professional in the field. The experience shall include at least the following subject matter: test administration and interpretation, guidance curriculum planning, individual and group counseling, individual education and occupational planning, and use of career information delivery systems.

E. "SEOP" means student educational occupational plan.

F. "Guidance curriculum planning" means structured, developmental experiences presented systematically through classroom and group activities which are organized in areas of self-knowledge, education and occupational exploration, and career planning directed toward meeting the Board approved student competencies.

G. "Career information delivery systems" means the state approved computer software program which provides specific occupation and career planning information, scholarship information, and information about postsecondary institutions.

H. "Structured groups" means groups conducted by counselors outside the classroom to respond to students' identified interests or needs.

I. "Classroom presentations" means team teaching or assisting in teaching guidance curriculum learning-activities or units by counselors in classrooms, the guidance center, or other school facilities.

J. "Advisement" means counseling with students using personal-social, education, career and labor market information to plan personal, educational and occupational goals.

K. "Assessment" means analysis and evaluation of students' abilities, interests, skills and achievement by counselors; counselors may use this test information and other data as the basis for assisting students to develop immediate and long-range plans.

L. "Placement" means assisting students in making the transition from school to school, school to work or school to additional education and training.

M. "Personal counseling" means counseling on a small-group or individual basis for students expressing difficulties dealing with relationships, personal concerns, or normal developmental tasks; this includes assisting students in identifying problems, causes, alternatives, and possible consequences to initiate appropriate action.

N. "Consultation" means consulting with parents, teachers, other educators, and community agencies regarding strategies to help students.

O. "Referral" means recommending/contacting referral sources, agencies, or programs to deal with crises such as suicide, violence, abuse and terminal illness.

P. "Program management" means following and understanding guidance program evaluation, data analysis, follow-up studies, and the continued development and updating of guidance learning activities and resources.

Q. "Community outreach" means becoming knowledgeable about community resources and referral agencies, field trip sites, employment opportunities, and local labor market information.

R. "Public relations" means orienting staff and the school community to the comprehensive guidance program through such means as newsletters, local media, and school-community presentations.

S. "Board" means the Utah State Board of Education.

T. "USOE" means the Utah State Office of Education.

U. "State Advisory Committee on Teacher Education (SACTE)" means a committee charged with promoting and providing liaison among preparing institutions, public schools, professional organizations, and the USOE for the improvement of teacher certification and teacher education. SACTE is comprised of 30 members: six deans of universities/colleges, four superintendents, three elementary teachers, three secondary teachers, two elementary principals, two secondary principals, and ten others representing counselors, applied technology education, Utah Association of Teacher Educators, Board of Regents, Utah Education Association, USOE, School Boards Association, and a lay person.

**R277-506-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53A-1-402(1)(a) and 53A-6-103 which permit the Board to make rules regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify:

(1) the standards for obtaining certificates issued by the Board for employment in the public schools as school counselors, school psychologists, and school social workers; and

(2) the standards which shall be met by a post-secondary institution in order to receive Board approval of its program for school counselors, school psychologists, and school social workers.

**R277-506-3. School Counselor.**

A. There are three levels of certification for a K-12 school counselor.

(1) Provisional certificate--an applicant for the Level I (Provisional) Certificate shall:

(a) be formally admitted into a Board approved counselor education program;

(b) have completed all of the requirements of a Board approved counselor education program except the field experience at a Board approved institution of higher education;

(c) have completed a practicum experience which includes:

(i) individual education and career planning to include student education plan (SEP) at the elementary level and student education/occupation plan (SEOP) at the secondary level,

(ii) guidance curriculum planning,

(iii) individual and group counseling,

(iv) test administration and interpretation, and

(v) use of career information delivery systems;

(d) have been recommended for Level I Certification by an institution of higher education with a Board approved counselor education program.

(2) Basic Certificate - an applicant for the Level II (Basic) Certificate shall:

(a) have completed the requirements for a Level I Provisional Certificate identified in Section 3A(1), above;

(b) under the supervision of a school counselor with a Level III School Counselor Certificate, have completed a Board approved 600 hour field experience in a counselor education program in a school setting and demonstrated competence during field experience in the following:

(i) structured groups,

(ii) classroom presentations,

(iii) advisement,

(iv) assessment,

(v) placement and follow-up,

(vi) personal counseling,

(vii) consultation,

(viii) referral,

(ix) program management,

(x) community outreach, and

(xi) public relations;

(c) have a master's degree in school counseling or in a related field, as approved by the Board; and

(d) have been recommended for a Level II Certificate by an institution that has a program for the preparation of school counselors approved by the Board;

(3) Standard Certificate - an applicant for the Level III (Standard) Certificate shall:

(a) have completed the requirements for a Level II Basic Certificate identified in Section 3A(2), above;

(b) have completed at least two years of successful experience as a school counselor under a Basic School Counselor Certificate or its equivalent.

(c) have been recommended for the Standard Certificate by the superintendent of the employing school district.

(4) An individual with a Level I Certificate may be allowed to function as a counselor for not more than three years, after which the counselor shall move to the Level II to be allowed to continue as a school counselor;

(5) Only 400 hours of field experience are required for the Basic Certificate if the applicant has two or more years of successful teaching or counseling experience, as approved by the Board; and

(6) Field experience shall be supervised on site by qualified district employees unless the Board approves alternate supervision.

**R277-506-4. School Psychologist.**

A. An applicant for the Basic School Psychologist Certificate shall have:

(1) completed at least an approved masters degree or equivalent certification program consisting of a minimum of 60 semester (90 quarter) hours in school psychology at an accredited institution;

(2) demonstrated competence in the following:

(a) understanding the organization, administration, and operation of schools, the major roles of personnel employed in schools, and curriculum development;

(b) directing psychological and psycho-educational assessments and intervention including all areas of exceptionality;

(c) individual and group intervention and remediation techniques, including consulting, behavioral methods, counseling, and primary prevention;

(d) understanding the ethical and professional practice and legal issues related to the work of school psychologists;

(e) social psychology, including interpersonal relations, communications and consultation with students, parents, and professional personnel;

(f) coordinating and working with community-school relations and multicultural education programs and assessment; and

(g) using and evaluating tests and measurements, developmental psychology, affective and cognitive processes, social and biological bases of behavior, personality, and psychopathology;

(3) completed a one school year internship or its equivalent with a minimum of 1200 clock hours in school psychology. At least 600 of the 1200 clock hours shall be in a school setting or a setting with an educational component; and

(4) been recommended by an institution whose program of preparation for school psychologists has been approved by the Board.

B. Current certification as a nationally certified school psychologist by the National School Psychology Certification Board shall be accepted in lieu of requirements for the Basic Certificate.

C. An applicant for the Standard School Psychologist Certificate shall:

(1) satisfy requirements for the basic school psychologist certificate;

(2) have completed at least two years of successful experience as a school psychologist under a Basic School Psychologist Certificate or its equivalent; and

(3) have been recommended by the employing school district with input from a teacher education institution.

D. The school psychologist preparation program of an institution may be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for school psychologists. These standards were developed by school psychologists in Utah schools and recommended to the Board by SACTE and are available from the USOE Certification Office.

**R277-506-5. School Social Workers.**

A. An applicant for the Basic School Social Worker Certificate shall have:

(1) completed a Board approved program for the preparation of school social workers including a Master of

Social Work degree from an accredited institution;

(2) demonstrated competence in the following:

(a) articulating the role and function of the school social worker including relationships with other professional school and community personnel, organizations, and agencies;

(b) understanding the organization, administration, and evaluation of a school social work program;

(c) social work practice with individuals, families, and groups;

(d) developing and interpreting a social history and psycho-social assessment of the individual and the family system;

(e) analyzing family dynamics and experience in counseling and conflict management and resolution;

(f) communication and consulting skills in working with the client, the family, the school staff, and community and social agencies;

(g) understanding the teaching/learning environment;

(h) analyzing school law and child welfare issues;

(i) using social work methods to facilitate the affective domain of education and the learning process; and

(j) understanding knowledge pertaining to the cause and effects of social forces, cultural changes, stress, disability, disease, deprivation, neglect, and abuse on learning and on human behavior and development, and the effect of these forces on minorities of race, ethnicity, and class.

(3) completed an approved school social work internship in a school setting or in an agency which includes a substantial amount of experience with children and contact with schools; and

(4) been recommended by an institution whose program of preparation for social workers has been approved by the Board.

B. An applicant for the Standard School Social Worker Certificate shall have:

(1) completed at least two years of successful experience as a school social worker under a Basic School Social Worker Certificate or its equivalent; and

(2) been recommended by the employing school district with input from a teacher education institution.

C. The social worker program of an institution may be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for school social workers, developed and available as provided in Subsection R277-506-4D.

**KEY: educational program evaluations, professional competency, teacher certification**
**December 3, 1996** **Art X Sec 3**
**Notice of Continuation September 12, 2002** **53A-1-402(1)(a)**
**53A-6-103**
**53A-1-401(3)**

**R277. Education, Administration.**

**R277-514. Board Procedures: Sanctions for Educator Misconduct.**

**R277-514-1. Definitions.**

In addition to terms defined in Section 53A-6-103, the following definitions apply:

A. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional, criminal, or incompetent conduct; is unfit for duty; has lost licensure in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.

B. "Board" means the Utah State Board of Education.

C. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a unit of the public education system or an accredited private school.

D. "Licensure Committee" means a committee of the Board which reviews issues relating to licensure of educators.

E. "Commission" means the Utah Professional Practices Advisory Commission.

F. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.

G. "Party" means the complainant or the respondent.

H. "Recommended disposition" means a recommendation for resolution of a complaint.

I. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

J. "Superintendent" means the State Superintendent of Public Instruction.

**R277-514-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public schools in the Board, Section 53A-6-405 relating to withdrawal or denial of licensure by the Board for cause, Section 53A-6-307 in which the Board retains the power to issue or revoke licenses, hold hearings or take other disciplinary action as warranted, and Subsection 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide an appeals process for decisions made by UPPAC, including a review by the Superintendent; and to specify the procedures under which the Board may take action against an educator's license for misconduct.

**R277-514-3. Administrative Review by Superintendent.**

A. If an administrative action is taken by the Commission which results in a recommendation to the Board for:

(1) suspension of an educator's license for two years or more, or

(2) revocation of an educator's license,

B. Either party may request review by the Superintendent within 15 days from the date that the Commission sends written notice to both parties that the Commission has made its administrative recommendation.

C. The request for review shall consist of the following:

(1) name, position, and address of appellant;

(2) issue(s) being appealed; and

(3) signature of appellant.

D. If the Superintendent finds:

(1) that procedural errors have occurred which may have violated fairness or due process issues, the Superintendent shall refer the case back to the Commission for reconsideration as to whether or notthe findings, conclusions or decisions of the Commission are supported by a preponderance of the evidence, or that the recommended disposition presents a reasonable resolution of the case. After reconsideration is completed, the Superintendent shall notify all parties to the case, and refer the matter to the Board for final disposition consistent with this rule.

**R277-514-4. Licensure Committee Procedures.**

A. Except as provided under Subsection R277-514-4(E), if the Board receives an allegation of misconduct by an educator, the allegation shall be forwarded to the Executive Secretary of the Professional Practices Advisory Commission for action under R686-100.

B. A case referred to the Board by the Commission, following review by the Superintendent, or upon appeal under R686-100-17C, shall be assigned to the Licensure Committee.

C. The Licensure Committee shall review the case file and the recommendation of the Commission. If the Licensure Committee finds that there have not been serious procedural errors on the part of the Commission, that the findings and conclusions of the Commission are reasonable and supported by a preponderance of the evidence, and that the recommended disposition presents a reasonable resolution of the case, then the Licensure Committee shall approve the Commission's action and forward the case to the full Board for its consideration.

D. If the Licensure Committee finds that there is insufficient information in the case file to complete its work, the Licensure Committee may direct the parties to appear and present additional evidence or clarification.

E. If the Licensure Committee finds that serious procedural errors have occurred which have violated the fundamental fairness of the process, then the Licensure Committee shall refer the case back to the Commission to correct the errors.

F. If the Licensure Committee determines that the findings or conclusions of the Commission are not supported by a preponderance of the evidence, or that the recommended disposition does not present a reasonable resolution of the case, then the Licensure Committee may refer the case back to the Commission for further action or may, in the alternative, prepare its own findings, conclusions, or recommended disposition.

G. If the Licensure Committee prepares its own findings, conclusions, or recommendation, then the Licensure Committee shall forward its findings, conclusions, or recommendation to

the Board together with the file as received from the Commission.

**R277-514-5. Board Procedures.**

A. Upon receiving a case from the Licensure Committee, the members of the Board may accept the recommendation of the Licensure Committee or may review the case file, findings, conclusions, and recommended disposition. If the Board finds that there have not been serious procedural errors, that the findings and conclusions are reasonable and supported by a preponderance of the evidence, and that the recommended disposition presents a reasonable resolution of the case, then the Board shall approve the findings and recommended disposition.

B. If the Board finds that serious procedural errors have occurred which have violated the fundamental fairness of the process, then the Board shall refer the case back to the Commission to correct the errors.

C. If the Board determines that the findings or conclusions are not supported by a preponderance of the evidence, or that the recommended disposition does not present a reasonable resolution of the case, then the Board may refer the case back to the Commission for further action or may, in the alternative, prepare other findings, conclusions, or disposition.

D. If the Board finds that there is insufficient information in the case file to complete its work, the Board may direct the parties to appear and present additional evidence or clarification.

E. If the Board finds it advisable to do so, the Board may initiate investigations or hearings regarding the initial or continued licensure of an individual and take disciplinary action upon its own volition without referring a given case to the Commission.

F. The Board shall issue a written order regarding its action which contains its conclusions and its disposition of the case, and direct the State Superintendent to serve a copy of the written order upon the parties.

G. All documents used by the Board in reaching its decision, and a copy of the Board's final order, shall be made part of the permanent case file.

H. The decision of the Board is final.

**R277-514-6. Notification Requirements and Procedures.**

A. An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school employee shall immediately report that belief to the school principal, district superintendent, or the Commission. A school administrator receiving such a report shall immediately submit the information to the Commission if the employee is licensed as an educator.

B. A local superintendent shall notify the Commission if an educator is found, pursuant to an administrative or judicial action, to be guilty of:

(1) unprofessional conduct or professional incompetence which results in suspension for more than one week or termination, or which otherwise warrants Commission review; or

(2) immoral behavior.

C. Failure to comply with Subsection A or B constitutes unprofessional conduct.

D. The State Office of Education shall notify the educator's employer of any final action taken by the Board; and shall notify all Utah school districts and the NASDTEC Educator Information Clearinghouse whenever a license is revoked or suspended, or if an educator has surrendered a license or allowed it to lapse in the face of allegations of misconduct rather than accept an opportunity to defend against the allegations.

**KEY: disciplinary actions, professional competency, teacher licensure***

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| **April 3, 2000** | **Art X Sec 3** |
| **Notice of Continuation September 12, 2002** | **53A-6-405** |
| | **53A-6-307** |
| | **53A-1-401(3)** |

**R277. Education, Administration.**
**R277-521. Professional Specialist Licensing.**
**R277-521-1. Definitions.**

A. "Accredited college or university" means a school or institution which is sanctioned through a review process by a regional or national accrediting agency recognized by the United States Department of Education.

B. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in public school administration.

C. "Board" means the Utah State Board of Education.

D. "USOE" means the Utah State Office of Education.

E. "Volunteer or work experience with the public schools" means regular time spent at specific volunteer assignments such as school board member; regular school district employee; regular classroom volunteer or tutor; or local, regional or state PTA board member under the direction of licensed personnel.

**R277-521-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-104(1) which authorizes the Board to issue licenses for educators, and Section 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish standards for licencing of professional specialists and administrators.

**R277-521-3. Level 1 License.**

A. Finance and Statistics: An individual employed at least 20 hours per week in a school district or by the Board may be eligible for this license if the individual satisfies the following:

(1) has a minimum of a Bachelor's degree from an accredited college or university in accounting, finance, business statistics or a related area; and

(2) can demonstrate at least minimal experience in education which may include:

(a) four semester hours or the quarter hour equivalent from an accredited college or university in education-related classes;

(b) a minimum of five hours of USOE or district inservice in education related classes; or

(c) volunteer or work experience or education experience with the public schools.

(3) submits documentation of education courses or related experience, or both, for evaluation and approval by section/department staff.

B. Law and Legislation: An individual employed at least 20 hours per week by a school district or by the Board, may be eligible for the professional specialist license if the individual satisfies the following:

(1) active member of the Utah State Bar; and

(2) can demonstrate at least minimal experience in education which may include:

(a) four semester hours or the quarter hour equivalent from an accredited college or university in education-related classes;

(b) a minimum of five hours of USOE or district inservice in education related classes; or

(c) volunteer or work experience or education experience with the public schools.

(3) submits documentation of education courses or related experience, or both, for evaluation and approval by section/department staff.

C. Evaluation and Assessment: An individual employed at least 20 hours per week by a school district or by the Board, shall be eligible for the professional specialist license if the individual satisfies the following:

(1) has a minimum of a Bachelor's degree from an accredited college or university in psychology, education, or educational psychology; and

(2) can demonstrate at least minimal experience in education which may include:

(a) four semester hours or the quarter hour equivalent from an accredited college or university in education-related classes;

(b) a minimum of five hours of USOE or district inservice in education related classes; or

(c) volunteer or work experience or education experience with the public schools.

(3) submits documentation of education courses or related experience, or both, for evaluation and approval by section/department staff.

**R277-521-4. Level 2 License.**

A. Finance and Statistics: An individual employed at least 20 hours per week in a school district or by the Board shall be eligible for this license if the individual satisfies all applicable conditions under R277-521-3A and the following:

(1) has completed a Masters degree in accounting, finance, business statistics or a related area, or CPA (certified public accountant) from an accredited college or university; and

(2) provides documentation of significant educational experience such as:

(a) 10-12 hours education-related or supervisor-approved course work; or

(b) 20 hours USOE or district inservice in education-related classes; or

(3) provides documentation of significant volunteer or work experience as demonstrated by increased levels of responsibilities as defined under R277-521-1D or education experience.

B. Law and Legislation: An individual employed at least 20 hours per week in a school district or by the Board shall be eligible for this license if the individual satisfies all applicable conditions under R277-521-3B and the following:

(1) has completed 20 semester hours or equivalent quarter hours from an accredited college or university in:

(a) educational administration; or

(b) educational instruction; or

(c) supervisor-approved course work; or

(2) provides documentation of significant educational experience such as:

(a) 10-12 hours education-related or supervisor-approved course work; or

(b) 20 hours USOE or district inservice in education-related classes; or

(3) provides documentation of significant volunteer or work experience as demonstrated by increased levels of responsibilities as outlined under R277-521-1D.

C. Evaluation and Assessment: An individual employed at

53A-6-104(1)
53A-1-401(3)

least 20 hours per week in a school district or by the Board shall be eligible for this license if the individual satisfies all applicable conditions under R277-521-3C and the following:

(1) has completed 20 semester hours or equivalent quarter hours beyond the Bachelor's degree from an accredited college or university in:

(a) educational psychology; or

(b) supervisor-approved course work; and

(2) provides documentation of significant educational experience such as:

(a) 10-12 hours education-related or supervisor-approved course work; or

(b) 20 hours USOE or district inservice in education-related classes; or

(3) significant volunteer or work experience as demonstrated by increased levels of responsibilities as outlined under R277-521-1D.

**R277-521-5. Level 3 License.**

A. Finance and Statistics: An individual employed at least 20 hours per week in a school district or by the Board shall be eligible for this license if the individual satisfies all applicable conditions under R277-521-3A and R277-521-4A and the following:

(1) has completed a Doctorate or Masters degree in accounting, finance, business statistics or a related area, and a CPA consistent with Section 53A-6-103(9)(d); and

(2) has earned a teacher, counselor, or administrative license.

B. School Law and Legislation: An individual employed at least 20 hours per week in a school district or by the Board shall be eligible for this license if the individual satisfies all applicable conditions under R277-521-3B and R277-521-4B and the following:

(1) has completed a Doctorate other than law consistent with Section 53A-6-103(9)(d) and at least a Masters degree in a USOE-approved area of study; and

(2) has earned a teacher, counselor, or administrative license.

C. Evaluation and Assessment: An individual employed at least 20 hours per week in a school district or by the Board shall be eligible for this license if the individual satisfies all applicable conditions under R277-521-3C and R277-521-4C and the following:

(1) has completed a Doctorate consistent with Section 53A-6-103(9)(d); and

(2) has earned a teacher, counselor, or administrative license.

**R277-521. Other Requirements.**

A. An applicant for licensing under R277-521 shall satisfy the criminal background check requirements under Section 53A-6-401.

B. An applicant for licensing under R277-521 shall satisfy professional development requirements under Section 53A-6-104(2) and R277-501.

**KEY: education, license**
**September 4, 2002** **Art X Sec 3**

**R277. Education, Administration.**
**R277-608. Prohibition of Corporal Punishment in Utah's Public Schools.**
**R277-608-1. Definitions.**

A. This rule uses the definitions of 53A-11-801.

B. "Board" means the Utah State Board of Education.

C. "USOE" means the Utah State Office of Education.

**R277-608-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities and Section 53A-11-801 through 805 which provides guidelines for the use of reasonable and necessary physical restraint or force in educational settings.

B. The purpose of this rule is to prohibit the use of corporal punishment in the public schools of Utah.

**R277-608-3. Reporting Requirements.**

A. Each school district shall incorporate in the district plan submitted to the USOE annually, the prohibition of corporal punishment.

B. A district policy shall incorporate a prohibition of corporal punishment, appropriate sanctions and appeal procedures for district employees disciplined under this rule and the corresponding state statute.

**R277-608-4. Special Education Exception(s) to this Rule.**

Districts shall have in place, as part of their district special education plans, procedures or manuals, criteria and procedures for using appropriate behavior reduction intervention in accordance with state and federal law.

**KEY: students' rights, disciplinary problems, teachers**
**1992 Art X Sec 3**
**Notice of Continuation September 10, 2002 53A-1-401(3)**
**53A-11-801 through 805**

**R277. Education, Administration.**
**R277-703. Centennial Scholarship for Early Graduation.**
**R277-703-1. Definitions.**

A. "ATC" means Applied Technology Center.

B. "Board" means the Utah State Board of Education.

C. "SEOP" means student education/occupational plan.

D. "Centennial Scholarship" means the amount awarded to an early graduating student designated in Section 53A-15-102.

**R277-703-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, Section 53A-1-402(1), U.C.A. 1953, which authorizes the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements, Section 53A-15-101(5) and (6) which direct the Board to provide an early graduation option to students and to develop, implement and evaluate the early graduation program, and Section 53A-1-401(3), U.C.A. 1953, which authorizes the Board to adopt rules in accordance with its responsibilities.

B. This rule designates the Early Graduation Centennial Scholarship Certificate for use by public schools, allows for graduation to be flexible and appropriate to meet individual students' needs, and outlines the early graduation procedure. If a student graduates any time following the eleventh grade year and enters a Utah post-secondary institution, the school district shall receive a reimbursement designated for the public high school from which the student graduated early. The post-secondary institution shall receive an Early Graduation Centennial Scholarship Certificate signed by the high school principal entitling the early graduate to a partial tuition scholarship following the date of graduation according to the schedule established by this rule.

**R277-703-3. Curriculum Options for Accelerating a Secondary School Student's Education Program.**

A. A student shall complete the courses of study and credit mandated by the Board and by the local board of education.

B. Options for earning additional credit may include but are not limited to:

(1) Courses:

(a) High school summer school;

(b) High school or ATC early morning or after school classes;

(c) Courses completed at the student's own rate based on performance (the local board of education is responsible for assessment of mastery, R277-700-6);

(d) College courses numbered 101 and above from fully accredited institutions (concurrent enrollment, extension division, or continuing education classes);

(e) Local school district approved high school or college level correspondence courses;

(f) Equivalency ratio of higher education hours to high school credits: five (5) quarter or three (3) semester hours equal one (1) unit of high school credit.

(2) Demonstrated proficiency by assessment (amount of credit to be determined by the local board of education, R277-700-6):

(a) Advanced Placement Examination as approved by the local board of education;

(b) ACT or SAT scores that meet or exceed a level set by the local board of education;

(c) Utah state or district secondary end-of-course tests;

(d) Demonstrated proficiency in a subject, as assessed by the local board of education;

(e) College Level Examination Program (CLEP) tests.

(3) Approved work experience, as assessed by the local board of education.

(4) Demonstrated mastery in an experimental program that has received prior approval from the Board (local board of education seeks approval from the Board);

(5) Increased credit for courses that are combined into a time frame that ordinarily accommodates a lesser number of classes, as approved by the local board of education;

(6) Independent study: a student may be allowed credit for an independent research project or independent reading relevant to a course of study;

(7) Credit for experience gained during travel relevant to a specific course. Prior approval shall be obtained from and credit awarded by the local board of education.

**R277-703-4. Early Graduation Student Education Plan.**

A. In consultation with the student's parent or guardian and school advisor, each student shall indicate to the secondary principal the intent to complete early graduation at the beginning of the ninth grade year or as soon thereafter as the intent is known.

B. To be eligible for early graduation, a student shall have a current SEOP on file at the student's high school under provisions of R277-700-8.

**R277-703-5. Local Education Requirements.**

A. Requirements relating to semesters in membership are inapplicable to students who have been approved under Section R277-703-4 for graduation following the eleventh grade year.

B. Local academic and citizenship credit requirements for graduation which exceed Board requirements shall include provisions that permit students to graduate early.

**R277-703-6. Funding Provisions.**

A. A school district shall receive a payment designated for each high school from which students graduated before the end of the twelfth grade year.

B. Payment provisions:

(1) Districts shall receive payment for one-half of the designated Centennial Scholarship amount for each student reported as having graduated at the conclusion of the eleventh grade year on the S-3 report in the fiscal year following the student's graduation.

(2) Districts shall receive payment based on a percentage of the Centennial Scholarship amount for each student reported as graduating during the twelfth grade year. These students shall also be listed on the S-3 report and payment shall be made to the district designated for the schools in the fiscal year following the students' graduation. Districts shall receive payment for schools operating on the quarter or trimester system for each early graduating student according to the following

schedule:

(a) End of first quarter of 12th grade year: 75 percent of one-half of the Centennial Scholarship amount;

(b) End of second quarter of 12th grade year: 50 percent of one-half of the Centennial Scholarship amount;

(c) End of third quarter of 12th grade year: 25 percent of one-half of the Centennial Scholarship amount;

(d) End of first trimester of 12th grade year: 67 percent of one-half of the Centennial Scholarship amount;

(e) End of second trimester of 12th grade year: 33 percent of one-half of the Centennial Scholarship amount.

B. A student who graduates from high school at the conclusion of the eleventh grade year or during the twelfth grade year shall be entitled to a partial tuition scholarship in the form of the Early Graduation Centennial Scholarship Certificate to be used at a Utah public college, university, community college, applied technology center, or any other institution in Utah accredited by the Northwest Association of Schools and Colleges that offers post-secondary courses. The post-secondary institution shall complete the Early Graduation Centennial Scholarship Certificate and submit it to the Utah State Office of Education. Upon receipt of the Early Graduation Centennial Scholarship Certificate, the Utah State Office of Education shall verify the information, and reimburse the institution an amount set forth in the following schedule in the fiscal year during which the student enrolls in a post-secondary institution. To be eligible for the scholarship, the student must enroll in an eligible post-secondary institution within one calendar year of graduation.

(1) The student who graduates at the end of the eleventh grade year shall receive a full Centennial Scholarship.

(2) The student who graduates at the end of the first quarter of the twelfth grade year shall receive 75 percent of the Centennial Scholarship amount.

(3) The student who graduates at the end of the second quarter of the twelfth grade year shall receive 50 percent of the Centennial Scholarship amount.

(4) The student who graduates at the end of the third quarter of the twelfth grade year shall receive 25 percent of the Centennial Scholarship amount.

(5) The student who graduates at the end of the first trimester of the twelfth grade year shall receive 67 percent of the Centennial Scholarship amount.

(6) The student who graduates at the end of the second trimester of the twelfth grade year shall receive 33 percent of the Centennial Scholarship amount.

**KEY: graduation requirements, curricula**
**1994 Art X Sec 3**
**Notice of Continuation September 12, 2002 53A-1-402(1)**
**53A-1-401(3)**
**53A-15-101(5) and (6)**

**R277. Education, Administration.**

**R277-713. Concurrent Enrollment of High School Students in College Courses.**

**R277-713-1. Definitions.**

A. "Adjunct faculty" means high school teacher(s) approved by the cooperating institution of higher education to teach concurrent enrollment classes on behalf of the institution of higher education.

B. "Board" means the Utah State Board of Education.

C. "Concurrent enrollment" means enrollment by public school students in one or more college or university courses for credit by a high school student who continues to be enrolled and counted in Average Daily Membership.

D. "Annual Concurrent Enrollment Contract" means a written plan, negotiated by a school district and an institution of higher education, to provide college level courses to high school students.

E. "USHE" means the Utah System of Higher Education.

F. "USOE" means the Utah State Office of Education.

**R277-713-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which provides for the State Board to have general supervision and control over public schools and by Section 53A-17a-120 which directs the Board to adopt rules for accelerated learning programs, Section 53A-1-402(1)(c) which directs the Board to adopt minimum standards for curriculum, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of concurrent enrollment is to provide a challenging college-level and productive secondary school experience, particularly in the senior year, and to provide transition courses to be applied to post-secondary education.

C. The purpose of this rule is to specify the standards and procedures for concurrent enrollment.

**R277-713-3. Student Eligibility.**

A. Local schools and institutions of higher education shall jointly establish student eligibility requirements which shall be sufficiently selective to predict a successful experience.

B. Local schools have the primary responsibility for identifying students who are eligible to participate in concurrent enrollment classes.

C. Each student participating in the concurrent enrollment program shall have a current student education/occupation plan (SEOP) on file at the participating high school, as required under Section 53A-1a-106(2)(b).

**R277-713-4. Operational Procedures.**

A. Private and public institutions of higher education may participate in the concurrent enrollment program.

B. Concurrent enrollment courses shall be offered at the most appropriate location using the most appropriate methods for the course content, the faculty, and the students involved.

C. The delivery system and curriculum program shall be designed and implemented to take full advantage of the most current available educational technology.

**R277-713-5. Courses.**

A. Participation in concurrent enrollment begins a student's college experience and a permanent college transcript.

B. Course registration and the awarding of credit for concurrent enrollment courses are the province of colleges and universities governed by USHE policies.

C. Concurrent enrollment course offerings shall reflect the strengths and resources of the respective schools and institutions of higher education and be based upon student needs. The number of courses selected shall be kept small enough to ensure coordinated statewide development and training activities for participating teachers. Concurrent enrollment offerings shall be limited to a manageable number of courses in English, mathematics, fine arts, humanities, science, social science, and vocational/technical programs to allow a focus of energy and resources on quality instruction in these courses. However, there may be a greater variety of courses in the vocational-technical area.

D. Course content, procedures, examinations, teaching materials, and program monitoring shall be the responsibility of the appropriate higher education institution or department and shall ensure quality and comparability with courses offered on the college or university campus.

**R277-713-6. Student Tuition, Fees and Credit for Concurrent Enrollment Programs.**

A. Tuition may not be charged to high school students for participation in this program.

B. Students may be charged a one-time enrollment fee per institution and assume responsibility for obtaining textbooks.

C. Concurrent enrollment program fees attributable only to college/university credit or enrollment are not subject to fee waiver under R277-407.

D. All other fees related to concurrent enrollment classes are subject to fee waiver consistent with R277-407.

E. Credit:

(1) Three (3) semester higher education hours equal one (1) unit of high school credit.

(2) College level courses taught in the high school carry the same credit hour value as when taught on a college or university campus and apply toward college/university graduation on the same basis as courses taught at the institution of higher education to which the credits are submitted.

(3) Credit earned through the concurrent enrollment program shall be transferable from one USHE institution to another.

**R277-713-7. Faculty.**

A. Nomination of adjunct faculty is the joint responsibility of the local school district and the participating institution of higher education. Final approval of the adjunct faculty shall be determined by the appropriate college or university department. Selection criteria for adjunct faculty teaching concurrent enrollment courses shall be the same as those criteria applied to other adjunct faculty appointments within the department.

B. Adjunct faculty status of high school teachers:

(1) High school teachers who hold adjunct faculty status with a college or university for the purpose of teaching concurrent enrollment courses shall be included as fully as possible in the academic life of the supervising academic

department.

(2) Universities, colleges and secondary schools shall share expertise and in-service training, as necessary, to adequately prepare teachers at all levels to teach concurrent enrollment students.

(3) In-service experiences may qualify teachers or professors for graduate level credit.

**R277-713-8. Concurrent Enrollment Funding and Use of Concurrent Enrollment Funds.**

A. Each district shall receive a pro-rated amount of the funds appropriated for concurrent enrollment according to the number of semester hours successfully completed by students registered through the district in the prior year compared to the state total of completed concurrent enrollment hours.

B. Each high school shall receive its proportional share of district concurrent enrollment monies allocated to the district pursuant to Section 53A-17a-120 based upon the hours of concurrent enrollment course work successfully completed by students on the high school campus as compared to the state total of completed concurrent enrollment hours.

C. State funding to school districts for concurrent enrollment is limited to a maximum of 30 semester hours per student per school year.

D. Funds allocated to school districts for concurrent enrollment shall not be used for any other program.

E. Colleges or universities shall receive concurrent enrollment funds from school districts based on the Annual Concurrent Enrollment Contract and approved guidelines.

F. District use of state funds for concurrent enrollment is limited to the following:

(1) to pay tuition for students;

(2) to pay for a share of the costs of supervision and monitoring by college or university employees according to the annual contractual agreement;

(3) to aid in staff development of adjunct faculty in cooperation with the participating college or university;

(4) to assist with costs of distance learning programs;

(5) to offset the costs of district or school personnel who work with the program;

(6) to pay for textbooks and other instructional materials; and

(7) other uses approved in writing through the USOE Concurrent Enrollment Specialist consistent with the law and purposes of this rule.

G. Concurrent enrollment course credit shall count for completion of high school graduation requirements as well as for college credit.

**R277-713-9. Annual Contracts.**

Collaborating school districts and institutions of higher education shall negotiate annual contracts including:

(1) the courses offered;

(2) the location of the instruction;

(3) the teacher;

(4) student eligibility requirements;

(5) course outlines;

(6) texts, and other materials needed; and

(7) the administrative and supervisory services, in-service education, and reporting mechanisms to be provided by each party to the contract.

**KEY: students, curricula, higher education**
**November 2, 1999 Art X Sec 3**
**Notice of Continuation September 12, 2002 53A-17a-120**
**53A-1-402(1)(c)**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-717. Math, Engineering, Science Achievement (MESA).**
**R277-717-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Designated Minority Students" means African American students, Asian students, Native American/Alaskan students, Hispanic/Latino students, or Pacific Islander students.

C. "District or School Plan" means a plan outlined in writing, including budget and evaluation components developed by each school district receiving MESA funding or, if so determined by the district, by each recipient school.

D. "Math, Engineering, Science Achievement (MESA)" program means a course or courses offered during the regular school day or a club held after school that involves identified students and addresses identified district objectives with designated minority and all female students.

E. "MESA Public Education Funding Application Review Committee" means a committee composed of eleven members as follows: Coalition of Minorities Advisory Committee (CMAC) (4), school districts (3), USOE staff (2); higher education members of the Math, Engineering, Science Achievement/Science, Technology, Engineering Program (MESA/STEP) Advisory Board(2).

F. "USOE" means the Utah State Office of Education.

**R277-717-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board, Section 53A-4-202 which assigns to the Board the responsibility for developing standards and administering funds for a program promoting educational excellence, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-121 which appropriates funding for programs for at risk youth.

B. This rule establishes standards and procedures to direct recipient districts or schools to develop plans to encourage the participation of underrepresented minority and all female students who traditionally have participated in math, engineering, and science classes disproportionately to white males.

**R277-717-3. Plan Criteria.**

A. District or school plans shall identify objectives and activities to address MESA objectives.

B. The objectives of the MESA organization are:

(1) to increase the number of designated minority and all female students who pursue course work in mathematics, engineering, and science areas;

(2) to provide a program that will motivate designated minority and all female students to take better advantage of existing educational opportunities;

(3) to increase graduation rates of designated minority and all female underrepresented students from high school;

(4) to strengthen the self-image of designated minority and all female students relating to their success in mathematics and science courses, and to enable them to become successful role models for other students;

(5) to provide designated minority and all female students the opportunity to relate and associate with successful role models; and

(6) to coordinate the efforts of public schools, colleges and universities, the USOE, industries, professional and community groups, and others in the development and maintenance of academic support programs to increase the participation of designated minority and all female students in the fields of mathematics and science.

C. Courses shall include secondary courses that place designated minority and all female students on a college preparation track for post high school opportunities in mathematics and science.

D. Examples of MESA activities include:

(1) regularly scheduled after-school meetings with advisors to hear guest presenters;

(2) tutoring sessions, particularly in mathematics, and including study aids;

(3) field trips;

(4) hands-on activities designed to introduce students to career possibilities, curriculum options or additional courses of study;

(5) exposure to career opportunities in math, engineering, and science, including teaching in these fields as a potential career;

(6) community service designed to address school interest and attendance issues as well as to introduce designated minority and all female students to math, science, engineering-related businesses/activities and opportunities for high school and the future; and

(7) internships or work experiences in identified areas which may be encouraged by student stipends or academic credit or both.

E. A MESA plan shall include an annual report to the USOE which shall include:

(1) an accounting for funds spent consistent with objectives identified in the plan;

(2) a program narrative; and

(3) specific numbers or examples of increased participation or success in math, science, engineering courses/activities by designated minority and all female students.

**R277-717-4. Budget.**

A. Budget items shall be tied to objectives.

B. The budget may include payments to compensate schools for school fees directly related to successful participation by designated minority or all female students in identified MESA courses or activities.

C. Districts or schools are encouraged to consider additional course alternatives for identified students including:

(1) ATE classes;

(2) community school classes;

(3) concurrent enrollment;

(4) advanced placement courses.

**R277-717-5. Plan Applications.**

A. Plan applications shall be submitted annually by school districts.

B. Plan applications shall be submitted to the USOE on forms provided by the USOE and consistent with USOE timelines.

C. State funding may require matching funding from local or federal sources. Applications may require identification of matching funds.

D. The MESA Public Education Funding Application Review Committee shall make recommendations to the Board for approval of program funding.

**KEY: minority education, mathematics, engineering, science**
**January 4, 2002** **Art X Sec 3**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-720. Child Nutrition Programs.**
**R277-720-1. Definitions.**

A. "Board" means the Utah State Board of Education.

**R277-720-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board and by Section 53A-1-401(3), U.C.A. 1953, which allows the Board to adopt rules in accordance with its responsibilities. Section 53A-1-402(1)(b) further allows the Board to make rules regarding access to programs and health requirements, and Section 53A-1-402(1)(f) which directs the Board to establish minimum standards for the school lunch program.

B. The purpose of this rule is to specify the standards and procedures for child nutrition programs administered by the Board.

**R277-720-3. Standards and Procedures for Child Nutrition.**

A. The Board adopts the following laws and regulations found at the Utah State Office of Education Child Nutrition Section and law libraries and hereby incorporates them by reference:

(1) the National School Lunch Act, 42 U.S.C. 1758, 1759a, 1761, 1762a, 1765, 1766;

(2) the Child Nutrition Act of 1966, 42 U.S.C. 1761, 1771, 1772, 1779;

(3) the Food and Agricultural Act of 1965, 7 U.S.C. 1446a-1;

(4) 42 U.S.C. 3030a;

B. The Board shall act in accordance with the following publications available from the Utah State Office of Education Child Nutrition Section:

(1) the ADMINISTRATIVE MANUAL -- CHILD CARE FOOD PROGRAM;

(2) the ADMINISTRATIVE MANUAL -- CHILD NUTRITION PROGRAM, July, 1992;

(3) UTAH FAMILY DAY CARE HOME SPONSORS MANUAL, June 1993; and

(4) all state plans and agreements which are required and submitted under applicable law.

**R277-720-4. Programs.**

The Board administers the following federal child nutrition programs:

A. National School Lunch Program;
B. School Breakfast Program;
C. Special Milk Program;
D. Child and Adult Care Food Program;
E. Summer Food Service Program for Children;
F. Food Distribution Program; and
G. Nutrition Education and Training Program.

**KEY: school lunch program, nutrition**
**1993** **Art X Sec 3**
**Notice of Continuation September 12, 2002** **53A-1-401(3)**
**53A-1-402(1)(b)**
**53A-1-402(1)(f)**

**R277. Education, Administration.**
**R277-750. Education Programs for Students with Disabilities.**
**R277-750-1. Definitions.**

"Board" means the Utah State Board of Education.

**R277-750-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1) which directs the Board to adopt rules regarding programs for students with disabilities, Section 53A-15-301 which directs the Board to set standards for state funds appropriated for students with disabilities and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for special education programs.

**R277-750-3. Standards and Procedures.**

A. As its rules for programs for students with disabilities, the Board adopts and hereby incorporates by reference:

Education of the Handicapped Act, 20 U.S.C., Chapter 33, Section 1401 et seq. as amended by Public Law 102-119; and

B. The Board shall act in accordance with:

(1) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. 794, incorporated by reference in R277-112;

(2) The State Board of Education R277-750, "State Board of Education Special Education Rules," June, 2000 including the following appendices:

(a) Appendix A, Utah Specialist Education Law (UCA 53A-15-301-305),

(b) Appendix B, State Licensor Endorsements: Special Education, School Psychologist, School Social Workers, and Paraeducator qualifications Standards,

(c) Appendix C, Elementary and Secondary Program of Studies and High School Graduation Requirements,

(d) Appendix D, Coordination Council for Persons with Disabilities,

(e) Appendix E, Vocational Rehabilitation Services,

(f) Appendix F, Selection of Least Restrictive Behavioral Interventions for Use with Students with Disabilities, June, 2001; and

(3) Utah State Federal Application, as amended, for fiscal years 1993-1995, June 1992, under Part B of the Individuals with Disabilities Education Act, (20 U.S.C., Chapter 33, Section 1412) as amended by Public Law 102-119.

C. Students with disabilities shall be entitled to dual enrollment consistent with Section 53A-11-102.5 and R277-438.

**KEY: special education**

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| **December 5, 2001** | **Art X Sec 3** |
| **Notice of Continuation September 12, 2002** | **53A-1-402(1)** |
| | **53A-17a-111** |
| | **53A-15-301** |
| | **53A-1-401(3)** |

**R277. Education, Administration.**
**R277-911. Secondary Applied Technology Education.**
**R277-911-1. Definitions.**

A. "ADM" means average daily membership.

B. "Applied technology education" means organized educational programs which directly or indirectly prepare individuals for employment, or for additional preparation leading to employment, in occupations where entry requirements generally do not require a baccalaureate or advanced degree. These programs provide all students an undisrupted education system, driven by a student education occupation plan (SEOP), through competency-based instruction, culminating in essential life skills, certified occupational skills, and meaningful employment. Occupational categories include agriculture; business; family and consumer sciences; health science and technology; information technology; marketing; trade and technical education; and technology education.

C. "Approved program" means a program approved by the Board that meets or exceeds the state program standards or outcomes for applied technology education programs.

D. "Board" means the Utah State Board of Education.

E. "Bureau of Apprenticeship and Training" means a branch office for apprenticeship administered by the United States Department of Labor and located in Salt Lake City.

F. "CIP code" means the Classification of Instructional Programs, a federal curriculum listing.

G. "Comprehensive counseling and guidance program" means the organization of resources to meet the priority needs of students through four delivery system components as outlined in R277-462.

H. "Course" means an individual applied technology education class structured by state-approved standards and CIP code. An approved course may require one or two periods for up to one year. Courses may be completed by demonstrated competencies or by course completion.

I. "Entry-level" means a set of tasks identified and validated by workers and employers in an occupation as those of a beginner in the field. Entry-level skills are a limited subset of the total set of tasks performed by an experienced worker in the occupation. Competent performance of entry-level tasks enhances employability and initial productivity.

J. "Extended year program" means applied technology education programs no longer than 12 weeks in duration, offered during the summer recess, and supported by extended-year or other applied technology education funds.

K. "Program" means a combination of applied technology education courses that provides the competencies for specific job placement or continued related training and is outlined in the SEOP using all available and appropriate high school courses.

L. "Program completion" means the student completion of a sequence of approved courses, work-based learning experiences, and/or other prescribed learning experiences as determined by the student education occupation plan (SEOP).

M. "Regional Consortium" means the school districts, applied technology colleges, colleges and universities within the regions that approve applied technology education programs.

N. "Registered Apprenticeship" means a training program that includes on-the-job training in a specific occupation combined with related classroom training and has approval of the Bureau of Apprenticeship and Training.

O. "Related training" means a course or program directly related to an occupation that is compatible with apprenticeship training and is taught in a classroom and approved by the Bureau of Apprenticeship and Training.

P. "Scope and Sequence" means the organization of all applied technology education courses and related academic courses into programs within the high school curriculum that lead to specific skill certification, job placement, continued education or training.

Q. "SEOP" means student education occupation plan.

R. "Skill Certification" means a verification of competent task performance. Verification of the skills standard is provided by an approved state or national program certification process.

S. "Tech Prep" means a planned applied technology education/academic continuum of courses within an applied technology education field beginning in the 9th grade and continuing with post secondary training which culminates in an associate degree, apprenticeship, certificate of completion, or baccalaureate degree.

T. "USOE" means the Utah State Office of Education.

U. "WPU" means weighted pupil unit. The basic unit used to calculate the amount of state funds for which a school district is eligible.

V. "Work-based Learning" means a program in which a student is trained by employment or other activity at a work site, either at place of business, a home, or a farm, supplemented by needed classroom instruction or teacher assistance.

**R277-911-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, by Section 53A-15-202 which allows the Board to establish minimum standards for applied technology education programs in the public education system, and Sections 53A-17a-113 and 114 which direct the Board to distribute specific amounts and percentages for specific applied technology education programs and facilitate administration of various programs.

B. This rule establishes standards and procedures for school districts seeking to qualify for funds administered by the Board for applied technology education programs in the public education system.

**R277-911-3. Applied Technology Education Program Approval.**

A. Program Planning: applied technology education programs are based on verified training needs of the area and provide students with the competencies necessary to progress in occupations for which an occupational potential exists. Programs are supported by a data base, including:

(1) local, regional, state, and federal manpower projections;

(2) student occupational/interest surveys;

(3) regional job profile;

(4) advisory committee input; and

(5) follow-up evaluation and reports.

B. Program Administration: School district applied

technology education directors shall meet the requirements specified in Subsections 9(A), (B) and (C).

C. Learning Resources: Within available resources, instructional materials, including textbooks, reference materials, and media, shall reflect current technology, processes, and information for the applied technology education programs being taught.

D. Student Services:

(1) Applied technology education guidance, counseling, and Board approved testing shall be provided for students enrolled in applied technology education programs.

(2) A written plan for placement services shall be developed with the assistance of local advisory committees, business and industry and the Department of Workforce Services.

(3) An SEOP shall be developed for all students. The plan shall include:

(a) a student's education occupation plans (grades 7-12) including job placement when appropriate;

(b) all Board graduation requirements;

(c) evidence of parent, student, and school representative involvement annually;

(d) attainment of approved workplace skill competencies;

(e) identification of an applied technology education post-secondary goal and an approved sequence of academic and applied technology education courses.

E. Instruction: Curricula and instruction shall be directly related to business and industry validated competencies. Successful completion of competencies shall be verified by a valid skill certification process. Instruction in proper and safe use of any equipment required for skill certification shall be provided within the approved program.

F. Equipment and Facilities: Equipment and facilities, consistent with the validated competencies identified in the instruction standard, shall be provided and maintained in a manner that meets safety requirements and applicable state and federal laws.

G. Instructional Staff: Counselors and instructional staff shall hold valid Utah teaching licenses with endorsements appropriate for the programs they teach. These may be obtained through an institutional recommendation or through occupational and educational experience verified by the USOE licensure process as outlined in R277-502. Applied technology education program instructors shall keep technical and professional skills current through business/industry involvements in order to ensure that students are provided accurate state-of-the-art information.

H. Equal Educational Opportunity: Applied technology education programs are conducted in agreement with the Board policies and state and federal laws and regulations on access that prohibit discrimination on the basis of race, creed, color, national origin, religion, age, sex, and disability.

I.(1) Applied technology education advisory council: An active advisory council shall be established to review all applied technology education programs annually. The council may serve several school districts or a region. The council reviews the program offerings, quality of programs, and equipment needs.

(2) Program advisory committee: Each state funded approved occupational applied technology education program shall be supported at the school district/regional level by a program advisory committee made up of individuals who are working in the occupational area. Basic exploratory programs are to have an advisory committee.

J. Applied technology education student leadership organizations: School districts are encouraged to make this training available through nationally-chartered applied technology education student leadership organizations in each program area.

K. Program and instruction evaluation: Each school district, with oversight by local program advisory committee members, shall make an annual evaluation of its applied technology education programs.

**R277-911-4. Disbursement and Expenditure of Applied Technology Education Funds--General Standards.**

A. To be eligible for state applied technology education program funds, a school district shall first expend for applied technology education programs an amount equivalent to the regular WPU for students in approved applied technology education programs, grades seven through twelve, based on prior year ADM, times the current year WPU value, less an amount for indirect costs as computed by the State School Finance Unit.

B. State applied technology education program funds may thereafter be expended only for approved applied technology education programs.

**R277-911-5. Disbursement of Funds--Added Cost Funds.**

A. Weighted pupil units are allocated for the added instructional costs of approved applied technology education programs operated or contracted by school districts. Programs and courses provided through applied technology colleges, and higher education institutions do not qualify for added cost funds except for specific contractual arrangements approved by the Board.

B. All approved applied technology education programs shall receive funds determined by prior year hours of membership for approved programs.

C. Allocations are computed using grades nine through twelve ADM in approved programs for the previous year with a growth factor applied to school districts experiencing growth of one percent or greater in grades nine through twelve except as provided by R277-462 and R277-916.

D. Added cost funds shall be used to cover the added applied technology education program instructional costs of school district programs.

**R277-911-6. Disbursement of Funds--Equipment Set Aside Funds.**

A. Equipment set aside funds are used to pay for applied technology education program equipment needs.

B. Each school district is eligible for a minimum amount of equipment set aside funds.

C. Applicants for funds may submit proposals as individual school districts or as regional groups. All proposals shall show evidence of coordination within a service delivery area. A regional group shall include recommended priorities for

funding in its proposal.

**R277-911-7. Disbursement of Funds--Skill Certification.**

A. School districts that demonstrate approved student skill certification may receive additional compensation.

B. To be eligible for skill certification compensation, a school district shall show its student completer has demonstrated mastery of standards, as established by the Board. An authorized test administrator shall verify student mastery of the skill standards.

C. Skill certification compensation is available only if an approved skill certification assessment is developed for the program.

**R277-911-8. Disbursement of Funds--Applied Technology Education Leadership Organization Funds.**

A. Participating school districts sponsoring applied technology education leadership organizations are eligible for a portion of the funds set aside for this purpose.

B. Qualifying applied technology education leadership organizations shall be nationally chartered and include: SkillsUSA/VICA (Vocational Industrial Clubs of America), DECA (Distributive Education Clubs of America), FFA (Future Farmers of America), HOSA (Health Occupations Students of America), FBLA (Future Business Leaders of America), FCCLA (Family, Career and Community Leaders of America), and ITEA/TSA (International Technology Education Association/Technology Students Association).

C. Up to one percent of the state applied technology education appropriation for school districts shall be allocated to eligible school districts based on documented prior year student membership in approved applied technology education leadership organizations.

D. A portion of funds allocated to school districts for applied technology education leadership organizations shall be used to pay the school district's portion of statewide administrative and national competition costs. The remaining amount shall be available for school district applied technology education leadership organization expenses.

**R277-911-9. Disbursement of Funds--School District WPUs.**

A. Twenty (20) WPUs are allocated to each school district for costs associated with the administration of applied technology education. To encourage multidistrict applied technology education administrative services, 25 WPUs may be allocated to each school district that consolidates applied technology education administrative services with one or more other school district.

B. To qualify for 20 or 25 WPUs per school district, the school district applied technology education director shall:

(1) hold or be in the process of completing requirements for a current Utah Administrative/Supervisory License specified in R277-505; and

(2)(a) have an endorsement in at least one applied technology area listed in R277-518, Vocational-Technical Certificates, and have four years of experience as a full-time applied technology educator; or

(b) complete a prescribed in-service program provided by the USOE within a period of two years following local board appointment as a school district applied technology education director.

B. To qualify for 25 WPUs for consolidated, multi-district administration, the participating school districts shall employ a full-time multi-district applied technology education director.

C. In addition to WPUs appropriated to school districts qualifying according to the above criteria, each approved high school may qualify for funding according to the following criteria:

(1) Ten (10) WPUs are allocated to each high school that:

(a) conducts approved programs in a minimum of two applied technology education areas e.g. agriculture; business; family and consumer sciences; health science and technology; information technology; marketing; trade and technical education; and technology education.

(b) conducts a minimum of six different state-approved CIP coded courses. Consolidated courses in small schools may count as more than one course as approved by the appropriate state applied technology education specialist(s);

(2) Fifteen (15) WPUs are allocated to each high school that:

(a) conducts approved programs in a minimum of three applied technology education areas;

(b) conducts a minimum of nine different state-approved CIP coded courses. Consolidated courses in small schools may count as more than one course as approved by the appropriate state applied technology education specialist(s);

(c) has at least one approved applied technology education student leadership organization;

(3) Twenty (20) WPUs are allocated to each high school that:

(a) conducts approved programs in a minimum of four applied technology education areas,

(b) conducts a minimum of twelve different state-approved CIP coded courses. Consolidated courses in small schools may count more than one course as approved by the appropriate state applied technology education specialist(s),

(c) has at least two approved applied technology education student leadership organizations;

(4) Twenty-five (25) WPUs are allocated to each high school that:

(a) conducts approved programs in a minimum of five applied technology education areas,

(b) conducts a minimum of fifteen different state-approved CIP coded courses. Consolidated courses in small schools may count more than one course as approved by the appropriate state applied technology education specialist(s),

(c) has at least three approved applied technology education student leadership organizations.

D. Also, a maximum of one approved alternative high school, as outlined in R277-730, per school district may qualify. School districts sharing an alternative school share receive a prorated share.

E. Programs and courses provided through school district technical centers shall not receive funding under this section.

**R277-911-10. Disbursement of Funds--School District Technical Centers.**

A. A maximum of forty WPUs may be computed for each

school district operating an approved school district center. To qualify under the approved school district technical center provision, the school district shall:

(1) provide at least one facility other than an existing high school as a designated school district technical center;

(2) employ a full-time applied technology education administrator for the center;

(3) enroll a minimum of 400 students in the school district technical center;

(4) prevent unwarranted duplication by the school district technical center of courses offered in existing high schools, applied technology colleges and higher education institutions;

(5) centralize high-cost programs in the school district technical center;

(6) conduct approved programs in a minimum of five applied technology education areas;

(7) conduct a minimum of fifteen different state-approved CIP coded courses.

**R277-911-11. Disbursement of Funds--Summer Applied Technology Education Agriculture Programs.**

A. To receive state summer applied technology education agriculture program funds, a school district shall submit to the USOE, an application for approval of the school district's program. Applications shall be received prior to the annual due date specified each year. Notification of approval of the school district's program shall be made within ten calendar days of receiving the application.

B. A teacher of a summer applied technology education agriculture program shall:

(1) hold a valid Utah teaching license, with an endorsement in agriculture, as outlined in R277-911-3G;

(2) develop a calendar of activities which shall be approved by school district administration and reviewed by the state specialist for applied technology education agricultural education;

(3) work a minimum of eight hours a day in the summer applied technology education agriculture program. Exceptions shall be reflected in the calendar of activities and be approved by the school district administration;

(4) not engage in other employment, including self-employment, which conflicts with the teacher's performance in the summer applied technology education agriculture program;

(5) develop and file a weekly schedule and a monthly report outlining accomplishments related to the calendar of activities with the school principal, school district applied technology education director, and the state specialist for agricultural education; and

(6) visit the participating students a minimum of two times during the summer program with a minimum average of four on-site visits to students.

C. College interns may be approved to conduct summer applied technology education agriculture programs upon approval by the state specialist for applied technology education agricultural education.

D. Students enrolled in the summer applied technology education agriculture program shall:

(1) have on file in the teacher's and school district office a student education occupation plan (SEOP) goal related to agriculture;

(2) in conjunction with the student's parent or employer and the teacher, develop an individual plan of activities, including a supervised occupational experience program;

(3) have completed the eighth grade; and

(4) have not have graduated from high school.

E. The USOE applied technology education agricultural education specialist collects data from the program and staff of each school district to ensure compliance with approved standards. A final program report, on forms provided by the USOE, shall be submitted to the USOE Division of School Finance on the annual due date specified.

F. Summer applied technology education agricultural funding is allocated to each school district conducting an approved program for a minimum of 35 students lasting nine weeks. A school district may receive funding for no more than nine weeks or 35 students.

G. School districts operating programs with fewer than 35 students per teacher or for fewer than nine weeks shall receive a prorated share of the summer applied technology education agricultural allocation.

**R277-911-12. Disbursement of Funds - Comprehensive Guidance; Technology, Life, and Careers, and Work-Based Learning Programs.**

A. The board shall distribute funds to school districts consistent with Section 53A-17a-113(2)(3)(4) and (6).

B. School districts shall spend funds distributed for comprehensive guidance consistent with Section 53A-1a-106(2)(b) and R277-462 which explain the purpose and criteria for student education plans (SEP) and student education occupation plans (SEOP).

C. School districts may spend funds allocated under this section to fund work-based learning programs consistent with Section 53A-17a-113(1)(c), other criteria of the Section, R277-915 and R277-916.

D. School districts may spend funds allocated under this section to fund technology, life, and careers programs consistent with Section 53A-17a-113 and R277-916.

**KEY: technical education, applied technology education**
**April 23, 2002 Art X Sec 3**
**Notice of Continuation September 12, 2002 53A-15-202**
**53A-17a-113 through 115**

**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 July 3, 2002, 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 June 5, 2002, 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**
**September 5, 2002 19-2-104(3)(e)**
**Notice of Continuation March 27, 2002**

**R309. Environmental Quality, Drinking Water.**
**R309-110. Administration: Definitions.**
**R309-110-1. Purpose.**

The purpose of this rule is to define certain terms and expressions that are utilized throughout all rules under R309. Collectively, those rules govern the administration, monitoring, operation and maintenance of public drinking water systems as well as the design and construction of facilities within said systems.

**R309-110-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104 of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

**R309-110-3. Definitions.**

As used in R309:

"Action Level" means the concentration of lead or copper in drinking water tap samples (0.015 mg/l for lead and 1.3 mg/l for copper) which determines, in some cases, the corrosion treatment, public education and lead line replacement requirements that a water system is required to complete.

"AF" means acre foot and is the volume of water required to cover an acre to a depth of one foot (one AF is equivalent to 325,851 gallons).

"Air gap" The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, catch basin, plumbing fixture or other device and the flood level rim of the receptacle. This distance shall be two times the diameter of the effective opening for openings greater than one inch in diameter where walls or obstructions are spaced from the nearest inside edge of the pipe opening a distance greater than three times the diameter of the effective openings for a single wall, or a distance greater than four times the diameter of the effective opening for two intersecting walls. This distance shall be three times the diameter of the effective opening where walls or obstructions are closer than the distances indicated above.

"ANSI/NSF" refers to the American National Standards Institute and NSF International. NSF International has prepared at least two health effect standards dealing with treatment chemicals added to drinking water and system components that will come into contact with drinking water, these being Standard 60 and Standard 61. The American National Standards Institute acts as a certifying agency, and determines which laboratories may certify to these standards.

"Approval" unless indicated otherwise, shall be taken to mean a written statement of acceptance from the Executive Secretary.

"Approved" refers to a rating placed on a system by the Division and means that the public water system is operating in substantial compliance with all the Rules of R309.

"Average Yearly Demand" means the amount of water delivered to consumers by a public water system during a typical year, generally expressed in MG or AF.

"AWWA" refers to the American Water Works Association located at 6666 West Quincy Avenue, Denver, Colorado 80235. Reference within these rules is generally to a particular Standard prepared by AWWA and which has completed the ANSI approval process such as ANSI/AWWA Standard C651-92 (AWWA Standard for Disinfecting Water Mains).

"Backflow" means the undesirable reversal of flow of water or mixtures of water and other liquids, gases, or other substances into the distribution pipes of the potable water supply from any source. Also see backsiphonage, backpressure and cross-connection.

"Backpressure" means the phenomena that occurs when the customer's pressure is higher than the supply pressure, This could be caused by an unprotected cross connection between a drinking water supply and a pressurized irrigation system, a boiler , a pressurized industrial process, elevation differences, air or steam pressure, use of booster pumps or any other source of pressure. Also see backflow, backsiphonage and cross connection.

"Backsiphonage" means a form of backflow due to a reduction in system pressure which causes a subatmospheric or negative pressure to exist at a site or point in the water system. Also see backflow and cross-connection.

"Best Available Technology" (BAT) means the best technology, treatment techniques, or other means which the Executive Secretary finds, after examination under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting MCLs for synthetic organic chemicals, any BAT must be at least as effective as granular activated carbon for all these chemicals except vinyl chloride. Central treatment using packed tower aeration is also identified as BAT for synthetic organic chemicals.

"Board" means the Drinking Water Board.

"Breakpoint Chlorination" means addition of chlorine to water until the chlorine demand has been satisfied. At this point, further addition of chlorine will result in a free residual chlorine that is directly proportional to the amount of chlorine added beyond the breakpoint.

"C" is short for "Residual Disinfectant Concentration."

"Capacity Development" means technical, managerial, and financial capabilities of the water system to plan for, achieve, and maintain compliance with applicable drinking water standards.

"cfs" means cubic feet per second and is one way of expressing flowrate (one cfs is equivalent to 448.8 gpm).

"Class" means the level of certification of Backflow Prevention Technician (Class I, II or III).

"Coagulation" is the process of destabilization of the charge (predominantly negative) on particulates and colloids suspended in water. Destabilization lessens the repelling character of particulates and colloids and allows them to become attached to other particles so that they may be removed in subsequent processes. The particulates in raw waters (which contribute to color and turbidity) are mainly clays, silt, viruses, bacteria, fulvic and humic acids, minerals (including asbestos, silicates, silica, and radioactive particles), and organic particulate.

"Collection area" means the area surrounding a ground-water source which is underlain by collection pipes, tile, tunnels, infiltration boxes, or other ground-water collection

devices.

"Commission" means the Operator Certification Commission.

"Community Water System" (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Compliance cycle" means the nine-year calendar year cycle during which public water systems must monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle began January 1, 1993 and ends December 31, 2001; the second begins January 1, 2002 and ends December 31, 2010; the third begins January 1, 2011 and ends December 31, 2019.

"Compliance period" means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period ran from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; and the third is from January 1, 1999 to December 31, 2001.

"Comprehensive Performance Evaluation" (CPE) is a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with these rules, the comprehensive performance evaluation must consist of at least the following components: Assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

"Confirmed SOC contamination area" means an area surrounding and including a plume of SOC contamination of the soil or water which previous monitoring results have confirmed. The area boundaries may be determined by measuring 3,000 feet horizontally from the outermost edges of the confirmed plume. The area includes deeper aquifers even though only the shallow aquifer is the one contaminated.

"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion of the filtration area in which discrete bacterial colonies can not be distinguished.

"Contaminant" means any physical, chemical biological, or radiological substance or matter in water.

"Continuing Education Unit" (CEU) means ten contact hours of participation in, and successful completion of, an organized and approved continuing education experience under responsible sponsorship, capable direction, and qualified instruction. College credit in approved courses may be substituted for CEUs on an equivalency basis.

"Conventional Surface Water Treatment" means a series of processes including coagulation, flocculation, sedimentation, filtration and disinfection resulting in substantial particulate removal and inactivation of pathogens.

"Controls" means any codes, ordinances, rules, and regulations that a public water system can cite as currently in effect to regulate potential contamination sources; any physical conditions which may prevent contaminants from migrating off of a site and into surface or ground water; and any site with negligible quantities of contaminants.

"Corrective Action" refers to a rating placed on a system by the Division and means a provisional rating for a public water system not in compliance with the Rules of R309, but making all the necessary changes outlined by the Executive Secretary to bring them into compliance.

"Corrosion inhibitor" means a substance capable of reducing the corrosiveness of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

"Criteria" means the conceptual standards that form the basis for DWSP area delineation to include distance, ground-water time of travel, aquifer boundaries, and ground-water divides.

"Criteria threshold" means a value or set of values selected to represent the limits above or below which a given criterion will cease to provide the desired degree of protection.

"Cross-Connection" means any actual or potential connection between a drinking (potable) water system and any other source or system through which it is possible to introduce into the public drinking water system any used water, industrial fluid, gas or substance other than the intended potable water. For example, if you have a pump moving non-potable water and hook into the drinking water system to supply water for the pump seal, a cross-connection or mixing may lead to contamination of the drinking water. Also see backsiphonage, backpressure and backflow.

"Cross Connection Control Program" means the program administered by the public water system in which cross connections are either eliminated or controlled.

"Cross Connection Control Commission" means the duly constituted advisory subcommittee appointed by the Board to advise the Board on Backflow Technician Certification and the Cross Connection Control Program of Utah.

"CT" or "$CT_{calc}$" is the product of "residual disinfectant concentration" (C) in mg/l determined before or at the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T." If a public water system applies disinfectant at more than one point prior to the first customer, the summation of each CT value for each disinfectant sequence before or at the first customer determines the total percent inactivation or "Total Inactivation Ratio." In determining the Total Inactivation Ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point(s).

"$CT_{req'd}$" is the CT value required when the log reduction credit given the filter is subtracted from the (3-log) inactivation requirement for Giardia lamblia or the (4-log) inactivation requirement for viruses.

"$CT_{99.9}$" is the CT value required for 99.9 percent (3-log) inactivation of Giardia lamblia cysts. $CT_{99.9}$ for a variety of disinfectants and conditions appear in Tables 1.1-1.6, 2.1, and 3.1 of Section 141.74(b)(3) in the code of Federal Regulations (also available from the Division).

"Designated person" means the person appointed by a public water system to ensure that the requirements of their Drinking Water Source Protection Plan(s) for ground water sources and/or surface water sources are met.

"Direct Employment" means that the operator is directly compensated by the drinking water system to operate that drinking water system.

"Direct Filtration" means a series of processes including coagulation and filtration, but excluding sedimentation, resulting in substantial particulate removal.

"Direct Responsible Charge" means active on-site control and management of routine maintenance and operation duties. A person in direct responsible charge is generally an operator of a water treatment plant or distribution system who independently makes decisions during normal operation which can affect the sanitary quality, safety, and adequacy of water delivered to customers. In cases where only one operator is employed by the system, this operator shall be considered to be in direct responsible charge.

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income which is less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax commission from federal individual income tax returns excluding zero exemptions returns.

"Discipline" means type of certification (Distribution or Treatment).

"Disinfectant Contact Time" ("T" in CT calculations) means the time in minutes that it takes water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is measured. Where only one "C" is measured, "T" is the time in minutes that it takes water to move from the point of disinfectant application to a point before or at where residual disinfectant concentration ("C") is measured. Where more than one "C" is measured, "T" is (a) for the first measurement of "C," the time in minutes that it takes water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured and (b) for subsequent measurements of "C," the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated. Disinfectant contact time in pipelines must be calculated by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

"Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents (see also Primary Disinfection and Secondary Disinfection).

"Disinfection profile" is a summary of daily Giardia lamblia inactivation through the treatment plant.

"Distribution System" means the use of any spring or well source, distribution pipelines, appurtenances, and facilities which carry water for potable use to consumers through a public water supply. Systems which chlorinate groundwater are in this discipline.

"Distribution System Manager" means the individual responsible for all operations of a distribution system.

"Division" means the Utah Division of Drinking Water, who acts as staff to the Board and is also part of the Utah Department of Environmental Quality.

"Dose Equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission of Radiological Units and Measurements (ICRU).

"Drinking Water" means water that is fit for human consumption and meets the quality standards of R309-200. Common usage of terms such as culinary water, potable water or finished water are synonymous with drinking water.

"Drinking Water Project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses which has at least fifteen service connections or serves an average of twenty-five individuals daily for at least sixty days of the year and includes collection, treatment, storage, and distribution facilities under the control of the operator and used primarily with the system and collection, pretreatment or storage facilities used primarily in connection with the system but not under such control.

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project.

"Drinking Water Regional Planning" means a county wide water plan, administered locally by a coordinator, who facilitates the input of representatives of each public water system in the county with a selected consultant, to determine how each public water system will either collectively or individually comply with source protection, operator certification, monitoring (including consumer confidence reports), capacity development (including technical, financial and managerial aspects), environmental issues, available funding and related studies.

"DWSP Program" means the program to protect drinking water source protection zones and management areas from contaminants that may have an adverse effect on the health of persons.

"DWSP Zone" means the surface and subsurface area surrounding a ground-water or surface water source of drinking water supplying a PWS, over which or through which contaminants are reasonably likely to move toward and reach such water source.

"Emergency Storage" means that storage tank volume which provides water during emergency situations, such as pipeline failures, major trunk main failures, equipment failures, electrical power outages, water treatment facility failures, source water supply contamination, or natural disasters.

"Engineer" means a person licensed under the Professional Engineers and Land Surveyors Licensing Act, 58-22 of the Utah

Code, as a "professional engineer" as defined therein.

"Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

"Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

"Equalization Storage" means that storage tank volume which stores water during periods of low demand and releases the water under periods of high demand. Equalization storage provides a buffer between the sources and distribution for the varying daily water demands. Typically, water demands are high in the early morning or evening and relatively low in the middle of the night. A rule-of-thumb for equalization storage volume is that it should be equal to one average day's use.

"Equivalent Residential Connection" (ERC) is a term used to evaluate service connections to consumers other than the typical residential domicile. Public water system management is expected to review annual metered drinking water volumes delivered to non-residential connections and estimate the equivalent number of residential connections that these represent based upon the average of annual metered drinking water volumes delivered to true single family residential connections. This information is utilized in evaluation of the system's source and storage capacities (refer to R309-510).

"Executive Secretary" means the Executive Secretary of the Board as appointed and with authority outlined in 19-4-106 of the Utah Code.

"Existing ground-water source of drinking water" means a public supply ground-water source for which plans and specifications were submitted to the Division on or before July 26, 1993.

"Existing surface water source of drinking water" means a public supply surface water source for which plans and specifications were submitted to the Division on or before June 12, 2000.

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"Filter profile" is a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts verus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

"Financial Assistance" means a drinking water project loan, credit enhancement agreement, interest buy-down agreement or hardship grant.

"Fire Suppression Storage" means that storage tank volume allocated to fire suppression activities. It is generally determined by the requirements of the local fire marshal, expressed in gallons, and determined by the product of a minimum flowrate in gpm and required time expressed in minutes.

"First draw sample" means a one-liter sample of tap water, collected in accordance with an approved lead and copper sampling site plan, that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.

"Flash Mix" is the physical process of blending or dispersing a chemical additive into an unblended stream. Flash Mixing is used where an additive needs to be dispersed rapidly (within a period of one to ten seconds). Common usage of terms such as "rapid mix" or "initial mix" are synonymous with flash mix.

"Floc" means flocculated particles or agglomerated particles formed during the flocculation process. Flocculation enhances the agglomeration of destabilized particles and colloids toward settleable (or filterable) particles (flocs). Flocculated particles may be small (less than 0.1 mm diameter) micro flocs or large, visible flocs (0.1 to 3.0 mm diameter).

"Flocculation" means a process to enhance agglomeration of destabilized particles and colloids toward settleable (or filterable) particles (flocs). Flocculation begins immediately after destabilization in the zone of decaying mixing energy (downstream from the mixer) or as a result of the turbulence of transporting flow. Such incidental flocculation may be an adequate flocculation process in some instances. Normally flocculation involves an intentional and defined process of gentle stirring to enhance contact of destabilized particles and to build floc particles of optimum size, density, and strength to be subsequently removed by settling or filtration.

"fps" means feet per second and is one way of expressing the velocity of water.

"G" is used to express the energy required for mixing and for flocculation. It is a term which is used to compare velocity gradients or the relative number of contacts per unit volume per second made by suspended particles during the flocculation process. Velocity gradients G may be calculated from the following equation: G = square root of the value(550 times P divided by u times V). Where: P = applied horsepower, u = viscosity, and V = effective volume.

"GAC10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days.

" Geometric Mean" the geometric mean of a set of N numbers $X_1$, $X_2$, $X_3$,...., $X_N$ is the Nth root of the product of the numbers.

"gpd" means gallons per day and is one way of expressing average daily water demands experienced by public water systems.

"gpm" means gallons per minute and is one way of expressing flowrate.

"gpm/sf" means gallons per minute per square foot and is one way of expressing flowrate through a surface area.

"Grade" means any one of four possible steps within a certification discipline of either water distribution or water treatment. Grade I indicates knowledge and experience requirements for the smallest type of public water supply. Grade IV indicates knowledge and experience levels appropriate for the largest, most complex type of public water supply.

"Gross Alpha Particle Activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

"Gross Beta Particle Activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

"ground water of high quality" means a well or spring producing water deemed by the Executive Secretary to be of sufficiently high quality that no treatment is required. Such sources shall have been designed and constructed in conformance with these rules, have been tested to establish that

all applicable drinking water quality standards (as given in rule R309-200) are reliably and consistently met, have been deemed not vulnerable to natural or man-caused contamination, and the public water system management have established adequate protection zones and management policies in accordance with rule R309-600.

"ground water of low quality" means a well or spring which, as determined by the Executive Secretary, cannot reliably and consistently meet the drinking water quality standards described in R309-200. Such sources shall be deemed to be a low quality ground water source if any of the conditions outlined in subsection R309-505-8(1) exist. Ground water that is classified "UDI" is a subset of this definition and requires "conventional surface water treatment" or an acceptable alternative.

"Ground Water Source" means any well, spring, tunnel, adit, or other underground opening from or through which ground water flows or is pumped from subsurface water-bearing formations.

"Ground Water Under the Direct Influence of Surface Water" or "UDI" means any water beneath the surface of the ground with significant occurrence of insects or other macro organisms, algae, or large-diameter pathogens such as Giardia lamblia, or (for surface water treatment systems serving at least 10,000 people only) Cryptosporidium, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence will be determined for individual sources in accordance with criteria established by the Executive Secretary. The determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well or spring construction and geology with field evaluation.

"Haloacetic acids"(five) (HAA5) mean the sum of the concentrations in mg/l of the haloacetic acid compounds (monochloracetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.

"Hardship Grant" means a grant of monies to a political subdivision that meets the drinking water project loan considerations whose project is determined by the Board to not be economically feasible unless grant assistance is provided. A hardship grant may be authorized in the following forms:

(1) a Planning Advance which will be required to be repaid at a later date, to help meet project costs incident to planning to determine the economic, engineering and financial feasibility of a proposed project;

(2) a Design Advance which will be required to be repaid at a later date, to help meet project costs incident to design including, but not limited to, surveys, preparation of plans, working drawings, specifications, investigations and studies; or

(3) a Project Grant which will not be required to be repaid.

"Hardship Grant Assessment" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal. Hardship grant assessment funds shall be subject to the requirements of UAC R309-700 for hardship grants.

"Hotel, Motel or Resort" shall include tourist courts, motor hotels, resort camps, hostels, lodges, dormitories and similar facilities, and shall mean every building, or structure with all buildings and facilities in connection, kept, used, maintained as, advertised as, or held out to the public to be, a place where living accommodations are furnished to transient guests or to groups normally occupying such facilities on a seasonal or short term basis.

"Hydrogeologic methods" means the techniques used to translate selected criteria and criteria thresholds into mappable delineation boundaries. These methods include, but are not limited to, arbitrary fixed radii, analytical calculations and models, hydrogeologic mapping, and numerical flow models.

"Initial compliance period" means the first full three-year compliance period which begins at least 18 months after promulgation, except for contaminants listed in R309-200-5(3)(a), Table 200-2 numbers 19 to 33; R309-200-5(3)(b), Table 200-3 numbers 19 to 21; and R309-200-5(1)(c), Table 200-1 numbers 1, 5, 8, 11 and 18, initial compliance period means the first full three-year compliance after promulgation for systems with 150 or more service connections (January 1993-December 1995), and first full three-year compliance period after the effective date of the regulation (January 1996-December 1998) for systems having fewer than 150 service connections.

"Intake", for the purposes of surface water drinking water source protection, means the device used to divert surface water and also the conveyance to the point immediately preceding treatment, or, if no treatment is provided, at the entry point to the distribution system.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and a political subdivision, for the purpose of reducing the cost of financing incurred by a political subdivision on bonds issued by the subdivision for drinking water project costs.

"Labor Camp" shall mean one or more buildings, structures, or grounds set aside for use as living quarters for groups of migrant laborers or temporary housing facilities intended to accommodate construction, industrial, mining or demolition workers.

"Land management strategies" means zoning and non-zoning controls which include, but are not limited to, the following: zoning and subdivision ordinances, site plan reviews, design and operating standards, source prohibitions, purchase of property and development rights, public education programs, ground water monitoring, household hazardous waste collection programs, water conservation programs, memoranda of understanding, written contracts and agreements, and so forth.

"Land use agreement" means a written agreement, memoranda or contract wherein the owner(s) agrees not to locate or allow the location of uncontrolled potential contamination sources or pollution sources within zone one of new wells in protected aquifers or zone one of surface water sources. The owner(s) must also agree not to locate or allow the location of pollution sources within zone two of new wells in unprotected aquifers and new springs unless the pollution source agrees to install design standards which prevent contaminated discharges to ground water. This restriction must be binding on all heirs, successors, and assigns. Land use agreements must be recorded with the property description in

the local county recorder's office. Refer to R309-600-13(2)(d).

Land use agreements for protection areas on publicly owned lands need not be recorded in the local county recorder office. However, a letter must be obtained from the Administrator of the land in question and meet the requirements described above.

"Large water system" for the purposes of R309-210-6 only, means a water system that serves more than 50,000 persons.

" Lead free" means, for the purposes of R309-210-6, when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead; when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead; and when used with respect to plumbing fittings and fixtures intended by the manufacture to dispense water for human ingestion refers to fittings and fixtures that are in compliance with standards established in accordance with 42 U.S.C. 300 g-6(e).

"Lead service line" means a service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line.

"Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

"Major Bacteriological Routine Monitoring Violation" means that no routine bacteriological sample was taken as required by R309-210-5(1).

"Major Bacteriological Repeat Monitoring Violation" - means that no repeat bacteriological sample was taken as required by R309-210-5(2).

"Major Chemical Monitoring Violation" - means that no initial background chemical sample was taken as required in R309-204-4(5).

"Management area" means the area outside of zone one and within a two-mile radius where the Optional Two-mile Radius Delineation Procedure has been used to identify a protection area.

For wells, land may be excluded from the DWSP management area at locations where it is more than 100 feet lower in elevation than the total drilled depth of the well.

For springs and tunnels, the DWSP management area is all land at elevation equal to or higher than, and within a two-mile radius, of the spring or tunnel collection area. The DWSP management area also includes all land lower in elevation than, and within 100 horizontal feet, of the spring or tunnel collection area. The elevation datum to be used is the point of water collection. Land may also be excluded from the DWSP management area at locations where it is separated from the ground water source by a surface drainage which is lower in elevation than the spring or tunnel collection area.

"Man-Made Beta Particle and Photon Emitters" means all radionuclides emitting beta particles and/or photons listed in Maximum Permissible Body Burdens and maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, "NBS Handbook 69," except the daughter products of thorium-232, uranium-235 and uranium-238.

"Maximum Contaminant Level" (MCL) means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

"Maximum residual disinfectant level" (MRDL) means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a PWS is in compliance with the MRDL when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a PWS is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as MCLs. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in rule, operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections.

"Maximum residual disinfectant level goal" (MRDLG) means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are non-enforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants.

"Medium-size water system" for the purposes of R309-210-6 only, means a water system that serves greater than 3,300 and less than or equal to 50,000 persons.

"Metropolitan area sources" means all sources within a metropolitan area. A metropolitan area is further defined to contain at least 3,300 year round residents. A small water system which has sources within a metropolitan system's service area, may have those sources classified as a metropolitan area source.

"MG" means million gallons and is one way of expressing a volume of water.

"MGD" means million gallons per day and is one way of expressing average daily water demands experienced by public water systems or the capacity of a water treatment plant.

"mg/l" means milligrams per liter and is one way of expressing the concentration of a chemical in water. At small concentrations, mg/l is synonymous with "ppm" (parts per million).

"Minor Bacteriological Routine Monitoring Violation" means that not all of the routine bacteriological samples were taken as required by R309-210-5(1).

"Minor Bacteriological Repeat Monitoring Violation" means that not all of the repeat bacteriological samples were taken as required by R309-210-5(2).

"Minor Chemical Monitoring Violation" means that the required chemical sample(s) was not taken in accordance with R309-205 and R309-210.

"Modern Recreation Camp" means a campground accessible by any type of vehicular traffic. The camp is used wholly or in part for recreation, training or instruction, social,

religious, or physical education activities or whose primary purpose is to provide an outdoor group living experience. The site is equipped with permanent buildings for the purpose of sleeping, a drinking water supply under pressure, food service facilities, and may be operated on a seasonal or short term basis. These types of camps shall include but are not limited to privately owned campgrounds such as youth camps, church camps, boy or girl scout camps, mixed age groups, family group camps, etc.

"Near the first service connection" means one of the service connections within the first 20 percent of all service connections that are nearest to the treatment facilities.

"Negative Interest" means a loan having loan terms with an interest rate at less than zero percent. The repayment schedule for loans having a negative interest rate will be prepared by the Board.

"New ground water source of drinking water" means a public supply ground water source of drinking water for which plans and specifications are submitted to the Division after July 26, 1993.

"New surface water source of drinking water" means a public supply surface water source of drinking water for which plans and specifications are submitted to the Division after June 12, 2000.

"New Water System" means a system that will become a community water system or non-transient, non-community water system on or after October 1, 1999.

"Non-Community Water System" (NCWS) means a public water system that is not a community water system. There are two types of NCWS's: transient and non-transient.

"Non-distribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which a coliform-positive sample was taken.

"Nonpoint source" means any diffuse source of contaminants or pollutants not otherwise defined as a point source.

"Non-Transient Non-Community Water System" (NTNCWS) means a public water system that regularly serves at least 25 of the same nonresident persons per day for more than six months per year. Examples of such systems are those serving the same individuals (industrial workers, school children, church members) by means of a separate system.

"Not Approved" refers to a rating placed on a system by the Division and means the water system does not fully comply with all the Rules of R309 as measured by R309-400.

"NTU" means Nephelometric Turbidity Units and is an acceptable method for measuring the clarity of water utilizing an electronic nephelometer (see "Standard Methods for Examination of Water and Wastewater").

"Operator" means a person who operates, repairs, maintains, and is directly employed by a public drinking water system.

"Operator Certification Commission" means the Commission appointed by the Board as an advisory Commission on public water system operator certification.

"Operating Permit" means written authorization from the Executive Secretary to actually start utilizing a facility constructed as part of a public water system.

"Optimal corrosion control treatment" for the purposes of R309-210-6 only, means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while insuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

"Package Plants" refers to water treatment plants manufactured and supplied generally by one company which are reportedly complete and ready to hook to a raw water supply line. Caution, some plants do not completely comply with all requirements of these rules and will generally require additional equipment.

"PCBs" means a group of chemicals that contain polychlorinated biphenyl.

"Peak Day Demand" means the amount of water delivered to consumers by a public water system on the day of highest consumption, generally expressed in gpd or MGD. This peak day will likely occur during a particularly hot spell in the summer. In contrast, some systems associated with the skiing industry may experience their "Peak Day Demand" in the winter.

"Peak Instantaneous Demand" means calculated or estimated highest flowrate that can be expected through any water mains of the distribution network of a public water system at any instant in time, generally expressed in gpm or cfs (refer to section R309-510-9).

"Person" means an individual, corporation, company, association, partnership; municipality; or State, Federal, or tribal agency.

"Picocurie" (pCi) means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

"Plan Approval" means written approval, by the Executive Secretary, of contract plans and specifications for any public drinking water project which have been submitted for review prior to the start of construction (see also R309-500-7).

"Plug Flow" is a term to describe when water flowing through a tank, basin or reactors moves as a plug of water without ever dispersing or mixing with the rest of the water flowing through the tank.

"Point of Disinfectant Application" is the point where the disinfectant is applied and water downstream of that point is not subject to re-contamination by surface water runoff.

"Point of Diversion"(POD) is the point at which water from a surface source enters a piped conveyance, storage tank, or is otherwise removed from open exposure prior to treatment.

"Point-of-Entry Treatment Device" means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

"Point-of-Use Treatment Device" means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

"Point source" means any discernible, confined, and discrete source of pollutants or contaminants, including but not limited to any site, pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, animal feeding operation with more than ten animal units, landfill, or vessel or other floating craft, from which pollutants are or may be

discharged.

"Political Subdivision" means any county, city, town, improvement district, metropolitan water district, water conservancy district, special service district, drainage district, irrigation district, separate legal or administrative entity created under Title 11, Chapter 13, Interlocal Cooperation Act, or any other entity constituting a political subdivision under the laws of Utah.

"Pollution source" means point source discharges of contaminants to ground or surface water or potential discharges of the liquid forms of "extremely hazardous substances" which are stored in containers in excess of "applicable threshold planning quantities" as specified in SARA Title III. Examples of possible pollution sources include, but are not limited to, the following: storage facilities that store the liquid forms of extremely hazardous substances, septic tanks, drain fields, class V underground injection wells, landfills, open dumps, landfilling of sludge and septage, manure piles, salt piles, pit privies, drain lines, and animal feeding operations with more than ten animal units.

The following definitions are part of R309-600 and clarify the meaning of "pollution source:"

(1) "Animal feeding operation" means a lot or facility where the following conditions are met: animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered to be a single feeding operation if they adjoin each other, if they use a common area, or if they use a common system for the disposal of wastes.

(2) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers; the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(3) "Extremely hazardous substances" means those substances which are identified in the Sec. 302(EHS) column of the "TITLE III LIST OF LISTS - Consolidated List of Chemicals Subject to Reporting Under SARA Title III," (EPA 550-B-96-015). A copy of this document may be obtained from: NCEPI, PO Box 42419, Cincinnati, OH 45202. Online ordering is also available at http://www.epa.gov/ncepihom/orderpub.html.

"Potential contamination source" means any facility or site which employs an activity or procedure which may potentially contaminate ground or surface water. A pollution source is also a potential contamination source.

"ppm" means parts per million and is one way of expressing the concentration of a chemical in water. At small concentrations generally used, ppm is synonymous with "mg/l" (milligrams per liter).

"Practical Quantitation Level" (PQL) means the required analysis standard for laboratory certification to perform lead and copper analyses. The PQL for lead is .005 milligrams per liter and the PQL for copper is 0.050 milligrams per liter.

"Primary Disinfection" means the adding of an acceptable primary disinfectant during the treatment process to provide adequate levels of inactivation of bacteria and pathogens. The effectiveness is measured through "CT" values and the "Total Inactivation Ratio." Acceptable primary disinfectants are, chlorine, ozone, and chlorine dioxide (see also "CT" and "$CT_{99.9}$").

"Principal Forgiveness" means a loan wherein a portion of the loan amount is "forgiven" upon closing the loan. The terms for principal forgiveness will be as directed by R309-705-8, and by the Board.

"Drinking Water Project Costs" include the cost of acquiring and constructing any drinking water project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way; engineering or architectural fees, legal fees, fiscal agent's and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the political subdivision, the Board or the Department of Environmental Quality, in connection with the issuance of obligation of the political subdivision to evidence any loan made to it under the law.

"Protected aquifer" means a producing aquifer in which the following conditions are met:

(1) A naturally protective layer of clay, at least 30 feet in thickness, is present above the aquifer;

(2) the PWS provides data to indicate the lateral continuity of the clay layer to the extent of zone two; and

(3) the public supply well is grouted with a grout seal that extends from the ground surface down to at least 100 feet below the surface, and for a thickness of at least 30 feet through the protective clay layer.

"Public Drinking Water Project" means construction, addition to, or modification of any facility of a public water system which may affect the quality or quantity of the drinking water (see also section R309-500-6).

"Public Water System" (PWS) means a system, either publicly or privately owned, providing water through constructed conveyances for human consumption and other domestic uses, which has at least 15 service connections or serves an average of at least 25 individuals daily at least 60 days out of the year and includes collection, treatment, storage, or distribution facilities under the control of the operator and used primarily in connection with the system, or collection, pretreatment or storage facilities used primarily in connection with the system but not under his control (see 19-4-102 of the Utah Code Annotated). All public water systems are further categorized into three different types, community (CWS), non-transient non-community (NTNCWS), and transient non-community (TNCWS). These categories are important with respect to required monitoring and water quality testing found in R309-205 and R309-210 (see also definition of "water

system").

"Raw Water" means water that is destined for some treatment process that will make it acceptable as drinking water. Common usage of terms such as lake or stream water, surface water or irrigation water are synonymous with raw water.

"Recreational Home Developments" are subdivision type developments wherein the dwellings are not intended as permanent domiciles.

"Recreational Vehicle Park" means any site, tract or parcel of land on which facilities have been developed to provide temporary living quarters for individuals utilizing recreational vehicles. Such a park may be developed or owned by a private, public or non-profit organization catering to the general public or restricted to the organizational or institutional member and their guests only.

"Regional Operator" means a certified operator who is in direct responsible charge of more than one public drinking water system.

"Regionalized Water System" means any combination of water systems which are physically connected or operated or managed as a single unit.

"Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem" (mrem) is 1/1000 of a rem.

"Renewal Course" means a course of instruction, approved by the Subcommittee, which is a prerequisite to the renewal of a Backflow Technician's Certificate.

"Repeat compliance period" means any subsequent compliance period after the initial compliance period.

"Replacement well" means a public supply well drilled for the sole purpose of replacing an existing public supply well which is impaired or made useless by structural difficulties and in which the following conditions are met:

(1) the proposed well location shall be within a radius of 150 feet from an existing ground water supply well; and

(2) the PWS provides a copy of the replacement application approved by the State Engineer (refer to Section 73-3-28 of the Utah Code).

"Required reserve" means funds set aside to meet requirements set forth in a loan covenant/bond indenture.

"Residual Disinfectant Concentration" ("C" in CT calculations) means the concentration of disinfectant, measured in mg/l, in a representative sample of water.

"Restricted Certificate" means that the operator has qualified by passing an examination but is in a restricted certification status due to lack of experience as an operator.

"Roadway Rest Stop" shall mean any building, or buildings, or grounds, parking areas, including the necessary toilet, hand washing, water supply and wastewater facilities intended for the accommodation of people using such facilities while traveling on public roadways. It does not include scenic view or roadside picnic areas or other parking areas if these are properly identified

"Routine Chemical Monitoring Violation" means no routine chemical sample(s) was taken as required in R309-205, R309-210 and R309-215.

"Safe Yield" means the annual quantity of water that can be taken from a source of supply over a period of years without depleting the source beyond its ability to be replenished naturally in "wet years".

"Sanitary Seal" means a cap that prevents contaminants from entering a well through the top of the casing.

"scfm/sf" means standard cubic foot per minute per square foot and is one way of expressing flowrate of air at standard density through a filter or duct area.

"Secondary Disinfection" means the adding of an acceptable secondary disinfectant to assure that the quality of the water is maintained throughout the distribution system. The effectiveness is measured by maintaining detectable disinfectant residuals throughout the distribution system. Acceptable secondary disinfectants are chlorine, chloramine, and chlorine dioxide.

"Secondary Maximum Contaminant Level" means the advisable maximum level of contaminant in water which is delivered to any user of a public water system.

"Secretary to the Subcommittee" means that individual appointed by the Executive Secretary to conduct the business of the Subcommittee.

"Sedimentation" means a process for removal of solids before filtration by gravity or separation.

"Semi-Developed Camp" means a campground accessible by any type of vehicular traffic. Facilities are provided for both protection of site and comfort of users. Roads, trails and campsites are defined and basic facilities (water, flush toilets and/or vault toilets, tables, fireplaces or tent pads) are provided. These camps include but are not limited to National Forest campgrounds, Bureau of Reclamation campgrounds, and youth camps.

"Service Connection" means the constructed conveyance by which a dwelling, commercial or industrial establishment, or other water user obtains water from the supplier's distribution system. Multiple dwelling units such as condominiums or apartments, shall be considered to have a single service connection, if fed by a single line, for the purpose of microbiological repeat sampling; but shall be evaluated by the supplier as multiple "equivalent residential connections" for the purpose of source and storage capacities.

"Service Factor" means a rating on a motor to indicate an increased horsepower capacity beyond nominal nameplate capacity for occasional overload conditions.

"Service line sample" means a one-liter sample of water collected in accordance with R309-210-6(3)(b)(iii), that has been standing for at least 6 hours in a service line.

"Single family structure" for the purposes of R309-210-6 only, means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

"Small water system" means a public water system that serves 3,300 persons or fewer.

"Specialist" means a person who has successfully passed the written certification exam and meets the required experience, but who is not in direct employment with a Utah public drinking water system.

"Stabilized drawdown" means that there is less than 0.5 foot of change in water level measurements in a pumped well for a minimum period of six hours.

"Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

"SOCs" means synthetic organic chemicals.

"Stabilized Drawdown" means the drawdown measurements taken during a constant-rate yield and drawdown test as outlined in subsection R309-515-14(10)(b) are constant (no change).

"Subcommittee" means the Cross Connection Control Subcommittee.

"Supplier of water" means any person who owns or operates a public water system.

"Surface Water" means all water which is open to the atmosphere and subject to surface runoff (see also section R309-204-5(1)). This includes conveyances such as ditches, canals and aqueducts, as well as natural features.

"Susceptibility" means the potential for a PWS (as determined at the point immediately preceding treatment, or if no treatment is provided, at the entry point to the distribution system) to draw water contaminated above a demonstrated background water quality concentration through any overland or subsurface pathway. Such pathways may include cracks or fissures in or open areas of the surface water intake, and/or the wellhead, and/or the pipe/conveyance between the intake and the water distribution system or treatment.

"SUVA" means Specific Ultraviolet Absorption at 254 nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm ($UV_{254}$) (in $m^{-1}$) by its concentration of dissolved organic carbon (DOC) (in mg/l).

"System with a single service connection" means a system which supplies drinking water to consumers via a single service line.

"T" is short for "Contact Time" and is generally used in conjunction with either the residual disinfectant concentration (C) in determining CT or the velocity gradient (G) in determining mixing energy GT.

"Ten State Standards" refers to the Recommended Standards For Water Works, 1997 by the Great Lakes Upper Mississippi River Board of State Public Health and Environmental Managers available from Health Education Services, A Division of Health Research Inc., P.O. Box 7126, Albany, New York 12224, (518)439-7286.

"Time of travel" means the time required for a particle of water to move in the producing aquifer from a specific point to a ground water source of drinking water. It also means the time required for a particle of water to travel from a specific point along a surface water body to an intake.

"Total Inactivation Ratio" is the sum of all the inactivation ratios calculated for a series of disinfection sequences, and is indicated or shown as: "Summation sign ($CT_{calc}$)/($CT_{req'd}$)." A total inactivation ratio equal to or greater than 1.0 is assumed to provide the required inactivation of Giardia lamblia cysts. $CT_{calc}/CT_{99.9}$ equal to 1.0 provides 99.9 percent (3-log) inactivation, whereas $CT_{calc}/CT_{90}$ equal to 1.0 only provides 90 percent (1-log) inactivation.

"Too numerous to count" (TNTC) means that the total number of bacterial colonies exceeds 200 on a 47 mm diameter membrane filter used for coliform detection.

"Total Organic Carbon" (TOC) means total organic carbon in mg/l measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

"Total Trihalomethanes" (TTHM) means the MCL for trihalomethanes. This is the sum of four of ten possible isomers of chlorine/bromine/methane compounds, all known as trihalomethanes (THM). TTHM is defined as the arithmetic sum of the concentrations in micro grams per liter of only four of these (chloroform, bromodichloromethane, dibromochloromethane, and bromoform) rounded to two significant figures. This measurement is made by samples which are "quenched," meaning that a chlorine neutralizing agent has been added, preventing further THM formation in the samples.

"Training Coordinating Committee" means the voluntary association of individuals responsible for environmental training in the state of Utah.

"Transient Non-Community Water System" (TNCWS) means a non-community public water system that does not serve 25 of the same nonresident persons per day for more than six months per year. Examples of such systems are those, RV park, diner or convenience store where the permanent nonresident staff number less than 25, but the number of people served exceeds 25.

"Treatment Plant" means those facilities capable of delivering complete treatment to any water (the equivalent of coagulation and/or filtration) serving a public drinking water supply.

"Treatment Plant Manager" means the individual responsible for all operations of a treatment plant.

"Trihalomethanes" (THM) means any one or all members of this class of organic compounds.

"Trihalomethane Formation Potential" (THMFP) - these samples are collected just following disinfection and measure the highest possible TTHM value to be expected in the water distribution system. The formation potential is measured by not neutralizing the disinfecting agent at the time of collection, but storing the sample seven days at 25 degrees C prior to analysis. A chlorine residual must be present in these samples at the end of the seven day period prior to analysis for the samples to be considered valid for this test. Samples without a residual at the end of this period must be resampled if this test is desired.

"Turbidity Unit" refers to NTU or Nephelometric Turbidity Unit.

"UDI" means under direct influence (see also "Ground Water Under the Direct Influence of Surface Water").

"Uncovered finished water storage facility" is a tank, reservoir, or other facility used to store water that will undergo no further treatment except residual disinfection and is open to the atmosphere.

"Unprotected aquifer" means any aquifer that does not meet the definition of a protected aquifer.

"Unregulated Contaminant" means a known or suspected disease causing contaminant for which no maximum contaminant level has been established.

"Unrestricted Certificate" means that a certificate of competency issued by the Executive Secretary when the operator has passed the appropriate level written examination and has met all certification requirements at the discipline and grade stated on the certificate.

"Virus" means a virus of fecal origin which is infectious to humans.

"Waterborne Disease Outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system, as determined by the appropriate local or State agency.

"Watershed" means the topographic boundary that is the perimeter of the catchment basin that contributes water through a surface source to the intake structure. For the purposes of surface water DWSP, if the topographic boundary intersects the state boundary, the state boundary becomes the boundary of the watershed.

"Water Supplier" means a person who owns or operates a public drinking water system.

"Water System" means all lands, property, rights, rights-of-way, easements and related facilities owned by a single entity, which are deemed necessary or convenient to deliver drinking water from source to the service connection of a consumer(s). This includes all water rights acquired in connection with the system, all means of conserving, controlling and distributing drinking water, including, but not limited to, diversion or collection works, springs, wells, treatment plants, pumps, lift stations, service meters, mains, hydrants, reservoirs, tanks and associated appurtenances within the property or easement boundaries under the control of or controlled by the entity owning the system.

In accordance with R309, certain water systems may be exempted from monitoring requirements, but such exemption does not extend to submittal of plans and specifications for any modifications considered a public drinking water project.

"Wellhead" means the physical structure, facility, or device at the land surface from or through which ground water flows or is pumped from subsurface, water-bearing formations.

"Zone of Influence" corresponds to area of the upper portion of the cone of depression as described in "Groundwater and Wells," second edition, by Fletcher G. Driscoll, Ph.D., and published by Johnson Division, St. Paul, Minnesota.

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**R309. Environmental Quality, Drinking Water.**

**R309-204. Facility Design and Operation: Source Development.**

**R309-204-1. Purpose.**

This rule specifies requirements for public drinking water sources. It is intended to be applied in conjunction with R309-201 through R309-211. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-204-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code Annotated and in accordance with Title 63, Chapter 46a of the same, known as the Administrative Rulemaking Act.

**R309-204-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-200.

**R309-204-4. General.**

(1) Issues to be Considered.

The selection, development and operation of a public drinking water source must be done in a manner which will protect public health and assure that all required water quality standards, as described in R309-103, are met.

(2) Communication with the Division.

Because of the issues described above in (1), engineers are advised to work closely with the Division to help assure that sources are properly sited, developed and operated.

(3) Number of Sources and Quantity Requirements.

Community water systems established after January 1, 1998 serving more than 100 connections shall have a minimum of two sources, except where served by a water treatment plant. Community Water Systems established prior to that date, currently serving more than 100 connections, shall obtain a separate source no later than January 1, 2000. For all systems, the total developed source capacity(ies) shall equal or exceed the peak day demand of the system. Refer to R309-203-5 of these rules for procedure to estimate the peak day demand.

(4) Quality Requirements.

In selecting a source of water for development, the designing engineer shall demonstrate to the satisfaction of the Executive Secretary that the source(s) selected for use in public water systems are of satisfactory quality, or can be treated in a manner so that the quality requirements of R309-103 can be met.

(5) Initial Analyses.

All new drinking water sources, unless otherwise noted below, shall be analyzed for the following:

(a) All the primary and secondary inorganic contaminants listed in R309-103, Table 103-1 and Table 103-5 (excluding Asbestos unless it would be required by R309-104-4.1.2),

(b) Ammonia as N; Boron; Calcium; Chromium, Hex as Cr; Copper; Lead; Magnesium; Potassium; Turbidity, as NTU; Specific Conductivity at 25 degrees Celsius, u mhos/cm; Bicarbonate; Carbon Dioxide; Carbonate; Hydroxide; Phosphorous, Ortho as P; Silica, dissolved as $SiO_2$; Surfactant as MBAS; Total Hardness as $CaCO_3$; and Alkalinity as $CaCO_3$,

(c) Pesticides, PCB's and SOC's as listed in R309-103-2.3a, Table 103-2 unless the system is a transient non-community pws or, if a community pws or non-transient non-community pws, they have received waivers in accordance with R309-104-4.3.1f. The following six constituents have been excused from monitoring in the State by the EPA, dibromochloropropane, ethylene dibromide, Diquat, Endothall, glyphosate and Dioxin,

(d) VOC's as listed in R309-103-2.3b, Table 103-3 unless the system is a transient non-community pws, and

(e) Radiologic chemicals as listed in R309-103-2.4 unless the system is a non-transient non-community pws or a transient non-community pws.

(f) Unregulated contaminants as listed in R309-104-5.1.1 list A and list B, unless a transient non-coummity pws.

All analyses shall be performed by a certified laboratory as required by R309-104-3 (Specially prepared sample bottles are required),

(6) Source Classification.

Subsection R309-202-7(1)(a)(i) provides information on the classification of water sources. The Executive Secretary shall classify all existing or new sources as either:

(a) Surface water or ground water under direct influence of surface water which will require conventional surface water treatment or an approved equivalent, or as

(b) Ground water not under the direct influence of surface water.

(7) Latitude and Longitude.

The latitude and longitude, to at least the nearest second, or the location by section, township, range, and course and distance from an established outside section corner or quarter corner of each point of diversion shall be submitted to the Executive Secretary prior to source approval.

**R309-204-5. Surface Water Sources.**

(1) Definition.

A surface water source, as is defined in R309-200, shall include, but not be limited to tributary systems, drainage basins, natural lakes, artificial reservoirs, impoundments and springs or wells which have been classified as being directly influenced by surface water. Surface water sources will not be considered for culinary use unless they can be rendered acceptable by conventional surface water treatment or other equivalent treatment techniques acceptable to the Executive Secretary.

(2) Pre-design Submittal.

The following information must be submitted to the Executive Secretary and approved in writing before commencement of design of diversion structures and/or water treatment facilities:

(a) A copy of the chemical analyses required by R309-103 and described in R309-204-4(5) above, and

(b) A survey of the watershed tributary to the watercourse along which diversion structures are proposed. The survey shall include, but not be limited to:

(i) determining possible future uses of impoundments or reservoirs,

(ii) the present stream classification by the Division of Water Quality, any obstacles to having stream(s) reclassified 1C, and determining degree of watershed control by owner or other agencies,

(iii) assessing degree of hazard to the supply by accidental spillage of materials that may be toxic, harmful or detrimental to treatment processes,

(iv) obtaining samples over a sufficient period of time to assess the microbiological, physical, chemical and radiological characteristics and variations of the water,

(v) assessing the capability of the proposed treatment process to reduce contaminants to applicable standards, and

(vi) consideration of currents, wind and ice conditions, and the effect of tributary streams at their confluence.

(3) Pre-construction Submittal.

Following approval of a surface water source, the following additional information must be submitted for review and approval prior to commencement of construction:

(a) Evidence that the water system owner has a legal right to divert water from the proposed source for domestic or municipal purposes;

(b) Documentation regarding the minimum firm yield which the watercourse is capable of producing (see R309-204-5(4)(a) below; and

(c) Complete plans and specifications and supporting documentation for the proposed treatment facilities so as to ascertain compliance with R309-206 or R309-207.

(4) Quantity.

The quantity of water from surface sources shall:

(a) Be assumed to be no greater than the low flow of a 25 year recurrence interval or the low flow of record for these sources when 25 years of records are not available;

(b) Meet or exceed the anticipated peak day demand for water as estimated in R309-203-7 and provide a reasonable surplus for anticipated growth; and

(c) Be adequate to compensate for all losses such as silting, evaporation, seepage, and sludge disposal which would be anticipated in the normal operation of the treatment facility.

(5) Diversion Structures.

Design of intake structures shall provide for:

(a) Withdrawal of water from more than one level if quality varies with depth;

(b) Intake of lowest withdrawal elevation located at sufficient depth to be kept submerged at the low water elevation of the reservoir;

(c) Separate facilities for release of less desirable water held in storage;

(d) Occasional cleaning of the inlet line;

(e) A diversion device capable of keeping large quantities of fish or debris from entering an intake structure; and

(f) Suitable protection of pumps where used to transfer diverted water (refer to R309-209-5).

(6) Impoundments.

The design of an impoundment reservoir shall provide for, where applicable:

(a) Removal of brush and trees to the high water level;

(b) Protection from floods during construction;

(c) Abandonment of all wells which may be inundated (refer to applicable requirements of the Division of Water Rights); and

(d) Adequate precautions to limit nutrient loads.

**R309-204-6. Ground Water - Wells.**

(1) Required Treatment.

If properly developed, water from wells may be suitable for culinary use without treatment. A determination as to whether treatment may be required can only be made after the source has been developed and evaluated.

(2) Standby Power.

Water suppliers, particularly community water suppliers, should assess the capability of their system in the event of a power outage. If gravity fed spring sources are not available, one or more of the system's well sources should be equipped for operation during power outages. In this event:

(a) To ensure continuous service when the primary power has been interrupted, a power supply should be provided through connection to at least two independent public power sources, or portable or in-place auxiliary power available as an alternative; and

(b) When automatic pre-lubrication of pump bearings is necessary, and an auxiliary power supply is provided, the pre-lubrication line should be provided with a valved by-pass around the automatic control, or the automatic control shall be wired to the emergency power source.

(3) The Utah Division of Water Rights.

The Utah Division of Water Rights (State Engineer's Office) regulates the drilling of water wells. Before the drilling of a well commences, the well driller must receive a start card from the State Engineer's Office.

(4) Source Protection.

Public drinking water systems are responsible for protecting their sources from contamination. The selection of a well location shall only be made after consideration of the requirements of R309-113. Sources shall be located in an area which will minimize threats from existing or potential sources of pollution.

If certain precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zones at the discretion of the Executive Secretary. When sewer lines are permitted in protection zones both sewer lines and manholes shall be specially constructed as follows:

(a) sewer lines shall be ductile iron pipe with mechanical joints or fusion welded high density polyethylene plastic pipe (solvent welded joints shall not be accepted);

(b) lateral to main connection shall be shop fabricated or saddled with a mechanical clamping watertight device designed for the specific pipe;

(c) the sewer pipe to manhole connections shall made using a shop fabricated sewer pipe seal ring cast into the manhole base (a mechanical joint shall be installed within 12 inches of the manhole base on each line entering the manhole, regardless of the pipe material);

(d) the sewer pipe shall be laid with no greater than 2 percent deflection at any joint;

(e) backfill shall be compacted to not less than 95 percent of maximum laboratory density as determined in accordance

with ASTM Standard D-690;

(f) sewer manholes shall meet the following requirements:

(i) the manhole base and walls, up to a point at least 12 inches above the top of the upper most sewer pipe entering the manhole, shall be shop fabricated in a single concrete pour.

(ii) the manholes shall be constructed of reinforced concrete.

(iii) all sewer lines and manholes shall be air pressure tested after installation.

(5) Outline of Well Approval Process.

(a) Well drilling shall not commence until both of the following items are submitted and receive a favorable review:

(i) a Preliminary Evaluation Report on source protection issues as required by R309-113-13(2), and

(ii) engineering plans and specifications governing the well drilling.

(b) Grouting Inspection During Well Construction.

An engineer from the Division, or the appropriate district engineer of the Department of Environmental Quality, shall be contacted at least three days before the anticipated beginning of the well grouting procedure (see R309-204-6(6)(i)). The well grouting procedure shall be witnessed by one of these individuals or their designee.

(c) After completion of the well drilling the following information shall be submitted and receive a favorable review before water from the well can be introduced into a public water system:

(i) a copy of the "Report of Well Driller" as required by the State Engineer's Office which is complete in all aspects and has been stamped as received by the same;

(ii) a copy of the letter from the engineer described in R309-204-6(5)(b) above, indicating inspection and confirmation that the well was grouted in accordance with the well drilling specifications and the requirements of this rule;

(iii) a copy of the pump test including the yield vs. drawdown test as described in R309-204-6(10)(b);

(iv) a copy of the chemical analyses required by R309-204-4(5);

(v) documentation indicating that the water system owner has a right to divert water for domestic or municipal purposes from the well source;

(vi) a copy of complete plans and specifications covering well equipment and diversion piping necessary to introduce water from the well into the distribution system; and

(vii) a bacteriological analysis of water obtained from the well after installation of permanent equipment, disinfection and flushing.

(d) An Operation Permit shall be obtained in accordance with R309-201-9 before any water from the well is introduced into a public water system.

(6) Well Materials, Design and Construction.

(a) ANSI/NSF Standards 60 and 61 Certification.

All interior surfaces must consist of products complying with ANSI/NSF Standard 61. This requirement applies to casings, drop pipes, well screens, coatings, adhesives, solders, fluxes, pumps, switches, electrical wire, sensors, and all other equipment or surfaces which may be contact the drinking water.

All substances introduced into the well during construction or development shall be certified to comply with ANSI/NSF Standard 60. This requirement applies to drilling fluids (biocides, clay thinners, defoamers, foamers, loss circulation materials, lubricants, oxygen scavengers, viscosifiers, weighting agents) and regenerants. This requirement also applies to well grouting and sealing materials which may come in direct contact with the drinking water.

(b) Permanent Steel Casing Pipe shall:

(i) be new single steel casing pipe meeting AWWA Standard A-100, ASTM or API specifications and having a minimum weight and thickness as given in Table 1 found in R655-4-7.2 of the Utah Administrative Code (Administrative Rules for Water Well Drillers, adopted January 19, 1995, Division of Water Rights);

(ii) have additional thickness and weight if minimum thickness is not considered sufficient to assure reasonable life expectancy of the well;

(iii) be capable of withstanding forces to which it is subjected;

(iv) be equipped with a drive shoe when driven;

(v) have full circumferential welds or threaded coupling joints; and

(vi) project at least 18 inches above the anticipated final ground surface and at least 12 inches above the anticipated pump house floor level. At sites subject to flooding the top of the well casing shall terminate at least three feet above the 100 year flood level or the highest known flood elevation, whichever is higher.

(c) Non-Ferrous Casing Material.

The use of any non-ferrous material for a well casing shall receive prior approval of the Executive Secretary based on the ability of the material to perform its desired function. Thermoplastic water well casing pipe shall meet ANSI/ASTM Standard F480-76 and shall bear the logo NSF-wc indicating compliance with NSF Standard 14 for use as well casing.

(d) Disposal of Cuttings.

Cuttings and waste from well drilling operations shall not be discharged into a waterway, lake or reservoir. The rules of the Utah Division of Water Quality must be observed with respect to these discharges.

(e) Packers.

Packers, if used, shall be of material that will not impart taste, odor, toxic substances or bacterial contamination to the well water. Lead, or partial lead packers are specifically prohibited.

(f) Screens.

The use of well screens is recommended where appropriate and, if used, they shall:

(i) be constructed of material resistant to damage by chemical action of groundwater or cleaning operations;

(ii) have size of openings based on sieve analysis of formations or gravel pack materials;

(iii) have sufficient diameter to provide adequate specific capacity and low aperature entrance velocities;

(iv) be installed so that the operating water level remains above the screen under all pumping conditions; and

(v) be provided with a bottom plate or washdown bottom fitting of the same material as the screen.

(g) Plumbness and Alignment Requirements.

Every well shall be tested for plumbness and vertical

alignment in accordance with AWWA Standard A100. Plans and specifications submitted for review shall:

(i) have the test method and allowable tolerances clearly stated in the specifications. and

(ii) clearly indicate any options the design engineer may have if the well fails to meet the requirements. Generally wells may be accepted if the misalignment does not interfere with the installation or operation of the pump or uniform placement of grout.

(h) Casing Perforations.

The placement of perforations in the well casing shall:

(i) be so located to permit as far as practical the uniform collection of water around the circumference of the well casing, and

(ii) be of dimensions and size to restrain the water bearing soils from entrance into the well.

(i) Grouting Techniques and Requirements.

All permanent well casing for public drinking water wells shall be grouted to a depth of at least 100 feet below the ground surface unless an "exception" is issued by the Executive Secretary (see R309-102-2.2).

If a well is to be considered in a protected aquifer the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective layer, as described in R309-113-6(1)(v).

The following applies to all drinking water wells:

(i) Consideration During Well Construction.

(A) Sufficient annular opening shall be provided to permit a minimum of two inches of grout between the permanent casing and the drilled hole, taking into consideration any joint couplings. If a carrier casing is left in place, the minimum clearances above shall pertain to both annular openings (between casings and between carrier casing and the drilled hole), the carrier casing shall be adequately perforated so as to ensure grout contact with the native formations, and the carrier casing shall be withdrawn at least five feet during grouting operations.

(B) Additional information is available from the Division for recommended construction methods for grout placement.

(C) The casing(s) must be provided with sufficient guides welded to the casing to permit unobstructed flow and uniform thickness of grout.

(ii) Grouting Materials.

(A) Neat Cement Grout.

Cement, conforming to ASTM Standard C150, and water, with no more than six gallons of water per sack of cement, shall be used for two inch openings. Additives may be used to increase fluidity subject to approval by the Executive Secretary.

(B) Concrete Grout.

Equal parts of cement conforming to ASTM Standard C150, and sand, with not more than six gallons of water per sack of cement may be used for openings larger than two inches.

(C) Clay Seal.

Where an annular opening greater than six inches is available a clay seal of clean local clay mixed with at least ten percent swelling bentonite may be used when approved by the Executive Secretary.

(iii) Application.

(A) When the annular opening is less than four inches, grout shall be installed under pressure, by means of a positive displacement grout pump, from the bottom of the annular opening to be filled.

(B) When the annular opening is four or more inches and 100 feet or less in depth, and concrete grout is used, it may be placed by gravity through a grout pipe installed to the bottom of the annular opening in one continuous operation until the annular opening is filled.

(C) All temporary construction casings should be removed but shall be withdrawn at least five feet during the grouting operation to ensure grout contact with the native formations.

(D) When a "well in a protected aquifer" classification is desired, the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective clay layer (see R309-113-6(1)(v)). If the clay layer starts below 100 feet, grout shall extend from the ground surface to a depth of at least 100 feet, grout or native fill may be utilized from there to the top of the clay layer, and then grout placed completely through the protective clay layer. If the clay layer starts and ends above 100 feet, grout shall extend from the ground surface down to and completely through the protective clay layer.

(E) After cement grouting is applied, work on the well shall be discontinued until the cement or concrete grout has properly set; usually a period of 72 hours.

(j) Water Entered Into Well During Construction.

Any water entering a well during construction shall not be contaminated and should be obtained from a chlorinated municipal system. Where this is not possible the water must be dosed to give a 100 mg/l free chlorine residual. Refer also to the administrative rules of the Division of Water Rights in this regard.

(k) Gravel Pack Wells.

The following shall apply to gravel packed wells:

(i) the gravel pack material is to be of well rounded particles, 95 percent siliceous material, that are smooth and uniform, free of foreign material, properly sized, washed and then disinfected immediately prior to or during placement,

(ii) the gravel pack is placed in one uniform continuous operation,

(iii) refill pipes, when used, are Schedule 40 steel pipe incorporated within the pump foundation and terminated with screwed or welded caps at least 12 inches above the pump house floor or concrete apron,

(iv) refill pipes located in the grouted annular opening be surrounded by a minimum of 1.5 inches of grout,

(v) protection provided to prevent leakage of grout into the gravel pack or screen, and

(vi) any casings not withdrawn entirely meet requirements of R309-204-6(6)(b) or R309-204-6(6)(c).

(7) Well Development.

(a) Every well shall be developed to remove the native silts and clays, drilling mud or finer fraction of the gravel pack.

(b) Development should continue until the maximum specific capacity is obtained from the completed well.

(c) Where chemical conditioning is required, the specifications shall include provisions for the method, equipment, chemicals, testing for residual chemicals, and disposal of waste and inhibitors.

(d) Where blasting procedures may be used the specifications shall include the provisions for blasting and cleaning. Special attention shall be given to assure that the grouting and casing are not damaged by the blasting.

(8) Capping Requirements.

(a) A welded metal plate or a threaded cap is the preferred method for capping a well.

(b) At all times during the progress of work the contractor shall provide protection to prevent tampering with the well or entrance of foreign materials.

(9) Well Abandonment.

(a) Test wells and groundwater sources which are to be permanently abandoned shall be sealed by such methods as necessary to restore the controlling geological conditions which existed prior to construction or as directed by the Utah Division of Water Rights.

(b) Wells to be abandoned shall be sealed to prevent undesirable exchange of water from one aquifer to another. Prefernce shall be given to using a neat cement grout. Where fill materials are used, which are other than cement grout or concrete, they shall be disinfected and free of foreign materials. When an abandoned will is filled with cement- grout or concrete, these materials shall be applied to the well- hole through a pipe, tremie, or bailer.

(10) Well Assessment.

(a) Step Drawdown Test.

Preliminary to the constant-rate test required below, it is recommended that a step-drawdown test (uniform increases in pumping rates over uniform time intervals with single drawdown measurements taken at the end of the intervals) be conducted to determine the maximum pumping rate for the desired intake setting.

(b) Constant-Rate Test.

A "constant-rate" yield and drawdown test shall:

(i) be performed on every production well after construction or subsequent treatment and prior to placement of the permanent pump,

(ii) have the test methods clearly indicated in the specifications,

(iii) have a test pump with sufficient capacity that when pumped against the maximum anticipated drawdown, it will be capable of pumping at least 1.5 times the desired design discharge rate,

(iv) provide for continuous pumping for at least 24 hours or until stabilized drawdown has continued for at least six hours when test pumped at a "constant-rate" equal to 1.5 times the desired design discharge rate,

(v) provide the following data:

(A) capacity vs. head characteristics for the test pump (manufacturer's pump curve),

(B) static water level (in feet to the nearest tenth, as measured from an identified datum; usually the top of casing),

(C) depth of test pump intake,

(D) time and date of starting and ending test(s),

(vi) For the "constant-rate" test provide the following at time intervals sufficient for at least ten essentially uniform intervals for each log cycle of the graphic evaluation required below:

(A) record the time since starting test (in minutes),

(B) record the actual pumping rate,

(C) record the pumping water level (in feet to the nearest tenth, as measured from the same datum used for the static water level),

(D) record the drawdown (pumping water level minus static water level in feet to the nearest tenth),

(E) provide graphic evaluation on semilogarithmic graph paper by plotting the drawdown measurements on the arithmetic scale at locations corresponding to time since starting test on the logarithmic scale, and

(vii) Immediately after termination of the constant-rate test, and for a period of time until there are no changes in depth to water level measurements for at least six hours, record the following at time intervals similar to those used during the constant-rate pump test:

(A) time since stopping pump test (in minutes),

(B) depth to water level (in feet to the nearest tenth, as measured from the same datum used for the pumping water level).

(11) Well Disinfection.

Every new, modified, or reconditioned well including pumping equipment shall be disinfected before being placed into service for drinking water use. These shall be disinfected according to AWWA Standard C654 published by the American Water Works Association as modified to incorporate the following as a minimum standard:

(i) the well shall be disinfected with a chlorine solution of sufficient volume and strength and so applied that a concentration of at least 50 parts per million is obtained in all parts of the well and comes in contact with equipment installed in the well. This solution shall remain in the well for a period of at least eight hours, and

(ii) a satisfactory bacteriologic water sample analysis shall be obtained prior to the use of water from the well in a public water system.

(12) Well Equipping.

(a) Naturally Flowing Wells.

Naturally flowing wells shall:

(i) have the discharge controlled by valves,

(ii) be provided with permanent casing and sealed by grout,

(iii) if erosion of the confining bed adjacent to the well appears likely, special protective construction may be required by the Division.

(b) Line Shaft Pumps.

Wells equipped with line shaft pumps shall:

(i) have the casing firmly connected to the pump structure or have the casing inserted into the recess extending at least 0.5 inches into the pump base,

(ii) have the pump foundation and base designed to prevent fluids from coming into contact with joints between the pump base and the casing,

(iii) be designed such that the intake of the well pump is at least ten feet below the maximum anticipated drawdown elevation,

(iv) avoid the use of oil lubrication for pumps with intake screens set at depths less than 400 feet (see R309-102-4.7 for additional requirements of lubricants).

(c) Submersible Pumps.

Where a submersible pump is used:

(i) The top of the casing shall be effectively sealed against the entrance of water under all conditions of vibration or movement of conductors or cables.

(ii) The electrical cable shall be firmly attached to the riser pipe at 20 foot intervals or less.

(iv) The intake of the well pump must be at least ten feet below the maximum anticipated drawdown elevation.

(d) Pitless Well Units and Adapters.

Pitless well units and adapters shall:

(i) not be used unless the specific application has been approved by the Executive Secretary,

(ii) terminate at least 18 inches above final ground elevation or three feet above the highest known flood elevation whichever is greater,

(iii) be approved by NSF International or the Pitless Adapter Association or other appropriate Review Authority,

(iv) have suitable access to the interior of the casing in order to disinfect the well,

(v) have a suitable sanitary seal or cover at the upper terminal of the casing that will prevent the entrance of any fluids or contamination, especially at the connection point of the electrical cables,

(vi) have suitable access so that measurements of static and pumped water levels in the well can be obtained,

(vii) allow at least one check valve within the well casing,

(viii) be furnished with a cover that is lockable or otherwise protected against vandalism or sabotage,

(ix) be shop-fabricated from the point of connection with the well casing to the unit cap or cover,

(x) be of watertight construction throughout,

(xi) be constructed of materials at least equivalent to and having wall thickness compatible to the casing,

(xii) have field connection to the lateral discharge from the pitless unit of threaded, flanged or mechanical joint connection,

(xiii) be threaded or welded to the well casing. If the connection to the casing is by field weld, the shop assembled unit must be designed specifically for field welding to the casing. The only field welding permitted on the pitless unit will be that needed to connect a pitless unit to the casing, and

(xiv) have an inside diameter as great as that of the well casing, up to and including casing diameters of 12 inches, to facilitate work and repair on the well, pump, or well screen.

(e) Well Discharge Piping.

The discharge piping shall:

(i) be designed so that the friction loss will be low,

(ii) have control valves and appurtenances located above the pump house floor when an above-ground discharge is provided,

(iii) be protected against the entrance of contamination,

(iv) be equipped with (in order of placement from the well head) a smooth nosed sampling tap, a check valve, a pressure gauge, a means of measuring flow and a shutoff valve,

(v) where a well pumps directly into a distribution system, be equipped with an air release vacuum relief valve located upstream from the check valve, with exhaust/relief piping terminating in a down-turned position at least six inches above the floor and covered with a No. 14 mesh corrosion resistant screen. An exception to this requirement will be allowed provided specific proposed well head valve and piping design includes provisions for pumping to waste all trapped air before water is introduced into the distribution system,

(vi) have all exposed piping valves and appurtenances protected against physical damage and freezing,

(vii) be properly anchored to prevent movement, and

(f) Water Level Measurement.

(i) Provisions shall be made to permit periodic measurement of water levels in the completed well.

(ii) Where permanent water level measuring equipment is installed it shall be made using corrosion resistant materials attached firmly to the drop pipe or pump column and installed in such a manner as to prevent entrance of foreign materials.

(g) Observation Wells.

Observation wells shall be:

(i) constructed in accordance with the requirements for permanent wells if they are to remain in service after completion of a water supply well, and

(ii) protected at the upper terminal to preclude entrance of foreign materials.

(h) Electrical Protection.

Sufficient electrical controls shall be placed on all pump motors to eliminate electrical problems due to phase shifts, surges, lightning, etc.

(13) Well House Construction.

The use of a well house is strongly recommended, particularly in installations utilizing above ground motors.

In addition to applicable provisions of R309-209, well pump houses shall conform to the following:

(a) Casing Projection Above Floor.

The permanent casing for all ground water wells shall project at least 12 inches above the pump house floor or concrete apron surface and at least 18 inches above the final ground surface. However, casings terminated in underground vaults may be permitted if the vault is provided with a drain to daylight sized to handle in excess of the well flow and surface runoff is directed away from the vault access.

(b) Floor Drain.

Where a well house is constructed the floor surface shall be at least six inches above the final ground elevation and shall be sloped to provide drainage. A "drain-to-daylight" shall be provided unless highly impractical.

(c) Earth Berm.

Sites subject to flooding shall be provided with an earth berm terminating at an elevation at least two feet above the highest known flood elevation or other suitable protection as determined by the Executive Secretary.

(d) Well Casing Termination at Flood Sites.

The top of the well casing at sites subject to flooding shall terminate at least 3 feet above the 100 year flood level or the highest known flood elevation, whichever is higher (refer to R309-204-6(6)(b)(vi)).

(e) Miscellaneous.

The well house shall be ventilated, heated and lighted in such a manner as to assure adequate protection of the equipment (refer to R309-209-5(2) (a) through (h)

(f) Fencing.

Where necessary to protect the quality of the well water the Executive Secretary may require that certain wells be fenced in

a manner similar to fencing required around spring areas.

(g) Access.

An access shall be provided either through the well house roof or sidewalls in the event the pump must be pulled for replacement or servicing the well.

**R309-204-7. Ground Water - Springs.**

(1) General.

Springs vary greatly in their characteristics and they should be observed for some time prior to development to determine any flow and quality variations. Springs determined to be "under the direct influence of surface water" will have to be given "surface water treatment".

(2) Source Protection.

Public drinking water systems are responsible for protecting their spring sources from contamination. The selection of a spring should only be made after consideration of the requirements of R309-204-4. Springs must be located in an area which shall minimize threats from existing or potential sources of pollution. A Preliminary Evaluation Report on source protection issues is required by R309-113-13(2). If certain precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zones at the discretion of the Executive Secretary. When sewer lines are permitted in protection zones both sewer lines and manholes shall be specially constructed as described in R309-204-6(4).

(3) Surface Water Influence.

Some springs yield water which has been filtered underground for years, other springs yield water which has been filtered underground only a matter of hours. Even with proper development, the untreated water from certain springs may exhibit turbidity and high coliform counts. This indicates that the spring water is not being sufficiently filtered in underground travel. If a spring is determined to be "under the direct influence of surface water", it shall be given "conventional surface water treatment" (refer to R309-202-6).

(4) Pre-construction Submittal

Before commencement of construction of spring development improvements the following information must be submitted to the Executive Secretary and approved in writing.

(a) Detailed plans and specifications covering the development work.

(b) A copy of an engineer's statement indicating:

(i) the historical record (if available) of spring flow variation,

(ii) expected minimum flow and the time of year it will occur,

(iii) expected maximum flow and the time of year it will occur,

(iv) expected average flow,

(v) the behavior of the spring during drought conditions.

After evaluating this information, the Division will assign a "firm yield" for the spring which will be used in assessing the number of and type of connections which can be served by the spring (see "desired design discharge rate" in R309-200).

(c) A copy of documentation indicating the water system owner has a right to divert water for domestic or municipal purposes from the spring source.

(d) A Preliminary Evaluation Report on source protection issues as required by R309-113-13(1).

(e) A copy of the chemical analyses required by R309-204-4(5).

(f) An assessment of whether the spring is "under the direct influence of surface water" (refer to R309-202-7(1)(a)(i).

(5) Information Required after Spring Development.

After development of a culinary spring, the following information shall be submitted:

(a) Proof of satisfactory bacteriologic quality.

(b) Information on the rate of flow developed from the spring.

(c) As-built plans of spring development.

(6) Operation Permit Required.

Water from the spring can be introduced into a public water system only after it has been approved for use, in writing, by the Executive Secretary.

(7) Spring Development.

The development of springs for drinking water purposes shall comply with the following requirements:

(a) The spring collection device, whether it be collection tile, perforated pipe, imported gravel, infiltration boxes or tunnels must be covered with a minimum of ten feet of relatively impervious soil cover. Such cover must extend a minimum of 15 feet in all horizontal directions from the spring collection device. Clean, inert, non-organic material shall be placed in the vicinity of the collection device(s).

(b) Where it is impossible to achieve the ten feet of relatively impervious soil cover, an acceptable alternate will be the use of an impermeable liner provided that:

(i) the liner has a minimum thickness of at least 10 mils,

(ii) all seams in the liner are folded or welded to prevent leakage,

(iii) the liner is certified as complying with ANSI/NSF Standard 61. This requirement is waived if certain that the drinking water will not contact the liner,

(iv) the liner is installed in such a manner as to assure its integrity. No stones, two inch or larger or sharp edged, shall be located within two inches of the liner,

(v) a minimum of two feet of relatively impervious soil cover is placed over the impermeable liner,

(vi) the soil and liner cover are extended a minimum of 15 feet in all horizontal directions from the collection devices.

(c) Each spring collection area shall be provided with at least one collection box to permit spring inspection and testing.

(d) All junction boxes and collection boxes, must comply with R309-210-14 with respect to access manholes, air vents, and overflow piping. Lids for these spring boxes shall be gasketed and the box adequately vented.

(e) The spring collection area shall be surrounded by a fence located a distance of 50 feet (preferably 100 feet if conditions allow) from all collection devices on land at an elevation equal to or higher than the collection device, and a distance of 15 feet from all collection devices on land at an elevation lower than the collection device. The elevation datum to be used is the surface elevation at the point of collection. The fence shall be at least "stock tight" (see R309-200). In remote areas where no grazing or public access is possible, the fencing requirement may be waived by the Executive Secretary. In populated areas a six foot high chain link fence with three

strands of barbed wire may be required.

(f) Within the fenced area all vegetation which has a deep root system shall be removed.

(g) A diversion channel, or berm, capable of diverting all anticipated surface water runoff away from the spring collection area shall be constructed immediately inside the fenced area.

(h) A permanent flow measuring device shall be installed. Flow measurement devices such as critical depth meters or weirs shall be properly housed and otherwise protected.

(i) The spring shall be developed as thoroughly as possible so as to minimize the possibility of excess spring water ponding within the collection area. Where the ponding of spring water is unavoidable, the excess shall be collected by shallow piping or french drain and be routed beyond and down grade of the fenced area required above, whether or not a fence is in place.

**R309-204-8. Operation and Maintenance.**

(1) Spring Collection Area Maintenance.

(a) Spring collection areas shall be periodically (preferably annually) cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas and diversion channel is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

(b) No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Executive Secretary. Such approval shall be given 1) only when acceptable pesticides are proposed; 2) when the pesticide product manufacturer certifies that no harmful substance will be imparted to the water; and 3) only when spring development construction meets the requirements of these rules.

(2) Pump Lubricants.

The U.S. Food and Drug Administration (FDA) has approved propylene glycol and certain types of mineral oil for occasional contact with or for addition to food products. These oils are commonly referred to as "food-grade mineral oils". All oil lubricated pumps shall utilize food grade mineral oil suitable for human consumption as determined by the Executive Secretary.

(3) Algicide Treatment.

No algicide shall be applied to a drinking water source unless specific approval is obtained from the Division. Such approval will be given only if the algicide is certified as meeting the requirements of ANSI/NSF Standard 60, Water Treatment Chemicals - Health Effects.

**KEY: drinking water, source development, source maintenance**
**January 1, 1998 19-4-104**
**Notice of Continuation September 16, 2002**

**R309. Environmental Quality, Drinking Water.**
**R309-500. Facility Design and Operation: Plan Review, Operation and Maintenance Requirements.**
**R309-500-1. Purpose.**

The purpose of this rule is to describe plan review procedures and requirements, clarify projects requiring review, and inspection requirements for drinking water projects. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-500-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

**R309-500-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

**R309-500-4. General.**

(1) Construction and Operation of New Facilities.

As authorized in 19-4-106(3) of the Utah Code, the Executive Secretary may review plans, specifications, and other data pertinent to proposed or expanded water supply systems to insure proper design and construction.

Plans and specifications and a business plan as required by R309-800-5, along with a completed project notification form, shall be submitted to the Executive Secretary for any new water systems or previously un-reviewed water systems unless acceptable data can be presented that the proposed or existing water system will not become a "public water system" as defined in 19-4-102 of the Utah Code or in R309-110.

Construction of new facilities for public water systems or existing facilities of previously un-reviewed public drinking water systems shall conform with rules R309-500 through R309-550; the "Facility Design and Operation" rules. There may be times in which the requirements of the Facility Design and Operation rules are not appropriate. Thus, the Executive Secretary may grant an "exception" to the Facility Design and Operation rules if it can br shown that the granting of such an exception will not jeopardize the public health.

Construction of a public drinking water project shall not begin until complete plans and specifications have been approved in writing by the Executive Secretary unless waivers have been issued as allowed by R309-500-6(3). This approval shall be referred to as the Plan Approval.

Furthermore, no new public drinking water facility shall be put into operation until written approval to do so has been given by the Executive Secretary or this requirement waived. This approval is referred to as the Operating Permit.

(2) Existing Facilities.

All existing public drinking water systems shall be capable of reliably delivering water which meets the minimum current standard of drinking water quantity and quality requirements. The Executive Secretary may require modification of existing systems in accordance with R309-500 through R309-550 when such modifications are needed to reliably achieve minimum quantity and quality requirements.

(3) Operation and Maintenance of Existing Facilities.

Public drinking water system facilities shall be operated and maintained in a manner which protects the public health. As a minimum, the operation and maintenance procedures of R309-500 through R309-550 shall be adhered to.

**R309-500-5. Public Drinking Water Project.**

(1) Definition.

A public drinking water project, requiring the submittal of a project notification form along with plans and specifications, is any of the following:

(a) The construction of any facility for a proposed drinking water system (see 19-4-106(3) of the Utah Code or R309-500-4(1) above describing the authority of the Executive Secretary).

(b) Any addition to, or modification of, the facilities of an existing public drinking water system which may affect the quality or quantity of water delivered.

(c) Any activity, other than on-going operation and maintenance procedures, which may affect the quality or quantity of water delivered by an existing public drinking water system. Such activities include:

(i) the interior re-coating or re-lining of any raw or drinking water storage tank, or water storage chamber within any treatment facility,

(ii) the "in-situ" re-lining of any pipeline,

(iii) a change or addition of any primary coagulant water treatment chemical (excluding filter, floc or coagulant aids) when the proposed chemical does not appear on a list of chemicals pre-approved by the Executive Secretary for a specific treatment facility, and

(iv) the re-development of any spring or well source or replacement of a well pump with one of different capacity.

(2) On-going Operation and Maintenance Procedures.

On-going operation and maintenance procedures are not considered public drinking water projects and, accordingly, are not subject to the project notification, plan approval and operating permit requirements of this rule. However, these activities shall be carried out in accordance with all operation and maintenance requirements contained in R309-500 through R309-550 and specifically the disinfection, flushing and bacteriological sampling and testing requirements of ANSI/AWWA C651-92 for pipelines, ANSI/AWWA C652-92 for storage facilities, and ANSI/AWWA C654-97 for wells before they are placed back into service. The following activities are considered to be on-going operation and maintenance procedures:

(a) pipeline leak repair,

(b) replacement of existing deteriorated pipeline where the new pipeline segment is the same size as the old pipeline,

(c) distribution pipeline additions where the pipeline size is the same as the main supplying the addition, the length is less than 500 feet and contiguous segments of new pipe total less

than 1000 feet in any fiscal year,

(d) entry into a drinking water storage facility for the purposes of inspection, cleaning and maintenance, and

(e) replacement of equipment or pipeline appurtenances with the same type, size and rated capacity (fire hydrants, valves, pressure regulators, meters, service laterals, chemical feeders and booster pumps including deep well pumps).

**R309-500-6. Plan Approval Procedure.**

(1) Project Notification.

The Division shall be notified prior to the construction of any "public drinking water project" as defined in R309-500-5(1) above. The notification may be prior to or simultaneous with submission of construction plans and specifications as required by R309-500-6(2) below. Notification shall be made by the management of the regulated public water system on a form provided by the Division. Information required by this form shall be determined by the Division and may include:

(a) whether the project is for a new or existing public drinking water system,

(b) the professional engineer, registered in the State of Utah, designing the project and his/her experience designing public drinking water projects within the state,

(c) the individual(s) who will be inspecting the project during construction and whether such inspection will be full-time or part time,

(d) whether required approvals or permits from other governmental agencies (e.g. local planning commissions, building inspectors, Utah Division of Water Rights)are awaiting approval by the Executive Secretary, the agency's name and contact person,

(e) the fire marshal, fire district or other entity having legal authority to specify requirements for fire suppression in the project area,

(f) for community and non-transient non-community public water systems or any public water system treating surface water, the name of the certified operator who is, or will be, in direct responsible charge of the water system,

(g) whether the water system has a registered professional engineer employed, appointed or designated as being directly responsible for the entire system design and his or her name and whether the system is requesting waiving of plan submittal under conditions of R309-500-6 (3),

(h) the anticipated construction schedule, and

(i) a description of the type of legal entity responsible for the water system (i.e. corporation, political subdivision, mutual ownership, individual ownership, etc.) and the status of the entity with respect to the rules of the Utah Public Service Commission.

(2) Pre-Construction Requirements.

All of the following shall be accomplished before construction of any public drinking water project commences:

(a) Contract documents, plans and specifications for a public drinking water project shall be submitted to the Division at least 30 days prior to the date on which action is desired unless the system is eligible for and has requested waiving of plan submittal. Any submittal shall include engineering reports, pipe network hydraulic analyses, water consumption data, supporting information, evidence of rights-of-way and reference to any previously submitted master plans pertinent to the project, along with a description of a program for keeping existing water works facilities in operation during construction so as to minimize interruption of service.

(b) Plans and specifications shall be prepared for every anticipated public water system project. The design utilized shall conform to the requirements of R309-500 through R309-550. Furthermore, the plans and specification shall be sufficiently detailed to assure that the project shall be properly constructed. Drawings shall be compatible with Division's document storage and microfilming practice. Drawings which are illegible or of unusual size shall not be accepted for review. Drawing size shall not exceed 30" x 42" nor be less than 8-1/2" x 11".

(c) The plans and specifications shall be stamped and signed by a licensed professional engineer in accordance with Section 58-22-602(2) of the Utah Code.

(d) Plans and specifications shall be reviewed for conformance with R309-500 through R309-550. No work shall commence on a public water system project until a plan approval has been issued by the Executive Secretary unless conditions outlined in R309-500-6(3) are met and waiving of plan submittal has been requested. If construction or the ordering of substantial equipment has not commenced within one year, a renewal of the Plan Approval shall be obtained prior to proceeding with construction.

(e) If, in the judgment of the Executive Secretary, alternate designs or specific solutions can protect the public health to the same or greater extent as achieved in R309-500 through R309-550, the Executive Secretary may grant an exception thereto (see the third paragraph of R309-500-4(1)).

(f) Novel equipment or treatment techniques may be developed which are not specifically addressed by these rules. These may be accepted by the Executive Secretary if it can be shown that:

(i) the technique will produce water meeting the requirements of R309-200 of these rules,

(ii) the Executive Secretary has determined that it will protect public health to the same extent provided by comparable treatment processes outlined in these rules, and

(iii) the Executive Secretary has determined the technique is as reliable as any comparable treatment process outlined is these rules.

(3) Waiving of Plan Submittal Requirement.

With identification of a professional engineer, as indicated below, on a project notification form the plan submittal requirement may be waived for certain projects. In these instances, in lieu of plans and specifications, a "certification of rule conformance" shall be submitted along with the additional information required for an operating permit (see R309-500-9), signed by the professional engineer identified to Executive Secretary in (b) or, if the system has not employed, appointed, or designated such, the registered professional engineer who prepared the items in (a). Projects eligible for this waiving of plan submittal are:

(a) distribution system improvements which conform to a "master plan" previously reviewed and approved by the Executive Secretary and installed in accordance with the "system's standard drawings," also previously reviewed and

approved by the Executive Secretary, or

(b) distribution system improvements consisting solely of pipelines and pipeline appurtenances (excluding pressure reducing valve stations and in-line booster pump stations);

(i) less than or equal to 4 inches in diameter in water systems (without fire hydrants) serving solely a residential population less than 3,300;

(ii) less than or equal to 8 inches in diameter in water systems (with fire hydrants) providing water for mixed use (commercial, industrial, agricultural and/or residential) to a population less than 3,300;

(iii) less than or equal to 12 inches in diameter in water systems(with fire hydrants) providing water for mixed use to a population between 3,300 and 50,000;

(iv) less than or equal to 16 inches in diameter in water systems (with fire hydrants) providing water for mixed use to a population greater than 50,000.

Additionally, the above systems shall employ, appoint or designate a registered professional engineer who is directly responsible for the entire public water system design and identify this individual to the Executive Secretary before being eligible for waiving of plan submittal requirements.

**R309-500-7. Inspection During Construction.**

Staff from the Division, or the appropriate local health department, after reasonable notice and presentation of credentials may make visits to the work site to assure compliance with these rules.

**R309-500-8. Change Orders.**

Any deviations from approved plans or specifications affecting capacity, hydraulic conditions, operating units, the functioning of water treatment processes, or the quality of water to be delivered, shall be reported to the Executive Secretary. If deemed appropriate, the Executive Secretary may require that revised plans and specifications be submitted for review. Revised plans or specifications shall be submitted to the Division in time to permit the review and approval of such plans or specifications before any construction work, which will be affected by such changes, is begun.

**R309-500-9. Issuance of Operating Permit.**

The Division shall be informed when a public drinking water project, or a well-defined phase thereof, is at or near completion. The new or modified facility shall not be used until an "Operating Permit" is issued, in writing, by the Executive Secretary. This permit shall not be issued until all of the following items are submitted and found to be acceptable for all projects with the exception of distribution lines (including in-line booster pump stations or pressure reducing stations), which may be placed into service prior to submittal of all items if the professional engineer responsible for the entire system, as identified to the Executive Secretary, has received items (1) and (4):

(1) a statement from a registered professional engineer that all conditions of Plan Approval were accomplished ("certification of rule conformance"),

(2) as-built "record" drawings; unless no changes are made from previously submitted and approved plans during construction,

(3) confirmation that a copy of the as-built "record" drawings has been received by the water system owner,

(4) evidence of proper flushing and disinfection in accordance with the appropriate ANSI/AWWA Standard,

(5) where appropriate, water quality data

(6) a statement from the Engineer indicating what changes to the project were necessary during construction, and certification that all of these changes were in conformance with these rules ("certification of rule conformance"),

(7) all other documentation which may have been required during the plan review process, and

(8) confirmation that the water system owner has been provided with an Operation and Maintenance manual for the new facility.

**R309-500-10. Adequacy of Wastewater Disposal.**

Plans and specifications for new water systems, or facilities required as a result of proposed subdivision additions to existing water systems, shall only be approved if the method(s) of wastewater disposal in the affected area have been approved, or been determined to be feasible, by the Utah Division of Water Quality or the appropriate local health agency.

**R309-500-11. Financial Viability.**

Owners of new or existing water systems are encouraged to develop realistic financial strategies for recouping the costs of constructing and operating their systems. Plans for water system facilities shall not be approved when it is obvious that public health will eventually be threatened because the anticipated usage of the system will not generate sufficient funds to insure proper operation and maintenance of the system (see also R309-352-5).

**R309-500-12. Fee Schedule.**

The Division may charge a fee for the review of plan and specifications. A fee schedule is available from the Division.

**R309-500-13. Other Permits.**

Local, county or other state permits may also be necessary before beginning construction of any drinking water project.

**R309-500-14. Reference Documents.**

All references made in R309-500 through R309-550 are available for inspection at the Division's office.

**R309-500-15. Violations of These Rules.**

Violations of rule contained in R309-500 through R309-550 are subject to the provisions of the Utah Safe Drinking Water Act (Title 19, Chapter 4 Section 109 of the Utah Code) and may be subject to fines and penalties.

**KEY: drinking water, plan review, operation and maintenance requirements, permits**
**August 15, 2001 19-4-104**
**Notice of Continuation September 16, 2002**

**R309. Environmental Quality, Drinking Water.**

**R309-505. Facility Design and Operation: Minimum Treatment Requirements.**

**R309-505-1. Purpose.**

This rule specifies the type and degree of treatment which must be applied to the various types of water sources found in Utah. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-505-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63, Chapter 46a of the same, known as the Administrative Rulemaking Act.

**R309-505-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

**R309-505-4. Pre-design Consultation.**

The type and degree of treatment which shall be given a public drinking water source depends upon the nature of the source and the chemical and biological characteristics of the water it produces. Prior to the design of any water treatment facility, the Executive Secretary shall be consulted and concur that the contemplated treatment method is appropriate for the source being treated.

**R309-505-5. Drinking Water Quality Standards.**

Drinking water provided for human consumption by public drinking water systems must meet all water quality standards as specified in R309-103. Sources of water which do not meet applicable standards, or may not meet such standards due to the proximity of contamination sources, shall be appropriately treated as specified herein or physically disconnected from the drinking water system.

**R309-505-6. Surface Water Sources.**

(1) Determination of Surface Water Source.

A surface water source is any water source which rests or travels above ground for any period of time. Such sources include rivers, streams, creeks, lakes, reservoirs, ponds or impoundments.

(2) Treatment of a Surface Water Source.

(a) As a minimum, surface water sources shall be given complete treatment as specified in R309-525 or R309-530.

(b) All surface waters shall be treated to assure:

(i) at least 99.9 percent (3-log) removal and/or inactivation of Giardia lamblia cysts between a point where the raw water is not subject to re-contamination by surface water runoff and a point downstream before or at the first customer;

(ii) at least 99.99 percent (4-log) removal and/or inactivation of viruses between a point where the raw water is not subject to re-contamination by surface water runoff and a point downstream before or at the first customer; and

(iii) removal of substances, as needed, to comply with the quality requirements of R309-103.

(c) A public water system using a surface water source is considered to be in compliance with the requirements in subsection (b), above, if the treatment technique utilized produces water meeting the quality provisions of R309-103, provided that all monitoring required by R309-104 has been accomplished.

**R309-505-7. Low Quality Ground Water Sources.**

(1) Determination of a Low Quality Ground Water Source.

(a) A low quality ground water source is any well or spring which, as determined by the Executive Secretary, cannot reliably and consistently meet the drinking water quality standards described in R309-103. A water source shall be deemed to be a low quality ground water source if any of the following conditions exist:

(i) It is determined by the Executive Secretary that the source is Ground Water Under the Direct Influence of Surface Water.

(A) Classification of existing ground water sources, as to whether or not they are under direct influence of surface water, shall be made by the Executive Secretary.

(B) Frequent monitoring of turbidity, temperature, pH and conductivity of source water, in conjunction with similar monitoring of nearby surface waters may, if properly documented, provide sufficient evidence that the source is not influenced.

(C) Classification of existing sources shall be based upon evaluation of part or all of the following:

(I) Records review; including review of plans and specifications used for construction of collection facilities as submitted for review and approval prior to construction; review of as-built plans as submitted after construction, especially where springs are concerned; review of previous sanitary surveys; and review of any system bacteriological violations which may be linked directly to a source.

(II) Results of written survey form.

(III) On-site inspection by Division personnel.

(IV) Special tests such as Microscopic Particulate Analysis (MPA), dye tracer studies, or time of travel studies done in conjunction with the source protection program. Because of critical timing for tests such as the MPA, accelerated monitoring and reporting of water characteristics as mentioned in R309-505-7 (1)(a)(i)(B) above, may be required prior to MPA sampling.

(b) Testing for microbiological, chemical or radiologic contaminants determines that the drinking water quality requirements of R309-103 cannot be reliably or consistently met.

(c) The location, design or construction of the well or spring makes it, in the judgement of the Executive Secretary, susceptible to natural or man-caused contamination.

(2) Treatment of a Low Quality Ground Water Source.

Low quality ground water sources shall be treated to assure that all chemical and biological contaminants are reduced to the

levels which are reliably and consistently below MCL's prescribed in R309-103. If a source is determined to be ground water under the direct influence of surface water the following is required:

(a) Upon determination that a ground water source is under the direct influence of surface water, conventional surface water treatment, as specified in R309-525,or an approved equivalent, as specified in R309-530, shall be installed within 18 months or the source must be abandoned as a source of drinking water and physically disconnected from the drinking water system.

(b) Systems which must retain use of ground water sources classified as under direct influence of surface water shall start disinfection immediately on those sources and monitor in accordance with residual disinfectant monitoring under treatment plant monitoring and reporting found in R309-104- as well as maintain satisfactory "CT" values in accordance with R309-103-2.7 during the 18 month interim period before conventional surface water treatment, or an approved equivalent, is installed. Chlorine, chlorine dioxide, chloramine, and ozone are considered capable of attaining required levels of disinfection.

(c) Once a ground water source is classified as under the influence of surface water, it must be considered to be a surface water source. Thus, all requirements in these rules which pertain to surface water sources also pertain to ground water under the direct influence of surface water.

**R309-505-8. High Quality Ground Water Sources.**

(1) Determination of a High Quality Ground Water Source.

A well or spring shall be deemed to be a high quality ground water source if the following conditions are met:

(a) The design and construction of the source are in conformance with these rules.

(b) Testing establishes that all applicable drinking water quality standards, as given in R309-103, are met, and can be expected to be met in the future.

(c) The source is not susceptible to natural or man-caused contamination and, furthermore, adequate protection zones and management areas have been established in accordance with R309-600.

(2) Treatment of a High Quality Ground Water Source.

A high quality ground water source requires no treatment.

**R309-505-9. Best Available Technologies (BATs).**

EPA has identified Best Available Technologies (BATs) in national regulations regarding drinking water. BATs include Activated Alumina, Coagulation/Filtration, Direct Filtration, Diatomite Filtration, Electrodialysis Reversal, Corrosion Control, Granulated Activated Carbon, Ion Exchange, Lime Softening, Reverse Osmosis, Polymer Addition and Packed Tower Aeration. Where a BAT is used to reduce the concentration of a contaminant:

(a) the requirements of R309-500 through R309-550 shall govern if the BAT is included in these rules.

(b) if the BAT is not included in R309-500 through R309-550, review of plans and specifications for a project will be governed by R309-530-9, New Treatment Processes or Equipment.

**R309-505-10. Point-of-Entry Treatment Devices.**

Where drinking water does not meet the quality standards of R309-103 and the available water system treatment methods are determined to be unreasonably costly or otherwise undesirable, the Executive Secretary may permit the public water supplier to install and maintain point-of-entry treatment devices which have been proven to be appropriate, safe and effective as determined through testing and compliance with protocols established by EPA's Environmental Technology Verification Program (ETV) or the applicable ANSI/NSF Standard(s). The installation and maintenance of such devices shall be the sole responsibility of the public water supplier and service contracts shall make this clear.

**R309-505-11. Temporary Use of Bottled Water or Point-of-Use Treatment Devices.**

Initially the use of bottled water, or point-of-use treatment devices, may be allowed on a temporary basis by the Executive Secretary. Their continued use shall be reviewed at least annually and only allowed after the Executive Secretary is satisfied that the PWS has made reasonable attempts since the last review to provide acceptable treatment of a more permanent nature without success. Point-of-use treatment devices used shall only be those proven to be appropriate, safe and effective as determined through testing and compliance with protocols established by EPA's Environmental Technology Verification Program (ETV) or the applicable ANSI/NSF Standard(s). Their installation and maintenance shall be under the control of a public water system and this made clear in service contracts between the consumer and the PWS.

**KEY: drinking water, surface water treatment, low quality ground water, high quality ground water**
**August 15, 2001 19-4-104**
**Notice of Continuation September 16, 2002**

**R309. Environmental Quality, Drinking Water.**

**R309-510. Facility Design and Operation: Minimum Sizing Requirements.**

**R309-510-1. Purpose.**

This rule specifies requirements for the sizing of public drinking water facilities such as sources (along with their associated treatment facilities), storage tanks, and pipelines. It is intended to be applied in conjunction with R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-510-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

**R309-510-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

**R309-510-4. General.**

This rule provides estimations which shall be used in the design of new systems, or if there is an absence of data collected by the public water system meeting the required confidence level for a reduction mentioned below, when evaluating water sources, storage facilities and pipelines. Within each of these three broad categories, the designer shall ascertain the contributions on demand from the indoor use of water, the outdoor use of water, and fire suppression activities (if required by local authorities). These components must be added together to determine the total demand on a given facility.

**R309-510-5. Reduction of Requirements.**

If acceptable data are presented, at or above the 90% confidence level, showing that the requirements made herein are excessive for a given project, the requirements may be appropriately reduced on a case by case basis by the Executive Secretary. In the case of Recreational Home Developments, in order to qualify for a quantity reduction, not only must the actual water consumption be less than quantities required by rule (with the confidence level indicated above) but enforceable policy restrictions must have been approved which prevent the use of such dwellings as a permanent domicile and these restrictions shall have been consistently enforced.

**R309-510-6. Water Conservation.**

This rule is based upon typical current water consumption patterns in the State of Utah. They may be excessive in certain settings where legally enforceable water conservation measures exist. In these cases the requirements made in this section may be reduced on a case-by-case basis by the Executive Secretary.

**R309-510-7. Source Sizing.**

(1) Peak Day Demand and Average Yearly Demand.

Sources shall legally and physically meet water demands under two separate conditions. First, they shall meet the anticipated water demand on the day of highest water consumption. This is referred to as the peak day demand. Second, they shall also be able to provide one year's supply of water, the average yearly demand.

(2) Estimated Indoor Use.

In the absence of firm water use data, Tables 510-1 and 510-2 shall be used to estimate the peak day demand and average yearly demand for indoor water use.

TABLE 510-1
Source Demand for Indoor Use

| Type of Connection | Peak Day Demand | Average Yearly Demand |
|---|---|---|
| Year-round use | | |
| Residential | 800 gpd/conn | 146,000 gal./conn |
| ERC | 800 gpd/ERC | 146,000 gal./ERC |
| Seasonal/Non-residential use | | |
| Modern Recreation Camp | 60 gpd/person | (see note 1) |
| Semi-Developed Camp | | |
| a. with pit privies | 5 gpd/person | (see note 1) |
| b. with flush toilets | 20 gpd/person | (see note 1) |
| Hotel, Motel, and Resort | 150 gpd/unit | (see note 1) |
| Labor Camp | 50 gpd/person | (see note 1) |
| Recreational Vehicle Park | 100 gpd/pad | (see note 1) |
| Roadway Rest Stop | 7 gpd/vehicle | (see note 1) |
| Recreational Home Development | 400 gpd/conn | (see note 1) |

Note 1. Annual demand shall be based on the number of days the system will be open during the year times the peak day demand unless data acceptable to the Division, with a confidence level of 90% or greater showing a lesser annual consumption, can be presented.

TABLE 510-2
Source Demand for Individual Establishments[a]
(Indoor Use)

| Type of Establishment | Peak Day Demand (gpd) |
|---|---|
| Airports | |
| a. per passenger | 3 |
| b. per employee | 15 |
| Boarding Houses | |
| a. for each resident boarder and employee | 50 |
| b. for each nonresident boarders | 10 |
| Bowling Alleys, per alley | |
| a. with snack bar | 100 |
| b. with no snack bar | 85 |
| Churches, per person | 5 |
| Country Clubs | |
| a. per resident member | 100 |
| b. per nonresident member present | 25 |
| c. per employee | 15 |
| Dentist's Office | |
| a. per chair | 200 |
| b. per staff member | 35 |

| | |
|---|---|
| Doctor's Office | |
| a. per patient | 10 |
| b. per staff member | 35 |
| Fairgrounds, per person | 1 |
| Fire Stations, per person | |
| a. with full-time employees and food prep. | 70 |
| b. with no full-time employees and no food prep. | 5 |
| Gyms | |
| a. per participant | 25 |
| b. per spectator | 4 |
| Hairdresser | |
| a. per chair | 50 |
| b. per operator | 35 |
| Hospitals, per bed space | 250 |
| Industrial Buildings, per 8 hour shift, per employee (exclusive of industrial waste) | |
| a. with showers | 35 |
| b. with no showers | 15 |
| Launderette, per washer | 580 |
| Movie Theaters | |
| a. auditorium, per seat | 5 |
| b. drive-in, per car space | 10 |
| Nursing Homes, per bed space | 280 |
| Office Buildings and Business Establishments, per shift, per employee (sanitary wastes only) | |
| a. with cafeteria | 25 |
| b. with no cafeteria | 15 |
| Picnic Parks, per person (toilet wastes only) | 5 |
| Restaurants | |
| a. ordinary restaurants (not 24 hour service) | 35 per seat |
| b. 24 hour service | 50 per seat |
| c. single service customer utensils only | 2 per customer |
| d. or, per customer served (includes toilet and kitchen wastes) | 10 |
| Rooming House, per person | 40 |
| Schools, per person | |
| a. boarding | 75 |
| b. day, without cafeteria, gym or showers | 15 |
| c. day, with cafeteria, but no gym or showers | 20 |
| d. day, with cafeteria, gym and showers | 25 |
| Service Stations[b] ,per vehicle served | 10 |
| Skating Rink, Dance Halls, etc., per person | |
| a. no kitchen wastes | 10 |
| b. Additional for kitchen wastes | 3 |
| Ski Areas, per person (no kitchen wastes) | 10 |
| Stores | |
| a. per public toilet room | 500 |
| b. per employee | 11 |
| Swimming Pools and Bathhouses[c] ,per person | 10 |
| Taverns, Bars, Cocktail Lounges, per seat | 20 |
| Visitor Centers, per visitor | 5 |

NOTES FOR TABLE 510-2:

1. Source capacity must at least equal the peak day demand of the system. Estimate this by assuming the facility is used to its maximum.

2. Generally, storage volume must at least equal one average day's demand.

3. Peak instantaneous demands may be estimated by fixture unit analysis as per Appendix E of the 200 International Plumbing Code.

(a) When more than one use will occur, the multiple use shall be considered in determining total demand. Small industrial plants maintaining a cafeteria and/or showers and club houses or motels maintaining swimming pools and/or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established demands from known or similar installations.

(b) or 250 gpd per pump,

(c) 20 x {Water Area ($Ft^2$) / 30} + Deck Area ($Ft^2$)

(3) Estimated Outdoor Use.

In the absence of firm water use data, Table 510-3 shall be used to estimate the peak day demand and average yearly demand for outdoor water use. The following procedure shall be used:

(a) Determine the location of the water system on the map entitled Irrigated Crop Consumptive Use Zones and Normal Annual Effective Precipitation, Utah as prepared by the Soil Conservation Service (available from the Division). Find the numbered zone, one through six, in which the water system is located (if located in an area described "non-arable" find nearest numbered zone).

(b) Determine the net number of acres which may be irrigated. This is generally done by starting with the gross acreage, then subtract out any area of roadway, driveway, sidewalk or patio pavements along with housing foundation footprints that can be reasonably expected for lots within a new subdivision or which is representative of existing lots. Before any other land area which may be considered "non-irrigated" (e.g. steep slopes, wooded areas, etc.) is subtracted from the gross area, the Division shall be consulted and agree that the land in question will not be irrigated.

(c) Refer to Table 510-3 to determine peak day demand and average yearly demand for outdoor use.

(d) The results of the indoor use and outdoor use tables shall be added together and source(s) shall be legally and physically capable of meeting this combined demand.

TABLE 510-3
Source Demand for Irrigation
(Outdoor Use)

| Map Zone | Peak Day Demand (gpm/irrigated acre) | Average Yearly Demand (AF/irrigated acre) |
|---|---|---|
| 1 | 2.26 | 1.17 |
| 2 | 2.80 | 1.23 |
| 3 | 3.39 | 1.66 |
| 4 | 3.96 | 1.87 |
| 5 | 4.52 | 2.69 |
| 6 | 4.90 | 3.26 |

(4) Accounting for Variations in Source Yield.

The design engineer shall consider whether flow from the source(s) may vary. Where flow varies, as is the case for most springs, the minimum flowrate shall be used in determining the number of connections which may be supported by the source(s). Where historical records are sufficient, and where peak flows from the source(s) correspond with peak demand periods, the Executive Secretary may grant an exception to this requirement.

**R309-510-8. Storage Sizing.**

(1) General.

Each storage facility shall provide:

(a) equalization storage volume, to satisfy peak day demands for water for indoor use as well as outdoor use,

(b) fire suppression storage volume, if the water system is equipped with fire hydrants and intended to provide fire fighting water, and

(c) emergency storage, if deemed appropriate by the water supplier or the Executive Secretary, to meet demands in the event of an unexpected emergency situation such as a line break or a treatment plant failures.

(2) Equalization Storage.

(a) All public drinking water systems shall be provided with equalization storage. The amount of equalization storage which must be provided varies with the nature of the water system, the extent of outdoor use and the location of the system.

(b) Required equalization storage for indoor use is provided in Table 510-4. Storage requirements for non-community systems which are not listed in this table shall be determined by calculating the average day demands from the information given in Table 510-2.

TABLE 510-4
Storage Volume for Indoor Use

| Type | Volume Required (gallons) |
|---|---|
| **Community Systems** | |
| Residential; | |
| per single resident service connection | 400 |
| Non-Residentail; | |
| per Equivalent Residential Connection (ERC) | 400 |
| **Non-Community Systems** | |
| Modern Recreation Camp; per person | 30 |
| Semi-Developed Camp; per person | |
| a. with Pit Privies | 2.5 |
| b. with Flush Toilets | 10 |
| Hotel, Motel and Resort; per unit | 75 |
| Labor Camp; per unit | 25 |
| Recreational Vehicle Park; per pad | 50 |
| Roadway Rest Stop; per vehicle | 3.5 |
| Recreational Home Development; per connection | 400 |

(c) Where the drinking water system provides water for outdoor use, such as the irrigation of lawns and gardens, the equalization storage volumes estimated in Table 510-5 shall be added to the indoor volumes estimated in Table 510-4. The procedure for determining the map zone and irrigated acreage for using Table 510-5 is outlined in Section R309-510-7(3).

TABLE 510-5
Storage Volume for Outdoor Use

| Map Zone | Volume Required (gallons/irrigated acre) |
|---|---|
| 1 | 1,782 |
| 2 | 1,873 |
| 3 | 2,528 |
| 4 | 2,848 |
| 5 | 4,081 |
| 6 | 4,964 |

(3) Fire Suppression Storage.

Fire suppression storage shall be required if the water system is intended to provide fire fighting water as evidenced by fire hydrants connected to the piping. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local fire suppression authority exists, needed fire suppression storage shall be assumed to be 120,000 gallons (1000 gpm for 2 hours).

(4) Emergency Storage.

Emergency storage shall be considered during the design process. The amount of emergency storage shall be based upon an assessment of risk and the desired degree of system dependability. The Executive Secretary may require emergency storage when it is warranted to protect public health and welfare.

**R309-510-9. Distribution System Sizing.**

(1) General Requirements.

The distribution system shall be designed to insure that a minimum of 20 psi exists at all points within the system during peak instantaneous demand conditions. If the distribution system is equipped with fire hydrants, the system shall be designed to insure that a minimum of 20 psi exists at all points within the system when needed fire flows are imposed upon the peak day demand flows of the system.

(2) Indoor Use, Estimated Peak Instantaneous Demand.

(a) For community water systems and large non-community systems, the peak instantaneous demand for each pipeline shall be assumed for indoor use as:

$Q = 10.8 \times N^{0.64}$

where N equals the total number of ERC's, and Q equals the total flow (gpm) delivered to the total connections served by that pipeline.

For Recreational Vehicle Parks, the peak instantaneous flow for indoor use shall be based on the following:

TABLE 510-6
Peak Instantaneous Demand for Recreational Vehicle Parks

| Number of Connections | Formula |
|---|---|
| 0 to 59 | $Q = 4N$ |
| 60 to 239 | $Q = 80 + 20N^{0.5}$ |
| 240 or greater | $Q = 1.6N$ |

NOTES FOR TABLE 510-6:
Q is total peak instantaneous demand (gpm) and N is the maximum number of connections. However, if the only water use is via service buildings the peak instantaneous demand shall be calculated for the number of fixture units as presented in Appendix E of the 2000 International Plumbing Code.

(b) For small non-community water systems the peak instantaneous demand to be estimated for indoor use shall be calculated on a per-building basis for the number of fixture units as presented in Appendix E of the 2000 International Plumbing Code.

(3) Outdoor Use, Estimated Peak Instantaneous Demand.

Peak instantaneous demand to be estimated for outdoor use is given in Table 510-7. The procedure for determining the map zone and irrigated acreage for using Table 510-7 is outlined in Section R309-510-7(3).

TABLE 510-7
Peak Instantaneous Demand for Outdoor Use

| Map Zone | Peak Instantaneous Demand (gpm/irrigated acre) |
|---|---|
| 1 | 4.52 |
| 2 | 5.60 |
| 3 | 6.78 |
| 4 | 7.92 |
| 5 | 9.04 |
| 6 | 9.80 |

(4) Fire Flows.

(a) Distribution systems shall be designed to deliver needed fire flows if fire hydrants are provided. The design

engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local fire suppression authority exists, needed fire flows shall be assumed to be 1000 gpm.

(b) If a distribution system is equipped with fire hydrants, the system shall be designed to insure that a minimum of 20 psi exists at all points within the system when fire flows are added to the peak day demand of the system. Refer to Section R309-510-7 for information on determining the peak day demand of the system.

**KEY: drinking water, minimum sizing, water conservation**
**August 15, 2001 19-4-104**
**Notice of Continuation September 16, 2002**

**R309. Environmental Quality, Drinking Water.**
**R309-520. Facility Design and Operation: Disinfection.**
**R309-520-1. Purpose.**

This rule specifies requirements for facilities which disinfect public drinking water. It is intended to be applied in conjunction with R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-520-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63, Chapter 46a of the same, known as the Administrative Rulemaking Act.

**R309-520-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

**R309-520-4. General.**

Continuous disinfection shall be required of all ground water sources not consistently meeting standards of bacteriologic quality. Surface water sources or ground water sources under direct influence of surface water shall be disinfected during the course of required conventional surface water treatment or alternative surface water treatment. Disinfection shall not be considered a substitute for inadequate collection facilities. Systems having only sources classified as ground water (see R309-202-8) and which disinfect shall meet the requirements of R309-102-4.1.

**R309-520-5. Allowable Primary Disinfectants.**

Primary disinfection is defined as the means for providing adequate levels of inactivation of pathogenic micro organisms within the treatment process. Its effectiveness is measured through the "CT" values. Only three disinfectants; chlorine (gaseous and liquid hypochlorites), ozone, and chlorine dioxide are allowable for primary disinfection.

**R309-520-6. Allowable Secondary Disinfectants.**

Secondary disinfection is intended to provide an adequate disinfectant residual in the distribution system to maintain the bacteriological quality of treated water. Its effectiveness is measured through maintaining a detectable disinfectant residual throughout the distribution system. Allowable disinfectants are chlorine (gaseous and liquid hypochlorites), chloramine, and chlorine dioxide.

**R309-520-7. Appropriate Uses of Chemical Disinfectants.**

Chemical disinfection alone is appropriate only for groundwater not under the influence of surface water. Surface water, or groundwater under the direct influence of surface water, shall be coagulated and filtered in addition to being disinfected. For criteria to be used in determining required levels of treatment refer to R309-103-2.7.

**R309-520-8. Required Chemical Dosing and Contact Time.**

Minimum levels for primary and secondary disinfection are specified in R309-103-2.7.

**R309-520-9. Siting.**

Disinfection installations shall be sited to permit convenient access through the entire year as well as considerations of safety (i.e. proximity to population or seismic fault zones).

**R309-520-10. Chlorine.**

(1) General Requirements for all Chlorination Installations.

(a) Chemical Types.

Disinfection by chlorination shall be accomplished by gaseous chlorine or liquid solutions of calcium or sodium hypochlorites.

(b) Feeding Equipment.

Solution-feed gas type chlorinators, direct-feed gas type chlorinators or hypochlorite liquid feeders of a positive displacement type shall be provided. Solution-feed gas type chlorinators are preferred. However, for small supplies requiring less than four pounds per day, liquid hypochlorinators are advised.

(c) Chlorine Feed Capacity.

The design of each chlorinator shall permit:

(i) the chlorinator capacity to be such that a free chlorine residual of at least 2 mg/l can be maintained in the system after 30 minutes of contact time during peak demand. The equipment shall be of such design that it will operate accurately over a feeding range of 0.2 mg/l to 2 mg/l.

(ii) assurance that a detectable residual, either combined or free, can be maintained at all times, at all points in the distribution system.

(d) Automatic Proportioning.

Automatic proportioning chlorinators shall be required where the rate of flow or chlorine demand is not reasonably constant.

(e) Injector/diffuser.

The chlorine solution injector/diffuser shall be compatible with the point of application to provide a rapid and thorough mix with all the water being treated. The center of a pipeline is the preferred application point.

(f) Contact Time and Point of Application.

(i) Due consideration shall be given to the contact time of the chlorine in water with relation to pH, ammonia, taste producing substances, temperature, biological quality, and other pertinent factors.

(ii) Where possible, the design shall minimize the formation of chloro-organic compounds. At plants treating surface water or ground water under the direct influence of surface water, provisions shall be made for applying chlorine to raw water, applied water, filtered water, and water entering the distribution system.

(iii) When treating ground water, provisions shall be made for applying chlorine to at least a reservoir inlet or transmission pipeline which will provide maximum contact time.

(iv) Care must be taken to assure that the point of application will, in conjunction with the pipe and tank configuration of the water system, allow required CT values to be achieved prior to the first consumer connection.

(g) Minimization of Chlorinated Overflow.

The chlorinator and associated water delivery facilities shall be designed so as to minimize the unnecessary release of chlorinated water into the environment from tank overflows (see also rules of Division of Water Quality pertaining to discharge or pollution).

(h) Chlorinator Piping.

The chlorinator water supply piping shall be designed to prevent contamination of the treated water supply by sources of questionable quality. At all facilities treating surface water, pre- and post-chlorination systems shall be independent where solution water is not finished water. All chlorinator solution water shall be at least of equal quality to the water receiving the chlorine solution.

(i) Water Measurement.

A means to measure water flow to be treated shall be provided.

(j) Residual Testing Equipment.

Chlorine residual test equipment recognized in the latest edition of "Standard Methods for the Examination of Water and Wastewater" shall be provided and shall be capable of measuring residuals to the nearest 0.1 mg/l in the range below 0.5 mg/l, to the nearest 0.3 mg/l between 0.5 mg/l and 1.0 mg/l and to the nearest 0.5 mg/l above 1.0 mg/l.

(k) Standby and Backup Equipment.

A spare parts kit shall be provided and maintained for all chlorinators to repair parts subject to wear and breakage. If there is a large difference in feed rates between routine and emergency dosages, a gas metering tube shall be provided for each dose range to ensure accurate control of the chlorine feed. Where chlorination is required for protection of the supply, standby equipment of sufficient capacity shall be available to replace the largest unit. Standby power shall be available, during power outages, for operation of chlorinators where protection of the supply is required.

(l) Heating, Lighting, Ventilation.

Chlorinator houses shall be heated, lighted and ventilated as necessary to assure proper operation of the equipment, and serviceability.

(m) Bypass Capability.

A chlorinator bypass shall be provided for periods during chlorinator servicing and power outages.

(2) Additional Requirement for Gas Chlorinators.

(a) Automatic Switch over.

Automatic Switch over of chlorine cylinders shall be provided, where necessary, to assure continuous disinfection.

(b) Injector.

Each injector shall be selected for the point of application with particular attention given to the quantity of chlorine to be added, the maximum injector waterflow, the total discharge back pressure, the injector operating pressure, and the size of the chlorine solution line. Gauges for measuring water pressure at the inlet and outlet of each injector shall be provided.

(c) Gas Scrubbers.

Gas chlorine facilities shall conform with the Uniform Fire Code, Article 80 and the Uniform Building Code, Chapter 9 as they are applied by local jurisdictions in the state. Furthermore, local toxic gas ordinances shall be complied with if they exist.

(d) Heat.

The design of the chlorination room shall assure that the temperature in the room will never fall below 32 degrees F or that temperature required for proper operation of the chlorinator, whichever is greater.

(e) Ventilation.

Chlorination equipment rooms which contain cylinders or equipment and lines with gaseous chlorine under pressure shall be vented such that:

(i) when fan(s) are operating, suction will provide one complete room air change per minute;

(ii) the ventilating fan(s) take suction near the floor, as far as practical from the door and air inlet, with the point of discharge so located as not to contaminate air inlets of any rooms or structures;

(iii) air inlets are through louvers near the ceiling;

(iv) louvers for chlorine room air intake and exhaust facilitate airtight closure;

(iv) separate switches for the fans and lights are outside of the room, at the entrance to the chlorination equipment room. Outside switches shall be protected from vandalism;

(v) vents from feeders and storage discharge above grade to the outside atmosphere; and

(vi) floor drains are discouraged. Where provided, the floor drains shall discharge to the outside of the building and shall not be connected to other internal or external drainage systems.

(f) Feeder Vent Hose.

The vent hose from the feeder shall discharge to the outside atmosphere above grade at a point least susceptible to vandalism and shall have the end covered with a No. 14 mesh non-corrodible screen.

(g) Housing.

Adequate housing shall be provided for the chlorination equipment and for storing the chlorine (see R309-520-10(1)(l) above).

(h) Housing at Water Treatment Plants.

Separate rooms for cylinders and feed equipment shall be provided at all water treatment plants. Chlorine gas feed and storage shall be enclosed and separated from other operating areas. The chlorine room shall be:

(i) provided with a shatter resistant inspection window installed in an interior wall and preferably located so that an operator may read the weighing scales without entering the chlorine room,

(ii) constructed in a manner that all openings between the chlorine room and the remainder of the plant are sealed, and

(iii) provided with doors equipped with panic hardware assuring ready means of exit and opening only to the building exterior.

(i) Cylinder Security.

Full and empty cylinders of chlorine gas shall be:

(i) isolated from operating areas;

(ii) restrained in position to prevent upset from accidental bumping or a seismic event;

(iii) stored in rooms separated from ammonia storage; and

(iv) stored in areas not in direct sunlight or exposed to excessive heat.

(j) Feed Line Routing.

Chlorine feed lines shall not carry pressurized chlorine gas beyond the chlorinator room. Only vacuum lines may be routed to other portions of the building outside the chlorine room and any openings for these lines must be adequately sealed.

(k) Weighing Scales.

Scales shall be provided for weighing cylinders. Scales should be of a corrosion resistant material and should be placed in a location remote from any moisture. Scales shall be accurate enough to indicate loss of weight to the nearest one pound for 150 pound cylinders and to the nearest 10 pounds for one ton cylinders.

(l) Pressure Gauges.

Pressure gauges shall be provided on the inlet and outlet of each chlorine injector as indicated in R309-520-10(2)(b). The preferred location is on the water feed line immediately before the inlet of the chlorine injector and at a point on the water main just ahead of chlorine injection. These locations should give accurate pressure readings while not being subjected to corrosive chlorinated water.

(m) Injector Protection.

A suitable screen to prevent small debris from clogging a chlorine injector shall be provided on the water feed line. Provision for flushing of the screen is required.

(n) Chlorine Vent Line Protection.

A non-corrodible fine mesh (No. 14 or finer) screen shall be placed over the discharge ends of all vent lines. All vent lines shall discharge to the outside atmosphere above grade and at locations least susceptible to vandalism.

(o) Gas Masks.

(i) Respiratory protection equipment, meeting the requirements of the National Institute for Occupational Safety and Health (NIOSH) shall be available where chlorine gas in one-ton cylinders is handled, and shall be stored at a convenient location, but not inside any room where chlorine is used or stored. The units shall use compressed air, have at least a 30 minute capacity, and be compatible with or exactly the same as units used by the fire department responsible for the plant.

(ii) Where smaller chlorine cylinders are used, suitable gas masks must be provided.

(p) Chlorine Leak Detection and Repair.

A bottle of Ammonium Hydroxide, 56% ammonia solution, shall be available for chlorine leak detection; where ton containers are used, a leak repair kit approved by the Chlorine Institute shall be provided. Continuous chlorine leak detection equipment is recommended. Where a leak detector is provided, it shall be equipped with both an audible alarm and a warning light.

**R309-520-11. Ozone.**

Proposals for use of ozone disinfection shall be discussed with the Division prior to the preparation of final plans and specifications.

Interim Standard - Ozonation, page xxxi, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 1997 edition is hereby incorporated by reference and shall govern the design and operation of disinfection facilities utilizing ozone. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

**R309-520-12. Chlorine Dioxide.**

Proposals for the use of Chlorine Dioxide as a disinfectant shall be discussed with the Division prior to the preparation of final plans and specifications. The "CT" values for the inactivation of Giardia cysts using chlorine dioxide are independent of pH, with only temperature affecting the value. For chlorine dioxide, a 3-log inactivation of Giardia cysts will generally result in greater than 4-log virus inactivation, and assure meeting requirements. However, for chlorine dioxide, unlike chlorine where this relationship always hold true, at certain temperatures, the 4-log virus CT may be higher than the 3-log Giardia cyst CT.

**R309-520-13. Chloramines.**

Proposals for the use of Chloramines as a disinfectant shall be discussed with the Division prior to the preparation of final plans and specifications.

**R309-520-14. Ultraviolet Light.**

(1) Proposals for use of ultraviolet disinfection shall be discussed with the Division prior to the preparation of final plans and specifications.

(2) Secondary disinfection and maintenance of the required residual will be necessary where disinfection of the supply is required.

(3) Ultraviolet disinfection will be permitted where the design conforms to the minimum recommendations of the U.S. Public Health Service listed below.

(a) Ultraviolet radiation at a level of 2,537 Angstrom units must be applied at a minimum dosage of 16,000 microwatt-seconds per square centimeter per second (1,600 Finsen Units) at all points throughout the water disinfection chamber.

(b) Maximum water depth in the chamber, measured from the tub surface to the chamber wall, shall not exceed three inches.

(c) The ultraviolet tubes shall be:

(i) jacketed so that a proper operating tube temperature of about 105 degrees F is maintained; and

(ii) the jacket shall be of quartz or high silica glass with similar optical characteristics.

(d) A flow or time delay mechanism shall be provided to permit a two minute tube warm-up period before water flows from the unit.

(e) The unit shall be designed to permit frequent mechanical cleaning of the water contact surface of the jacket without disassembly of the unit.

(f) An automatic flow control valve, accurate within the expected pressure range, shall be installed to restrict flow to the maximum design flow of the treatment unit.

(g) An accurately calibrated ultraviolet intensity meter, properly filtered to restrict its sensitivity to the disinfection spectrum, shall be installed in the wall of the disinfection chamber at the point of greatest water depth from the tube or tubes.

(h) A diversion valve or automatic shut-off valve shall be installed which will permit flow into the finished drinking water system only when at least the minimum ultraviolet dosage is applied. When power is not being supplied to the unit, the valve should be in a closed position which prevents the flow of water into the finished drinking water system.

(i) An automatic, audible alarm shall be installed to warn of malfunction or impending shutdown.

(j) The materials of construction shall not impart toxic materials into the water either as a result of the presence of toxic constituents in materials of construction or as a result of physical or chemical changes resulting from exposure to ultraviolet energy.

(k) The unit shall be designed to protect the operator against electrical shock or excessive radiation.

(l) As with any drinking water treatment process, due consideration must be given to the reliability, economics, and competent operation of the disinfection process and related equipment, including:

(i) installation of the unit in a protected enclosure not subject to extremes of temperature which could cause malfunction; and

(ii) provision of a spare UV tube and other necessary equipment to effect prompt repair by qualified personnel properly instructed in the operation and maintenance of the equipment.

**R309-520-15. Operation and Maintenance.**

(1) Safety.

Chlorine gas facilities shall be operated in a manner which minimizes risks to water system personnel or the general public.

(2) Residual Chlorine.

Public drinking water systems supplied water from conventional surface water treatment or alternatives shall test for detectable chlorine residual or HPC within the distribution system as outlined in R309-104-4.7.4c.

(3) Chlorine Dosing.

Chlorine, when used in the distribution system, shall be added in sufficient quantity to achieve either "breakpoint" and yield a detectable free chlorine residual or a detectable combined chlorine residual in the distribution system at points to be determined by the Executive Secretary. Residual checks must be taken daily by the operator of any system using disinfectants. The Executive Secretary may, however, reduce the frequency of residual checks if he determines that this would be an unwarranted hardship on the water system operator and, furthermore, the disinfection equipment has a verified record of reliable operation. Suppliers, when checking for residuals, must use test kits and methods which meet the requirements of the U.S. EPA. The "DPD" test method is recommended for free chlorine residuals. Information on the suppliers of this equipment is available from the Division.

(4) ANSI/NSF Standard 60 Certification.

All chemicals, including chlorine gas, added to drinking water supplied by a public water system shall be certified as complying with ANSI/NSF Standard 60, Drinking Water Treatment Chemicals.

**KEY: drinking water, primary disinfectants, secondary disinfectants, operation and maintenance**
**August 15, 2000 19-4-104**
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**R309. Environmental Quality, Drinking Water.**

**R309-525. Facility Design and Operation: Conventional Surface Water Treatment.**

**R309-525-1. Purpose.**

This rule specifies requirements for conventional surface water treatment plants used in public water systems. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-525-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

**R309-525-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

**R309-525-4. General.**

(1) Treatment plants used for the purification of surface water supplies or ground water supplies under direct influence of surface water must conform to the requirements given herein. The plants shall have, as a minimum, facilities for flash mixing of coagulant chemicals, flocculation, sedimentation, filtration and disinfection.

(2) The overall design of a water treatment facility must be carefully examined to assure the compatibility of all devices and processes. The design of treatment processes and devices shall depend on an evaluation of the nature and quality of the particular water to be treated. The combined unit processes shall produce water meeting all established drinking water standards as given in R309-103.

(3) Direct filtration may be acceptable and rules governing this method are given in R309-530-5.

(4) Refer to R309-530-9 for policy with regards to novel water treatment equipment or techniques which may depart from the requirements outlined herein.

**R309-525-5. Plant Capacity and Number of Treatment Trains.**

(1) A determination of the required plant capacity and the required number of treatment trains shall be made after consultation with the Division. Ordinarily, a minimum of two units each for flocculation, sedimentation and filtration must be provided. The design shall provide for parallel or series operation of the clarification stages. Flash mix shall be designed and operated to provide a minimum velocity gradient of 750 fps/ft. Mixing time shall be less than thirty seconds. The treatment plant shall be designed to meet the anticipated "peak day demand" of the system being served when the treatment plant is the system's sole source. When other sources are available to the system, this requirement may be relaxed.

(2) The degree of "back-up" required in a water treatment plant will vary with the number of connections to be served, the availability of other acceptable sources of water, and the ability to control water consumption. Thus, when other sources are available to the system, the requirements of R309-525-7 (Plant Reliability) may also be relaxed. The Division shall be consulted in this regard prior to plant design.

**R309-525-6. Plant Siting.**

Plants must be sited with due regard for earthquake, flood, and fire hazard. Assistance in this matter is available from the Utah Geologic Survey. The Division shall be consulted regarding site selection prior to the preparation of engineering plans and specifications.

**R309-525-7. Plant Reliability.**

Plants designed for processing surface water or ground water under direct influence of surface water shall be designed to meet present and future water demands and assure reliable operation at all times. To help assure proper, uninterrupted operation:

(1) A manual override shall be provided for any automatic controls. Highly sophisticated automation may put proper maintenance beyond the capability of the plant operator, leading to equipment breakdowns or expensive servicing. Adequate funding must be assured for maintenance of automatic equipment.

(2) Main switch electrical controls shall be located above grade, in areas not subject to flooding.

(3) Plants shall be operated by qualified personnel approved by the Executive Secretary. As a minimum, the treatment plant manager is required to be certified in accordance with R309-300 at the grade of the waterworks system with an appropriate unrestricted Utah Operator's Certificate.

(4) The plant shall be constructed to permit units to be taken out of service without disrupting operation, and with drains or pumps sized to allow dewatering in a reasonable period of time.

(5) The plant shall have standby power available to permit operation of essential functions during power outages,

(6) The plant shall be provided with backup equipment or necessary spare parts for all critical items.

(7) Individual components critical to the operation of a treatment plant shall be provided with anchorage to secure the components from loss due to an earthquake event.

**R309-525-8. Color Coding and Pipe Marking.**

The piping in water treatment plants shall be color coded for identification. The following table contains color schemes recommended by the Division. Identification of the direction of flow and the contained liquid shall also be made on the pipe.

TABLE 525-1

Recommended Color Scheme for Piping

| | |
|---|---|
| Water Lines | |
| Raw | Olive Green |
| Settled or Clarified | Aquamarine |
| Finished | Dark Blue |

| | |
|---|---|
| Chemical Lines | |
| Alum | Orange |
| Ammonia | White |
| Carbon Slurry | Black |
| Chorine (Gas and Solution) | Yellow |
| Fluoride | Light Blue with Red Band |
| Lime Slurry | Light Green |
| Potassium Permanganate | Violet |
| Sulfur Dioxide | Light Green with Yellow Band |
| Waste lines | |
| Backwash Waste | Light Brown |
| Sludge | Dark Brown |
| Sewer (Sanitary or Other) | Dark Gray |
| Other | |
| Compressed Air | Dark Green |
| Gas | Red |
| Other Lines | Light Gray |

**R309-525-9. Diversion Structures and Pretreatment.**

Refer to R309-515-5(5) for diversion structure design.

**R309-525-10. Presedimentation.**

Waters containing, heavy grit, sand, gravel, leaves, debris, or a large volume of sediments may require pretreatment, usually sedimentation, with or without the addition of coagulation chemicals.

(1) Presedimentation basins shall be equipped for efficient sludge removal.

(2) Incoming water shall be dispersed across the full width of the line of travel as efficiently as practical. Short-circuiting shall be minimized.

(3) Provisions for bypassing presedimentation basins shall be included.

**R309-525-11. Chemical Addition.**

(1) Goals.

Chemicals used in the treatment of surface water shall achieve the following:

(a) Primary coagulant chemicals shall be utilized to permit the formation of a floc,

(b) Disinfectants shall be added to raw and/or treated water.

(2) Application Criteria.

In achieving these goals the chemical(s) shall be applied to the water:

(a) To assure maximum control and flexibility of treatment,

(b) To assure maximum safety to consumer and operators,

(c) To prevent backflow or back-siphonage of chemical solutions to finished water systems.

(d) With appropriate spacing of chemical feed to eliminate any interference between chemicals.

(3) Typical Chemical Doses.

Chemical doses shall be estimated for each treatment plant to be designed. "Jar tests" shall be conducted on representative raw water samples to determine anticipated doses.

(4) Information Required for Review.

With respect to chemical applications, a submittal for Division review shall include:

(a) Descriptions of feed equipment, including maximum and minimum feed rates,

(b) Location of feeders, piping layout and points of application,

(c) Chemical storage and handling facilities,

(d) Specifications for chemicals to be used,

(e) Operating and control procedures including proposed application rates,

(f) Descriptions of testing equipment and procedures, and

(g) Results of chemical, physical, biological and other tests performed as necessary to define the optimum chemical treatment.

(5) Quality of Chemicals.

All chemicals added to water being treated for use in a public water system for human consumption shall comply with ANSI/NSF Standard 60. Evidence for this requirement shall be met if the chemical shipping container labels or material safety data sheets include:

(a) Chemical name, purity and concentrations, Supplier name and address, and

(b) Labeling indicating compliance with ANSI/NSF Standard 60.

(6) Storage, Safe Handling and Ventilation of Chemicals.

All requirements of the Utah Occupational Safety and Health Act (UOSHA) for storage, safe handling and ventilation of chemicals shall apply to public drinking water facilities. The designer shall incorporate all applicable UOSHA standards into the facility design, however, review of facility plans by the Division of Drinking Water under this Rule shall be limited to the following requirements:

(a) Storage of Chemicals.

(i) Space shall be provided for:

(A) An adequate supply of chemicals,

(B) Convenient and efficient handling of chemicals,

(C) Dry storage conditions.

(ii) Storage tanks and pipelines for liquid chemicals shall be specific to the chemicals and not for alternates.

(iii) Chemicals shall be stored in covered or unopened shipping containers, unless the chemical is transferred into a covered storage unit.

(iv) Liquid chemical storage tanks must:

(A) Have a liquid level indicator, and

(B) Have an overflow and a receiving basin or drain capable of receiving accidental spills or overflows, and meeting all requirements of R309-525-23, and

(C) Be equipped with an inverted "J" air vent.

(v) Acids shall be kept in closed acid-resistant shipping containers or storage units.

(b) Safe Handling.

(i) Material Safety Data Sheets for all chemicals utilized shall be kept and maintained in prominent display and be easily accessed by operators.

(ii) Provisions shall be made for disposing of empty bags, drums or barrels by an acceptable procedure which will minimize operator exposure to dusts.

(iii) Provisions shall be made for measuring quantities of chemicals used to prepare feed solutions.

(c) Dust Control and Ventilation.

Adequate provision shall be made for dust control and ventilation.

(7) Feeder Design, Location and Control.

(a) General Feeder Design.

General equipment design, location and control shall be such that:

(i) feeders shall supply, at all times, the necessary amounts of chemicals at an accurately controlled rate, throughout the anticipated range of feed,

(ii) chemical-contact materials and surfaces are resistant to the aggressiveness of the chemicals,

(iii) corrosive chemicals are introduced in a manner to minimize potential for corrosion,

(iv) chemicals that are incompatible are not fed, stored or handled together.

(v) all chemicals are conducted from the feeder to the point of application in separate conduits,

(vi) spare parts are available for all feeders to replace parts which are subject to wear and damage,

(vii) chemical feeders are as near as practical to the feed point,

(viii) chemical feeders and pumps operate at no lower than 20 percent of the feed range,

(ix) chemicals are fed by gravity where practical,

(x) be readily accessible for servicing, repair, and observation.

(b) Chemical Feed Equipment.

Where chemical feed is necessary for the protection of the consumer, such as disinfection, coagulation or other essential processes:

(i) a minimum of two feeders, one active and one standby, shall be provided for each chemical,

(ii) the standby unit or a combination of units of sufficient capacity shall be available to replace the largest unit during shut-downs,

(iii) where a booster pump is required, duplicate equipment shall be provided and, when necessary, standby power,

(iv) a separate feeder shall be used for each non-compatible chemical applied where a feed pump is required, and

(v) spare parts shall be available for all feeders to replace parts which are subject to wear and damage.

(c) Dry Chemical Feeders.

Dry chemical feeders shall:

(i) measure feed rate of chemicals volumetrically or gravimetrically, and

(ii) provide adequate solution water and agitation of the chemical in the solution tank.

(d) Feed Rate Control.

(i) Feeders may be manually or automatically controlled, with automatic controls being designed to allow override by manual controls.

(ii) Chemical feed rates shall be proportional to flows.

(iii) A means to measure water flow rate shall be provided.

(iv) Provisions shall be made for measuring the quantities of chemicals used.

(v) Weighing scales:

(A) shall be provided for weighing cylinders at all plants using chlorine gas,

(B) may be required for fluoride solution feed, where applicable,

(C) shall be provided for volumetric dry chemical feeders, and

(D) shall be accurate to measure increments of 0.5 percent of scale capacity.

(8) Feeder Appurtenances.

(a) Liquid Chemical Solution Pumps.

Positive displacement type solution feed pumps shall be used to feed liquid chemicals, but shall not be used to feed chemical slurries. Pumps must be sized to match or exceed maximum head conditions found at the point of injection. All liquid chemical feeders shall be provided with devices approved by the Utah Plumbing Code which will prevent the siphoning of liquid chemical through the pump.

(b) Solution Tanks.

(i) A means consistent with the nature of the chemical solution shall be provided in a solution tank to maintain a uniform strength of solution. Continuous agitation shall be provided to maintain slurries in suspension.

(ii) Means shall be provided to measure the solution level in the tank.

(iii) Chemical solutions shall be kept covered. Large tanks with access openings shall have the openings curbed and fitted with tight overhanging covers.

(iv) Subsurface locations are discouraged, but when used for solution tanks shall:

(A) be free from sources of possible contamination, and

(B) assure positive drainage for ground waters, accumulated water, chemical spills and overflows.

(v) Overflow pipes, when provided, shall:

(A) have a free fall discharge, and

(B) be located where noticeable.

(vi) Acid storage tanks shall be vented to the outside atmosphere, but not through vents in common with day tanks.

(vii) Each tank shall be provided with a valved drain, protected against backflow in accordance with R309-525-11(10)(b) and R309-525-11(10)(c).

(viii) Solution tanks shall be located and protective curbing provided so that chemicals from equipment failure, spillage or accidental drainage shall not enter the water in conduits, treatment or storage basins.

(ix) When polymers are used, storage tanks shall be located away from heat sources and direct sunlight.

(c) Day Tanks.

(i) Day tanks shall be provided where dilution of liquid chemical is required prior to feeding.

(ii) Day tanks shall meet all the requirements of R309-525-11(9)(b).

(iii) Certain chemicals, such as polymers, become unstable after hydration, therefore, day tanks shall hold no more than a thirty hour supply unless manufacturer's recommendations allow for longer periods.

(iv) Day tanks shall be scale-mounted, or have a calibrated gauge painted or mounted on the side if liquid levels cannot be observed in a gauge tube or through translucent sidewalls of the tank. In opaque tanks, a gauge rod extending above a referenced point at the top of the tank, attached to a float may be used. The ratio of the cross-sectional area of the tank to its height must be such that unit readings are meaningful in relation to the total amount of chemical fed during a day.

(v) Hand pumps may be provided for transfer from a carboy or drum. A top rack may be used to permit withdrawal

into a bucket from a spigot. Where motor-driven transfer pumps are provided a liquid level limit switch and an overflow from the day tank, which will drain by gravity back into the bulk storage tank, must be provided.

(vi) A means which is consistent with the nature of the chemical solution shall be provided to maintain uniform strength of solution in a day tank. continuous agitation shall be provided to maintain chemical slurries in suspension.

(vii) Tanks shall be properly labeled to designate the chemical contained.

(d) Feed Lines.

(i) Feed lines shall be as short as possible in length of run, and be:

(A) of durable, corrosion resistant material,

(B) easily accessible throughout the entire length,

(C) protected against freezing, and

(D) readily cleanable.

(ii) Feed lines shall slope upward from the chemical source to the feeder when conveying gases.

(iii) Lines shall be designed with due consideration of scale forming or solids depositing properties of the water, chemical, solution or mixture conveyed.

(9) Make up Water Supply and Protection.

(a) In Plant Water Supply.

In plant water supply shall be:

(i) Ample in supply, adequate in pressure, and of a quality equal to or better than the water at the point of application.

(ii) Provided with means for measurement when preparing specific solution concentrations by dilution.

(iii) Properly protected against backflow.

(b) Cross-Connection Control.

Cross-connection control shall be provided to assure that:

(i) The make-up waterlines discharging to solution tanks shall be properly protected from backflow as required by the Utah Plumbing Code.

(ii) Liquid chemical solutions cannot be siphoned through solution feeders into the process units as required in R309-525-11(9)(c).

(iii) No direct connection exists between any sewer and the drain or overflow from the feeder, solution chamber or tank by providing that all pipes terminate at least six inches or two pipe diameters, whichever is greater, above the overflow rim of a receiving sump, conduit or waste receptacle.

(iv) Pre- and post-chlorination systems must be independent to prevent possible siphoning of partially treated water into the clear well. The water supply to each eductor shall have a separate shut-off valve. No master shut off valve will be allowed.

(c) Liquid Chemical Feeders, Siphon Control.

Liquid chemical feeders shall be such that chemical solutions cannot be siphoned into the process units, by:

(i) Assuring positive pressure at the point of discharge,

(ii) Providing vacuum relief,

(iii) Providing a suitable air gap, or

(iv) Other suitable means or combinations as necessary.

(10) Operator Safety.

Design of the plant shall be in accordance with the Utah Occupational Safety and Health Act (UOSHA). The designer and public water system management are responsible to see that they incorporate applicable UOSHA standards into the facility design and operation. Review of facility plans by the Division shall be limited to the following recommendations:

(a) Floor surfaces should be smooth and impervious, slip-proof and well drained,

(b) At least one pair of rubber gloves, a dust respirator of a type certified by the National Institute of Occupational Safety and Health (NIOSH) for toxic dusts, an apron or other protective clothing and goggles or face mask should be provided for each operator, A deluge shower and/or eye washing device should be installed where strong acids and alkalis are used or stored.

(c) A water holding tank that will allow water to reach room temperature should be installed in the water line feeding the deluge shower and eye washing device. Other methods of water tempering may be available.

(d) Adequate ventilation should be provided.

(11) Design for Specific Chemicals.

Design of the plant shall be in accordance with the Utah Occupational Safety and Health Act (UOSHA). The designer and public water system management are responsible to see that they incorporate applicable UOSHA standards into the facility design and operation. Review of facility plans by the Division shall be limited to the following recommendations:

Acids and Caustics.

(i) Acids and caustics should be kept in closed corrosion-resistant shipping containers or storage units.

(ii) Acids and caustics should not be handled in open vessels, but should be pumped in undiluted form from original containers through suitable hose, to the point of treatment or to a covered day tank.

Sodium Chlorite for Chlorine Dioxide Generation.

Proposals for the storage and use of sodium chlorite should be approved by the Executive Secretary prior to the preparation of final plans and specifications. Provisions should be made for proper storage and handling of sodium chlorite to eliminate any danger of explosion.

(i) Sodium Chlorite Storage: (A) Sodium chlorite should be stored by itself in a separate room and preferably should be stored in an outside building detached from the water treatment facility. It should be stored away from organic materials which would react violently with sodium chlorite; (B) The storage structures should be constructed of noncombustible materials; (C) If the storage structure is to be located in a area where a fire may occur, water should be available to keep the sodium chlorite area sufficiently cool to prevent decomposition from heat and resultant potential explosive conditions.

(ii) Sodium Chlorite Handling: (A) Care should be taken to prevent spillage; (B) An emergency plan of operation should be available for the clean up of any spillage; (C) Storage drums should be thoroughly flushed prior to recycling or disposal.

(iii) Sodium Chlorite Feeders: (A) Positive displacement feeders should be provided; (B) Tubing for conveying sodium chlorite or chlorine dioxide solutions should be Type 1 PVC, polyethylene or materials recommended by the manufacturer; (C) Feed lines should be installed in a manner to prevent formation of gas pockets and should terminate at a point of positive pressure; (D) Check valves should be provided to prevent the backflow of chlorine into the sodium chlorite line.

**R309-525-12. Mixing.**

(1) Flash Mix.

(a) Equipment - Mechanical, in-line or jet mixing devices shall be used.

(b) Mixing - All devices used in rapid mixing shall be capable of imparting a minimum velocity gradient (G) of at least 750 fps per foot. Mixing time shall be less than thirty seconds.

(c) Location - The flash mix and flocculation basins shall be as close together as possible.

(d) Introduction of chemicals - Primary coagulant chemicals shall be added at the point of maximum turbulence within the flash mix unit. Where in-line mixing devices are used chemical injection should be at the most appropriate upstream point.

(2) Flocculation.

(a) Basin design.

Inlet and outlet design shall prevent short-circuiting and destruction of floc. A drain or pumps shall be provided to handle dewatering and sludge removal.

(b) Detention.

The flow-through velocity shall not be less than 0.5 feet per minute nor greater than 1.5 feet per minute with a detention time for floc formation of at least 30 minutes.

(c) Equipment.

Agitators shall be driven by variable speed drives with the peripheral speed of paddles ranging from 0.5 fps to 2.0 fps. Equipment shall be capable of imparting a velocity gradient (G) between 25 fps per foot and 80 fps per foot to the water treated. Compartmentalized tapered energy flocculation concept may also be used in which G tapers from 100 fps to 10 fps per foot.

(d) Hydraulic flocculation.

Hydraulic flocculation may be permitted and shall be reviewed on a case by case basis. The unit must yield a G value equivalent to that required by b and c above.

(e) Piping.

Flocculation and sedimentation basins shall be as close as possible. The velocity of flocculated water through pipes or conduits to settling basins shall not be less than 0.5 fps nor greater than 1.5 fps. Allowance must be made to minimize turbulence at bends and changes in direction.

(f) Other designs.

Baffling may be used to provide for flocculation in small plants only after consultation with the Division. The design shall be such that the velocities and flows noted above will be maintained.

(g) Visible floc.

The flocculation unit shall be capable of producing a visible, settleable floc.

**R309-525-13. Sedimentation.**

(1) General Design Requirements.

Sedimentation shall follow flocculation. The detention time for effective clarification is dependent upon a number of factors related to basin design and the nature of the raw water. The following criteria apply to conventional sedimentation units:

(a) Inlet devices.

Inlets shall be designed to distribute the water equally and at uniform velocities. Open ports, submerged ports, or similar entrance arrangements are required. A baffle shall be constructed across the basin close to the inlet end and shall project several feet below the water surface to dissipate inlet velocities and provide uniform flows across the basin.

(b) Outlet devices.

Outlet devices shall be designed to maintain velocities suitable for settling in the basin and to minimize short-circuiting. The use of submerged orifices is recommended in order to provide a volume above the orifices for storage when there are fluctuations in the flow.

(c) Emergency Overflow.

An overflow weir (or pipe) shall be installed which will establish the maximum water level desired on top of the filters. It shall discharge by gravity with a free fall to a location where the discharge will be visible.

(d) Sludge Removal.

Sludge removal design shall provide that:

(i) sludge pipes shall be not less than three inches in diameter and arranged to facilitate cleaning,

(ii) entrance to sludge withdrawal piping shall prevent clogging,

(iii) valves shall be located outside the basin for accessibility, and

(iv) the operator may observe and sample sludge being withdrawn from the unit.

(v) Sludge collection shall be accomplished by mechanical means.

(e) Drainage.

Basins shall be provided with a means for dewatering. Basin bottoms shall slope toward the drain not less than one foot in 12 feet where mechanical sludge collection equipment is not provided.

(f) Flushing lines.

Flushing lines or hydrants shall be provided and shall be equipped with backflow prevention devices acceptable to the Executive Secretary.

(g) Safety.

Appropriate safety devices shall be included as required by the Occupational Safety and Health Act (OSHA).

(h) Removal of floating material.

Provision shall be made for the periodic removal of floating material.

(2) Sedimentation Without Tube Settlers.

If tube settling equipment is not used within settling basins, the following requirements apply:

(a) Detention Time.

A minimum of four hours of detention time shall be provided. Reduced sedimentation time may be approved when equivalent effective settling is demonstrated or multimedia filtration is employed.

(b) Weir Loading.

The rate of flow over the outlet weir shall not exceed 20,000 gallons per day per foot of weir length. Where submerged orifices are used as an alternate for overflow weirs they shall not be lower than three feet below the water surface when the flow rates are equivalent to weir loading.

(c) Velocity.

The velocity through settling basins shall not exceed 0.5 feet per minute. The basins shall be designed to minimize short-

circuiting. Fixed or adjustable baffles shall be provided as necessary to achieve the maximum potential for clarification.

(d) Depth.

The depth of the sedimentation basin shall be designed for optimum removal.

(3) Sedimentation With Tube Settlers.

Proposals for settler unit clarification shall be approved by the Executive Secretary prior to the preparation of final plans and specifications.

(a) Inlet and outlet design shall be such to maintain velocities suitable for settling in the basin and to minimize short circuiting.

(b) Flushing lines shall be provided to facilitate maintenance and be properly protected against backflow or back siphonage. Drain and sludge piping from the settler units shall be sized to facilitate a quick flush of the settler units and to prevent flooding other portions of the plant.

(c) Although most units will be located within a plant, design of outdoor installations shall provide sufficient freeboard above the top of settlers to prevent freezing in the units.

(d) The design application rate shall be a maximum rate of 2 gal/sq.ft./min of cross-sectional area (based on 24-inch long 60 degree tubes or 39.5-inch long 7.5 degree tubes), unless higher rates are successfully shown through pilot plant or in-plant demonstration studies.

**R309-525-14. Solids Contact Units.**

(1) General.

Solids contact units are generally acceptable for combined softening and clarification where water characteristics, especially temperature, do not fluctuate rapidly, flow rates are uniform and operation is continuous. Before such units are considered as clarifiers without softening, specific approval of the Executive Secretary shall be obtained. A minimum of two units are required for surface water treatment.

(2) Installation of Equipment

The design engineer shall see that a representative of the manufacturer is present at the time of initial start-up operation to assure that the units are operating properly.

(3) Operation of Equipment.

The following shall be provided for plant operation:

(a) a complete outfit of tools and accessories,

(b) necessary laboratory equipment, and

(c) adequate piping with suitable sampling taps so located as to permit the collection of samples of water from critical portions of the units.

(4) Chemical feed.

Chemicals shall be applied at such points and by such means as to insure satisfactory mixing of the chemicals with the water.

(5) Mixing.

A flash mix device or chamber ahead of solids contact units may be required to assure proper mixing of the chemicals applied. Mixing devices employed shall be so constructed as to:

(a) provide good mixing of the raw water with previously formed sludge particles, and

(b) prevent deposition of solids in the mixing zone.

(6) Flocculation.

Flocculation equipment:

(a) shall be adjustable (speed and/or pitch),

(b) shall provide for coagulation in a separate chamber or baffled zone within the unit, and

(c) shall provide the flocculation and mixing period to be not less than 30 minutes.

(7) Sludge concentrators.

(a) The equipment shall provide either internal or external concentrators in order to obtain a concentrated sludge with a minimum of waste water.

(b) Large basins shall have at least two sumps for collecting sludge with one sump located in the central flocculation zone.

(8) Sludge removal.

Sludge removal design shall provide that:

(a) sludge pipes shall be not less than three inches in diameter and so arranged as to facilitate cleaning,

(b) the entrance to the sludge withdrawal piping shall prevent clogging,

(c) valves shall be located outside the tank for accessibility, and

(d) the operator may observe and sample sludge being withdrawn from the unit.

(9) Cross-connections.

(a) Blow-off outlets and drains shall terminate and discharge at places satisfactory to the Executive Secretary.

(b) Cross-connection control must be included for the finished drinking water lines used to back flush the sludge lines.

(10) Detention period.

The detention time shall be established on the basis of the raw water characteristics and other local conditions that affect the operation of the unit. Based on design flow rates, the detention time shall be:

(a) two to four hours for suspended solids contact clarifiers and softeners treating surface water, and

(b) one to two hours for suspended solids contact softeners treating only ground water.

(11) Suspended slurry concentrate.

Softening units shall be designed so that continuous slurry concentrates of one percent or more, by weight, can be satisfactorily maintained.

(12) Water losses.

(a) Units shall be provided with suitable controls for sludge withdrawal.

(b) Total water losses shall not exceed:

(i) five percent for clarifiers,

(ii) three percent for softening units.

(c) Solids concentration of sludge bled to waste shall be:

(i) three percent by weight for clarifiers,

(ii) five percent by weight for softeners.

(13) Weirs or orifices.

The units shall be equipped with either overflow weirs or orifices constructed so that water at the surface of the unit does not travel over 10 feet horizontally to the collection trough.

(a) Weirs shall be adjustable, and at least equivalent in length to the perimeter of the basin.

(b) Weir loading shall not exceed:

(i) 10 gpm per foot of weir length for units used for clarifiers

(ii) 20 gpm per foot of weir length for units used for

softeners.

(c) Where orifices are used the loading rates per foot of launderer shall be equivalent to weir loadings. Either shall produce uniform rising rates over the entire area of the tank.

(14) Upflow rates.

Upflow rates shall not exceed:

(a) 1.0 gpm/sf at the sludge separation line for units used for clarifiers,

(b) 1.75 gpm/sf at the slurry separation line for units used as softeners.

**R309-525-15. Filtration.**

(1) General.

Filters may be composed of one or more media layers. Mono-media filters are relatively uniform throughout their depth. Dual or multi-layer beds of filter material are so designed that water being filtered first encounters coarse material, and progressively finer material as it travels through the bed.

(2) Rate of Filtration.

(a) The rate of filtration shall be determined through consideration of such factors as raw water quality, degree of pretreatment provided, filter media, water quality control parameters, competency of operating personnel, and other factors as determined by the Executive Secretary. Generally, higher filter rates can be assigned for the dual or multi-media filter than for a single media filter because the former is more resistant to filter breakthrough.

(b) The filter rate shall be proposed and justified by the designing engineer to the satisfaction of the Executive Secretary prior to the preparation of final plans and specifications.

(c) The use of dual or multi-media filters may allow a reduction of sedimentation detention time (see R309-525-13(2)(a)) due to their increased ability to store sludge.

(d) Filter rates assigned by the Executive Secretary must never be exceeded, even during backwash periods.

(e) The use of filter types other than conventional rapid sand gravity filters must receive written approval from the Executive Secretary prior to the preparation of final plans and specifications.

(3) Number of Filters Required.

At least two filter units shall be provided. Where only two filter units are provided, each shall be capable of meeting the plant design capacity (normally the projected peak day demand) at the approved filtration rate. Where more than two filter units are provided, filters shall be capable of meeting the plant design capacity at the approved filtration rate with one filter removed from service. Refer to R309-525-5 for situations where these requirements may be relaxed.

(4) Media Design.

R309-525-15(4)(a) through R309-525-15(4)(e), which follow, give requirements for filter media design. These requirements are considered minimum and may be made more stringent if deemed appropriate by the Executive Secretary.

(a) Mono-media, Rapid Rate Gravity Filters.

The allowable maximum filtration rate for a silica sand, mono-media filter is three gpm/sf This type of filter is composed of clean silica sand having an effective size of 0.35 mm to 0.65 mm and having a uniformity coefficient less than 1.7. The total bed thickness must not be less than 24 inches nor generally more than 30 inches.

(b) Dual Media, Rapid Rate Gravity Filters.

The following applies to all dual media filters:

(i) Total depth of filter bed shall not be less than 24 inches nor generally more than 30 inches.

(ii) All materials used to make up the filter bed shall be of such particle size and density that they will be effectively washed at backwash rates between 15 and 20 gpm/sf They must settle to reconstitute the bed essentially in the original layers upon completion of backwashing.

(iii) The bottom layer must be at least ten inches thick and consist of a material having an effective size no greater than 0.45 mm and a uniformity coefficient not greater than 1.5.

(iv) The top layer shall consist of clean crushed anthracite coal having an effective size of 0.45 mm to 1.2 mm, and a uniformity coefficient not greater than 1.5.

(v) Dual media filters will be assigned a filter rate up to six gpm/sf. Generally if the bottom fine layer consists of a material having an effective size of 0.35 mm or less, a filtration rate of six gpm/sf can be assigned.

(vi) Each dual media filter must be provided with equipment which shall continuously monitor turbidity in the filtered water. The equipment shall be so designed to initiate automatic backwash if the filter effluent turbidity exceeds 0.5 NTU. If the filter turbidity exceeds five NTU, filter shutdown is required. In plants attended part-time, this shutdown must be accomplished automatically and shall be accompanied by an alarm. In plants having full-time operators, a five NTU condition need only activate an alarm. Filter shutdown may then be accomplished by the operator.

(c) Tri-Media, Rapid Rate Gravity Filters.

The following applies to all Tri-media filters:

(i) Total depth of filter bed shall not be less than 24 inches nor generally more than 30 inches.

(ii) All materials used to make up the filter bed shall be of such particle size and density that they will be effectively washed at backwash rates between 15 and 20 gpm/sf. They must settle to reconstitute the bed to the normal gradation of coarse to fine in the direction of flow upon completion of backwashing.

(iii) The bottom layer must be at least four inches thick and consist of a material having an effective size no greater than 0.45 mm and uniformity coefficient not greater than 2.2. The bottom layer thickness may be reduced to three inches if it consists of a material having an effective size no greater than 0.25 mm and a uniformity coefficient not greater than 2.2.

(iv) The middle layer must consist of silica sand having an effective size of 0.35 mm to 0.8 mm, and a uniformity coefficient not greater than 1.8.

(v) The top layer shall consist of clean crushed anthracite coal having an effective size of 0.45 mm to 1.2 mm, and a uniformity coefficient not greater than 1.85.

(vi) Tri-media filters will be assigned a filter rate up to 6 gpm/sf. Generally, if the bottom fine layer consists of a material having an effective size of 0.35 mm or less, a filtration rate of six gpm/sf can be assigned.

(vii) Each Tri-media filter must be provided with equipment which shall continuously monitor turbidity in the filtered water. The equipment shall be so designed to initiate

automatic backwash if the effluent turbidity exceeds 0.5 NTU. If the filter turbidity exceeds five NTU, filter shutdown is required. In plants attended part-time, this shutdown must be accomplished automatically and shall be accompanied by an alarm. In plants having full-time operators, a five NTU condition need only activate an alarm. Filter shutdown may then be accomplished by the operator.

(d) Granulated Activated Carbon (GAC).

Use of granular activated carbon media shall receive the prior approval of the Executive Secretary, and must meet the basic specifications for filter material as given above, and:

(i) There shall be provision for adding a disinfectant to achieve a suitable residual in the water following the filters and prior to distribution,

(ii) There shall be a means for periodic treatment of filter material for control of biological or other growths,

(iii) Facilities for carbon regeneration or replacement must be provided.

(e) Other Media Compositions and Configurations.

Filters consisting of materials or configurations not prescribed in this section will be considered on experimental data or available operation experience.

(5) Support Media, Filter Bottoms and Strainer Systems.

Care must be taken to insure that filter media, support media, filter bottoms and strainer systems are compatible and will give satisfactory service at all times.

(a) Support Media.

The design of support media will vary with the configuration of the filtering media and the filter bottom. Thus, support media and/or proprietary filter bottoms shall be reviewed on a case-by-case basis.

(b) Filter Bottoms and Strainer Systems.

(i) The design of manifold type collection systems shall:

(A) Minimize loss of head in the manifold and laterals,

(B) Assure even distribution of washwater and even rate of filtration over the entire area of the filter,

(C) Provide a ratio of the area of the final openings of the strainer system to the area of the filter of about 0.003,

(D) Provide the total cross-sectional area of the laterals at about twice the total area of the final openings,

(E) Provide the cross-sectional area of the manifold at 1.5 to 2 times the total area of the laterals.

(ii) Departures from these standards may be acceptable for high rate filter and for proprietary bottoms.

(iii) Porous plate bottoms shall not be used where calcium carbonate, iron or manganese may clog them or with waters softened by lime.

(6) Structural Details and Hydraulics.

The filter structure shall be so designed as to provide for:

(a) Vertical walls within the filter,

(b) No protrusion of the filter walls into the filter media,

(c) Cover by superstructure,

(d) Head room to permit normal inspection and operation,

(e) Minimum water depth over the surface of the filter media of three feet, unless an exception is granted by the Executive Secretary,

(f) Maximum water depth above the filter media shall not exceed 12 feet,

(g) Trapped effluent to prevent backflow of air to the bottom of the filters,

(h) Prevention of floor drainage to enter onto the filter by installation of a minimum four inch curb around the filters,

(i) Prevention of flooding by providing an overflow or other means of control,

(j) Maximum velocity of treated water in pipe and conduits to filters of two fps,

(k) Cleanouts and straight alignment for influent pipes or conduits where solids loading is heavy or following lime-soda softening,

(l) Washwater drain capacity to carry maximum flow,

(m) Walkways around filters, to be not less than 24 inches wide,

(n) Safety handrails or walls around filter areas adjacent to normal walkways,

(o) No common wall between filtered and unfiltered water shall exist. This requirement may be waived by the Executive Secretary for small "package" type plants using metal tanks of sufficient thickness,

(p) Filtration to waste for each filter.

(7) Backwash.

(a) Water Backwash Without Air.

Water backwash systems shall be designed so that backwash water is not recycled to the head of the treatment plant unless it has been settled, as a minimum. Furthermore, water backwash systems; including tanks, pumps and pipelines, shall:

(i) Provide a minimum backwash rate of 15 gpm/sf, consistent with water temperatures and the specific gravity of the filter media. The design shall provide for adequate backwash with minimum media loss. A reduced rate of 10 gpm/sf may be acceptable for full depth anthracite or granular activated carbon filters.

(ii) provide finished drinking water at the required rate by washwater tanks, a washwater pump, from the high service main, or a combination of these.

(iii) Permit the backwashing of any one filter for not less than 15 minutes.

(iv) Be capable of backwashing at least two filters, consecutively.

(v) Include a means of varying filter backwash rate and time.

(vi) Include a washwater regulator or valve on the main washwater line to obtain the desired rate of filter wash with washwater valves or the individual filters open wide.

(vii) Include a rate of flow indicator, preferably with a totalizer on the main washwater line, located so that it can be easily read by the operator during the washing process.

(viii) Be designed to prevent rapid changes in backwash water flow.

(ix) Use only finished drinking water.

(x) Have washwater pumps in duplicate unless an alternate means of obtaining washwater is available.

(xi) Perform in conjunction with "filter to waste" system to allow filter to stabilize before introduction into clearwell.

(b) Backwash with Air Scouring.

Air scouring can be considered in place of surface wash when:

(i) air flow for air scouring the filter must be 3 to 5 scfm/sf

of filter area when the air is introduced in the underdrain; a lower air rate must be used when the air scour distribution system is placed above the underdrains,

(ii) a method for avoiding excessive loss of the filter media during backwashing must be provided,

(iii) air scouring must be followed by a fluidization wash sufficient to restratify the media,

(iv) air must be free from contamination,

(v) air scour distribution systems shall be placed below the media and supporting bed interface; if placed at the interface the air scour nozzles shall be designed to prevent media from clogging the nozzles or entering the air distribution system.

(vi) piping for the air distribution system shall not be flexible hose which will collapse when not under air pressure and shall not be a relatively soft material which may erode at the orifice opening with the passage of air at high velocity.

(vii) air delivery piping shall not pass down through the filter media nor shall there be any arrangement in the filter design which would allow short circuiting between the applied unfiltered water and the filtered water,

(viii) consideration shall be given to maintenance and replacement of air delivery piping,

(ix) when air scour is provided the backwash water rate shall be variable and shall not exceed eight gpm/sf unless operating experience shows that a higher rate is necessary to remove scoured particles from filter surfaces.

(x) the filter underdrains shall be designed to accommodate air scour piping when the piping is installed in the underdrain, and

(xi) the provisions of Section R309-525-15(7)(a) (Backwash) shall be followed.

(8) Surface Wash or Subsurface Wash.

Surface wash or subsurface wash facilities are required except for filters used exclusively for iron or manganese removal. Washing may be accomplished by a system of fixed nozzles or a revolving-type apparatus, provided:

(a) Provisions for water pressures of at least 45 psi,

(b) A properly installed vacuum breaker or other approved device to prevent back-siphonage if connected to a finished drinking water system,

(c) All washwater must be finished drinking water,

(d) Rate of flow of two gpm/sf of filter area with fixed nozzles or 0.5 gpm/sf with revolving arms.

(9) Washwater Troughs.

Washwater troughs shall be so designed to provide:

(a) The bottom elevation above the maximum level of expanded media during washing,

(b) A two inch freeboard at the maximum rate of wash,

(c) The top edge level and all edges of trough at the same elevation

(d) Spacing so that each trough serves the same number of square feet of filter areas,

(e) Maximum horizontal travel of suspended particles to reach the trough not to exceed three feet.

(10) Appurtenances.

(a) The following shall be provided for every filter:

(i) Sample taps or means to obtain samples from influent and effluent,

(ii) A gauge indicating loss of head,

(iii) A meter indicating rate-of-flow. A modified rate controller which limits the rate of filtration to a maximum rate may be used. However, equipment that simply maintains a constant water level on the filters is not acceptable, unless the rate of flow onto the filter is properly controlled,

(iv) A continuous turbidity monitoring device where the filter is to be loaded at a rate greater than three gpm/sf

(v) Provisions for draining the filter to waste with appropriate measures for backflow prevention (see R309-525-23).

(i) Wall sleeves providing access to the filter interior at several locations for sampling or pressure sensing,

(ii) A 1.0 inch to 1.5 inch diameter pressure hose and storage rack at the operating floor for washing filter walls.

(11) Miscellaneous.

Roof drains shall not discharge into filters or basins and conduits preceding the filters.

**R309-525-16. In-Plant Finished Drinking Water Storage.**

(1) General.

In addition to the following, the applicable design standards of R309-545 shall be followed for plant storage.

(a) Backwash Water Tanks.

Backwash water tanks shall be sized, in conjunction with available pump units and finished water storage, to provide the backwash water required by R309-525-15(7). Consideration shall be given to the backwashing of several filters in rapid succession.

(b) Clearwell.

Clearwell storage shall be sized, in conjunction with distribution system storage, to relieve the filters from having to follow fluctuations in water use.

(i) When finished water storage is used to provide the contact time for chlorine (see R309-520-10(1)(f), especially sub-section (f)(iv)), special attention must be given to size and baffling.

(ii) To ensure adequate chlorine contact time, sizing of the clearwell shall include extra volume to accommodate depletion of storage during the nighttime for intermittently operated filtration plants with automatic high service pumping from the clearwell during non-treatment hours.

(iii) An overflow and vent shall be provided.

(2) Adjacent Compartments.

Finsihed drinking water shall not be stored or conveyed in a compartment adjacent to unsafe water when the two compartments are separated by a single wall. The Executive Secretary may grant an exception to this requirement for small "package" treatment plants using metal tanks of sufficient wall thickness.

(3) Basins and Wet-Wells.

Receiving basins and pump wet-wells for finished drinking water shall be designed as drinking water storage structures. (See Section R309-545)

**R309-525-17. Miscellaneous Plant Facilities.**

(1) Laboratory.

Sufficient laboratory equipment shall be provided to assure proper operation and monitoring of the water plant. A list of required laboratory equipment is:

(a) one floc testing apparatus with illuminated base and variable speed stirrer,

(b) 10 each 1000 ml Griffin beakers (plastic is highly recommended over glass to prevent breakage),

(c) one 1000 ml graduated cylinder (plastic is highly recommended over glass to prevent breakage),

(d) pH test strips (6.0 to 8.5),

(e) five wide mouth 25 ml Mohr pipets,

(f) one triple beam, single pan or double pan balance with 0.1 g sensitivity and 2000 g capacity (using attachment weights),

(g) DPD chlorine test kit,

(h) bench-top turbidimeter,

(i) five each 1000 ml reagent bottles with caps,

(j) dish soap,

(k) brush (2 3/4 inch diameter by 5 inch),

(l) one platform scale 1/2 lb sensitivity, 100 lb capacity,

(m) book - Simplified Procedures for Water Examination, AWWA Manual M12

(2) Continuous Turbidity Monitoring and Recording Equipment.

Continuous turbidity monitoring and recording facilities shall be located as specified in R309-104-4.4.1a.

(3) Sanitary and Other Conveniences.

All treatment plants shall be provided with finished drinking water, lavatory and toilet facilities unless such facilities are otherwise conveniently available. Plumbing must conform to the Utah Plumbing Code and must be so installed to prevent contamination of a public water supply.

**R309-525-18. Sample Taps.**

Sample taps shall be provided so that water samples can be obtained from appropriate locations in each unit operation of treatment. Taps shall be consistent with sampling needs and shall not be of the petcock type. Taps used for obtaining samples for bacteriological analysis shall be of the smooth-nosed type without interior or exterior threads, shall not be of the mixing type, and shall not have a screen, aerator, or other such appurtenance.

**R309-525-19. Operation and Maintenance Manuals.**

Operation and maintenance manuals shall be prepared for the treatment plant and found to be acceptable by the Executive Secretary. The manuals shall be usable and easily understood. They shall describe normal operating procedures, maintenance procedures and emergency procedures.

**R309-525-20. Operator Instruction.**

Provisions shall be made for operator instruction at the start-up of a plant.

**R309-525-21. Safety.**

All facilities shall be designed and constructed with due regard for safety, comfort and convenience. As a minimum, all applicable requirements of Utah Occupational Safety and Health Act (UOSHA) must be adhered to.

**R309-525-22. Disinfection Prior To Use.**

All pipes, tanks, and equipment which can convey or store finished drinking water shall be disinfected in accordance with the following AWWA procedures:

(1) C651-99 Disinfecting Water Mains

(2) C652-92 Disinfection of Water Storage Facilities

(3) C653-97 Disinfection of Water Treatment Plants

**R309-525-23. Disposal of Treatment Plant Waste.**

Provisions must be made for proper disposal of water treatment plant waste such as sanitary, laboratory, sludge, and filter backwash water. All waste discharges and treatment facilities shall meet the requirements of the plumbing code, the Utah Department of Environmental Quality, the Utah Department of Health, and the United States Environmental Protection Agency, including the following:

(1) Rules for Onsite Wastewater Disposal Systems, Utah Administrative Code R317-4.

(2) Rules for Water Quality, Utah Administrative Code R317.

(3) Rules for Solid and Hazardous Waste, Utah Administrative Code R315.

In locating waste disposal facilities, due consideration shall be given to preventing potential contamination of a water supply as well as breach or damage due to environmental factors.

**R309-525-24. Other Considerations.**

Consideration shall be given to the design requirements of other federal, state, and local regulatory agencies for items such as safety requirements, special designs for the handicapped, plumbing and electrical codes, construction in the flood plain, etc.

**R309-525-25. Operation and Maintenance.**

(1) Water system operators must determine that all chemicals added to water intended for human consumption are suitable for drinking water use and comply with ANSI/NSF Standard 60.

(2) No chemicals or other substances may be added to public water supplies unless the chemical addition facilities and chemical type have been reviewed and approved by the Executive Secretary. The Executive Secretary shall be notified prior to the changing of primary coagulant type. The Executive Secretary may require documentation to verify that sufficient testing and analysis have been done. The primary coagulant may not be changed without prior approval from the Executive Secretary.

(3) During the operation of a conventional surface water treatment plant stable flow rates shall be maintained through the filters.

(4) All instrumentation needed to verify that treatment processes are sufficient shall be properly calibrated and maintained. As a minimum, this shall include turbidimeters.

**KEY: drinking water, flocculation, sedimentation, filtration**
**August 15, 2001 19-4-104**
**Notice of Continuation September 16, 2002**

**R309. Environmental Quality, Drinking Water.**

**R309-530. Facility Design and Operation: Alternative Surface Water Treatment Methods.**

**R309-530-1. Purpose.**

This rule specifies requirements for alternative surface water treatment methods. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-530-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with subsection 63-46a of the same, known as the Administrative Rulemaking Act.

**R309-530-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

**R309-530-4. General.**

(1) Alternative Methods.

In addition to conventional surface water treatment method (i.e. coagulation, sedimentation and filtration as outlined in R309-525), several alternative methods may also be suitable. They are: Direct Filtration; Slow Sand Filtration; Membrane Filtration; and Diatomaceous Earth Filtration.

(2) Incorporation of Other Rules.

For each process described in this section pertinent rules are given. The designer shall also incorporate the relevant rules given in other sections into the plans and specifications for any of these specialized treatment methods. Where applicable, the following topics shall be addressed:

(a) Plant Siting (see R309-525-6).

(b) Pre-design Submittal (see R309-515-5(2)).

(c) Plant Reliability (see R309-525-7).

(d) Color Coding and Pipe Marking (see R309-525-8).

(e) Chemical Addition (see R309-525-11).

(f) Miscellaneous Plant Facilities (see R309-525-17, particularly sub-section R309-525-17(1), Laboratory).

(g) Operation and Maintenance Manuals (see R309-525-19).

(h) Safety (see R309-525-21).

(i) Disposal of Treatment Plant Waste (see R309-525-23).

(j) Disinfection (see R309-520).

**R309-530-5. Direct Filtration.**

(1) Chemical Addition and Mixing.

Direct Filtration is conventional surface water treatment without the sedimentation process. Rules for Chemical Addition and Mixing shall be the same as found in sections R309-525-11 and R309-525-12.

(2) Source Water Quality.

Direct Filtration applies the destabilized colloids to the filter rather than removing the majority of the load through sedimentation. While this process represents considerable construction cost savings, the source water must have low average turbidity in order to provide reliable service without excessive backwash requirements. Source water with low average turbidity is generally only obtained from large capacity reservoirs.

(3) Design Requirements.

The following requirements shall apply to Direct Filtration plants:

(a) At least one year's record of source water turbidity, sampled at least once per week, shall be presented to the Executive Secretary. A Direct Filtration facility will only be permitted if the data shows that 75% of the measurements are below five (5) NTU. The Executive Secretary shall judge whether Direct Filtration is suitable given the quality of the proposed source water (see R309-515-5(2)(a)(ii)).

(b) Pilot plant studies, acceptable to the Executive Secretary, shall be conducted prior to the preparation of final engineering plans.

(c) Requirements for flash mix and flocculation basin design are given in sub-sections R309-525-12(1) and R309-525-12(2).

(d) Chemical addition and mixing equipment shall be designed to be capable of providing a visible, but not necessarily settleable, floc.

(e) Surface wash, subsurface wash, or air scour shall be provided for the filters in accordance with sub-section R309-525-15(7).

(f) A continuous monitoring turbidimeter shall be installed on each filter effluent line and shall be of a type with at least two alarm conditions capable of meeting the requirements of subsections R309-525-15(4)(b)(vi) or R309-525-15(4)(c)(vii). The combined plant effluent shall be equipped with a continuous turbidimeter having a chart recorder. Additional monitoring equipment to assist in control of the coagulant dose may be required (i.e. streaming current gauges, particle counters, etc.) if the plant cannot consistently meet the requirements of rule R309-103.

(g) In addition to the alarm conditions required above, the plant shall be designed and operated so that the plant will automatically shut down when a source water turbidity of 20 NTU lasts longer than three hours, or when the source water turbidity exceeds 30 NTU at any time.

(h) The plant design and land ownership surrounding the plant shall allow for the installation of conventional sedimentation basins. Sedimentation basins may be required if the Executive Secretary determines the plant is failing to meet minimum water quality or performance standards.

**R309-530-6. Slow Sand Filtration.**

(1) Acceptability.

Slow sand filtration means a process involving passage of raw water through a bed of sand at low velocity resulting in substantial particle removal by physical and biological mechanisms. The acceptability of slow sand filters as a substitute for "conventional surface water treatment" facilities (detailed in R309-525) shall be determined by the Executive Secretary based on suitability of the source water and demand

characteristics of the system.

(2) Source Water Quality.

The Executive Secretary may impose design requirements in addition to those listed herein, in allowing this process. The following shall be considered, among other factors, in determining whether slow sand filtration will be acceptable:

(a) Source water turbidity must be low and consistent. Slow Sand Filtration shall be utilized only when the source waters have turbidity less than 50 NTU and color less than 30 units (see R309-515-5(2)(a)).

(b) The nature of the turbidity particles shall be considered. Turbidity must not be attributable to colloidal clay.

(c) The nature and extent of algae growths in the raw water shall be considered. Algae must not be a species considered as filter and screen-clogging algae as indicated in "Standard Methods for the Examination of Water and Wastewater" prepared and published jointly by American Public Health Association, American Water Works Association, and Water Environment Federation. High concentrations of algae in the raw water can cause short filter runs; the amount of algae, expressed as the concentration of chlorophyll a in the raw water shall not exceed 0.005 mg/l.

(3) Pilot Plant Studies.

The Executive Secretary shall allow the use of Slow Sand Filtration only when the supplier's engineering studies show that the slow sand facility can consistently produce an effluent meeting the quality requirements of rule R309-103. The Executive Secretary should be consulted prior to the detailed design of a slow sand facility.

(4) Operation.

Effluent from a Slow Sand Filtration facility shall not be introduced into a public water supply until an active biological mat has been created on the filter.

(5) Design requirements.

The following design parameters shall apply to each Slow Sand Filtration plant:

(a) At least three filter units shall be provided. Where only three units are provided, any two shall be capable of meeting the plant's design capacity (normally the projected "peak daily flow") at the approved filtration rate. Where more than three filter units are provided, the filters shall be capable of meeting the plant design capacity at the approved filtration rate with any one filter removed from service.

(b) All filters shall be protected to prevent freezing. If covered by a structure, enough headroom shall exist to permit normal movement by operating personnel for scraping and sand removal operations. There shall be adequate manholes and access ports for the handling of sand. An overflow at the maximum filter water level shall be provided.

(c) The permissible rates of filtration shall be determined by the quality of the source water and shall be determined by experimental data derived during pilot studies conducted on the source water. Filtration rates of 0.03 gpm/sf to 0.01 gpm/sf shall be acceptable (equivalent to two to six million gallons per day per acre). Somewhat higher rates may be acceptable when demonstrated to the satisfaction of the Executive Secretary.

(d) Each filter unit shall be equipped with a main drain and an adequate number of lateral underdrains to collect the filtered water. The underdrains shall be so spaced that the maximum velocity of the water flow in the underdrain will not exceed 0.75 fps. The maximum spacing of the laterals shall not exceed three feet if pipe laterals are used.

(e) Filter sand shall be placed on graded gravel layers for an initial filter sand depth of 30 inches. A minimum of 24 inches of filter sand shall be present, even after scraping. The effective size of the filter sand shall be between 0.30 mm and 0.45 mm in diameter. The filter sand uniformity coefficient shall not exceed 2.5. Further, the sand shall throughly washed and found to be clean and free from foreign matter.

(f) A three-inch layer of well rounded sand shall be used as a supporting media for filter sand. It shall have an effective size of 0.8 mm to 2.0 mm in diameter and the uniformity coefficient shall not be greater than 1.7.

(g) A supporting gravel media shall be provided. It shall consist of hard, durable, rounded silica particles and shall not include flat or elongated particles. The coarsest gravel shall be 2.5 inches in size when the gravel rests directly on the strainer system, and must extend above the top of the perforated laterals. Not less than four layers of gravel shall be provided in accordance with the following size and depth distribution when used with perforated laterals:

TABLE 530-1

| Size | Depth |
|---|---|
| 2 1/2 to 1 1/2 inches | 5 to 8 inches |
| 1 1/2 to 3/4 inches | 3 to 5 inches |
| 3/4 to 1/2 inches | 3 to 5 inches |
| 1/2 to 3/16 inches | 2 to 3 inches |
| 3/16 to 3/32 inches | 2 to 3 inches |

Reduction of gravel depths may be considered upon justification to the Executive Secretary when proprietary filter bottoms are specified.

(h) Slow sand filters shall be designed to provide a depth of at least three to five feet of water over the sand.

(i) Each filter shall be equipped with: a loss of head gauge; an orifice, venturi meter, or other suitable metering device installed on each filter to control the rate of filtration; and an effluent pipe designed to maintain the water level above the top of the filter sand.

(j) Disinfection of the effluent of Slow Sand Filtration plants will be required.

(k) A filter-to-waste provision shall be included.

(l) Electrical power shall be available at the plant site.

**R309-530-7. Diatomaceous Earth Filtration.**

The use of Diatomaceous Earth Filtration units may be considered for application to surface waters with low turbidity and low bacterial contamination, and additionally may be used for iron removal for groundwaters of low quality, providing the removal is effective and the water is of sanitary quality before treatment.

The acceptability of Diatomaceous Earth Filtration as a substitute for "conventional surface water treatment" facilities (detailed in rule R309-525) shall be determined by the Executive Secretary. Determination may be based on the level of support previously exhibited by the public water system management along with a finding by the Executive Secretary

that "conventional surface water treatment" or other methods herein described are too costly or unacceptable.

Diatomaceous Earth Filtration consists of a process to remove particles from water wherein a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the source water to maintain the permeability of the filter cake. Diatomite filters are characterized by rigorous operating requirements, high operating costs, and increased sludge production.

Part 4, Section 4.2.3, Diatomaceous Earth Filtration, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 1997 edition is hereby incorporated by reference and shall govern the design and operation of diatomaceous earth filtration facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

**R309-530-8. Membrane Technology.**

(1) Acceptability.

Surface waters, or groundwater under the direct influence of surface water (UDI), may be treated using membrane technology (microfiltration, ultrafiltration, nanofiltration) coupled with "primary and secondary disinfection."

(2) Pilot Plant Study.

Because this is a relatively new technology, appropriate investigation shall be conducted by the public water system to assure that the process will produce the required quality of water at a cost which can be borne by the public water system consumers. A pilot plant study shall be conducted prior to the commencement of design. The study must be conducted in accordance with EPA's Environmental Technology Verification Program (ETV) or the protocol and treated water parameters must be approved prior to conducting any testing by the Executive Secretary.

(3) Design Requirements.

The following items shall be addressed in the design of any membrane technology plant intended to provide microbiological treatment of surface waters or groundwater "UDI:"

(a) The facility shall be equipped with an on-line particle counter on the final effluent.

(b) The facility shall be equipped with an automatic membrane integrity test system.

**R309-530-9. New Treatment Processes or Equipment.**

The policy of the Board is to encourage, rather than to obstruct, the development of new methods and equipment for the treatment of water. Nevertheless, any new processes or equipment must have been thoroughly tested in full-scale, comparable installations, before approval of plans can be issued. Refer to EPA's Environmental Technology Verification Program (ETV).

No new treatment process will be approved for use in Utah unless the designer or supplier can present evidence satisfactory to the Executive Secretary that the process will insure the delivery of water of safe, sanitary quality, without imposing undue problems of supervision, operation and/or control.

**KEY: drinking water, direct filtration, slow sand filtration, membrane technology**
**August 15, 2001 19-4-104**
**Notice of Continuation September 16, 2002**

**R309. Environmental Quality, Drinking Water.**

**R309-535. Facility Design and Operation: Miscellaneous Treatment Methods.**

**R309-535-1. Purpose.**

The purpose of this rule is to provide specific requirements for miscellaneous water treatment methods which are primarily intended to remove chemical contaminants from drinking water; or, adjust the chemical composition of drinking water. It is intended to be applied in conjunction with other rules, specifically R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-535-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

**R309-535-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

**R309-535-4. General.**

For each process described in this section pertinent rules are given. The designer must also, however, incorporate the relevant rules given in other sections into the plans and specifications for any of these specialized treatment methods. Where applicable, the following topics must be addressed:

(1) Plant Siting (see R309-525-6).

(2) Plant Reliability (see R309-525-7).

(3) Color Coding and Pipe Marking (see R309-525-8).

(4) Chemical Addition (see R309-525-11).

(5) Miscellaneous Plant Facilities (see R309-525-17, particularly sub-section R309-525-17(1), Laboratory).

(6) Operation and Maintenance Manuals (see R309-525-19).

(7) Safety (see R309-525-21).

(8) Disposal of Treatment Plant Waste (see R309-525-23).

(9) Disinfection (see R309-520).

**R309-535-5. Fluoridation.**

Sodium fluoride, sodium silicofluoride and fluorosilicic acid shall conform to the applicable AWWA standards and/or ANSI/NSF Standard 60. Other fluoride compounds which may be available must be approved by the Executive Secretary.

(1) Fluoride compound storage.

Fluoride chemicals should be isolated from other chemicals to prevent contamination. Compounds shall be stored in covered or unopened shipping containers and should be stored inside a building. Unsealed storage units for fluorosilicic acid should be vented to the atmosphere at a point outside any building. Bags, fiber drums and steel drums should be stored on pallets.

(2) Chemical feed equipment and methods.

In addition to the requirements in R309-525-11 "Chemical Addition", fluoride feed equipment shall meet the following requirements:

(a) scales, loss-of-weight recorders or liquid level indicators, as appropriate, accurate to within five percent of the average daily change in reading shall be provided for chemical feeds,

(b) feeders shall be accurate to within five percent of any desired feed rate,

(c) fluoride compound shall not be added before lime-soda softening or ion exchange softening,

(d) the point of application of fluorosilicic acid, if into a horizontal pipe, shall be in the lower half of the pipe,

(e) a fluoride solution shall be applied by a positive displacement pump having a stroke rate not less than 20 strokes per minute,

(f) a spring opposed diaphragm type anti-siphon device shall be provided for all fluoride feed lines and dilution water lines,

(g) a device to measure the flow of water to be treated is required,

(h) the dilution water pipe shall terminate at least two pipe diameters above the solution tank,

(i) water used for sodium fluoride dissolution shall be softened if hardness exceeds 75 mg/l as calcium carbonate,

(j) fluoride solutions shall be injected at a point of continuous positive pressure or a suitable air gap provided,

(k) the electrical outlet used for the fluoride feed pump should have a nonstandard receptacle and shall be interconnected with the well or service pump,

(l) saturators should be of the upflow type and be provided with a meter and backflow protection on the makeup water line.

(3) Secondary controls.

Secondary control systems for fluoride chemical feed devices shall be provided as a means of reducing the possibility for overfeed; these may include flow or pressure switches or other devices.

(4) Protective equipment.

Personal protective equipment as outlined in R309-525-11(10) shall be provided for operators handling fluoride compounds. Deluge showers and eye wash devices shall be provided at all fluorosilicic acid installations.

(5) Dust control.

(a) Provision must be made for the transfer of dry fluoride compounds from shipping containers to storage bins or hoppers in such a way as to minimize the quantity of fluoride dust which may enter the room in which the equipment is installed. The enclosure shall be provided with an exhaust fan and dust filter which place the hopper under a negative pressure. Air exhausted from fluoride handling equipment shall discharge through a dust filter to the outside atmosphere of the building.

(b) Provision shall be made for disposing of empty bags, drums or barrels in a manner which will minimize exposure to fluoride dusts. A floor drain should be provided to facilitate the hosing of floors.

(6) Testing equipment.

Equipment shall be provided for measuring the quantity of fluoride in the water. Such equipment shall be subject to the

approval of the Executive Secretary.

**R309-535-6. Taste and Odor Control.**

Part 4, Section 4.9, Taste and Odor Control, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 1997 edition is hereby incorporated by reference and shall govern the design and operation of taste and odor control facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

**R309-535-7. Stabilization.**

Part 4, Section 4.8, Stabilization, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 1997 edition is hereby incorporated by reference and it shall govern the design and operation of stabilization facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

**R309-535-8. Deionization.**

Current practical methods of deionization include Ion Exchange, Reverse Osmosis and Electrodialysis. Additional methods of deionization may be approved subject to the presentation of evidence of satisfactory reliability.

All properly developed groundwater sources having water quality exceeding 2,000 mg/l Total Dissolved Solids and/or 500 mg/l Sulfate shall be either properly diluted or treated by the methods outlined in this section. Deionization cannot be considered a substitute process for conventional complete treatment outlined in R309-525.

(1) Ion Exchange.

(a) General.

Great care shall be taken by the designer to avoid loading the media with water high in organics.

(b) Design.

(i) Pretreatment shall be provided per the manufacturer's recommendation.

(ii) Upflow or down flow units are acceptable.

(iii) Exchangers shall have at least a three foot media depth.

(iv) Exchangers shall be designed to meet the recommendations of the media manufacturer with regard to flow rate or contact time. In any case, flow shall not exceed seven gpm/sf of bed area. The plant shall be provided with an influent or effluent meter as well as a meter on any bypass line.

(v) Chemical feeders used shall conform with R309-525-8. All solution tanks shall be covered.

(vi) Regenerants added shall be uniformly distributed over the entire media surface of upflow or downflow units. Regeneration shall be according to the media manufacturer's recommendations.

(vii) The wash rate capability shall be in excess of the manufacturers recommendation and should be at least six to eight gpm/sf of bed area.

(viii) Disinfection (see R309-520) shall be required ahead of the exchange units where this does not interfere with the media.

Where disinfection interferes with the media, disinfection shall follow the treatment process.

(c) Waste Disposal.

Waste generated by ion exchange treatment shall be disposed of in accordance with R309-525-23.

(2) Reverse Osmosis.

(a) General.

The design shall permit the easy exchange of modules for cleaning or replacement.

(b) Design Criteria.

(i) Pretreatment shall be provided per the manufacturer's recommendation.

(ii) Required equipment includes the following items: pressure gauges on the upstream and downstream side of the filter; a conductivity meter present at the site; taps for sampling permeate, concentrate and blended flows (if practiced). If a continuous conductivity meter is permanently installed, piping shall be such that the meter can be disconnected and calibrated with standard solutions at a frequency as recommended by the manufacturer.

(iii) Aeration, if practiced, shall conform with provisions of R309-535-9.

(iv) Cleaning shall be routinely done in accordance with the manufacturer's recommendations.

(v) Where the feed water pH is altered, stabilization of the finished water is mandatory.

(c) Waste Disposal.

Waste generated by reverse osmosis treatment shall be disposed of in accordance with R309-525-23.

(3) Electrodialysis.

(a) General.

(b) Design.

(i) Pretreatment shall be provided per the manufacturers recommendation.

(ii) The design shall include ability to: measure plant flow rates; measure feed temperature if the water is heated (a high temperature automatic cutoff is required to prevent membrane damage); measure D.C voltage at the first and second stages as well as on each of the stacks. Sampling taps shall be provided to measure the conductivity of the feed water, blowdown water, and product water. D.C. and A.C. kilowatt-hour meters to record the electricity used shall also be provided.

(c) Waste Disposal.

Waste generated by electrodialysis treatment shall be disposed of in accordance with R309-525-23.

**R309-535-9. Aeration.**

Part 4, Section 4.5, Aeration, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 1997 edition, is hereby incorporated by reference and shall govern the design and operation of aeration facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

**R309-535-10. Softening.**

Part 4, Section 4.4, Softening, in the Recommended

Standards for Water Works (commonly known as "Ten State Standards"), 1997 edition, is hereby incorporated by reference and shall govern the design and operation of softening facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

**R309-535-11. Iron and Manganese Control.**

Iron and manganese control, as used herein, refers solely to treatment processes designed specifically for this purpose. The treatment process used will depend upon the character of the source water. The selection of one or more treatment processes shall meet specific local conditions as determined by engineering investigations, including chemical analyses of representative samples of water to be treated, and receive approval of the Executive Secretary. It may be necessary to operate a pilot plant in order to gather all information pertinent to the design. Consideration should be given to adjust the pH of the raw water to increase the rate of the chemical reactions involved.

Removal or treatment of iron and manganese are normally by the following methods:

(1) Removal by Oxidation, Detention and Filtration.

(a) Oxidation.

Oxidation may be by aeration, or by chemical oxidation with chlorine, potassium permanganate, ozone or chlorine dioxide.

(b) Detention.

(i) Reaction time - A minimum detention time of twenty minutes shall be provided following aeration in order to insure that the oxidation reactions are as complete as possible. This minimum detention may be omitted only where a pilot plant study indicates no need for detention. The detention basin shall be designed as a holding tank with no provisions for sludge collection but with sufficient baffling to prevent short circuiting.

(ii) Sedimentation - Sedimentation basins shall be provided when treating water with high iron and/or manganese content, or where chemical coagulation is used to reduce the load on the filters. Provisions for sludge removal shall be made.

(c) Filtration.

(i) General - Minimum criteria relative to number, rate of filtration, structural details and hydraulics, filter media, etc., provided for rapid rate gravity filters shall apply to pressure filters where appropriate, and may be used in this application but cannot be used in the filtration of surface waters or following lime-soda softening.

(ii) Details of Design for Pressure Filter - The filters shall be designed to provide for:

(A) Loss of head gauges on the inlet and outlet pipes of each filter,

(B) An easily readable meter or flow indicator on each battery of filters,

(C) Filtration and backwashing of each filter individually with an arrangement of piping as simple as possible to accomplish these purposes,

(D) The top of the washwater collectors to be at least twenty-four (24) inches above the surface of the media,

(E) The underdrain system to efficiently collect the filtered water and to uniformly distribute the backwash water at a rate capable of not less than 15 gpm/sf of filter area,

(F) Backwash flow indicators and controls that are easily readable while operating the control valves,

(G) An air release valve on the highest point of each filter,

(H) An accessible manhole to facilitate inspections and repairs,

(I) Means to observe the wastewater and filters during backwashing, and

(J) Construction to prevent cross-connection.

(2) Removal by the Lime-soda Softening Process.

For removal by the lime-soda softening process refer to Part 4, Section 4.4, Softening, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 1997 edition as indicated in R309-535-10.

(3) Removal by Manganese Greensand Filtration.

This process, consisting of the continuous feed of potassium permanganate to the influent of a manganese greensand filter, is more applicable to the removal of manganese than the removal of iron.

(a) Provisions shall be made to apply the permanganate as far ahead of the filter as practical and at a point immediately before the filter.

(b) An anthracite media cap of at least six inches shall be provided over manganese greensand.

(c) The normal filtration rate is three gpm/sf.

(d) The normal wash rate is 8 to 10 gpm/sf.

(e) Air washing shall be provided.

(f) Sample taps shall be provided:

(i) prior to application of permanganate,

(ii) immediately ahead of filtration,

(iii) at a point between the anthracite media and the manganese greensand,

(iv) halfway down the manganese greensand, and

(v) at the filter effluent.

(4) Removal by Ion Exchange.

This process is not acceptable where either the source water or wash water contains dissolved oxygen.

(5) Sequestration by Polyphosphates.

This process shall not be used when iron, manganese or a combination thereof exceeds 1.0 milligram per liter. The total phosphate applied shall not exceed 10 milligrams per liter as $PO_4$. Where phosphate treatment is used, satisfactory chlorine residuals shall be maintained in the distribution system and the following required:

(a) feeding equipment shall conform to the requirements of R309-525-11(7),

(b) stock phosphate solution shall be kept covered and disinfected by carrying approximately 10 mg/l free chlorine residual,

(c) polyphosphates shall not be applied ahead of iron and manganese removal treatment. If no iron or manganese removal treatment is provided, the point of application shall be prior to any aeration, oxidation or disinfection steps, and

(d) phosphate chemicals must comply with ANSI/NSF Standard 60.

Sampling taps shall be provided for control purposes. Taps shall be located on each raw water source, and on each treatment unit influent and effluent.

Waste generated by iron and manganese control treatment shall be disposed of in accordance with R309-525-23.

**R309-535-12. New Treatment Processes or Equipment.**

The policy of the Board is to encourage, rather than to obstruct, the development of new methods and equipment for the treatment of water. Nevertheless, any new processes or equipment must have been thoroughly tested in full-scale, comparable installations, before approval of plans can be issued. The U.S. Environmental Protection Agency (EPA) has created the Environmental Technology Verification (ETV) Program to facilitate the deployment of innovative or improved environmental technologies through performance verification and dissemination of information. NSF International (NSF) in cooperation with the EPA operates the Package Drinking Water Treatment Systems (PDWTS) pilot, one of 12 technology areas under ETV. Engineers and Manufacturers are referred to Bruce Bartley, Manager, ETV project, NSF International, P.O. Box 130140, Ann Arbor, Michigan 48113-0140.

No new treatment process will be approved for use in Utah unless the designer or supplier can present evidence satisfactory to the Executive Secretary that the process will insure the delivery of water of safe, sanitary quality, without imposing undue problems of supervision, operation and/or control.

**KEY: drinking water, miscellaneous treatment, stabilization, iron and manganese control**
**May 1, 2001 19-4-104**
**Notice of Continuation September 16, 2002**

**R309. Environmental Quality, Drinking Water.**
**R309-540. Facility Design and Operation: Pump Stations.**
**R309-540-1. Purpose.**

The purpose of this rule is to provide specific requirements for pump stations utilized to deliver drinking water to facilities of public water systems. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-540-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

**R309-540-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

**R309-540-4. General.**

Pumping stations shall be designed to maintain the sanitary quality of water and to provide ample quantities of water at sufficient pressure.

**R309-540-5. Pumping Facilities.**

(1) Location.

(a) The pumping station shall be designed such that:

(i) the proposed site will meet the requirements for sanitary protection of water quality, hydraulics of the system, and protection against interruption of service by fire, flood or any other hazard;

(ii) the access to the pump station shall be six inches above the surrounding ground and the station located at an elevation which is a minimum of three feet above the 100-year flood elevation, or three feet above the highest recorded flood elevation, which ever is higher, or protected to such elevations;

(iii) the station is readily accessible at all times unless permitted to be out of service for the period of inaccessibility;

(iv) surrounding ground is graded so as to lead surface drainage away from the station; and

(v) the station is protected to prevent vandalism and entrance by animals or unauthorized persons.

(2) Pumping Stations.

(a) Building structures for both raw and drinking water shall:

(i) have adequate space for the installation of additional pumping units if needed, and for the safe servicing of all equipment;

(ii) be of durable construction, fire and weather resistant, with outward-opening doors;

(iii) have an interior floor elevation at least six inches above the exterior finished grade;

(iv) have any underground facilities, especially wet wells, waterproofed;

(v) have all interior floors drained in such a manner that the quality of drinking water contained in any wet wells will not be endangered. All floors shall slope at least one percent (one foot every 100 feet) to a suitable drain; and

(vi) provide a suitable outlet for drainage from pump glands without discharging onto the floor.

(b) Suction wells shall:

(i) be watertight;

(ii) have floors sloped to permit removal of water and entrained solids;

(iii) be covered or otherwise protected against contamination; and

(iv) have two pumping compartments or other means to allow the suction well to be taken out of service for inspection, maintenance, or repair.

(c) Servicing equipment shall consist of:

(i) crane-ways, hoist beams, eyebolts, or other adequate facilities for servicing or removal of pumps, motors or other heavy equipment;

(ii) openings in floors, roofs or wherever else needed for removal of heavy or bulky equipment; and

(iii) a convenient tool board, or other facilities as needed, for proper maintenance of the equipment.

(d) Stairways and ladders shall:

(i) be provided between all floors, and in pits or compartments which must be entered; and

(ii) have handrails on both sides, and treads of non-slip material. They shall have risers not exceeding nine inches and treads wide enough for safety.

(e) Heating provisions shall be adequate for:

(i) the comfort of the operator; and

(ii) the safe and efficient operation of the equipment.

(f) Ventilation shall:

(i) conform to existing local and/or state codes; and

(ii) forced ventilation of at least six changes of air per hour shall be provided for all rooms, compartments, pits and other enclosures below ground floor, and any area where unsafe atmosphere may develop or where excessive heat may be built up.

(g) Lighting.

Pump stations shall be adequately lighted throughout. All electrical work shall conform to the requirements of the relevant state and/or local building codes.

(h) Sanitary and other conveniences.

Plumbing shall be so installed as to prevent contamination of a public water supply. Wastes shall be discharged in accordance with the plumbing code, R317-4, or R317-1-3.

(3) Pumps.

(a) Capacity.

Capacity shall be provided such that the pump or pumps shall be capable of providing the peak day demand of the system or the specific portion of the system serviced.

The pumping units shall:

(i) have ample capacity to supply the peak day demand against the required distribution system pressure without dangerous overloading;

(ii) be driven by prime movers able to meet the maximum horsepower condition of the pumps without use of service

factors;

(iii) be provided readily available spare parts and tools; and

(iv) be served by control equipment that has proper heater and overload protection for air temperature encountered.

(b) Suction Lift.

Suction lift, where possible, shall be avoided. If suction lift is necessary, the required lift shall be within the pump manufacturer's recommended limits and provision shall be made for priming the pumps.

(c) Priming.

Prime water shall not be of lesser sanitary quality than that of the water being pumped. Means shall be provided to prevent back siphonage. When an air-operated ejector is used, the screened intake shall draw clean air from a point at least 10 feet above the ground or other source.

(4) Booster Pumps.

(a) Booster pumps shall be located or controlled so that:

(i) they will not produce negative pressure in their suction lines;

(ii) automatic cutoff pressure shall be at least 10 psi in the suction line;

(iii) automatic or remote control devices shall have a range between the start and cutoff pressure which will prevent excessive cycling; and

(iv) a bypass is available.

(b) Inline booster pumps (pumps withdrawing water directly from distribution lines without the benefit of storage and feeding such water directly into other distribution lines rather than storage), in addition to the other requirements of this section, shall have at least two pumping units (such that with any one pump out of service, the remaining pump or pumps shall be capable of providing the peak day demand of the specific portion of the system serviced), shall be accessible for servicing and repair and located or controlled so that the intake pressure shall be at least 20 psi when the pump or pumps are in normal operation.

(c) Individual home booster pumps shall not be allowed for any individual service from the public water supply main.

(5) Automatic and remote controlled stations.

All remote controlled stations shall be electrically operated and controlled and shall have signaling apparatus of proven performance. Installation of electrical equipment shall conform with the applicable state and local electrical codes and the National Electrical Code.

(6) Appurtenances.

(a) Valves.

Valves shall be used to permit satisfactory operation, maintenance, and repair of the equipment. If foot valves are necessary, they shall have a net valve area of at least 2 1/2 times the area of the suction pipe and they shall have a positive-acting check valve on the discharge side between the pump and the shut-off valve.

(b) Piping.

Piping within and near pumping stations shall:

(i) be designed so that the friction losses will be minimized;

(ii) not be subject to contamination;

(iii) have watertight joints;

(iv) be protected against surge or water hammer; and

(v) be such that each pump has an individual suction line or that the lines shall be so manifolded that they will insure similar hydraulic and operating conditions.

(c) Gauges and Meters.

Each pump shall:

(i) have a standard pressure gauge on its discharge line;

(ii) have a compound gauge (capable of indicating negative pressure or vacuum as well as positive pressure) on its suction line; and

(iii) have recording gauges in the larger stations.

(d) Water Seal.

Where pumps utilize water seals, the seals shall:

(i) not be supplied with water of a lesser sanitary quality than that of the water being pumped; and

(ii) when pumps are sealed with potable water and are pumping water of lesser sanitary quality, the seal shall be provided with a break tank open to atmospheric pressure, and have an air gap of at least six inches or two pipe diameters, whichever is greater, between the feeder line and the spill line of the tank.

(e) Controls.

Controls shall be designed in such a manner that they will operate their prime movers, and accessories, at the rated capacity without dangerous overload. Where two or more pumps are installed, provision shall be made for alternation. Provision shall be made to prevent energizing the motor in the event of a backspin cycle. Electrical controls shall be protected against flooding. Equipment shall be provided or other arrangements made to prevent surge pressures from activating controls which switch on pumps or activate other equipment outside the normal design cycle of operation.

(f) Standby Power.

Standby power, to ensure continuous service when the primary power has been interrupted, shall be provided from at least two independent sources or a standby or an auxiliary source shall be provided. If standby power is provided by onsite generators or engines, the fuel storage and fuel line must be designed to protect the water supply from contamination.

(g) Water Pre-Lubrication.

When automatic pre-lubrication of pump bearings is necessary and an auxiliary direct drive power supply is provided, the pre-lubrication line shall be provided with a valved bypass around the automatic control so that the bearings can, if necessary, be lubricated manually before the pump is started or the pre-lubrication controls shall be wired to the auxiliary power supply.

**R309-540-6. Hydropneumatic Systems.**

(1) General.

Hydropneumatic systems shall comply with all appropriate sections of R309-540-5.

Unpressurized ground level or elevated storage, designed in accordance with R309-545, shall be provided in addition to the diaphragm or air tanks. Diaphragm or air pressure tank storage shall not be considered for fire protection purposes or effective system storage.

(2) Location.

If diaphragm or air tanks and appurtenances are located

below ground, adequate provisions for drainage, ventilation, maintenance, and flood protection shall be made and the electrical controls shall be located above grade so as to be protected from flooding as required by R309-540-5(6)(e). Any discharge piping from combination air release/vacuum relief valves(air/vac's) or pressure relief valves located in below ground chambers shall comply with all the pertinent requirements of R309-550-6(6).

(3) Operating Pressures.

The system shall be designed to provide a minimum of 20 psi pressure at all points in the distribution system during peak instantaneous flow conditions. A pressure gauge shall be installed on the pressure tank inlet line.

(4) Piping.

In addition to the bypass required by R309-540-5(4)(iv) on the pumps, the diaphragm or air tanks shall have sufficient bypass piping to permit operation of the hydropneumatic system while one or more of the tanks are being repaired or painted.

(5) Pumps.

At least two pumping units shall be provided. With any pump out of service the remaining pump or pumps shall be capable of providing the peak instantaneous demand of the system as described in R309-510-9(2), while recharging the pressure tank at 115 percent of the upper pressure setting. Pump cycling shall not exceed 15 starts per hour, with a maximum of ten starts per hour preferred.

(6) Pressure Tanks.

(a) Pressure tanks shall meet the requirement of state and local laws and regulations for the manufacture and installation of unfired pressure vessels. Interior coatings or diaphragms used in pressure tanks that will come into contact with the drinking water shall comply with ANSI/NSF Standard 61. Non diaphragm pressure tanks shall have an access manhole, a drain, control equipment consisting of pressure gauge, water sight glass, automatic or manual air blow-off, means for adding air, and pressure operated start-stop controls for the pumps.

(b) The minimum volume of the pressure tank or combination of tanks shall be greater than or equal to the sum of S and the value of CX divided by 4W.

where the following values are used in the equation above:

C = minutes per operating cycle, four minutes to meet the requirements of R309-540-6(5) above or preferably six minutes, and is equal to pump ON time plus pump OFF time.

X = output capacity rating of the pump(s) at the high pressure condition in the tank(s), in gpm.

W = percent of volume withdrawn during a given drop in tank pressure: specifically, between $P_h$ and $P_l$. $W = 100(P_h - P_l)/P_h$ where $P_h$ = high pressure in tank in psia (high absolute pressure) and $P_l$ = low pressure in tank is psia (low absolute pressure). Values of W range typically from 0.26 to 0.31 for pressure differentials of 15 to 30 psi and high system pressures of 45 to 85 psi at elevations of approximately 5,000 feet.

S = water seal volume in gallons, the volume of inactive water remaining in tank at low pressure condition.

(7) Air Volume.

The method of adjusting the air volume shall be acceptable to the Executive Secretary. Air delivered by compressors to the pressure tank shall be adequately filtered, oil free, and be of adequate volume. Any intake shall be screened and draw clean air from a point at least 10 feet above the ground or other source of possible contamination, unless the air is filtered by an apparatus approved by the Executive Secretary. Discharge piping from air relief valves shall be designed and installed with screens to eliminate the possibility of contamination from this source.

(8) Water Seal.

For air pressure tanks without an internal diaphragm the volume of water remaining in a air pressure tank at the lower pressure setting shall be sufficient to provide an adequate water seal at the outlet to prevent the leakage of air.

The following water seal depths shall be considered as minimum requirements.

(a) Horizontal outlets shall maintain sufficient depth, as measured from the centerline of the horizontal outlet pipe, such that the depth is greater than or equal to the sum of d and twice the value $v^2$ divided by 2G.

(b) Vertical outlets, if unbaffled, the depth shall be the same as in (a) except measured from the pipe outlet; if baffled, the depth shall be greater than or equal to the value $v^2$ divided by 2G.

where the following values are used in the equations above:

v = the axial velocity in the pipe outlet for the peak instantaneous demand flow rate of the system.

d = the diameter of the outlet pipe in ft.

G = the gravitational constant of 32.2 ft/sec/sec.

(9) Standby Power Supply.

Where a hydropneumatic system is intended to serve a public water system, categorized as a community water system as defined in R309-110, a standby source of power shall be provided.

**KEY: drinking water, pumps, hydropneumatic systems, individual home booster pumps**
**August 15, 2001 19-4-104**
**Notice of Continuation September 16, 2002**

**R309. Environmental Quality, Drinking Water.**
**R309-545. Facility Design and Operation: Drinking Water Storage Tanks.**
**R309-545-1. Purpose.**

The purpose of this rule is to provide specific requirements for public drinking water storage tanks. It is intended to be applied in conjunction with other rules, specifically R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-545-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

**R309-545-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

**R309-545-4. General.**

Storage for drinking water shall be provided as an integral part of each public drinking water system unless an exception to rule is approved by the Executive Secretary. Pipeline volume in transmission or distribution lines shall not be considered part of any storage volumes.

**R309-545-5. Size of Tank(s).**

Required Storage Capacity: In the absence of firm water use data, at or above the 90% confidence level, storage tanks shall be sized in accordance with the recommended minimums of R309-510.

**R309-545-6. Tank Material and Structural Adequacy.**

(1) Materials.

The materials used in drinking water storage structures shall provide stability and durability as well as protect the quality of the stored water.

(2) Structural Design.

The structural design of drinking water storage structures shall be sufficient for the environment in which they are located. The design shall incorporate a careful analysis of potential seismic risks.

**R309-545-7. Location of Tanks.**

(1) Pressure Considerations.

The location of the reservoir and the design of the water system shall be such that the minimum working pressure in the distribution system under peak day demand conditions, including fire flow, is 20 psi.

(2) Connections.

Tanks shall be located at an elevation where present and anticipated connections can be adequately served. System connections shall not be placed at elevations such that a minimum of 20 psi cannot be continuously maintained.

(3) Sewer Proximity.

Sewers, drains, standing water, and similar sources of possible contamination shall be kept at least 50 horizontal feet from the reservoir.

(4) Standing Surface Water.

The area surrounding a ground-level drinking water storage structure shall be graded in a manner that will prevent surface water from standing within 50 horizontal feet of the structure.

(5) Ability to Isolate.

Drinking water storage structures shall be designed and located so that they can be isolated from the distribution system. Storage structures shall be capable of being drained for cleaning or maintenance without necessitating loss of pressure in the distribution system.

(6) Earthquake and Landslide Risks.

Potential geologic hazards shall be taken into account in selecting a tank location. Earthquake and landslide risks shall be evaluated.

(7) Security.

The site location and design of a drinking water storage reservoir shall take into consideration security issues and potential for vandalism.

**R309-545-8. Tank Burial.**

(1) Flood Elevation.

The bottom of drinking water storage reservoirs shall be located at least three feet above the 100 year flood level or the highest known maximum flood elevation, whichever is higher.

(2) Ground Water.

When the bottom of a drinking water storage reservoir is to be below normal ground surface, it shall be placed above the local ground water table elevation.

(3) Covered Roof.

When the roof of a drinking water storage reservoir is to be covered by earth, the roof shall be sloped to drain toward the outside edge of the tank.

**R309-545-9. Tank Roof and Sidewalls.**

(1) Protection From Contamination.

All drinking water storage structures shall have suitable watertight roofs and sidewalls which shall also exclude birds, animals, insects, and excessive dust.

(2) Openings.

Openings in the roof and sidewalls shall be kept to a minimum and comply with the following:

(a) Any pipes running through the roof or sidewall of a metal drinking water storage structure shall be welded, or properly gasketed. In new concrete tanks, these pipes shall be connected to standard wall castings with seepage rings which have been poured in place. Vent pipes, in additions to seepage rings, shall have raised concrete curbs which direct water away from the vent pipe and are formed as a single pour with the roof deck. No roof drains or any other pipes which may contain water of less quality than drinking water shall ever penetrate the roof, walls, or floor of a drinking water storage tank.

(b) Openings in a storage structure roof or top, designated to accommodate control apparatus or pump columns, shall be

welded, gasketed, or curbed and sleeved as above, and shall have additional proper shielding to prevent vandalism.

(c) Openings shall be kept as far away as possible from the storage tank outlet and other sources of surface water.

(3) Adjacent Compartments.

Drinking water shall not be stored or conveyed in a compartment adjacent to wastewater when the two compartments are separated by a single wall.

(4) Slope of Roof.

The roof of all storage structures shall be designed for drainage. Parapets, or similar construction which would tend to hold water and snow, shall not be utilized unless adequate waterproofing and drainage are provided. Downspout or roof drain pipes shall not enter or pass through the reservoir.

**R309-545-10. Internal Features.**

The following shall apply to internal features of drinking water storage structures:

(1) Drains.

If a drain is provided, it shall not discharge to a sanitary sewer. If local authority allows discharge to a storm drain, the drain discharge shall have a physical air gap of at least two pipe diameters between the discharge end of the pipe and the overflow rim of the receiving basin.

(2) Internal Catwalks.

Internal catwalks, if provided and located so as to be over the drinking water, shall have a solid floor with raised edges. The edges and floor shall be so designed that shoe scrapings or dirt will not fall into the drinking water.

(3) Inlet and Outlet.

To minimize potential sediment flow from the structure, the normal outlet pipes from all reservoirs shall be located in a manner to provide a silt trap prior to discharge into the distribution system.

(4) Disinfection.

If the drinking water reservoir is to be utilized as a contact basin for disinfection purposes, the design engineer shall conduct tracer studies or other tests, previously approved by the Executive Secretary, to determine the minimum contact time and the potential for short circuiting.

**R309-545-11. ANSI/NSF International, Standard 61.**

(1) ANSI/NSF Standard 61 Certification.

All interior surfaces or coatings shall consist of products which are certified by laboratories approved by ANSI and which comply with ANSI/NSF Standard 61 or other standards approved by the Executive Secretary. This requirement applies to any pipes and fittings, protective materials (e.g. paints, coatings, concrete admixtures, concrete release agents, concrete sealers), joining and sealing materials (e.g. adhesives, caulks, gaskets, primers and sealants) and mechanical devices (e.g. electrical wire, switches, sensors, valves, submersible pumps) which are located so as to come into contact with the drinking water.

(2) Curing Time and Volatile Organic Compounds.

If products which require a cure or set time are utilized in such a way as to come into contact with the drinking water, then water shall not be introduced into the vessel until any required curing time has passed. It shall be the responsibility of the water purveyor to assure that no tastes or odors, toxins or other compounds, which result in MCL exceedances, are imparted to the water as a result of tank repair.

**R309-545-12. Steel Tanks.**

(1) Paints.

Proper protection shall be given to all metal surfaces, both internal and external, by paints or other protective coatings. Internal coatings shall comply with ANSI/NSF Standard 61.

(2) Cathodic Protection.

If installed, internal cathodic protection shall be designed, installed and maintained by personnel trained in corrosion engineering.

**R309-545-13. Tank Overflow.**

All water storage structures shall be provided with an overflow which is discharged at an elevation between 12 and 24 inches above the ground surface with an appropriate air gap. The discharges shall not cause erosion.

(1) Diameter.

All overflow pipes shall be of sufficient capacity to permit waste of water in excess of the filling rate.

(2) Slope.

All overflow pipes shall Be sloped for complete drainage,

(3) Screen.

All overflow pipes shall be screened with No. 4 mesh non-corrodible screen installed at a location least susceptible to damage by vandalism,

(4) Visible Discharge.

All overflow pipes shall be located so that any discharge is visible,

(5) Cross Connections.

All overflow pipes shall not be connected to, or discharge into, any sanitary sewer system.

(6) Paint.

If an overflow pipe within a reservoir is painted or otherwise coated, such coating shall comply with ANSI/NSF Standard 61.

**R309-545-14. Access Openings.**

Drinking water storage structures shall be designed with reasonably convenient access to the interior for cleaning and maintenance.

(1) Height.

There shall be at least one opening above the water line which shall be framed at least four inches above the surface of the roof at the opening; or if on a buried structure, shall be elevated at least 18 inches above any earthen cover over the structure. The frame shall be securely fastened and sealed to the tank roof so as to prevent any liquid contaminant entering the tank. Concrete drinking water storage structures shall have raised curbs around access openings, formed and poured continuous with the pouring of the roof and sloped to direct water away from the frame.

(2) Shoebox Lid.

The frame of any access opening shall be provided with a close fitting solid shoebox type cover which extends down around the frame at least two inches and is furnished with a gasket(s) between the lid and frame,

(3) Locking Device.

The lid to any access opening shall have a locking device.

**R309-545-15. Venting.**

Drinking water storage structures shall be vented. Overflows shall not be considered as vents. Vents provided on drinking water storage reservoirs shall:

(1) Inverted Vent.

Be downturned or shielded to prevent the entrance of surface water and rainwater.

(2) Open Discharge.

On buried structures, have the discharge 24 to 36 inches above the earthen covering.

(3) Blockage.

Be located and sized so as to avoid blockage during winter conditions.

(4) Pests.

Exclude birds and animals.

(5) Dust.

Exclude insects and dust, as much as this function can be made compatible with effective venting.

(6) Screen.

Be fitted with No. 14 mesh or finer non-corrodible screen.

(7) Screen Protector.

Be fitted with additional heavy gage screen or substantial covering which will protect the No. 14 mesh screen against vandalism and, further, discourage purposeful attempts to contaminate the reservoir.

**R309-545-16. Freezing Prevention.**

All drinking water storage structures and their appurtenances, especially the riser pipes, overflows, and vents, shall be designed to prevent freezing which may interfere with proper functioning.

**R309-545-17. Level Controls.**

Adequate level control devices shall be provided to maintain water levels in storage structures.

**R309-545-18. Security.**

Locks on access manholes, and other necessary precautions shall be provided to prevent unauthorized entrance, vandalism, or sabotage.

**R309-545-19. Safety.**

(1) Utah OSHA.

The safety of employees shall be considered in the design of the storage structure. Ladders, ladder guards, platform railings, and safely located entrance hatches shall be provided where applicable. As a minimum, such matters shall conform to pertinent laws and regulations of the Utah Occupational Safety and Health Administration.

(2) Ladders.

Generally, ladders having an unbroken length in excess of 20 feet shall be provided with appropriate safety devices. This requirement shall apply both to interior and exterior reservoir ladders.

(3) Requirements for Elevated Tanks.

Elevated tanks shall have railings or handholds provided for transfer from the access tube to the water compartment.

**R309-545-20. Disinfection.**

Drinking water storage structures shall be disinfected before being put into service for the first time, and after being entered for cleaning, repair, or painting. The reservoir shall be cleaned of all refuse and shall then be washed with potable water prior to adding the disinfectant. AWWA Standard C652-92 shall be followed for reservoir disinfection, with the exception there shall be no delivery of waters used in the disinfection process to the distribution system, unless specifically authorized, in writing, by the Executive Secretary.

Upon completing any of the three methods for storage tank chlorination, as outlined in AWWA C652-92, the water system must properly dispose of residual super-chlorinated waters in the outlet pipes. Other super-chlorinated waters, which are not to be ultimately diluted and delivered into the distribution system, shall also be properly disposed.

Chlorinated water discharged from the storage tank shall be disposed of in an acceptable manner and in conformance with the rules of the Utah Water Quality Board (see R317 of the Utah Administrative Code).

**R309-545-21. Incorporation by Reference.**

The following list of Standards shall be considered as incorporated by reference in this specific rule. The most recent published copy of the referenced standard will apply in each case.

(1) AWWA Standards.

(a) C652-92, Disinfection of Water Storage Reservoirs.

(b) D100-96, Welded Steel Tanks for Water Storage.

(c) D101-53(R86), Inspecting and Repairing Steel Water Tanks, Standpipes, Reservoirs, and Elevated Tanks for Water Storage.

(d) D102-97, Coating Steel Water-Storage Tanks.

(e) D103-97, Factory-Coated Bolted Steel Tanks for Water Storage.

(f) D104-97, Automatically Controlled, Impressed-Current Cathodic Protection for the Interior of Steel Water Tanks.

(g) D110-95, Wire-Wound Circular Prestressed-Concrete Water Tanks (including addendum D110a-96).

(h) D115-95, Circular Prestressed Concrete Water Tanks With Circumferential Tendons.

(i) D120-84(R89), Thermosetting Fiberglass-Reinforced Plastic Tanks.

(j) D130-96, Flexible-Membrane-Lining and Floating-Cover Materials for Potable-Water Storage.

(2) NSF International Standards.

(a) NSF 60, Drinking Water Treatment Chemicals - Health Effects.

(b) NSF 61, Drinking Water System Components - Health Effects.

(3) Utah OSHA.

Applicable standards of the Utah Occupational Safety and Health Administration are hereby incorporated by reference.

**R309-545-22. Operation and Maintenance of Storage Tanks.**

(1) Inspection and Cleaning.

Tanks which are entered for inspection and cleaning shall

be disinfected in accordance with AWWA Standard C652-92 prior to being returned to service. When diver(s) enter storage tanks that have not been drained for inspection purposes, they shall comply with section five of the above standard unless the tank is constructed of steel, in which case they shall comply additionally with AWWA Standard D101-53(R86).

(2) Recoating or Repairing.

Any substance used to recoat or repair the interior of drinking water storage tank shall be certified to conform with ANSI/NSF Standard 61. If the tank is not drained for recoating or repairing, any substance or material used to repair interior coatings or cracks shall be suitable for underwater application, as indicated by the manufacturer, as well as comply with both ANSI/NSF Standards 60 and 61.

(3) Seasonal Use.

Water storage tanks which are operated seasonally shall be flushed and disinfected in accordance with AWWA Standard C652-92 prior to each season's use. Certification of proper disinfection, as evidenced by at least one satisfactory bacteriologic sample, shall be obtained by the system management and kept on file for inspection by personnel of the Division. During the non-use period, care shall be taken to see that openings to the water storage tank (those which are normally closed and sealed during normal use) are closed and secured.

**KEY: drinking water, storage tanks, access, overflow and drains**
**August 15, 2000 19-4-104**
**Notice of Continuation September 16, 2002**

**R309. Environmental Quality, Drinking Water.**

**R309-550. Facility Design and Operation: Transmission and Distribution Pipelines.**

**R309-550-1. Purpose.**

The purpose of this rule is to provide specific requirements for the design and installation of transmission and distribution pipelines which are utilized to deliver culinary drinking water to facilities of public drinking water systems or to consumers. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-550-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

**R309-550-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

**R309-550-4. General.**

Transmission and distribution pipelines shall be designed, constructed and operated to convey adequate quantities of water at ample pressure, while maintaining water quality.

**R309-550-5. Water Main Design.**

(1) Distribution System Pressure.

The distribution system shall be designed to maintain a minimum pressure of 20 psi (at ground level) at all points of connection, under all conditions of flow, but especially during peak day flow conditions, including fire flows.

(2) Assumed Flow Rates.

Flow rates to be assumed when designing or analyzing distribution systems shall be as given in R309-510 of these rules.

(3) Computerized Network Analysis.

(a) All water mains shall be sized after a hydraulic analysis based on flow demands and pressure requirements. If the calculations needed to conduct this hydraulic analysis are complex, a computerized network analysis shall be performed to verify that the distribution system will be capable of meeting the requirements of this rule.

(b) Where improvements will upgrade more than 50% of an existing distribution system, or where a new distribution system is proposed, a hydraulic analysis of the entire system shall be prepared and submitted for review prior to plan approval.

(c) In the analysis and design of water distribution systems, the following Hazen-William coefficients shall be used: PVC pipe = 140; Ductile Iron Pipe = 120; Cement-Mortar Lined Ductile Iron Pipe = 130 to 140.

(4) Minimum Water Main Size.

For water mains not connected to fire hydrants, the minimum line size shall be 4-inch diameter. Minimum water main size serving a fire hydrant lateral shall be 8-inch diameter unless a hydraulic analysis indicates that required flow and pressures can be maintained by smaller lines.

(5) Fire Protection.

(a) The design of the distribution system shall be consistent with Appendix III-A and III-B of the 1991 Uniform Fire Code. As specified in this code, minimum fire-flow requirements are:

(i) 1000 gpm for one- and two-family dwellings with an area of less than 3600 square feet.

(ii) 1500 gpm or greater for all other buildings.

(b) The location of fire hydrants shall be consistent with Appendix III-B of the 1991 Uniform Fire Code. As specified in this code, average spacing between hydrants must be no greater than 500 ft.

(c) An exception to the fire protection requirements of (a) and (b) may be granted if a suitable statement is received from the local fire protection authority.

(d) Water mains not designed to carry fire flows shall not have fire hydrants connected to them.

(e) The design engineer shall verify that the pipe network design permits fire-flows to be met at representative locations while a minimum pressure of 20 psi is maintained at all times and at all points in the distribution system.

(f) As a minimum, the flows to be assumed during a fire-flow analysis shall be the "peak day demand" plus the fire flow requirement.

(6) Geologic Considerations.

The character of the soil through which water mains are to be laid shall be considered. This information shall accompany any submittal for a pipeline project.

(7) Dead Ends.

(a) In order to provide increased reliability of service and reduce head loss, dead ends shall be minimized by making appropriate tie-ins whenever practical.

(b) Where dead-end mains occur, they shall be provided with a fire hydrant if flow and pressure are sufficient, or with an approved flushing hydrant or blow-off for flushing purposes. Flushing devices shall be sized to provide flows which will give a velocity of at least 2.5 fps in the water main being flushed. No flushing device shall be directly connected to any sewer.

(8) Valves.

Sufficient valves shall be provided on water mains so that inconvenience and sanitary hazards will be minimized during repairs. Valves shall be located at not more than 500 foot intervals in commercial districts and at not more than one block or 800 foot intervals in other districts. Where systems serve widely scattered customers and where future development is not expected, the valve spacing shall not exceed one mile.

(9) Corrosive Soils.

The design engineer shall consider the materials to be used when corrosive soils or waters will be encountered.

(10) Special Precautions in Areas of Groundwater Contamination by Organic Compounds.

Where distribution systems are installed in areas of groundwater contaminated by organic compounds:

(a) pipe and joint materials which are not subject to permeation of the organic compounds shall be used.

(b) non-permeable materials shall be used for all portions of the system including water main, service connections and hydrants leads.

(11) Separation of Water Mains from Other Sources of Contamination.

Design engineers shall exercise caution when locating water mains at or near certain sites such as sewage treatment plants or industrial complexes. Individual septic tanks shall be located and avoided. The engineer shall contact the Division to establish specific design requirements for locating water mains near any source of contamination.

**R309-550-6. Component Materials and Design.**

(1) NSF Standard for Health Effects.

All materials which may contact drinking water, including pipes, gaskets, lubricants and O-Rings, shall be ANSI-certified as meeting the requirements of NSF Standard 61, Drinking Water System Components - Health Effects. To permit field-verification of this certification, all such components shall be appropriately stamped with the NSF logo.

(2) Restrictions on Asbestos and Lead.

(a) The use of asbestos cement pipe shall not be allowed.

(b) Pipes and pipe fittings containing more than 8% lead shall not be used. Lead-tip gaskets shall not be used. Repairs to lead-joint pipe shall be made using alternative methods.

(3) AWWA Standards for Mechanical Properties.

Pipe, joints, fittings, valves and fire hydrants shall conform to NSF Standard 61 or Standard 14, and applicable sections of ANSI/AWWA Standards C104-95 through C550-90 and C900-97 through C950-95.

(4) Used Materials.

Only materials which have been used previously for conveying potable water may be reused. Used materials shall meet the above standards, be thoroughly cleaned, and be restored practically to their original condition.

(5) Fire Hydrant Design.

Hydrant drains shall not be connected to or located within 10 feet of sanitary sewers or storm drains.

(6) Air Relief Valves.

At high points in water mains where air can accumulate, provisions shall be made to remove air by means of hydrants or air relief valves. Automatic air relief valves shall not be used in situations where flooding may occur.

(a) Air Relief Valve Vent Piping.

The open end of an air relief vent pipe from automatic valves shall, where possible as determined by public water system management, be extended to at least one foot above grade and provided with a screened (#14 mesh, non-corrodible) downward elbow. Alternately, the open end of the pipe may be extended to as little as one foot above the top of the pipe if the valve's chamber is not subject to flooding and provided with a drain-to-daylight (See (b) below). Blow-offs or air relief valves shall not be connected directly to any sewer.

(b) Chamber Drainage.

Chambers, pits or manholes containing valves, blow-offs, meters, other such appurtenances to a distribution system, shall not be connected directly to any storm drain or sanitary sewer. They shall be provided with a drain to daylight. Where this is not possible, underground gravel filled absorption pits may be used if the site is not subject to flooding and conditions will assure adequate drainage. Where a chamber contains an air relief valve, and it is not possible to provide a drain-to-daylight, the vent pipe from the valve shall be extended to at least one foot above grade (See (a) above). Only when it is both impossible to extend the vent pipe above grade, and impossible to provide a drain-to-daylight may a gravel filled sump be utilized to provide chamber drainage (assuming local ground conditions permit adequate drainage without ground water intrusion).

**R309-550-7. Separation of Water Mains and Transmission Lines from Sewers and Other Pollution Sources.**

(1) Basic Separation Standards.

The horizontal distance between pressure water mains and sanitary sewer lines shall be at least ten feet. Where a water main and a sewer line must cross, the water main shall be at least 18 inches above the sewer line. Separation distances shall be measured edge-to-edge (i.e. from the nearest edges of the facilities). Water mains and sewer lines shall not be installed in the same trench.

(2) Exceptions to Basic Separation Standards.

Local conditions, such as available space, limited slope, existing structures, etc., may create a situation where there is no alternative but to install water mains or sewer lines at a distance less than that required by Subsection (1), above. Exceptions to the rule may be provided by the Executive Secretary if it can be shown that the granting of such an exception will not jeopardize the public health.

(3) Special Provisions.

The following special provisions apply to all situations:

(a) The basic separation standards are applicable under normal conditions for sewage collection lines and water distribution mains. More stringent requirements may be necessary if conditions such as high groundwater exist.

(b) Sewer lines shall not be installed within 25 feet horizontally of a low head (5 psi or less pressure) water main.

(c) Sewer lines shall not be installed within 50 feet horizontally of any transmission line segment which may become unpressurized.

(d) New water mains and sewers shall be pressure tested where the conduits are located ten feet apart or less.

(e) In the installation of water mains or sewer lines, measures shall be taken to prevent or minimize disturbances of the existing line.

(f) Special consideration shall be given to the selection of pipe materials if corrosive conditions are likely to exist. These conditions may be due to soil type and/or the nature of the fluid conveyed in the conduit, such as a septic sewage which produces corrosive hydrogen sulfide.

(g) Sewer Force Mains

(i) Sewer force mains shall not be installed within ten feet (horizontally) of a water main.

(ii) When a sewer force main must cross a water line, the crossing shall be as close as practical to the perpendicular. The sewer force main shall be at least 18 inches below the water line.

(iii) When a new sewer force main crosses under an existing water main, all portions of the sewer force main within ten feet (horizontally) of the water main shall be enclosed in a continuous sleeve.

(iv) When a new water main crosses over an existing sewer force main, the water main shall be constructed of pipe materials with a minimum rated working pressure of 200 psi or equivalent pressure rating.

(4) Water Service Laterals Crossing Sewer Mains and Laterals.

Water service laterals shall conform to all requirements given herein for the separation of water and sewer lines.

**R309-550-8. Installation of Water Mains.**

(1) Standards.

(a) The specifications shall incorporate the provisions of the manufacturer's recommended installation procedures or the following standards:

(i) AWWA Standard C600-99, Installation of Ductile Iron Water Mains and Their Appurtenances

(ii) ASTM D2774, Recommended Practice for Underground Installation of Thermoplastic Pressure Piping and PVC Pipe

(b) The provisions of the following publication shall be followed for PVC pipe design and installation:

PVC Pipe - Design and Installation, AWWA Manual M23, 1990, published by the American Water Works Association

(2) Bedding.

A continuous and uniform bedding shall be provided in the trench for all buried pipe. Stones larger than the backfill materials described below shall be removed for a depth of at least six inches below the bottom of the pipe.

(3) Backfill.

Backfill material shall be tamped in layers around the pipe and to a sufficient height above the pipe to adequately support and protect the pipe. The material and backfill zones shall be as specified by the standards referenced in Subsection (1), above. As a minimum:

(a) For plastic pipe, backfill material with a maximum particle size of 3/4 inch shall be used to surround the pipe.

(b) For ductile iron pipe, backfill material shall contain no stones larger than 2 inches.

(4) Dropping Pipe into Trench.

Under no circumstances shall the pipe or accessories be dropped into the trench.

(5) Burial Cover.

All water mains shall be covered with sufficient earth or other insulation to prevent freezing unless they are part of a non-community system that can be shut-down and drained during winter months when temperatures are below freezing.

(6) Thrust Blocking.

All tees, bends, plugs and hydrants shall be provided with reaction blocking, tie rods or joints designed to prevent movement.

(7) Pressure and Leakage Testing.

All types of installed pipe shall be pressure tested and leakage tested in accordance with AWWA Standard C600-99.

(8) Surface Water Crossings.

(a) Above Water Crossings

The pipe shall be adequately supported and anchored, protected from damage and freezing, and accessible for repair or replacement.

(b) Underwater Crossings

A minimum cover of two feet or greater, as local conditions may dictate, shall be provided over the pipe. When crossing water courses which are greater than 15 feet in width, the following shall be provided:

(i) The pipe shall be of special construction, having restrained joints for any joints within the surface water course and flexible restrained joints at both edges of the water course.

(ii) Valves shall be provided at both ends of water crossings so that the section can be isolated for testing or repair; the valves shall be easily accessible, and not subject to flooding; and the valve nearest to the supply source shall be in a manhole.

(iii) Permanent taps shall be made on each side of the valve within the manhole to allow insertion of testing equipment to determine leakage and for sampling purposes.

(9) Sealing Pipe Ends During Construction.

The open ends of all pipeline under construction shall be covered and effectively sealed at the end of the day's work.

(10) Disinfecting Water Distribution Systems.

All new water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651-99. The specifications shall include detailed procedures for the adequate flushing, disinfection and microbiological testing of all water mains. On all new and extensive distribution system construction, evidence of satisfactory disinfection shall be provided to the Division. Samples for coliform analyses shall be collected after disinfection is complete and the system is refilled with potable water. A standard heterotrophic plate count is advisable. The use of water for culinary purposes shall not commence until the bacteriologic tests indicate the water to be free from contamination.

**R309-550-9. Cross Connections and Interconnections.**

(1) Physical Cross Connections.

There shall be no physical cross connections between the distribution system and pipe, pumps, hydrants, or tanks which are supplied from, or which may be supplied or contaminated from, any source except as approved by the Executive Secretary.

(2) Recycled Water.

Neither steam condensate nor cooling water from engine jackets or other heat exchange devices shall be returned to the potable water supply.

(3) System Interconnects.

The approval of the Executive Secretary shall be obtained for interconnections between different potable water supply systems.

**R309-550-10. Water Hauling.**

Water hauling is not an acceptable permanent method for culinary water distribution in community water systems. Proposals for water hauling shall be submitted to and approved by the Executive Secretary.

(1) Exceptions.

The Executive Secretary may allow its use for non-community public water supplies if:

(a) consumers could not otherwise be supplied with good

quality drinking water, or

(b) the nature of the development, or ground conditions, are such that the placement of a pipe distribution system is not justified.

(2) Emergencies.

Hauling may also be necessary as a temporary means of providing culinary water in an emergency.

**R309-550-11. Service Connections and Plumbing.**

(1) Service Taps.

Service taps shall be made so as to not jeopardize the sanitary quality of the system's water.

(2) Plumbing.

(a) Service lines shall be capped until used.

(b) Water services and plumbing shall conform to the Utah Plumbing Code. Solders and flux containing more than 0.2% lead and pipe and pipe fittings containing more than 8% lead shall not be used.

(3) Individual Home Booster Pumps.

Individual booster pumps shall not be allowed for any individual service from the public water supply mains. Exceptions to the rule may be provided by the Executive Secretary if it can be shown that the granting of such an exception will not jeopardize the public health.

(4) Service Lines.

The portion of the service line under the control of the water supplier is considered to be part of the distribution system and shall comply with all requirements given herein.

(5) Service Meters and Building Service Line.

Connections between the service meter and the home shall be in accordance with the Utah Plumbing Code.

(6) Allowable Connections.

All dwellings or other facilities connected to a public water supply shall be in conformance with the Utah Plumbing Code.

**R309-550-12. Transmission Lines.**

(1) Unpressurized Flows.

Transmission lines shall conform to all applicable requirements in this rule. Transmission line design shall minimize unpressurized flows.

(2) Proximity to Concentrated Sources of Pollution.

A water supplier shall not route an unpressurized transmission line any closer than fifty feet to any concentrated source of pollution (i.e. septic tanks and drain fields, garbage dumps, pit privies, sewer lines, feed lots, etc.). Furthermore, unpressurized transmission lines shall not be placed in boggy areas or areas subject to the ponding of water.

(3) Exceptions.

Where the water supplier cannot obtain a fifty foot separation distance from concentrated sources of pollution, it is permitted to use a Class 50 ductile iron pipe with joints acceptable to the Executive Secretary. Reasonable assurance must be provided to assure that contamination will not be able to enter the unpressurized pipeline.

**R309-550-13. Operation and Maintenance.**

(1) Disinfection After Line Repair.

The disinfection procedures of Section 4.7, AWWA Standard C651-99 shall be followed if any water main is cut into or repaired.

(2) Cross Connections.

The water supplier shall not allow a connection which may jeopardize water quality. Cross connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly. The requirements of the Utah Plumbing Code shall be met with respect to cross connection control and backflow prevention.

Suppliers shall maintain an inventory of each pressure vacuum breaker assembly, spill-resistant vacuum breaker assembly, double check valve assembly, reduced pressure principle backflow prevention assembly, and high hazard air gap used by their customers, and a service/inspection record for each such assembly.

Backflow prevention assemblies shall be inspected and tested at least once a year, by an individual certified for such work. This responsibility may be borne by the water system or the water system management may require that the customer having the backflow prevention assembly be responsible for having the device tested.

Suppliers serving areas also served by a pressurized irrigation system shall prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 19-4-112 of the Utah Code.

(3) NSF Standards.

All pipe and fittings used in routine operation and maintenance shall be ANSI-certified as meeting NSF Standard 61 or Standard 14.

(4) Seasonal Operation.

Water systems operated seasonally shall be disinfected and flushed according to the techniques given in AWWA Standard C651-99 for pipelines and AWWA Standard C652-92 for storage facilities prior to each season's use. A satisfactory bacteriologic sample shall be achieved prior to use. During the non-use period, care shall be taken to close all openings into the system.

**KEY: drinking water, transmission and distribution pipelines, connections, water hauling**
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**R309. Environmental Quality, Drinking Water.**

**R309-700. Utah Drinking Water Project Loan, Credit Enhancement, Interest Buy-Down, and Hardship Grant Program: Policies and Guidelines.**

**R309-700-1. Purpose.**

This rule establishes criteria for financial assistance to public drinking water systems in accordance with Title 73, Chapter 10 b-c, Utah Code Annotated using funds made available by the Utah legislature from time to time for this purpose.

**R309-700-2. Statutory Authority.**

The authority for the Department of Environmental Quality acting through the Drinking Water Board to issue loans to political subdivisions to finance all or part of drinking water project costs and to enter into "credit enhancement agreements", "interest buy-down agreements", and "Hardship Grants" is provided in Chapter 10b and 10c, Title 73, Utah Code Annotated 1953.

**R309-700-3. Definitions and Eligibility.**

Title 73, Chapter 10b-6(1)(a) limits eligibility for financial assistance under this section to political subdivisions.

Definitions for terms used in this rule are given in R309-110.

**R309-700-4. Application and Project Initiation Procedures.**

The following procedures must normally be followed to obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel to prepare an effective and appropriate financial assistance agreement, including cost effectiveness evaluations of financing methods and alternatives, for consideration by the Board.

(2) A completed application form, project engineering report as appropriate, and financial capability assessment are submitted to the Board. Comments from the local health department and/or district engineer shall accompany the application. Comments from other interested parties such as an association of governments will also be accepted.

(3) The staff prepares an engineering and financial feasibility report on the project for presentation to the Board.

(4) The Board "Authorizes" financial assistance for the project on the basis of the feasibility report prepared by the staff, designates whether a loan, credit enhancement agreement, interest buy-down agreement, hardship grant or any combination thereof, is to be entered into, and approves the project schedule (see R309-700-11). The Board shall authorize a hardship grant only if it determines that other financing alternatives are unavailable or unreasonably expensive to the applicant. If the applicant seeks financial assistance in the form of a loan of amounts in the security account established pursuant to Chapter 10c, Title 73 "Utah Code Annotated" (1953), which loan is intended to provide direct financing of projects costs, then the Board shall authorize such loan only if it determines that credit enhancement agreements, interest buy-down agreements and other financing alternatives are unavailable or unreasonably expensive to the applicant or that a loan represents the financing alternative most economically advantageous to the state and the applicant; provided, that for purposes of this paragraph and for purposes of Section 73-10c-4(2), Utah Code Annotated (1953), the term "loan" shall not include loans issued in connection with interest buy-down agreements as described in R309-700-9(2) or in connection with any other interest buy-down arrangement.

(5) Planning Advance - The applicant requesting a Planning Advance must attend a preapplication meeting, complete an application for a Planning Advance, prepare a plan of study, satisfactorily demonstrate procurement of planning services, and prepare a draft contract for planning services including financial evaluations.

(6) Design Advance - The applicant requesting a Design Advance must have completed an engineering plan which meets program requirements.

(7) The project applicant must demonstrate public support for the project.

(8) For financial assistance mechanisms when the applicant's bond is purchased by the Board, the project applicant's bond documentation, including an opinion from legal counsel experienced in bond matters that the drinking water project obligation is a valid and binding obligation of the applicant (see R309-700-12(3)), must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to the Utah Code Annotated 1953, Section 11-14-21. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel experienced in bond matters that the drinking water project obligation is a valid and binding obligation of the applicant.

(9) Hardship Grant - The Board executes a grant agreement setting forth the terms and conditions of the grant.

(10) The Board issues a Plan Approval for plans and specifications and concurs in bid advertisement.

(11) If a project is designated to be financed by a loan or an interest buy-down agreement as described in R309-700-9(2), from the Board, to cover any part of project costs an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for qualified project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement as described in R309-700-9(1) all project funds will be maintained in a separate account and a quarterly report of project expenditures will be provided to the Board.

(12) For a revenue bond a User Charge Ordinance must be submitted to the Board for review and approval to insure adequate provisions for debt retirement and/or operation and maintenance. For a general obligation bond, a User Charge Ordinance must be submitted to the Board for review and approval to insure the system will have adequate resources to provide acceptable service.

(13) A plan of operation, for the project after construction is complete, including adequate staffing with an operator, certified at the appropriate level in accordance with R309-301 in responsible charge, training, and start up procedures to assure efficient operation and maintenance of the facilities, must be submitted by the applicant and approved by the Board.

(14) The applicant's contract with its engineer must be submitted to the Board for review to determine that there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

(15) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, and adequacy of bidding and contract documents.

(16) A position fidelity bond must be provided for the treasurer or other local staff handling the repayment funds and revenues produced by the applicant's system.

(17) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board issues the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and notifies the applicant to sell the bonds (See R309-700-8 and -9).

(18) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant sells the bonds on the open market and notifies the Board of the terms of sale. If a credit enhancement agreement is being utilized, the bonds sold on the open market shall contain the legend required by Section 73-10c-6(3)(d), Utah Code Annotated (1953). If an interest buy-down agreement is being utilized, the bonds sold on the open market shall bear a legend which makes reference to the interest buy-down agreement and states that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

(19) The applicant opens bids for the project.

(20) LOAN ONLY - The Board gives final approval to purchase the bonds and execute the loan contract (see R309-700-4(23)).

(21) LOAN ONLY - The final closing of the loan is conducted.

(22) A preconstruction conference shall be held.

(23) The applicant issues a written notice to proceed to the contractor.

(24) The applicant must have in place a Water Management and Conservation Plan.

**R309-700-5. Loan, Credit Enhancement, Interest Buy-Down, and Hardship Grant Consideration Policy.**

(1) Board Priority Determination. In determining the priority for financial assistance the Board shall consider:

(a) The ability of the applicant to obtain funds for the drinking water project from other sources or to finance such project from its own resources;

(b) The ability of the applicant to repay the loan or other project obligations;

(c) Whether a good faith effort to secure all or part of the services needed from the private sector through privatization has been made; and

(d) Whether the drinking water project:

(i) meets a critical local or state need;

(ii) is cost effective;

(iii) will protect against present or potential hazards;

(iv) is needed to comply with the minimum standards of the Federal Safe Drinking Water Act, 42 USC, 300f, et. seq. or similar or successor statute;

(v) is needed to comply with the minimum standards of the Utah Safe Drinking Water Act, Title 19, Chapter 4 or similar or successor statute.

(e) The overall financial impact of the proposed project on the citizens of the community, including direct and overlapping indebtedness, tax levies, user charges, impact or connection fees, special assessments, etc., resulting from the proposed project, and anticipated operation and maintenance costs versus the median income of the community;

(f) Consistency with other funding source commitments which may have been obtained for the project;

(g) The point total from an evaluation of the criteria listed in Table 1;

TABLE 1

NEED FOR PROJECT

| | POINTS |
|---|---|
| 1. PUBLIC HEALTH AND WELFARE (SELECT ONE) | |
| A. There is evidence that waterborne illnesses have occurred | 15 |
| B. There are reports of illnesses which may be waterborne | 10 |
| C. No reports of waterborne illness, but high potential for such exists | 5 |
| D. No reports of possible waterborne illness and low potential for such exists | 0 |
| 2. WATER QUALITY RECORD (SELECT ONE) | |
| A. Primary Maximum Contaminant Level (MCL) violation more than 6 times in preceding 12 months | 15 |
| B. In the past 12 months violated a primary MCL 4 to 6 times | 12 |
| C. In the past 12 months violated a primary MCL 2 to 3 times or exceeded the Secondary Drinking Water Standards by double | 9 |
| D. In the past 12 months violated MCL 1 time | 6 |
| E. Violation of the Secondary Drinking Water Standards | 5 |
| F. Does not meet all applicable MCL goals | 3 |
| G. Meets all MCLs and MCL goals | 0 |
| 3. VERIFICATION OF POTENTIAL SHORTCOMINGS (SELECT ONE) | |
| A. Has had sanitary survey within the last year | 5 |
| B. Has had sanitary survey within the last five years | 3 |
| C. Has not had sanitary survey within last five years | 0 |
| 4. GENERAL CONDITIONS OF EXISTING FACILITIES (SELECT ALL THOSE WHICH ARE TRUE AND PROJECT WILL REMEDY) | |
| A. The necessary water treatment facilities do not exist, not functioning, functioning but do not meet the requirements of the Utah Public Drinking Water Rules (UPDWR) | 10 |
| B. Sources are not developed or protected according to UPDWR | 10 |
| C. Source capacity is not adequate to meet current demands and system occasionally goes dry or suffers from low pressures | 10 |

| | |
|---|---|
| D. Significant areas within distribution system have inadequate fire protection | 8 |
| E. Existing storage tanks leak excessively or are structurally flawed | 5 |
| F. Pipe leak repair rate is greater than 4 leaks per 100 connections per year | 2 |
| G. Existing facilities are generally sound and meeting existing needs | 0 |

5. ABILITY TO MEET FUTURE DEMANDS (Select One)

| | |
|---|---|
| A. Facilities have inadequate capacity and cannot reliably meet current demands | 10 |
| B. Facilities will become inadequate within the next three years | 5 |
| C. Facilities will become inadequate within the next five to ten years | 3 |

6. OVERALL URGENCY (Select One)

| | |
|---|---|
| A. System is generally out of water. There is no fire protection or water for flushing toilets | 10 |
| B. System delivers water which cannot be rendered safe by boiling | 10 |
| C. System delivers water which can be rendered safe by boiling | 8 |
| D. System is occasionally out of water | 5 |
| E. Situation should be corrected, but is not urgent | 0 |

| | |
|---|---|
| TOTAL POSSIBLE POINTS FOR NEED FOR PROJECT | 100 |

(h) Other criteria that the Board may deem appropriate.

(2) Drinking Water Board Financial Assistance Determination. The amount and type of financial assistance offered will be based on the following considerations:

(a) An evaluation based upon the criteria in Tables 2 and 3 of the applicant's financial condition, the project's impact on the community, and the applicant's commitment to operating a responsible water system.

The interest rate to be charged by the Board for its financial assistance will be computed using the number of points assigned to the project from Table 2 to reduce, in a manner determined by Board resolution from time to time, the most recent market yields for "A" rated, tax exempt, 20 year municipal revenue bonds. The interest rate so calculated will be assigned to the financial assistance. This interest rate may be further reduced, in a manner determined by Board resolution from time to time, by the ratio of the number of points assigned to the applicant's water system from Table 3 to the total points available.

For hardship grant consideration, exclusive of advances for planning and design, the estimated annual cost of drinking water service for the average residential user should exceed 1.75% of the median adjusted gross household income from the most recent available State Tax Commission records. The Board will also consider the applicant's level of contribution to the project.

TABLE 2

FINANCIAL CONSIDERATIONS

| | POINTS |
|---|---|
| 1. COST EFFECTIVENESS RATIO (SELECT ONE) | |
| A. Project cost $0 to $500 per benefitting connection | 15 |
| B. $501 to $1,500 | 12 |
| C. $1,501 to $2,000 | 9 |
| D. $2,001 to $3,000 | 6 |
| E. $3,001 to $5,000 | 3 |
| F. $5,001 to $10,000 | 1 |
| G. Over $10,000 | 0 |

2. PRIVATE SECTOR OR OTHER FUNDING, BUT NOT OWN CONTRIBUTION (SELECT ONE)

| | |
|---|---|
| A. A reasonable search for it has been made without success | 10 |
| B. Will provide greater than 50% of project cost | 10 |
| C. Will provide 25 to 49% of project cost | 8 |
| D. Will provide 10 to 24% of project cost | 5 |
| E. Will provide 1 to 9% of project cost | 3 |
| F. Has not been investigated | 0 |

3. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)

| | |
|---|---|
| A. Less than 70% of State Median AGI | 15 |
| B. 71 to 90% of State Median AGI | 12 |
| C. 91 to 115% of State Median AGI | 9 |
| D. 116 to 135% of State Median AGI | 6 |
| E. 136 to 160% of State Median AGI | 3 |
| F. Greater than 161% of State Median AGI | 0 |

4. APPLICANT'S COMMITMENT TO PROJECT

4A. PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)

| | |
|---|---|
| a. Greater than 25% of project funds | 15 |
| b. 10 to 25% of project funds | 12 |
| c. 5 to 9% of project funds | 9 |
| d. 2 to 4% of project funds | 6 |
| e. Less than 2% of project funds | 0 |

4B. RESIDENTS ARE WILLING TO (AND IT IS CONFIRMED BY RESIDENTS) INCREASE WATER BILL BY (SELECT ONE)

| | |
|---|---|
| a. Greater than $10.00 per month per connection | 15 |
| b. $5.01 to $10.00 per month per connection | 11 |
| c. $2.51 to $5.00 per month per connection | 7 |
| d. $1.00 to $2.50 per month per connection | 3 |
| e. Less than $1.00 per month per connection | 0 |

5. ABILITY TO REPAY LOAN

5A. WATER BILL (INCLUDING TAXES) AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME (SELECT ONE)

| | |
|---|---|
| a. Greater than 2.50% of local median AGI | 15 |
| b. 2.01 to 2.50% of local median AGI | 11 |
| c. 1.51 to 2.00% of local median AGI | 7 |
| d. 1.01 to 1.50% of local median AGI | 3 |
| e. 0 to 1.00% of local median AGI | 0 |

5B. TOTAL DEBT LOAD (PRINCIPAL ONLY) OF APPLICANT AFTER PROJECT IS CONSTRUCTED (INCLUDING WATER AND SEWER DEBT, LIGHTING DEBT, SCHOOL DEBT, ETC.) (SELECT ONE)

| | |
|---|---|
| a. Greater than 12% of fair market value | 15 |
| b. 8.1 to 12% of fair market value | 12 |
| c. 4.1 to 8.0% of fair market value | 9 |
| d. 2.1 to 4.0% of fair market value | 6 |
| e. 1.0 to 2.0% of fair market value | 3 |
| f. Less than 1% of fair market value | 0 |

| | |
|---|---|
| TOTAL POSSIBLE POINTS FOR FINANCIAL NEED | 100 |

TABLE 3

SPECIAL INCENTIVES

| | POINTS |
|---|---|

| | |
|---|---|
| 1. Applicant has secured adequate protection zones for all existing drinking water sources | 5 |
| 2. Applicant has developed a master plan to guide water system growth in the next 20 years | 5 |
| 3. Applicant has an established replacement fund | 5 |
| 4. Project will create a new regionalization plan or maintain integrity of existing regionalization plan | 5 |
| 5. Applicant has established a backflow prevention program | 5 |
| 6. Applicant has established a rate structure to encourage water conservation | 5 |
| 7. Project is necessary because of unforeseen circumstances | 5 |
| 8. Applicant has a written emergency response plan | 5 |
| TOTAL POSSIBLE POINTS FOR SPECIAL INCENTIVES | 40 |

(b) Optimizing return on the security account while still allowing the project to proceed.

(c) Local political and economic conditions.

(d) Cost effectiveness evaluation of financing alternatives.

(e) Availability of funds in the security account.

(f) Environmental need.

(g) Other criteria the Board may deem appropriate.

**R309-700-6. Planning Advance.**

(1) A Planning advance can only be made to a political subdivision which demonstrates a financial hardship which prevents the completion of project planning.

(2) A Planning Advance is made to a political subdivision with the intent to provide interim financial assistance for project planning until the long-term project financing can be secured. Once the long-term project financing has been secured, the Planning Advance must be expeditiously repaid to the Board.

(3) The applicant must demonstrate that all funds necessary to complete project planning will be available prior to commencing the planning effort. The Planning Advance will be deposited with these other funds into a supervised escrow account at the time the grant agreement between the applicant and the Board is executed.

(4) Failure on the part of the recipient of a Planning Advance to implement the construction project may authorize the Board to seek repayment of the Advance on such terms and conditions as it may determine.

(5) The recipient of a Planning Advance must first receive written approval for any cost increases or changes to the scope of work.

**R309-700-7. Design Advance.**

(1) A Design Advance can only be made to a political subdivision which demonstrates a financial hardship which prevents the completion of project design.

(2) A Design Advance is made to a political subdivision with the intent to provide interim financial assistance for the completion of the project design until the long-term project financing can be secured. Once the long-term project financing has been secured, the Project Design Advance must be expeditiously repaid to the Board.

(3) The applicant must demonstrate that all funds necessary to complete the project design will be available prior to commencing the design effort. The Design Advance will be deposited with these other funds into a supervised escrow account at the time the grant agreement between the applicant and the Board is executed.

(4) Failure on the part of the recipient of a Design Advance to implement the construction project may authorize the Board to seek repayment of the Advance on such terms and conditions as it may determine.

(5) The recipient of a Design Advance must first receive written approval for any cost increases or changes to the scope of work.

**R309-700-8. Credit Enhancement Agreements.**

The Board will determine whether a project may receive all or part of a loan, credit enhancement agreement or interest buy-down agreement subject to the criteria in R309-700-5. To provide security for project obligations the Board may agree to purchase project obligations of applicants or make loans to the applicants to prevent defaults in payments on project obligations. The Board may also consider making loans to the applicants to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. In addition, the Board may consider other methods and assistance to applicants to properly enhance the marketability of or security for project obligations.

**R309-700-9. Interest Buy-Down Agreements.**

Interest buy-down agreements may consist of:

(1) A financing agreement between the Board and applicant whereby a specified sum is loaned or granted to the applicant to be placed in a trust account. The trust account shall be used exclusively to reduce the cost of financing for the project.

(2) A financing agreement between the Board and the applicant whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

(3) Any other legal method of financing which reduces the annual payment amount on locally issued bonds. After credit enhancement agreements have been evaluated by the Board and it is determined that this method is not feasible or additional assistance is required, interest buy-down agreements and loans may be considered. Once the level of financial assistance required to make the project financially feasible is determined, a cost effective evaluation of interest buy-down options and loans must be completed. The financing alternative chosen should be the one most economically advantageous for the state and the applicant.

**R309-700-10. Loans.**

The Board may make loans to finance all or part of a drinking water project only after credit enhancement agreements and interest buy-down agreements have been evaluated and found either unavailable or unreasonably expensive. The

financing alternative chosen should be the one most economically advantageous for the state and its political subdivisions.

**R309-700-11. Project Authorization (Reference R309-700-4(4)).**

A project may be "Authorized" for a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant in writing by the Board following submission and favorable review of an application form, engineering report (if required), financial capability assessment and Staff feasibility report. The engineering report must include the preparation of a cost effective analysis of feasible project alternatives capable of meeting State and Federal drinking water requirements. It shall include consideration of monetary costs including the present worth or equivalent annual value of all capital costs, operation, maintenance, and replacement costs. The alternative selected must be the most economical means of meeting applicable State and Federal drinking water requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations. If it is anticipated that a project will be a candidate for financial assistance from the Board, the Staff should be contacted, and the plan of study for the engineering report (if required) should be approved before the planning is initiated.

Once the application form, plan of study, engineering report, and financial capability assessment are reviewed, the staff will prepare a project feasibility report for the Board's consideration in Authorizing a project. The project feasibility report will include a detailed evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended (i.e., for a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant).

Project Authorization is not a contractual commitment and is conditioned upon the availability of funds at the time of loan closing or signing of the credit enhancement, interest buy-down, or grant agreement and upon adherence to the project schedule approved at that time. If the project is not proceeding according to the project schedule the Board may withdraw the project Authorization so that projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

**R309-700-12. Financial Evaluations.**

(1) The Board considers it a proper function to assist and give direction to project applicants in obtaining funding from such State, Federal or private financing sources as may be available to achieve the most effective utilization of resources in meeting the needs of the State. This may also include joint financing arrangements with several funding agencies to complete a total project.

(2) Hardship Grants will be evidenced by a grant agreement.

(3) In providing any form of financial assistance in the form of a loan, the Board may purchase bonds of the applicant only if the bonds are accompanied by a legal opinion of recognized municipal bond counsel to the effect that the bonds are legal and binding under applicable Utah law (including, if applicable, the Utah Municipal Bond Act). For bonds of $150,000 or less the Board will not require this opinion.

(a) In providing any form of financial assistance in the form of a loan, the Board may purchase either a taxable or non-taxable bonds; provided that it shall be the general preference of the Board to purchase bonds issued by the applicant only if the bonds are tax exempt and are accompanied by a legal opinion of recognized municipal bond counsel to the effect that interest on the bonds is exempt from federal income taxation. Such an opinion must be obtained by the applicant in the following situations:

(i) Bonds which are issued to finance a project which will also be financed in part at any time by the proceeds of other bonds which are exempt from federal income taxation.

(ii) Bonds which are not subject to the arbitrage rebate provisions of Section 148 of the Internal Revenue Code of 1986 (or successor provision of similar intent), including, without limitation, bonds covered by the "small governmental units" exemption contained in Section 148(f)(4)(c) of the Internal Revenue Code of 1986 (or any successor provision of similar intent) and bonds which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of such bonds.

(b) In any other situations, the Board may purchase taxable bonds if it determines, after evaluating all relevant circumstances including the applicant's ability to pay, that the purchase of the taxable bonds is in the best interests of the State and applicant.

(c) If more than 25 percent of the project is to serve industry, bond counsel must evaluate the loan to ensure the tax exempt status of the loan fund.

(d) Revenue bonds purchased by the Board shall be secured by a pledge of water system revenues, and it is the general policy of the Board that the pledge of water revenues for the payment of debt service (principal and/or interest) on a particular revenue bond be on a parity with the pledge of those water revenues as security for the debt service payments on all other bonds or other forms of indebtedness which are secured by the water revenues.

(4) The Board will consider the financial feasibility and cost effectiveness evaluation of the project in detail. The financial capability assessment must be completed as a basis for the review. The Board will generally use these reports to determine whether a project will be Authorized to receive a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant (Reference R309-700-8, -9 and -10). If a project is Authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. The Board will require the applicants to repay the loan as rapidly as is reasonably consistent with the financial capability of the applicant. It is the Board's intent to avoid repayment schedules which would exceed the design life of the project facilities.

(5) Normal engineering and investigation costs incurred by the Department of Environmental Quality or Board during preliminary project investigation and prior to Board Authorization will not become a charge to the applicant if the project is found infeasible, denied by the Board, or if the

applicant withdraws the Application prior to the Board's Authorization. If the credit enhancement agreement or interest buy-down agreement does not involve a loan of funds from the Board, then administrative costs will not be charged to the project. However, if the project is Authorized to receive a loan or grant of funds from the Board, all costs from the beginning of the project will be charged to the project and paid by the applicant as a part of the total project cost. If the applicant decides not to build the project after the Board has Authorized the project, all costs accruing after the Authorization will be reimbursed by the applicant to the Board.

(6) The Board shall determine the date on which the scheduled payments of principal and interest will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system user one year of actual use of the project facilities before the first repayment is required.

(7) The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

(8) LOANS AND INTEREST BUY-DOWN AGREEMENTS ONLY - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction prior to or concurrent with the committal of State funds.

(9) The Board will not forgive the applicant of any payment after the payment is due.

(10) The Board will require a debt service reserve account be established by the applicant at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of one-tenth of the annual payment on the bond(s) purchased by the Board and shall continue until the total amount in the debt service reserve fund is equal to the annual payment. The debt service reserve account shall be continued until the bond is retired. Annual reports/statements will be required. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed. Annual reports/statements will be required.

(11) The Board will require a capital facilities replacement reserve account be established at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of five percent (5%) of the applicant's annual drinking water system budget, including depreciation, unless otherwise specified by the Board at the time of loan authorization, until the loan is repaid. This fund shall not serve as security for the payment of principal or interest on the loan. The applicant shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system and to notify the Board prior to making any disbursements from the fund so the Board can confirm that any expenditure is for an acceptable purpose. The applicant will not need the consent of the Board prior to making any expenditure from the fund. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed. Annual reports/statements will be required.

(12) If the Board is to purchase a revenue bond, the Board will require that the applicant's water rates be established such that sufficient net revenue will be raised to provide at least 125% (or such other amount as the Board may determine) of the total annual debt service.

**R309-700-13. Committal of Funds and Approval of Agreements.**

After the Board has approved the plans and specifications by the issuance of a Plan Approval and has received the appropriate legal documents and other items listed on the financial assistance checklist, the loan will be considered by the Board for final approval. The Board will determine whether the project loan, interest buy-down agreement or grant agreement is in proper order on the basis of the previous authorization. The Executive Secretary may then close the loan or credit enhancement agreement if obligations to the Board or other aspects of the project have not changed significantly since the Board's authorization of the loan or credit enhancement, provided all conditions imposed by the Board have been met. If significant changes have occurred the Board will then review the project and, if satisfied, the Board will then commit funds, approve the signing of the contract, credit enhancement agreement, interest buy-down agreement, or grant agreement, and instruct the Executive Secretary to submit a copy of the signed contract or agreement to the Division of Finance.

**R309-700-14. Construction.**

The Division of Drinking Water staff may conduct inspections and will report to the applicant. Contract change orders must be properly negotiated with the contractor and approved in writing. Change orders in excess of $10,000 must receive prior written approval by the Executive Secretary before execution. Upon successful completion of the project and recommendation of the applicant's engineer, the applicant will request the Executive Secretary to conduct a final inspection. When the project is complete to the satisfaction of the applicant's engineer, the Executive Secretary and the applicant, written approval will be issued by the Executive Secretary to commence using the project facilities.

**KEY: loans, interest buy-down, credit enhancement, hardship grant**
**August 15, 2000 73-10b**
**Notice of Continuation September 16, 2002 73-10c**

**R309. Environmental Quality, Drinking Water.**
**R309-705. Financial Assistance: Federal Drinking Water Project Revolving Loan Program.**
**R309-705-1. Purpose.**

The purpose of this rule is to establish criteria for financial assistance to public drinking water system in accordance with a federal grant established under 42 U.S.C. 300j et seq., federal Safe Drinking Water Act.

**R309-705-2. Statutory Authority.**

The authority for the Department of Environmental Quality acting through the Drinking Water Board to issue financial assistance for drinking water projects from a federal capitalization grant is provided in 42 U.S.C. 300j et seq., federal Safe Drinking Water Act, and Title 73, Chapter 10c, Utah Code Unannotated.

**R309-705-3. Definitions.**

Definitions for general terms used in this rule are given in R309-110. Definitions for terms specific to this rule are given below.

"Board" means the Drinking Water Board.

"Drinking Water Project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses. Its scope includes collection, treatment, storage, and distribution facilities.

"Project Costs" include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way, except property condemnation cost, which are not eligible costs; engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; Hardship Grant Assessments and interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the Board or the Department of Environmental Quality, in connection with the issuance of obligation to evidence any loan made to it under the law.

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income which is less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax commission from federal individual income tax returns excluding zero exemption returns.

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project, including, but not limited to, preliminary planning, studies, surveys, engineering or architectural fees, and preparation of plans and specifications.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

"Eligible Water System" means any community drinking water system, either privately or publicly owned; and nonprofit noncommunity water systems.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system, for the purpose of reducing the cost of financing incurred by an eligible water system on bonds issued by the subdivision for project costs.

"Financial Assistance" means a project loan, credit enhancement agreement, or interest buy-down agreement.

"Hardship Grant Assessment" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal. Hardship grant assessment funds shall be subject to the requirements of UAC R309-700 for hardship grants.

"Negative Interest" means a loan with an interest rate at less than zero percent. The repayment schedule for loans having a negative interest rate will be prepared by the Drinking Water Board.

"Principal Forgiveness" means a loan wherein a portion of the loan amount is "forgiven" upon closing the loan. The terms for principal forgiveness will be as directed by section 4 of this rule, and by the Drinking Water Board.

"Interest" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal

**R309-705-4. Financial Assistance Methods.**

(1) Eligible Activities of the SRF.

Funds within the SRF may be used for loans and other authorized forms of financial assistance. Funds may be used for the construction of publicly or privately owned works or facilities, or any work that is an eligible project cost.

(2) Types of Financial Assistance Available for Eligible Water Systems.

(a) Loans.

To qualify for "negative interest" or "principal forgiveness", the system must qualify as a "disadvantaged community". Upon application, the Board will make a case by case determination whether the system is a "disadvantaged community". To be eligible to be considered as a disadvantaged community, the system must be located in a service area or zip code area which has a median adjusted gross income which is less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax Commission from federal individual income tax returns excluding zero exemption returns. Additionally, the Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and other such information as the Board determines relevant to making the decision to recognize the system as a "disadvantaged community".

(i) Hardship Grant Assessment.

The assessment will be calculated based on the procedures and formulas shown in section 6 of this rule.

(ii) Repayment.

Annual repayments of principal, interest and/or Hardship Grant Assessment generally commence not later than one year after project completion. Project completion shall be defined as the date the funded project is capable of operation. Where a project has been phased or segmented, the repayment requirement applies to the completion of individual phases or segments.

The loan must be fully amortized not later than 20 years after project completion. The yearly amount of the principal repayment is set at the discretion of the Board.

(iii) Principal Forgiveness.

Eligible water systems meeting the definition of "disadvantaged community" may qualify for financial assistance in the form of forgiveness of the principal loan amount. Terms for principal forgiveness will be as determined by Board resolution.

Eligible applicants for "principal forgiveness" financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

(iv) Negative Interest Rate.

Eligible water systems meeting the definition of "disadvantaged community" may qualify for financial assistance in the form of a loan with a negative interest rate, as determined by Board resolution.

Eligible applicants for "negative interest" financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

(v) Dedicated Repayment Source and Security.

Loan recipients must establish one or more dedicated sources of revenue for repayment of the loan. As a condition of financial assistance, the applicant must demonstrate a revenue source and security, as required by the Board.

(b) Refinancing Existing Debt Obligations.

The Board may use funds from the SRF to buy or refinance municipal, inter-municipal or interstate agencies, where the initial debt was incurred and construction started after July 1, 1993. Refinanced projects must comply with the requirements imposed by the Safe Drinking Water Act(SDWA) as though they were projects receiving initial financing from the SRF.

(c) Credit Enhancement Agreements and Interest Buy-Down Agreements.

The Board will determine whether a project may receive all or part of a loan, credit enhancement agreement or interest buy-down agreement. To provide security for project obligations, the Board may agree to purchase project obligations of applicants, or make loans to the applicants. The Board may also consider making loans to the applicants to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. The Board may also consider other methods of assistance to applicants to properly enhance the marketability of or security for project obligations.

Interest buy-down agreements may consist of any of the following:

(i) A financing agreement between the Board and applicant whereby a specified sum is loaned to the applicant. The loaned funds shall be placed in a trust account, which shall be used exclusively to reduce the cost of financing for the project.

(ii) A financing agreement between the Board and the applicant whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

(iii) Any other legal method of financing which reduces the annual payment amount on publicly issued bonds. The financing alternative chosen should be the one most economically advantageous for the State and the applicant.

(3) Ineligible Projects.

Projects which are ineligible for financial assistance include:

(a) Any project for a water system in significant non-compliance, as measured by a "not approved" rating, unless the project will resolve all outstanding issues causing the non-compliance.

(b) Any project where the Board determines that the applicant lacks the technical, managerial, or financial capability to achieve or maintain SDWA compliance, unless the Board determines that the financial assistance will allow or cause the system to maintain long-term capability to stay in compliance.

(c) Any project meant to finance the expansion of a drinking water system to supply or attract future population growth. Eligible projects, however, can be designed and funded at a level which will serve the population that a system expects to serve over the useful life of the facility.

(d) Projects which are specifically prohibited from eligibility by Federal guidelines. These include the following:

(i) Dams, or rehabilitation of dams;

(ii) Water rights, unless the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy;

(iii) Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the treatment facility is located;

(iv) Laboratory fees for monitoring;

(v) Operation and maintenance costs;

(vi) Projects needed mainly for fire protection.

(e) Second home subdivisions, meaning those subdivisions having a majority of non-primary living residents.

**R309-705-5. Application and Project Initiation Procedures.**

The following procedures must normally be followed to obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the

necessary financial, legal and engineering counsel, as deemed acceptable by the Drinking Water Board, to prepare an effective and appropriate financial assistance agreement.

(2) A completed application form and project engineering report, as appropriate, are submitted to the Board.

(3) The staff prepares an engineering, capacity development analysis, and financial feasibility report on the project for presentation to the Board.

(4) The Board "Authorizes" financial assistance for the project on the basis of the feasibility report prepared by the staff. The Board then designates whether a loan, credit enhancement agreement, interest buy-down agreement, or any combination thereof, is to be entered into, and approves the project schedule (see section 7 of this rule).

(5) The applicant must demonstrate public support for the project prior to bonding, as deemed acceptable by the Drinking Water Board.

(6) For financial assistance mechanisms where the applicant's bond is purchased by the Board, the project applicant's bond documentation must include an opinion from recognized bond counsel. Counsel must be experienced in bond matters, and must include an opinion that the drinking water project obligation is a valid and binding obligation of the applicant (see section 8 of this rule). The opinion must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to 11-14-21 of the Utah Code Unannotated. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel, experienced in bond matters, that the drinking water project obligation is a valid and binding obligation of the applicant.

(7) The Board issues a Plan Approval for plans and specifications, if required, and concurs in bid advertisement.

(8) If a project is designated to be financed by a loan or an interest buy-down agreement, an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for eligible project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement, all project funds will be maintained in a separate account, and a quarterly report of project expenditures will be provided to the Board.

Incremental disbursement bonds will be required. Cash draws will be based on a schedule that coincides with the rate at which project related costs are expected to be incurred for the project.

(9) For a revenue bond, a User Charge Ordinance, or water rate structure, must be submitted to the Board for review and approval to insure adequate provisions for debt retirement and/or operation and maintenance. For a general obligation bond, a User Charge Ordinance must be submitted to the Board for review and approval to insure the system will have adequate resources to provide acceptable service.

(10) A "Private Company" will be required to enter into a Loan Agreement with the Board. The loan agreement will establish the procedures for disbursement of loan proceeds and will set forth the security interests to be granted to the Board by the Applicant to secure the Applicant's repayment obligations.

(a) The Board may require any of the following forms of security interest or additional/other security interests to guarantee repayment of the loan: deed of trust interests in real property, security interests in equipment and water rights, and personal guarantees.

(b) The security requirements wil be established after the Board's staff has reviewed and analysed the Applicants financial condition.

(c) These requirements may vary from project to project at the discretion of the Board

(d) The Applicant will also be required to excute a Promissory Note in the face amount of the loan, payable to the order of the lender, and file a Utah Division of Corporations and Commercial Code Financing Statement, Form UCC-1.

(e) The Board may specify that loan proceeds be disbursed incrementally into an escrow account for expected construction costs. Or it may authorize another acceptable disbursement procedure.

(11) The applicant's contract with its engineer must be submitted to the Board for review to, determine that there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

(12) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, validity and quantity of water rights, and adequacy of bidding and contract documents, as required.

(13) A position fidelity bond must be provided for the treasurer or other local staff handling the repayment funds and revenues produced by the applicant's system.

(14) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board shall issue the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and shall notify the applicant to sell the bonds.

(15) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant shall sell the bonds on the open market and the Board of the terms of sale. If a credit enhancement agreement is being utilized, the bonds sold on the open market shall contain the legend required by 73-10c-6(3)(d) of the Utah Code Unannotated. If an interest buy-down agreement is being utilized, the bonds sold on the open market shall bear a legend which makes reference to the interest buy-down agreement and states that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

(16) The applicant shall open bids for the project.

(17) LOAN ONLY - The Board shall give final approval to purchase the bonds and execute the loan contract.

(18) LOAN ONLY - The final closing of the loan is conducted.

(19) A preconstruction conference shall be held.

(20) The applicant shall issue a written notice to proceed to the contractor.

**R309-705-6. Applicant Priority System and Selection of Terms of Assistance.**

(1) Priority Determination.

The Board may, at its option, modify a project's priority rating based on the following considerations:

(a) The project plans, specifications, contract, financing, etc., of a lesser-rated project are ready for execution.

(b) Available funding.

(c) Acute health risk.

(d) Capacity Development.

The Board will utilize the format shown in Table 1 to prioritize loan applicants.

TABLE 1
Priority System

| Deficiency Description | Points Received |
|---|---|
| **Source Quality/Quantity** | |
| Health Risk (select one) | |
| A. There is evidence that waterborne illnesses have occurred. | 25 |
| B. There are reports of illnesses which may be waterborne. | 20 |
| C. High potential for waterborne illness exists. | 15 |
| D. Moderate potential for waterborne illness | 8 |
| E. No evidence of potential health risks | 0 |
| Compliance with SDWA (select all that apply) | |
| A. Source has been determined to be under the influence of surface water. | 25 |
| B. System is often out of water due to inadequate source capacity. | 20 |
| -or- System capacity does not meet the requirements of UPDWR. | 10 |
| C. Source has a history of three or more confirmed microbiological violations within the last year. | 10 |
| D. Sources are not developed or protected according to UPDWR. | 10 |
| E. Source has confirmed MCL chemistry violations within the last year. | 10 |
| Total | 100 |

| Deficiency Description | Points Available |
|---|---|
| **Treatment** | |
| Health Risk/Compliance with SDWA (select all that apply) | |
| A. Treatment system cannot consistently meet log removal requirements and/or turbidity standards. | 25 |
| B. The required disinfection systems are not installed, are inadequate, or fail to provide adequate water quality. | 25 |
| C. Treatment system is subject to impending failure, or has failed. | 25 |
| -or- Treatment system equipment does not meet demands of UPDWR. | 15 |
| -or- System equipment is projected to become inadequate | 5 |
| without upgrades. | |
| Total | 75 |

| Deficiency Description | Points Available |
|---|---|
| **Storage** | |
| Health Risk / Compliance with SDWA (select all that apply) | |
| A. Storage system is subject to impending failure, or has failed. | 25 |
| -or- System is old, cannot be easily cleaned, or subject to contamination. | 15 |
| B. Storage system is inadequate for existing demands. | 20 |
| -or- Storage system demand exceeds 90% of storage capacity. | 10 |
| C. Applicable contact time requirements cannot be met without an upgrade. | 15 |
| D. System suffers from low static pressures. | 15 |
| Total | 75 |

| Deficiency Description | Points Available |
|---|---|
| **Distribution** | |
| Health Risk/Compliance with SDWA (select all that apply) | |
| A. Distribution system equipment is deteriorated or inadequate for existing demands. | 20 |
| -or- Distribution system is inadequate to meet 5 year projected demands. | 10 |
| B. Applicable disinfectant residual maintenance requirements are not met or high backflow contamination potential exists. | 20 |
| C. Project will replace pipe containing unsafe materials (lead, asbestos, etc). | 15 |
| D. Minimum dynamic pressure requirements are not met. | 10 |
| E. System experiences a heavy leak rate in the distribution lines. | 10 |
| Total | 75 |

Priority Rating = (Average Points Received) x (Rate Factor) x (AGI Factor)

Where:

* Rate Factor = (Average System Water Bill/Average State Water Bill)

** AGI Factor = (State Median AGI/System Median AGI)

(2) Financial Assistance Determination. The amount and type of financial assistance offered will be based upon the criteria shown in Table 2. As determined by Board resolution, disadvantaged communities may also receive zero-percent loans, or other financial assistance as described herein.

Effective rate calculation methods will be determined by Board resolution from time to time, using the Revenue Bond Buyer Index (RBBI)as a basis point, the points assigned in Table 2, and a method to reduce the interest rate from a recent RBBI rate down to a potential minimum of zero percent.

TABLE 2
Special Hardship Grant Assessment Rate Reduction Incentives

| | |
|---|---|
| 1. Project will include creation or enhancement of, or compliance with a regionalization plan | 25 |
| 2. Applicant has, within the last 5 years, developed and implemented a water master plan | 25 |
| 3. Applicant has a 5-year history of having implemented a replacement or depreciation fund, amounting to 5% of the drinking water budget for O and M, and debt service. | 15 |
| 4. Applicant has a written emergency response plan. | 10 |
| 5. Project funding contributed by applicant meets or exceeds 20% of estimated project cost | 10 |
| 6. Applicant has established a rate structure to encourage water conservation | 15 |

TOTAL POSSIBLE POINTS 100

**R309-705-7. Project Authorization.**

A project may be "Authorized" for a loan, credit enhancement agreement, or interest buy-down agreement in writing by the Board following submission and favorable review of an application form, engineering report (if required), financial capability assessment and Staff feasibility report.

Once the application submittals are reviewed, the staff will prepare a project feasibility report for the Board's consideration in Authorizing a project. The project feasibility report will include an evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended (i.e., for a loan, credit enhancement agreement, or interest buy-down agreement).

The Board may authorize a loan for any work or facility to provide water for human consumption and other domestic uses. Generally, work means planning, engineering design, or other eligible activities defined elsewhere in these rules.

Project Authorization is conditioned upon the availability of funds at the time of loan closing or signing of the credit enhancement, or interest buy-down and upon adherence to the project schedule approved at that time. The Board, at its own discretion, may require the Applicant to enter into a "Commitment Agreement" with the Board prior to execution of final loan documents or closing of the loan. This Commitment Agreement or Binding Commitment may specify date(s) by which the Applicant must complete the requirements set forth in the Project Authorization Letter. The Commitment Agreement shall state that if the Department of Environmental Quality acting through the Drinking Water Board is unable to make the Loan by the Loan Date, this Agreement shall terminate without any liability accuring to the Department or the Applicant hereunder. Also, if the project does not proceed according to the project schedule, the Board may withdraw project Authorization, so that projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

**R309-705-8. Financial Evaluations.**

(1) The Board considers it a proper function to assist project applicants in obtaining funding from such financing sources as may be available.

(2) In providing financial assistance in the form of a loan, the Board may purchase bonds of the applicant only if the bonds are accompanied by a legal opinion of recognized municipal bond counsel. Bond counsel must provide an opinion that the bonds are legal and binding under applicable Utah law (including, if applicable, the Utah Municipal Bond Act). For bonds of $150,000 or less the Board will not require this opinion.

(3) In providing financial assistance in the form of a loan, the Board may purchase either taxable or non-taxable bonds; provided that it shall be the general preference of the Board to purchase bonds issued by the applicant only if the bonds are tax exempt. Tax-exempt bonds must be accompanied by a legal opinion of recognized municipal bond counsel to the effect that the Interest and the Hardship Grant Assessment (also interest) on the bonds is exempt from federal income taxation. Such an opinion must be obtained by the applicant in the following situations:

(a) Bonds which are issued to finance a project which will also be financed in part at any time by the proceeds of other bonds which are exempt from federal income taxation.

(b) Bonds which are not subject to the arbitrage rebate provisions of Section 148 of the Internal Revenue Code of 1986 (or successor provision of similar intent), including, without limitation, bonds covered by the "small governmental units" exemption contained in Section 148(f)(4)(c) of the Internal Revenue Code of 1986 (or any successor provision of similar intent) and bonds which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of such bonds.

(4) If more than 25 percent of the project is to serve industry, bond counsel must evaluate the loan to ensure the tax exempt status of the loan fund.

(5) Revenue bonds purchased by the Board shall be secured by a pledge of water system revenues, and it is the general policy of the Board that the pledge of water revenues for the payment of debt service (principal and/or Hardship Grant Assessment) on a particular revenue bond be on a parity with the pledge of those water revenues as security for the debt service payments on all other bonds or other forms of indebtedness which are secured by the water revenues.

(6) If a project is Authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. It is the Board's intent to avoid repayment schedules which would exceed the design life of the project facilities.

(7) Normal engineering and investigation costs incurred by the Department of Environmental Quality (DEQ) or Board during preliminary project investigation and prior to Board Authorization will not become a charge to the applicant if the project is found infeasible, denied by the Board, or if the applicant withdraws the Application prior to the Board's Authorization.

If the credit enhancement agreement or interest buy-down agreement does not involve a loan of funds from the Board, then administrative costs will not be charged to the project. However, if the Board Suthorizes a loan for the project, all costs incurred by the DEQ or Board on the project will be charged against the project and paid by the applicant as a part of the total project cost. Generally, this will include all DEQ and Board costs incurred from the beginning of the preliminary investigations through the end of construction and close-out of the project. If the applicant decides not to build the project after the Board has Authorized the project, all costs accrued after the Authorization date will be reimbursed by the applicant to the Board.

(8) The Board shall determine the date on which the scheduled payments of principal, Hardship Grant Assessment, and interest will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system user up to one year of actual use of the project facilities before the first repayment is required.

(9) The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the

construction costs during the construction period.

(10) LOANS AND INTEREST BUY-DOWN AGREEMENTS ONLY - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction prior to or concurrent with the committal of State funds.

(11) The Board will not forgive the applicant of any payment after the payment is due.

(12) The Board will require that a debt service reserve account be established by the applicant at or before the time that the loan is closed. Deposits to that account shall be made at least annually in the amount of one-tenth of the annual payment on the bond(s) purchased by the Board and shall continue until the total amount in the debt service reserve fund is equal to the annual payment. The debt service reserve account shall be continued until the bond is retired. Failure to maintain the reserve account will constitute a technical default on the bond(s).

(13) The Board will require a capital facilities replacement reserve account be established at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of five percent (5%) of the applicant's annual drinking water system budget, including depreciation, unless otherwise specified by the Board at the time of loan authorization, until the loan is repaid. This fund shall not serve as security for the payment of principal or Hardship Grant Assessment on the loan. The applicant shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system. The applicant will not need the consent of the Board prior to making any expenditure from the fund. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed.

(14) If the Board is to purchase a revenue bond, the Board will require that the applicant's water rates be established such that sufficient net revenue will be raised to provide at least 125% (or such other amount as the Board may determine) of the total annual debt service.

(15) A Water Management and Conservation Plan will be required.

**R309-705-9. Committal of Funds and Approval of Agreements.**

After the Board has approved the plans and specifications by the issuance of a Plan Approval, the loan will be considered by the Board for final approval. The Board will determine whether the agreement is in proper order. The Executive Secretary, or designee, may then execute final approval of the loan or credit enhancement agreement if obligations to the Board or other aspects of the project have not changed significantly since the Board's authorization of the loan or credit enhancement, provided all conditions imposed by the Board have been met. If significant changes have occurred the Board will then review the project and, if satisfied, the Board will then commit funds, approve the signing of the contract, credit enhancement agreement, or interest buy-down agreement, and instruct the Executive Secretary to submit a copy of the signed contract or agreement to the Division of Finance.

**R309-705-10. Construction.**

The Division of Drinking Water staff may conduct inspections and will report to the applicant. Contract change orders must be properly negotiated with the contractor and approved in writing. Change orders in excess of $10,000 must receive prior written approval by the Executive Secretary before execution. Upon successful completion of the project and recommendation of the applicant's engineer, the applicant will request the Executive Secretary to conduct a final inspection. When the project is complete to the satisfaction of the applicant's engineer, the Executive Secretary and the applicant, written approval will be issued by the Executive Secretary to commence using the project facilities.

**R309-705-11. Compliance with Federal Requirements.**

(1) Applicants must show the legal, institutional, managerial, and financial capability to construct, operate, and maintain the drinking water system(s) that the project will serve.

(2) As required by Federal Code, applicants may be subject to the following federal requirements:

Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended

Clean Air Act, Pub. L. 84-159, as amended

Coastal Barrier Resources Act, Pub. L. 97-348

Coastal Zone Management Act, Pub. L. 92-583, as amended

Endangered Species Act, Pub. L. 92-583

Environmental Justice, Executive Order 12898

Floodplain Management, Executive Order 11988 as amended by Executive Order 12148

Protection of Wetlands, Executive Order 11990

Farmland Protection Policy Act, Pub. L. 97-98

Fish and Wildlife Coordination Act, Pub. L. 85-624

National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190

National Historic Preservation Act of 1966, PL 89-665, as amended

Safe Drinking Water Act, Pub. L. 93-523, as amended

Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

Age Discrimination Act of 1975, Pub. L. 94-135

Title VI of the Civil Rights Act of 1964, Pub. L. 88-352

Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)

Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)

The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient)

Equal Employment Opportunity, Executive Order 11246

Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432

Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

Anti-Lobbying Provisions (40 CFR Part 30)

Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended

Procurement Prohibitions under Section 306 of the Clean Water Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to

Federal Contracts, Grants, or Loans

Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

Debarment and Suspension, Executive Order 12549

Accounting procedures, whereby applicants agree to maintain a separate project account in accordance with Generally Accepted Accounting Standards and Utah State Uniform Accounting requirements

**KEY: SDWA, financial assistance, loans**
**May 16, 2000 19-4-104**
**Notice of Continuation September 16, 2002 73-10c**

**R313. Environmental Quality, Radiation.**
**R313-17. Administrative Procedures.**
**R313-17-1. Application of Rule.**

This rule applies to proceedings under Title 19, Chapter 3 (Radiation Control Act).

**R313-17-2. Public Notice and Public Comment Period.**

(1) The Executive Secretary shall give public notice of, and an opportunity to comment on the following actions:

(a) Proposed licensing action for license categories 2b and c, 4a, b, c, d and 6 identified in R313-70-7 or a proposed approval or denial of a significant radioactive materials license, license amendment, or license renewal.

(b) The initial proposed registration of an ionizing radiation producing machine which operates at a kilovoltage potential (kVp) greater than 200 in an open beam configuration. R313-17-2(1)(b) does not apply to use in the healing arts.

(c) Board activities that may have significant public interest and the Board requests the Executive Secretary to take public comment on those proposed activities.

(2) Public notice shall allow at least 30 days for public comment.

(3) Public notice may describe more than one action listed in R313-17-2(1) and may combine notice of a public hearing with notice of the proposed action.

(4) Public notice shall be given by publication in a newspaper of general circulation in the area affected by the proposed action. Notice shall also be given to persons on a mailing list developed by the Executive Secretary and those who request in writing to be notified.

**R313-17-3. Public Comments, Response to Comments and Requests for Public Hearings.**

(1) During the public comment period provided under R313-17-2, any interested person may submit written comments on the proposed action and may request a public hearing, if no hearing has already been scheduled.

(2) A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing.

(3) Comments received during the public comment period and during any hearing shall be considered in making the final decision.

(4) At the time of the final decision, the Executive Secretary shall issue a response to comments, which shall include:

(a) Specific provisions, if any, that have been changed in the final action and the reasons for the change; and

(b) A brief description and response to all significant comments raised during the public comment period or during any hearing.

(5) The Executive Secretary's response to public comments shall be available to the public.

**R313-17-4. Public Hearings.**

(1) This section applies to hearings for public comment on proposed actions specified in R313-17-2. This section does not govern adjudicative proceedings.

(2) The Executive Secretary shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in the proposed action.

(3) The Executive Secretary may also hold a public hearing at his discretion, whenever, for instance, a hearing might clarify one or more issues involved in the proposed action.

(4) The Executive Secretary shall hold a public hearing whenever he receives written notice of opposition to a proposed action and a request for a hearing within 30 days of public notice under R313-17-2.

(5)(a) Public notice of the hearing shall be given as specified in R313-17-2.

(b) The public comment period under R313-17-2 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(c) Whenever possible the Executive Secretary shall schedule a hearing under this section at a time and location convenient to the parties involved.

(d) Any person at the hearing may submit oral or written statements and data concerning the proposed action. Reasonable limits may be set upon the time allowed for oral statements and the submission of statements in writing may be required.

(e) A tape recording or written transcript of the hearing shall be made available to the public.

**R313-17-5. Administrative Procedures General Provisions.**

(1) PURPOSE AND SCOPE

R313-17-5 through R313-17-13 set out procedures for conducting formal adjudicative proceedings in accordance with the Utah Administrative Procedures Act (UAPA), Section 63-46b-1 et seq. and govern:

(a) the contest of the validity of initial order or notice of violation as described in R313-17-5(2);

(b) the contest of proposed imposition of civil penalties under Section 19-3-109; and

(c) other formal adjudicative proceedings before the Radiation Control Board.

(2) INITIAL PROCEEDINGS EXEMPT FROM UAPA

Proceedings that culminate in the issuance of an initial order or a notice of violation under the Utah Radiation Control Act are not governed by UAPA as specified in Section 63-46b-1(2)(k). This includes, but is not limited to, initial proceedings regarding:

(a) approval, amendment, denial, termination, transfer, revocation, or renewal of licenses;

(b) requests for variances, exemptions, and other approvals;

(c) notices of violation and orders associated with notices of violation;

(d) orders to comply and orders to cease and desist;

(e) impoundment of radioactive material;

(f) orders for decommissioning;

(g) declaratory orders; and

(h) orders for surveying, monitoring, sampling, or information;

(3) DESIGNATION OF PROCEEDINGS

(a) Contest of an initial order or notice of violation or

proposed imposition of civil penalties shall be conducted as a formal proceeding.

(b) The Board in accordance with Section 63-46b-4(3) may convert proceedings which are designated to be formal to informal, and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

(c) Unless otherwise stated in R313, informal adjudicative proceedings shall be conducted in accordance with Section 63-46b-5.

(4) APPEARANCES AND REPRESENTATION

(a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his, her, or its interest in the proceeding.

(b) Any participant may be represented by legal counsel.

(5) COMPUTATION OF TIME

Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure except that no additional time shall be allowed for service by mail.

**R313-17-6. Commencing a Formal Adjudicative Proceeding.**

(1) Except as otherwise permitted by emergency orders as described in Section 63-46b-20, all adjudicative proceedings shall be commenced by either:

(a) a Notice of Agency Action in accordance with Section 63-46b-3, if proceedings are commenced by the Board; or

(b) a Request for Agency Action in accordance with R313-17-6(2), if proceedings are commenced by a person other than the Board.

(2)(a) The validity of initial orders, notices of violation and proposed imposition of civil penalties, as described in R313-17-5(1) and (2), may be contested by filing a written Request for Agency Action with the Board and submitted to:

Executive Secretary, Utah Radiation Control Board
Division of Radiation Control
168 North 1950 West
PO Box 144850
Salt Lake City, Utah 84114-4850.

(b) Any such request is governed by and shall comply with the requirements of Section 63-46b-3(3) and shall be received for filing within 30 days of the issuance of the Executive Secretary's order or notice of violation.

(c)(i) All initial orders or notices of violation are effective upon issuance and shall become final if not contested within 30 days after the date issued.

(ii) Issuance of such orders or notices of violation means the time a signed order is mailed by certified mail to the recipient's most current address or hand delivered to the recipient.

(iii) If delivery by certified mail is refused, the issued order or notice shall be sent by regular first class mail.

(d) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review or judicial appeal.

(3) RESPONSE TO REQUEST FOR AGENCY ACTION

In accordance with Section 63-46b-3(3)(d) and (e), notice of the time and place for a hearing shall be provided in the response to a request for agency action, or shall be provided promptly after the hearing is scheduled.

(4) PRE-HEARING RECORD

The Executive Secretary shall compile an administrative record prior to a scheduled hearing and give any party the opportunity to supplement the record. The pre-hearing record shall also consist of pleadings or other documents filed prior to the hearing.

**R313-17-7. Parties and Intervention.**

(1) DETERMINATION OF A PARTY.

The following persons are Parties to a formal proceeding governed by these rules:

(a) The person to whom an initial order or notice of violation is directed, such as a person who submitted a license application that was approved or disapproved by order of the Executive Secretary;

(b) The Executive Secretary of the Radiation Control Board; and

(c) All persons whose legal rights or interests are substantially affected by the proceeding, who have standing to participate in the proceeding, and to whom the Board has granted intervention under R313-17-7(2).

(2) INTERVENTION

A petition for intervention may be filed by a petitioner to commence an adjudicative proceeding in accordance with R313-17-6(2) or to intervene after a notice of agency action or request for agency action has been filed. A petitioner for intervention shall meet the following requirements:

(a)(i) The request for agency action is timely filed in accordance with R313-17-6(2); or

(ii) The Petition to Intervene in a proceeding commenced by a party other than the Petitioner for Intervention is filed with the Board, with a copy to all parties, within 20 days from the date of the Notice of Agency Action or Request for Agency Action.

(b) The Petition to Intervene:

(i) Identifies the proceedings in which intervention is sought;

(ii) Contains a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding and the petitioner qualifies as an Intervenor under Section 63-46b-9; and

(iii) Includes a statement of relief sought from the Board, including the basis thereof.

(c) Unless modified by the Presiding Officer, any party may respond to a Petition for Intervention during the period allowed for responsive pleadings under Section 63-46b-6. The Chair of the Radiation Control Board may act as Presiding Officer for purposes of this paragraph.

(d) Intervention may only be granted by order of the Board to a petitioner who meets the requirements of R313-17-7(2)(a) and (b).

(3) DESIGNATION OF PARTIES

Unless otherwise designed by the Hearing Officer:

(a) The person filing a Request for Agency Action shall be the Petitioner and the Executive Secretary shall be the Respondent.

(b) In a proceeding requested by a Petitioner for Intervention, the person granted Intervenor status shall be the

Petitioner. The Executive Secretary and the person to whom the challenged order or notice is directed shall be the Respondents.

(4) AMICUS CURIAE (Friend of the Court)

Persons may be permitted by the Presiding Officer(s) to enter an appearance as Amicus Curiae (Friend of the Court), subject to conditions established by the Presiding Officer(s).

**R313-17-8. Conduct of Proceedings.**

(1) ROLE OF BOARD

(a) The Board is the "agency head" as that term is used in Section 63-46b. The Board is also the "presiding officer," as that term is used in Section 63-46b, except:

(i) The Chair of the Board shall be considered the Presiding Officer to the extent that these rules allow; and

(ii) The Board may by order appoint one or more Presiding Officers to preside over all or a portion of the proceedings.

(b) The Chair of the Board may delegate his or her authority as specified in this Rule to another Board member.

(2) APPOINTED PRESIDING OFFICERS

Unless otherwise explicitly provided in an order of appointment, any appointment of a Presiding Officer shall be for the purpose of conducting all aspects of an adjudicative proceeding, except grant of intervention, stays of orders and issuance of the final order. As used in these rules, the term Presiding Officer shall mean Presiding Officers if more than one Presiding Officer is appointed by the Board.

(3) PRE-HEARING CONFERENCES

The Presiding Officer may direct the Parties to appear at a specified time and place for pre-hearing conferences for the purposes of clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, or encouraging settlement.

(4) BRIEFS

(a) Unless otherwise directed by the Presiding Officer, parties to the proceeding may submit a pre-hearing brief at least five business days before the hearing. Post-hearing briefs will be allowed only as authorized by the Presiding Officer.

(b) Response briefs may not be filed unless permitted by the Presiding Officer.

(5) SCHEDULES

(a) The Presiding Officer shall establish schedules for discovery and other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings.

(b) The parties are encouraged to prepare a joint proposed schedule. If the parties cannot agree on a joint proposed schedule, the Presiding Officer may consider proposals by any party.

(6) EXTENSIONS OF TIME

Except as otherwise provided by statute, the Presiding Officer may approve extensions of time limits established by this rule, and may extend time limits adopted in schedules established under R313-17-8(5). The Presiding Officer may also postpone hearings. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.

(7) MOTIONS

All motions shall be filed a minimum of 12 days before a scheduled hearing, unless otherwise directed by the Presiding Officer. A memorandum in opposition to a motion may be filed within ten days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the Presiding Officer.

(8) FILING AND COPIES OF SUBMISSIONS

The original of any motion, brief, petition for intervention, or other submission shall be filed with the Executive Secretary. In addition, the submitter shall provide a copy to each Presiding Officer and to all parties or their counsel of record.

**R313-17-9. Hearings.**

(1) CONDUCT OF HEARING

The Presiding Officer shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements.

(2) ORDER OF PRESENTATION

Unless otherwise directed by the Presiding Officer, the Executive Secretary shall present its case first, followed by the Petitioner and any other party, then the Executive Secretary, and other parties if appropriate, shall have the opportunity for rebuttal.

**R313-17-10. Orders.**

(1) PROPOSED ORDERS BY PARTIES

Unless otherwise directed by the Presiding Officer, each party may provide proposed orders for the Presiding Officer within ten days of the conclusion of the hearing.

(2) DRAFT ORDERS OF APPOINTED PRESIDING OFFICERS

(a) The appointed Officer presiding over the adjudicative proceeding shall prepare a recommended order, provide a copy of the order to the Board and mail a copy of the order to all parties or their counsel of record.

(b) The Board shall review the recommended order and hearing record.

(c) The Board may give each party the opportunity to make a presentation to the Board specific to the recommended order.

(d) After deliberation, the Board shall determine whether to accept, reject or modify the recommended order. The Board may remand part or all of the matter to the Presiding Officer for further proceedings.

(e) The Board may modify this procedure with notice to all parties.

(3) FINAL ORDERS

The Board shall issue a final order which shall include the information required by Sections 63-46b-10 or 63-46b-5(1)(i).

**R313-17-11. Stays of Orders.**

(1) STAY OF ORDERS PENDING ADMINISTRATIVE ADJUDICATION

(a) A party seeking a stay of a challenged order during an adjudicative proceeding shall file a motion with the Board. If granted, a stay would suspend the challenged Order for the period as directed by the Board.

(b) The Board may order a stay of the Order that is the subject of the formal adjudicative proceeding if the party seeking the Stay demonstrates the following:

(i) The party seeking the Stay will suffer irreparable harm

unless the stay issues;

(ii) The threatened injury to the party seeking the Stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(iii) The Stay, if issued, would not be adverse to the public interest; and

(iv) There is substantial likelihood that the party seeking the Stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

(2) STAY OF THE ORDER PENDING JUDICIAL REVIEW

(a) A party seeking a stay of the Board's final order during judicial review shall file a motion with the Board.

(b) The Board as Presiding Officer may grant a stay of its order during the pendency of judicial review if the standards of R317-17-11(1)(b) are met.

**R313-17-12. Reconsideration.**

No agency review under Section 63-46b-12 is available. A party may request reconsideration of an order of the Presiding Officer as provided in Section 63-46b-13.

**R313-17-13. Disqualification of Presiding Officer(s).**

(1) DISQUALIFICATION OF PRESIDING OFFICER

(a) A member of the Board or other Presiding Officer shall disqualify himself or herself from performing the functions of the Presiding Officer regarding any matter in which he or she, or his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;

(iii) Knows that he or she has an financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(iv) Knows that he or she has any other interest that could be substantially affected by the outcome of the proceeding; or

(v) Is likely to be a material witness in the proceeding.

(b) A member of the Board or other Presiding Officer is also subject to disqualification under principles of due process and administrative law.

(2) MOTIONS FOR DISQUALIFICATION

A motion for disqualification shall be made first to the Presiding Officer. If the Presiding Officer is appointed, any determination of the Presiding Officer upon a motion for disqualification may be appealed to the Board.

**R313-17-14. Other Forms of Address.**

Nothing in these rules shall prevent any person from requesting an opportunity to address the Board as a member of the public, rather than as a party. An opportunity to address the Board shall be granted at the discretion of the Board. However, addressing the Board in this manner does not constitute a request for agency action under R313-17-6.

**R313-17-15. Requests for Records.**

Requests for records under the Utah Government Record Access and Management Act, Title 63, Chapter 2, Utah Code Ann., are not governed by R313. See R305-1.

**KEY: administrative procedures, public comment, public hearings, orders**

**September 12, 2002 19-3-103.5**

**Notice of Continuation July 23, 2001 19-3-104**

**R313. Environmental Quality, Radiation Control.**
**R313-70. Payments, Categories and Types of Fees.**
**R313-70-1. General.**

R313-70 applies to persons who receive, possess, or use sources of radiation provided, however, that nothing in these rules shall apply to the extent a person is subject to regulations by the U.S. Nuclear Regulatory Commission. The fees charged are authorized by subsection 19-3-104(4) of the Environmental Quality Code.

**R313-70-3. Communications.**

Communications concerning the rules in R313-70 should be addressed to the Executive Secretary, and may be sent to the Division of Radiation Control, Department of Environmental Quality. Communications may be delivered in person at the Division of Radiation Control offices.

**R313-70-5. Payment of Fees.**

(1) New Application Fee: Applications for machine registration or radioactive material licensing for which a fee is prescribed, shall be accompanied by a remittance in the full amount of the fee. Applications will not be accepted for filing or processing prior to payment of the full amount specified. Applications for which no remittance is received will be returned to the applicant. Application fees will be charged irrespective of the Executive Secretary's disposition of the application or a withdrawal of the application.

(2) Annual Fee: Persons and individuals who are subject to licensing or registration of radioactive material or radiation machine registration with the Department of Environmental Quality under provisions of the Utah Radiation Control Rules, are assessed an annual fee in accordance with categories of R313-70-7 and R313-70-8. The appropriate fee shall be filed annually with the Executive Secretary, by July 30 for registrants or by the anniversary date for licensees. Fees for radiation machine registration will be considered late if not received annually by the last day of August. Licensees may be assessed late fees if license fees are not received within 30 days after the license anniversary date. Late fees may also be assessed for successive 30 day periods during which the annual fee or registration fee remains unpaid.

(3) Inspection Fee: Persons and entities who, under provisions of the Utah Radiation Control Rules, are subject to radiation machine registration with the Department of Environmental Quality are assessed an inspection fee in accordance with R313-70-8. Fees for inspection of a radiation machine are due within 30 days of receipt of an invoice from the Agency. Registrants may be assessed late fees if inspection fees are not received in a timely manner.

(4) Failure to pay the prescribed fee: the Executive Secretary will not process applications and may suspend or revoke licenses or registrations or may issue an order with respect to the activities as the Executive Secretary determines to be appropriate or necessary in order to carry out the provisions of this part of R313-70, and of the Act.

(a) General license certificates of registration and specific licenses issued pursuant to the provisions in R313-21 or R313-22, will be valid for a period of five years unless failure to submit appropriate fee occurs. Machine registrations will be valid for one year during the interval outlined in R313-16-230. Failure to submit appropriate fees will render the license, certificate or registration invalid, at which time a new application with appropriate fees shall be submitted.

(b) Renewal applications shall be filed in a timely manner in accordance with R313-22-37 or R313-16-230. The radioactive material license will expire on the date specified on the license. Machine registration will expire as outlined in R313-16-230. An expired license cannot be renewed, rather the licensee will be required to submit an application for a new license and submit the appropriate application and new license fee.

(4) Method of Payment: Fees shall be made payable to: Division of Radiation Control, Department of Environmental Quality.

**R313-70-7. License Categories and Types of Fees for Radioactive Materials Licenses.**

Fees shall be established in accordance with the Legislative Appropriations Act. Copies of established fee schedules may be obtained from the Executive Secretary.

TABLE

| LICENSE CATEGORY | TYPE OF FEE |
|---|---|
| (1) Special Nuclear Material | |
| (a) Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers and neutron generators. | New License or Renewal Annual Fee |
| (b) Licenses for possession and use of less than 15 g special nuclear material in unsealed form for research and development. | New License or Renewal Annual Fee |
| (c) All other special nuclear material licenses. | New License or Renewal Annual Fee |
| (d) Special nuclear material to be used as calibration and reference sources. | New License or Renewal Annual Fee |
| (2) Source Material. | |
| (a) Licenses for concentrations of uranium from other areas like copper or phosphates for the production of moist, solid, uranium yellow cake. | New License or Renewal Annual Fee |
| (b) Licenses for | Annual Fee |

| | | |
|---|---|---|
| possession and use of source material in extraction facilities such as conventional milling, in-situ leaching, heap leaching, and other processes including licenses authorizing the possession of byproduct material (tailings and other wastes) from source material extraction facilities, as well as licenses authorizing the possession and maintenance of a facility in a standby mode, and licenses that authorize the receipt of byproduct material, as defined in Section 19-3-102, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations. | | |
| (c) Licenses that authorize the receipt of byproduct material, as defined in Section 19-3-102, from other persons for possession and disposal. | Annual Fee | |
| (d) Licenses for possession and use of source material for shielding. | New License or Renewal Annual Fee | |
| (e) All other source material licenses. | New License or Renewal Annual Fee | |
| (3) Radioactive Material Other than Source Material and Special Nuclear Material. | | |
| (a)(i) Licenses of broad scope for possession and use of radioactive material for processing or manufacturing of items containing radioactive material for commercial distribution. | New License or Renewal Annual Fee | |
| (a)(ii) Other licenses for possession and use of radioactive material for processing or manufacturing of items containing radioactive material for commercial distribution. | New License or Renewal Annual Fee | |
| (b) Licenses authorizing the processing or manufacturing and distribution or redistribution of radio-pharmaceuticals, generators, reagent kits, or sources or devices containing radioactive material. | New License or Renewal Annual Fee | |
| (c) Licenses authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, or sources or devices not involving processing of radioactive material. | New License or Renewal Annual Fee | |
| (d) Licenses for possession and use of radioactive material for industrial radiography operations. | New License or Renewal Annual Fee | |
| (e) Licenses for possession and use of sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units). | New License or Renewal Annual Fee | |
| (f)(i) Licenses for possession and use of less than 10,000 curies of radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. | New License or Renewal Annual Fee | |
| (f)(ii) Licenses for possession and use of 10,000 curies or more of radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. | New License or Renewal Annual Fee | |
| (g) Licenses to distribute items containing radioactive material that require device review to persons exempt from the licensing requirements of R313-19, except specific licenses | New License or Renewal Annual Fee | |

| | |
|---|---|
| authorizing redistribution of items that have have been authorized for distribution to persons exempt from the licensing requirements of R313-19. | |
| (h) Licenses to distribute items containing radioactive material or quantities of radioactive material that do not require device evaluation to persons exempt from the licensing requirements of R313-19, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of R313-19. | New License or Renewal Annual Fee |
| (i) Licenses to distribute items containing radio-active material that require sealed source or device review to persons generally licensed under R313-21, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under R313-21. | New License or Renewal Annual Fee |
| (j) Licenses to distribute items containing radioactive material or quantities of radioactive material that do not require sealed source or device review to persons generally licensed under R313-21, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under R313-21. | New License or Renewal Annual Fee |
| (k) Licenses for possession and use of radioactive material for research and development, which do not authorize commercial distribution. | |
| (l) All other specific radioactive material licenses. | New License or Renewal Annual Fee |
| (m) Licenses of broad scope for possession and use of radioactive material for research and development which do not authorize commercial distribution. | New License or Renewal |
| (n) Licenses that authorize services for other licensees, except licenses that authorize leak testing or waste disposal services which are subject to the fees specified for the listed services. | New License or Renewal Annual Fee |
| (o) Licenses that authorize services for leak testing only. | New License or Renewal Annual Fee |
| (4) Radioactive Waste Disposal: | |
| (a) Licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of commercial disposal by land by the licensee. | Application Fee New License or Renewal |
| (b) Licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. | New License or Renewal Annual Fee |
| (c) Licenses specifically authorizing the receipt of prepackaged waste radioactive material from other persons. | New License or Renewal Annual Fee |

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|---|---|
| The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. | |
| (d) Licenses authorizing packaging of radioactive waste for shipment to waste disposal site where licensee does not take possession of waste material. | New License or Renewal Annual Fee |
| (5) Well logging, well surveys and tracer studies. | |
| (a) Licenses for possession and use of radioactive material for well logging, well surveys and tracer studies other than field flooding tracer studies. | New License or Renewal Annual Fee |
| (b) Licenses for possession and use of radioactive material for field flooding tracer studies. | New License or Renewal Annual Fee |
| (6) Nuclear laundries. | |
| (a) Licenses for commercial collection and laundry of items contaminated with radioactive material. | New License or Renewal Annual Fee |
| (7) Human use of radioactive material. | |
| (a) Licenses for human use of radioactive material in sealed sources contained in teletherapy devices. | New License or Renewal Annual Fee |
| (b) Other licenses issued for human use of radioactive material, except licenses for use of radioactive material contained in teletherapy devices. | New License or Renewal Annual Fee |
| (c) Licenses of broad scope issued to medical institutions or two or more physicians authorizing research and development, including human use of radioactive material, except licenses for radioactive material in sealed sources contained in teletherapy devices. | New License or Renewal Annual Fee |
| (8) Civil Defense. | |
| (a) Licenses for possession and use of radioactive material for civil defense activities. | New License or Renewal Annual Fee |
| (9) Power Source. | |
| (a) Licenses for the manufacture and distribution of encapsulated radioactive material wherein the decay energy of the material is used as a source for power. | New License or Renewal Annual Fee |
| (10) General License. | |
| (a) Measuring, gauging and control devices as described in R313-21-22(4), other than hydrogen-3 (tritium) devices and polonium-210 devices containing no more than 10 millicuries used for producing light or an ionized atmosphere. | Fee per registration certificate |
| (b) In Vitro testing | Fee per registration certificate |
| (c) Depleted uranium | Fee per registration certificate |
| (d) Reciprocal recognition, as provided for in R313-19-30, of a license issued by the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State. | Annual fee for license category listed in R313-70-7(1) through (10), per 180 days in one calendar year |

**R313-70-8. Registration and Inspection Categories and Types of Fees for Registration of Radiation Machines.**

(1) For machines registered under R313-16-230, registrants will pay an annual registration fee and an inspection fee that shall be established in accordance with the Legislative Appropriations Act. Copies of established fee schedules may be obtained from the Executive Secretary.

TABLE

| FACILITY TYPE | TYPE OF FEE | |
|---|---|---|
| Hospital/Therapy control | Registration | Annual per unit and first tube plus annual per each additional tube connected to a control unit. |

| | | |
|---|---|---|
| | State Inspection | Per tube. |
| Medical control | Registration | Annual per unit and first tube plus annual per each additional tube connected to a control unit. |
| | State Inspection | Per tube. |
| Podiatry control | Registration | Annual per unit and first tube plus annual per each additional tube connected to a control unit. |
| | State Inspection | Per tube. |
| Veterinary control | Registration | Annual per unit and first tube plus annual per each additional tube connected to a control unit. |
| | State Inspection | Per tube. |
| Chiropractic control | Registration | Annual per unit and first tube plus annual per each additional tube connected to a control unit. |
| | State Inspection | Per tube. |
| Dental control | Registration | Annual per unit and first tube plus annual per each additional tube connected to a control unit. |
| | State Inspection | Per control unit and first tube plus each additional tube connected to a control unit. |
| Industrial Facility control with High or Very High Radiation Areas Accessible to Individuals | Registration | Annual per unit and first tube plus annual per each additional tube connected to a control unit. |
| | State Inspection | Per tube. |
| Industrial Facility control with Cabinet X-ray or Units Designed for Other Industrial Purposes | Registration | Annual per unit and first tube plus annual per each additional tube connected to a control unit. |
| | State Inspection | Per tube. |
| Other control | Registration | Annual per unit and first tube plus annual per each additional tube connected to a control unit. |
| | State Inspection | Per tube. |
| Acceptance of work, performed by a person meeting the qualifications in R313-16-400, that demonstrates compliance with these rules. | | Per tube |

## R313-70-9. Other Fees for Services.

TABLE

| | |
|---|---|
| (1) Expedited application review. Applicable when, by mutual consent of the applicant and affected staff, an application request is taken out of date order and processed by staff during non-work hours. | Hourly |
| (2) Review of plans for decommissioning, decontamination, reclamation, or site restoration activities. | Plan Review Plus Hourly |
| (3) Management and oversight of impounded radioactive material. | Actual Cost |
| (4) License amendment, for greater than three applications in a calendar year. | Amendment Fee |

**KEY: radioactive materials, x-rays, registration, fees**
**September 12, 2002 19-3-104(6)**
**Notice of Continuation October 10, 2001**

**R331. Financial Institutions, Administration.**
**R331-3. Rule to Govern Persons Soliciting Savings or Share Accounts, Deposit Accounts, or Similar Evidence of Indebtedness or Participation Interests Therein from Residents of this State.**
**R331-3-1. Authority, Scope and Purpose.**

(1) This rule is issued pursuant to Subsections 7-1-401(5), 7-1-501(8) and Section 7-1-505.

(2) The purpose of this rule is to regulate persons soliciting savings or share accounts, deposit accounts or similar evidence of indebtedness or participation interests therein from residents of this state.

(3) The purpose of this rule is to protect the deposits of the residents of this state.

**R331-3-2. Definitions.**

(1) "Commissioner" means the Commissioner of Financial Institutions.

(2) "Department" means the Department of Financial Institutions.

(3) "Person" means any individual, partnership, corporation, association or other entity.

**R331-3-3. Registration.**

Any person "soliciting savings or share accounts, deposit accounts or similar evidence of indebtedness or participation interest therein from residents of this state" as defined in Section 7-1-501(8) shall register with the department on forms designated by the commissioner.

**R331-3-4. Fees.**

(1) Each person registering with the department shall pay an annual registration fee of $100.00.

(2) Each person registering with the department shall be subject to examination by the department at such times as the commissioner designates.

**KEY: financial institutions**

| | |
|---|---|
| **1995** | **7-1-401(8)** |
| **Notice of Continuation September 25, 2002** | **7-1-501(8)(d)** |
| | **7-1-505** |

**R331. Financial Institutions, Administration.** **7-1-705**
**R331-17. Publication and Disclosure of Acquisition of Control, Merger, or Consolidation Applications to the Department of Financial Institutions.** **7-1-301(5)**

**R331-17-1. Authority, Scope, and Purpose.**

(1) This rule is issued pursuant to Sections 7-1-301, 7-1-703, 7-1-704 and 7-1-705.

(2) This rule applies to all applicants to the department for change of control, acquisition of, merger, or consolidation with any financial institution chartered by the state.

(3) Public disclosure by newspaper publication of applications to the department for change of control is necessary to increase the amount of timely and useful information available to the public thereby increasing the department's sources of information in connection with these applications and enhancing its ability to prevent dishonest or unqualified persons from acquiring control of state chartered financial institutions.

**R331-17-2. Definitions.**

(1) "Control" means "control" as defined in 7-1-103.

(2) "Commissioner" means the Commissioner of Financial Institutions.

(3) "Department" means the Department of Financial Institutions.

**R331-17-3. Publication of Notice of Application.**

(1) Within ten days after the department has accepted an application for change of control, acquisition of, merger, or consolidation with a financial institution chartered by the state, the applicant shall publish an announcement of such acceptance in three successive issues of a newspaper of general circulation in the county where the principal place of business is established.

(2) The newspaper announcement shall contain:

(a) The name(s) of the proposed acquirer(s);

(b) The name of the financial institution whose stock is sought to be acquired;

(c) Date application was accepted by the department;

(d) A statement that any person wishing to comment on the proposed changes may submit written comments to the commissioner within 20 days following the required newspaper publication.

**R331-17-4. Waiver of Publication.**

(1) In circumstances requiring prompt action, the commissioner may, if it is in the public interest:

(a) Waive the publication requirement of Rule R331-17-3;

(b) Waive or shorten the public comment period; or

(c) Act on the proposed change in control prior to the expiration of the public comment period.

(2) The commissioner may determine it is in the public interest to grant confidential treatment to an application.

(3) The commissioner may waive publication of notice of an application if notice has been or will be published pursuant to a rule of another state or federal agency.

**KEY: financial institutions**
**1995** **7-1-703**
**Notice of Continuation September 25, 2002** **7-1-704**

**R331. Financial Institutions, Administration.**

**R331-23. Lending Limits for Banks, Industrial Loan Corporations.**

**R331-23-1. Authority, Scope, and Purpose.**

(1) The Department of Financial Institutions enacts this rule under authority granted by Sections 7-1-301, 7-3-19, and 7-8-20.

(2) The rule applies to all loans and extensions of credit made by banks and industrial loan corporations chartered in the state and their subsidiaries.

(3) The rule is intended to prevent one person from borrowing an unduly large amount of a given bank's or industrial loan corporation's funds, thereby exposing the bank's or industrial loan corporation's depositors, creditors and stockholders to excessive risk.

(4) The rule provides exceptions to the general lending limits set forth in Sections 7-3-19 and 7-8-20.

(5) The rule does not apply to loans made by a bank or an industrial loan corporation to a subsidiary. The rule does not apply to an extension of credit that is subject to, or expressly exempted from, a federal statute or regulation limiting the amount of total loans and credit that may be extended to any person or group of persons.

**R331-23-2. Definitions.**

(1) "Affiliate" means any institution that controls the bank or industrial loan corporation and any other institution that is controlled by the institution that controls the bank or industrial loan corporation. However, "affiliate" does not include a subsidiary of the bank or industrial loan corporation.

(2) "Commissioner" means the Commissioner of Financial Institutions.

(3) "Contractual commitment to advance funds" means:

(a) an obligation on the part of the bank or industrial loan corporation to make payments to a third party contingent upon default by the bank's or industrial loan corporation's customer in the performance of an obligation under the terms of that customer's contract with the third party or upon some other stated condition, or

(b) an obligation to guarantee or stand as surety for the benefit of a third party. The term includes standby letters of credit, guarantees, puts and other similar arrangements. A binding, written commitment to lend is a "contractual commitment to advance funds" if it and all other outstanding loans to the borrower are within the bank's or industrial loan corporation's lending limit on the date of the commitment.

(4) "Consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases products or commodities for the purpose of resale or for fabrication into goods for sale.

(5) "Consumer paper" includes paper relating to automobiles, mobile homes, recreational vehicles, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items.

(6) For purposes of the rule, "Control" means the ownership or control of at least 50% of the voting stock.

(7) "Current market value" means the bid or closing price listed for financial instruments in a regularly published listing or an electronic reporting service.

(8) "Financial instruments" means stocks, notes, bonds, and debentures traded in a national securities exchange, OTC margin stocks, as defined by the Federal Reserve Board at 12 CFR 220.2, 1996, commercial paper, negotiable certificates of deposit, bankers acceptances, and shares in money market and mutual funds of the type which issue shares in which banks or industrial loan corporations may perfect a security interest.

(9) "Institution" means "institution" as defined in Section 7-1-103.

(10) "Investment grade securities" means marketable obligations in the form of a bond, note or debenture rated in one of the four highest ratings of a nationally recognized rating agency. "Investment grade securities" does not include investments which are predominantly speculative in nature.

(11) "Loans and extensions of credit" means any direct or indirect advance of funds in any manner whatsoever to a person. This is made on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. "Loans and extensions of credit" includes:

(a) A purchase under repurchase agreement of securities, other assets or obligations other than investment grade securities in which the purchasing bank or industrial loan corporation has a perfected security interest, with regard to the seller but not as an obligation of the underlying obligor of the security;

(b) An advance by means of an overdraft, cash item, or otherwise;

(c) A contractual commitment to advance funds;

(d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, or other evidence of indebtedness upon which a person may be liable as maker, drawer, endorser, guarantor, or surety;

(e) A participation without recourse, with regard to the participating bank or industrial loan corporation, but not the originating bank or industrial loan corporation;

(f) Existing loans, leases, or advances which have been charged off on the books of the bank or industrial loan corporation in whole or in part and which are legally enforceable, including statutory bad debt under Section 7-3-25 or Section 7-8-15 respectively.

(12) "Loans and extensions of credit" does not include:

(a) A receipt by a bank or industrial loan corporation of a check deposited in or delivered to the bank or industrial loan corporation in the usual course of business unless it results in the carrying of a cash item for the granting of an overdraft other than an inadvertent overdraft in a limited amount that is promptly repaid;

(b) An acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through a merger or consolidation of financial institutions or a similar transaction by which an institution acquires assets and assumes liabilities of another institution, or foreclosure on collateral or similar proceeding for the protection of the bank or industrial loan corporation, provided that the indebtedness is not held for a period of more than three years from the date of the acquisition, unless permission to extend the period is granted by the commissioner on the basis that holding the indebtedness beyond three years is not detrimental to the safety and soundness of the

acquiring bank or industrial loan corporation ;

(c) An endorsement or guarantee for the protection of a bank or industrial loan corporation of any loan or other asset previously acquired by the bank or industrial loan corporation in good faith or any indebtedness to a bank or industrial loan corporation for the purpose of protecting the bank or industrial loan corporation against loss or of giving financial assistance to it;

(d) Non-interest bearing deposits to the credit of the bank or industrial loan corporation;

(e) The giving of immediate credit to a bank or industrial loan corporation upon uncollected items received in the ordinary course of business;

(f) The purchase of investment grade securities subject to repurchase agreement in which the purchasing bank or industrial loan corporation has a perfected security interest, or where the securities are purchased from the state or any political subdivision thereof;

(g) The sale of Federal funds;

(h) Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons.

(13) "Person" means "person" as defined in Section 7-1-103.

(14) "Readily marketable collateral" means financial instruments which are salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or similarly available daily bid and ask price market.

(15) "Sale of Federal Funds" means any transaction among depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution.

(16) "Standby letter of credit" means any letter of credit, or similar arrangement however named or described which represents an obligation to the beneficiary on the part of the issuer:

(a) To repay money borrowed by or advanced to or for the account of the account party, or

(b) To make payment on account of any indebtedness undertaken by the account party, or

(c) To make payment on account of any default by the account party in the performance of an obligation.

(17) "Subsidiary" means "subsidiary" as defined in Section 7-1-103.

(18) "Total capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserves for loan losses, and the portion of subordinated notes and debentures with more than one year maturity remaining.

**R331-23-3. General Rule.**

(1) The total loans and extensions of credit by a bank or industrial loan corporation to any person outstanding at one time and not fully secured, as determined in a manner consistent with this rule, by collateral having a market value at least equal to the amount of the loan or extension of credit may not exceed 15% of the amount of the bank's or industrial loan corporation's total capital.

(2) The total loans and extensions of credit by a bank or industrial loan corporation to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds and standing may not exceed 10% of the total capital of the bank or industrial loan corporation. This limitation is separate from and in addition to the 15% limitation described in Subsection (1), above.

(a) At all times, the total loans or extensions of credit to a person based on the limitation for banks in Section 7-3-19(2) and for industrial loan corporations in Rule R331-23-3(2) shall be secured by readily marketable collateral having a current market value of at least 100% of the total amount of funds outstanding, excluding accrued or discounted interest.

(b) Each bank or industrial loan corporation shall institute adequate procedures to ensure that the collateral value fully secures the outstanding loan or extension of credit at all times. At a minimum, each bank or industrial loan corporation shall perfect its security interest in the collateral and shall calculate the market value of the collateral at least monthly, or more frequently, as may be deemed necessary to ensure compliance with Section 7-3-19(2) for banks and Rule R331-23-3(2) for industrial loan corporations.

(c) If collateral values fall below 100% of the outstanding loan, the bank or industrial loan corporation must, within 60 days, obtain additional collateral in an amount sufficient to provide 100% coverage, require reduction of the loan or extension of credit, or sell the collateral and liquidate the debt. During this period, the loan or extension of credit will be considered nonconforming.

**R331-23-4. Combining Loans to Separate Borrowers - General Rule.**

(1) Loans or extensions of credit to one person will be combined where the proceeds of the loan or extension of credit are to be used for the direct benefit of any other person or persons.

(2) Loans or extensions of credit to a general partnership, joint venture or association shall, for purposes of this rule, be considered loans or extensions of credit jointly and severally to each member of such partnership, joint venture or association unless the agreement creating the general partnership, joint venture or association provides otherwise, in which case the loans or extensions of credit shall be allocated to each member only to the extent provided for by the terms of any such agreement.

(3) The sum of all loans or extensions of credit by a bank or industrial loan corporation outstanding at any one time to a person and all of its affiliates may not exceed 50% of the bank's or industrial loan corporation's total capital.

**R331-23-5. Exceptions to the Lending Limits.**

(1) The lending limits do not apply to the portion of a loan or extension of credit that represents accrued or discounted interest.

(2) Loans Secured by U.S. Obligations and General Obligations of a state or political subdivision.

(a) Loans or extensions of credit secured by bonds, notes,

certificates of indebtedness or Treasury bills of the United States or by other similar obligations fully guaranteed as to the principal and interest by the United States or general obligations of a state or a political subdivision are not subject to any limitation based on total capital.

(b) This exception applies only to the extent that loans or extensions of credit are fully secured by the current market value of obligations of the United States or guaranteed by the United States or general obligations of a state or political subdivision.

(c) If the market value of the collateral declines to the extent that the loan is no longer in conformance with this exception and exceeds the general 15% limitation, the loan must be brought into conformance within 60 days.

(3) Loans to or Guaranteed by a Federal Agency

(a) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on total capital.

(b) This exception may apply to only that portion of a loan or extension of credit that is covered by a federal guarantee or commitment.

(c) For purposes of this exception, the commitment or guarantee must be payable in cash or its equivalent within 60 days after demand for payment is made.

(d) A guarantee or commitment is unconditional if the protection afforded the bank or industrial loan corporation is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's or industrial loan corporation's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to take over only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank or industrial loan corporation.

(4) Loans Secured by Segregated Deposit Accounts

(a) Loans or extensions of credit secured by a segregated deposit account in the lending bank or industrial loan corporation shall not be subject to any limitation based on total capital.

(b) The bank or industrial loan corporation must ensure that a security interest has been perfected in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(c) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of a deposit eligible for withdrawal prior to the maturity of the secured loan, the bank or industrial loan corporation must establish internal procedures which will prevent the release of the security.

(5) Loans to Financial Institutions with the Approval of the commissioner

(a) Loans or extensions of credit to any financial institution or to any receiver, conservator, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the commissioner, shall not be subject to any limitation based on total capital.

(b) This exception is intended to apply only in emergency situations where a bank or industrial loan corporation is called upon to provide assistance to another financial institution.

(6) Discount of Consumer Paper

(a) This exception allows a bank or industrial loan corporation to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to 10% of its total capital (in addition to the 15% permitted by Section 7-3-19(1) and Section 7-8-20(1)) if the paper carries a full recourse endorsement or unconditional guarantee by the person transferring such paper. The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank or industrial loan corporation to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

(b) Under certain circumstances, consumer paper which otherwise meets the requirements of this exception will be considered a loan or extension of credit to the maker of the paper rather than the seller of the paper. Specifically, where (i) through the bank's or industrial loan corporation's files it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit, and (ii) any officer designated by the bank's or industrial loan corporation's Chairman or Chief Executive Officer pursuant to authorization by the Board of Directors certifies in writing that the bank or industrial loan corporation is relying primarily upon the maker to repay the loan or extension of credit, the loan or extension of credit is subject only to the lending limits of the maker of the paper. Where paper is purchased in substantial quantities, the records, evaluation, and certification may be in such form as is appropriate for the class and quantity of paper involved.

(7) Loans Secured by Livestock

(a) This exception allows a bank or industrial loan corporation to make loans or extensions of credit to one person in an amount equal to 10% of its total capital, in addition to the 15% permitted by Section 7-3-19(1) and Section 7-8-20(1), if the loans or extensions of credit are secured by livestock having a market value at least equal to 115% of the outstanding loan balance at all times. The loans or extensions of credit may be secured by shipping documents or other instruments which transfer title to, secure title to, or give a first lien on livestock. "Livestock" includes dairy and beef cattle, hogs, sheep, goats, horses, mules, poultry, and fish, whether or not held for resale. To support compliance with this exception, the bank or industrial loan corporation must maintain in its files an inspection and appraisal report on the livestock pledged.

(b) Under the laws of certain states, a person furnishing pasturage under a grazing contract may have a lien on the livestock for the amount due for pasturage. If the lien which is based on pasturage furnished by the lienor prior to the making of the loan (i) is assigned to the bank or industrial loan corporation by a recordable instrument and (ii) is protected against being defeated by some other lien or claim, by payment to a person other than the bank or industrial loan corporation, or otherwise, it would qualify under this exception provided the amount of such perfected lien is at least equal to the amount of

the loan and the value of the livestock is at no time less than 115% of the loan. Where the amount due under the grazing contract is dependent upon future performance thereunder, the resulting lien has merely prospective value and does not meet the requirements of the exception.

(8) Loans to Student Loan Marketing Association, Utah Board of Regents or Utah Higher Education Assistance Authority

Loans or extensions of credit to the Student Loan Marketing Association, the Utah Board of Regents or the Utah Higher Education Assistance Authority are not subject to any limitation based on total capital.

(9) Loans to Industrial Development Authorities and Housing Authorities

A loan or extension of credit to an industrial development authority, housing authority or similar public entity in the state is not a loan or extension of credit to the authority provided that:

(a) The bank or industrial loan corporation relies on the credit of the lessee or owner of the facility to be financed by the loan or extension of credit;

(b) The authority's liability with respect to the loan is limited solely to whatever interest it has in the particular facility;

(c) The authority's interest is assigned to the bank or industrial loan corporation as security for the loan or a promissory note from the lessee or owner to the bank or industrial loan corporation provides a higher order of security than the assignment of a lease, trust deed or mortgage; and

(d) lessee's or tenant's rent or mortgage payment is assigned and paid directly to the bank or industrial loan corporation.

A loan or extension of credit meeting the above criteria will be deemed a loan or extension of credit to the lessee or owner and will be combined with other obligations of the lessee or owner for purposes of Section 7-3-19 and Section 7-8-20.

(10) Other Exemptions

With the written approval of the commissioner other exemptions to the provisions of Section 7-3-19 and Section 7-8-20 may be permitted.

**R331-23-6. Record Keeping.**

(1) The board of directors shall review at least annually the most recent financial statements on all loans and extensions of credit to one person exceeding 10% of total capital. Based upon this review, the board of directors shall approve a determination that the conditions outlined in Rule R331-23-4 do not exist for such loans and extensions of credit. A statement of the above approval shall be incorporated into the minutes of the board of directors meeting at which the review was accomplished.

(2) In the case of loans and extensions of credit subject to the limitations of Section 7-3-19(2) and Rule R331-23-3(2), a record of the market value of the collateral securing such loans or extensions of credit shall be maintained as set forth in Rule R331-23-3.

**KEY: loans, banks, industrial loan corporations***
**July 16, 1997** **7-3-19**
**Notice of Continuation October 1, 2002** **7-8-20**

**R333. Financial Institutions, Banks.**
**R333-5. Discount Securities Brokerage Service by Banks.**
**R333-5-1. Authority, Scope, and Purpose.**

(1) This rule is issued pursuant to Subsection 7-1-301(3)(a) and Section 7-3-3.2.

(2) This rule governs the type of securities brokerage service state chartered banks may offer.

(3) The purpose of this rule is to limit securities activities to "discount brokerage" services and to give state chartered banks competitive equality with national banks which have their principal office in this state by granting the same rights and privileges to state chartered banks as are enjoyed by Utah's national banks.

**R333-5-2. Definitions.**

"Discount brokerage" means the practice of executing securities transactions solely at the direction of a bank customer but not providing that customer with any investment advice.

**R333-5-3. Discount Brokerage Services.**

A state chartered bank may enter into a contractual arrangement with unrelated discount brokers where the broker executes securities transactions for bank customers and the bank shares the commissions generated by the transaction. This service is restricted as outlined below:

(1) The bank clearly acts solely at the customer's direction;

(2) The transactions are for the account of the customer and not the account of the bank;

(3) The transactions are without recourse;

(4) The bank makes no warranty as to the performance or quality of any security;

(5) The bank does not advise customers to make any particular investment;

(6) The bank's promotional material clearly explains the bank's limited role in the service; and

(7) The bank's promotional material clearly explains that the transactions are not federally insured.

**KEY: banks and banking, securities**
**December 2, 1997 7-1-301(3)**
**Notice of Continuation September 23, 2002 7-3-3.2**

**R333. Financial Institutions, Banks.**
**R333-7. Investment by a State-Chartered Bank in Shares of Open-End Investment Companies.**
**R333-7-1. Authority, Scope, and Purpose.**

(1) This rule is issued pursuant to Subsection 7-1-301(8)(b)(i) and Section 7-3-3.2.

(2) This rule permits a state-chartered bank to purchase for its own account shares of open-end investment companies subject to certain restrictions.

(3) This rule expands the eligible classes and types of investments for state-chartered banks and gives them rights, privileges and powers granted to national banks.

**R333-7-2. Definitions.**

(1) "Open-end investment company" is one in which the shares are purchased or sold at par. The fund must be an open-ended investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and Securities Act of 1933 or a privately offered fund sponsored by an affiliated commercial bank.

(2) "Total capital" means the sum of capital stock, surplus, undivided profits, reserves for loan losses, reserve for contingencies, and subordinated notes and debentures with more than one year maturity.

**R333-7-3. Investment by a State-Chartered Bank in Shares of Open-End Investment Companies.**

(1) A state chartered bank may purchase and hold shares of an open-end investment company which are purchased or sold at par without limitation if the portfolio of the company consists wholly of obligations of, or obligations which are fully guaranteed as to principal and interest by the United States or this state.

(2) A state-chartered bank may invest an amount not to exceed 15% of the bank's total capital in any one money market fund with a Standard and Poor's Money Market Fund Rating of AAAm.

**KEY: banks and banking, investments**
**1995 7-1-301(8)(a)**
**Notice of Continuation September 11, 2002 7-3-3.2**

**R333. Financial Institutions, Banks.**

**R333-8. Authority for Banks to Issue Subordinated Capital Notes or Debentures.**

**R333-8-1. Authority, Scope, and Purpose.**

(1) This rule is issued pursuant to Subsection 7-1-301(8) and Section 7-3-28.

(2) This rule applies to all commercial banks chartered by the State of Utah which issue convertible or non-convertible subordinated capital notes or debentures.

(3) The purpose of this rule is to establish the criteria and procedures for issuance of subordinated capital notes or debentures and limitations on the total amount of such instruments which may be outstanding in order to protect the bank's depositors and shareholders.

**R333-8-2. Definitions.**

(1) "Capital Stock" means the total of:

(a) the par value of all shares of the bank having a par value that have been issued; plus

(b) the amount of the consideration received by the bank for all shares of the bank without par value that have been issued, except that part of the consideration which has been allocated to capital surplus in a manner permitted by law; plus

(c) the amounts not included in Subsections (a) and (b) as have been transferred to stated capital of the bank, whether upon the issue of shares as a share dividend or otherwise; minus

(d) all reductions from such sum as have been effected in a manner permitted by law.

(2) "Mandatory Convertible Securities" means any capital securities which require that at some future date the issuer must exchange common or perpetual preferred stock for the outstanding security.

(3) "Surplus" means the total of:

(a) the amount paid to the bank in excess of the par value of its capital stock, or, in the case of stock without par value, the amount designated as surplus of the total amount received for its capital stock,

(b) amounts received as capital contributions, and

(c) amounts transferred to the capital surplus account from undivided profits.

**R333-8-3. Authority to Issue Capital Notes and Debentures.**

(1) Any bank may, with the authorization by resolution of its board of directors, make application to the commissioner for permission to issue mandatory convertible, non-convertible, or optional convertible capital notes or debentures, subordinated to the claims of depositors and other creditors.

(2) The commissioner may grant approval for the issuance of mandatory convertible subordinated capital notes or debentures in such amounts and under such terms and conditions as he shall deem appropriate, provided that:

(a) All relevant provisions of Rule R331-5 have been complied with;

(b) The terms of any issue of mandatory convertible securities must require that all securities be converted to common stock or perpetual preferred stock within ten years of the date of issuance;

(c) The aggregate principal amount of all mandatory convertible securities outstanding at any time, together with the aggregate principal amount of all non-convertible or optional convertible securities outstanding shall not exceed 150% of the sum of the bank's capital stock and surplus accounts;

(d) Mandatory convertible securities may be redeemed prior to maturity only with the proceeds from the sale of common stock or perpetual preferred stock of the bank or bank holding company;

(e) The holder of the security cannot accelerate payment of principal except in the event of bankruptcy, insolvency, or reorganization;

(f) The security must be subordinate in right of payment to all senior indebtedness of the issuer. If the proceeds from the sale of such securities are to be loaned to an affiliate, that loan must be subordinated to the same extent as the original issue;

(g) The bank has a record of sound performance and management; and

(h) The securities shall not be used as collateral for loans or extensions of credit made by the bank.

(3) The commissioner may grant approval for the issuance of non-convertible or optional convertible subordinated capital notes or debentures in such amounts and under such terms and conditions as he shall deem appropriate, provided that:

(a) All relevant provisions and conditions of Department Rule R331-5 have been complied with;

(b) Each issue shall have a weighted average maturity at issuance of not less than seven years;

(c) The aggregate principal amount of all non-convertible and optional convertible securities outstanding at any time, together with the aggregate principal amount of all mandatory convertible securities outstanding shall not exceed 150% of the sum of the bank's capital stock and surplus accounts;

(d) The holder of the security cannot accelerate payment of principal except in the event of bankruptcy, insolvency, or reorganization;

(e) The security must be subordinate in right of payment to all senior indebtedness of the issuer. If the proceeds from the sale of such securities are to be loaned to an affiliate, that loan must be subordinated to the same extent as the original issue;

(f) The bank has a record of sound performance and management and can demonstrate that the bank will be able to generate earnings and cash flows adequate to service the subordinated notes or debentures; and

(g) The subordinated capital notes or debentures shall not be used as collateral for loans or extensions of credit made by the bank.

**R333-8-4. Disclosure.**

All subordinated capital notes or debentures issued by a bank, whether convertible or not, shall have the following provisions made in the body of the note or debenture and these provisions shall be disclosed in either a bold face type or in a size of type which is larger than the type face used in the other provisions carried in the body of the note or debenture.

(1) This obligation is NOT insured by the Federal Deposit Insurance Corporation.

(2) This obligation is subordinated to the claims of all depositors and other creditors.

(3) Subordinated capital notes or debentures shall not be used as collateral for loans made by the bank.

(4) The disclosure required under subsections (1) and (2) of this section shall be prominently displayed in all advertising of capital notes or debentures.

**R333-8-5. Use as Capital.**

The outstanding principal amount of all mandatory convertible securities and all subordinated capital notes or debentures not maturing within one year shall be added to the capital of the issuing bank for the purpose of determining the amount of "total capital" under the provisions of Section 7-3-19.

**R333-8-6. Exceptions to the Limits on Amounts of Subordinated Capital Notes or Debentures Which May Be Issued.**

(1) Notwithstanding the limitation imposed by this rule, subordinated capital notes or debentures assumed under a supervisory action or plan or reorganization pursuant to Sections 7-2-1, 7-2-12 or 7-2-18 may, at the discretion of the commissioner, exceed the maximum limitation imposed by this rule.

(2) Notwithstanding the limitation imposed by this rule, subordinated capital notes or debentures issued to the Federal Deposit Insurance Corporation pursuant to Section 13(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(c), may, at the discretion of the Commissioner, exceed the maximum limitation imposed by this rule.

**KEY: banks and banking**
**1995 7-1-301(8)(e)**
**Notice of Continuation September 23, 2002 7-3-28**

**R333. Financial Institutions, Banks.**

**R333-9. Indemnification of Directors, Officers, and Employees.**

**R333-9-1. Authority, Scope, and Purpose.**

(1) This rule is issued pursuant to Sections 7-1-301(4) and 7-3-13.

(2) This rule defines, clarifies and limits the extent to which a state chartered bank may provide in its articles of incorporation or bylaws for the indemnification of directors, officers and employees under the general corporate powers provision of Sections 16-10a-901 through 16-10a-909.

(3) The purpose of this rule is to deter acts that could threaten the safety and soundness of all state chartered banks by specifically prohibiting the indemnification of directors, officers and employees when a supervisory action results in a final order assessing civil money penalties or requiring affirmative action in the form of payment by an individual to a state chartered bank; to specifically set forth the commissioner's authority to deny or modify an indemnification which appears to be inconsistent with the standards stated in the bank's indemnification article or which would jeopardize the safety and soundness of any state chartered bank; and to specifically prohibit any state chartered bank from insuring any of its directors or employees against a final supervisory order assessing civil money penalties.

**R333-9-2. Indemnification of Directors, Officers, and Employees.**

(1) A state chartered bank may provide in its articles of incorporation or bylaws for the indemnification of directors, officers and employees for expenses personally incurred in actions to which the directors, officers or employees are parties or potential parties by reason of the performance of their official duties. Indemnification articles which substantially reflect the general provisions of Sections 16-10a-901 through 16-10a-909 are presumed by the department to be within the corporate powers of state chartered banks.

(2) The indemnification provisions shall not allow the indemnification, directly or indirectly, of directors, officers, or employees of a state chartered bank against expenses, penalties or other payments incurred in an administrative proceeding or action instituted by an appropriate bank regulatory agency which proceeding or action results in a final order assessing civil money penalties or requiring affirmative action by an individual or individuals in the form of payments to the bank.

(3) In accordance with his supervisory responsibilities, the commissioner may, in his discretion, review the threat to bank safety and soundness posed by any indemnification or proposed indemnification of directors, officers, or employees of any state chartered bank, or for the consistency of any such indemnification with the standards adopted by that bank in its articles of incorporation or bylaws. Based upon this review, the commissioner may direct a modification of a specific indemnification by a bank through appropriate administrative action.

(4) A state chartered bank may provide in its articles of incorporation or bylaws for the payment of premiums for insurance covering the liability of its directors, officers or employees to the extent that the coverage is provided for in Sections 16-10a-901 through 16-10a-909, except that the provision shall explicitly exclude insurance coverage for a formal supervisory order assessing civil money penalties against a bank director, officer or employee.

**KEY: banks and banking**

**1995 7-1-301(4)**

**Notice of Continuation September 23, 2002 7-3-13**

**R333. Financial Institutions, Banks.**

**R333-10. Securities Activities of Subsidiaries and Affiliates of State-Chartered Banks.**

**R333-10-1. Authority, Scope, and Purpose.**

(1) This rule is issued pursuant to Sections 7-3-3.2 and 7-3-21.

(2) This rule sets forth standards to govern securities activities of state chartered banks.

(3) The purpose of this rule is to establish safeguards to ensure that subsidiaries or affiliates engaged in securities activities do not endanger the safeness and soundness of state chartered banks.

**R333-10-2. Definitions.**

(1) "Affiliate" means any company that directly or indirectly, through one or more intermediaries, controls or is under common control with a state chartered bank.

(2) "Bona fide subsidiary" means a subsidiary of a bank that at a minimum:

(a) Is adequately capitalized;

(b) Is physically separate and distinct from the depository operations of the bank;

(c) Does not share a common name or logo with the bank;

(d) Maintains separate accounting and other corporate records;

(e) Shares no common officers or employees with the bank or its holding company;

(f) A majority of its board of directors is composed of persons who are neither directors nor officers of the bank or its holding company;

(g) Conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank and that investments recommended, offered or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank or its holding company nor are otherwise obligations of the bank or its holding company.

(3) "Company" means any corporation, other than a bank, any partnership, business trust, association, joint venture, pool syndicate, or other similar business organization.

(4) "Control" means "control" as defined in Section 7-1-103.

(5) "Extension of credit" means the making or renewal of any loan, a draw upon a line of credit, or an extending of credit in any manner whatsoever and includes:

(a) A purchase, whether or not under repurchase agreement, of securities, other assets, or obligations;

(b) An advance by means of an overdraft, cash item, or otherwise;

(c) Issuance of a standby letter of credit, or other similar arrangement regardless of name or description;

(d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which a natural person or company may be liable as maker, drawer, endorser, guarantor, or surety;

(e) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse;

(f) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for

(i) accrued interest or

(ii) taxes, insurance, or other expenses incidental to the existing indebtedness; or

(g) Any other transaction as a result of which a natural person or company becomes obligated to pay money, or its equivalent to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(6) "Investment quality debt security" means a marketable obligation in the form of a bond, note, or debenture that is rated in the top four rating categories by a nationally recognized rating service or a marketable obligation in the form of a bond, note, or debenture, the investment characteristics of which are equivalent to the investment characteristics of such a top-rated obligation.

(7) "Investment quality equity security" means marketable common stock that is ranked or graded in the top four categories or equivalent categories by a nationally recognized rating service, marketable preferred corporate stock that is rated in the top four rating categories by a nationally recognized rating service, or marketable preferred corporate stock that has investment characteristics that are equivalent to the investment characteristics of top rated preferred corporate stock.

(8) "Subsidiary" means any company controlled by a bank.

(9) "Total capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserve for loan losses, and subordinated notes and debentures with more than one year maturity.

**R333-10-3. Investment in Securities Activities.**

(1) No bank with total capital of less than 7% of its total assets may invest in a securities subsidiary.

(2) No bank may invest more than 10% of its capital in a securities subsidiary.

(3) A bank may not establish or acquire a subsidiary that engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes or other securities; conducts any activities for which the subsidiary is required to register with the Securities and Exchange Commission as a broker-dealer; acts as an investment adviser to any investment company; or engages in any other securities activity unless and except as otherwise provided by (4)(b) of this section, the subsidiary's underwriting activities that would not be authorized to the bank under Section 16 of the Glass-Steagall Act, 12 U.S.C. Sec. 24, Seventh, as made applicable to insured nonmember banks by Section 21 of the Glass-Steagall Act, 12 U.S.C. Sec. 378, are limited to, and therefore continue to be limited to, one or more of the following:

(a) underwriting of investment quality debt securities,

(b) underwriting of investment quality equity securities,

(c) underwriting of investment companies not more than 25% of whose investments consist of investments other than investment quality debt securities and/or investment quality equity securities, or

(d) underwriting of investment companies not more than 25% of whose investments consist of investments other than

obligations of the United States or United States Government agencies, repurchase agreements involving such obligations, bank certificates of deposit, banker's acceptances and other bank money instruments, short-term corporate debt instruments, and other similar investments normally associated with a money market fund; and that subsidiary conducts securities activities not authorized to the bank under section 16 of the Glass-Steagall Act, 12 U.S.C. Sec. 24, Seventh, as made applicable to insured nonmember banks by section 21 of the Glass-Steagall Act, 12 U.S.C. Sec. 378.

(4) Subsection (3) of this section not withstanding, a subsidiary of a state-chartered bank may engage in underwriting activities other than as limited thereby provided that the following conditions are met:

(a) The subsidiary is a member in good standing of the National Association of Securities Dealers, "NASD";

(b) The subsidiary has been in continuous operation for the five year period preceding notice to the commissioner as required by this part;

(c) No director, officer, general partner, employee, or 10% shareholder of any class of voting securities of the subsidiary has been charged within five years of the notice required by this part of any felony or misdemeanor:

(i) involving the making of a false filing with the Securities and Exchange Commission or the Utah Securities Division or the securities agency of another state or

(ii) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(d) Neither the subsidiary nor any of its directors, officers, general partners, employees, or 10% shareholders of any class of voting securities of the subsidiary is or has been subject to any state or federal administrative order or court order, judgment, or decree entered within five years of the notice required by this part temporarily or preliminarily enjoining or restraining such person or the subsidiary from engaging in, or continuing, any conduct or practice in connection with the purchase or sale of any security involving the making of a false filing with the Securities and Exchange Commission or the Utah Securities Division or the securities agency of another state or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(e) None of the subsidiary's directors, officers, general partners, employees, or 10% shareholders of any class of voting securities of the subsidiary are or have been subject to an order entered within five years of the notice required by this part issued by:

(i) the Securities and Exchange Commission entered pursuant to Section 15(b) or 15B(c) of the Securities Exchange Act of 1934, 15 U.S.C. 780, 78o-4, or Section 230(c) or (f) of the Investment Advisors Act of 1940, 15 U.S.C. 80b-3(c), or (f);

(ii) the Utah Securities Division entered pursuant to Sections 61-1-1 or 61-1-2; or

(iii) the state securities agency of another state which are similar to Sections 61-1-1 and 61-1-2.

(f) All officers of the subsidiary who have supervisory responsibility for underwriting activities have at least five years experience in similar activities at NASD member securities firms.

**R333-10-4. Affiliation With a Securities Company.**

A state chartered bank is prohibited from becoming affiliated with any company that directly engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes, or other securities unless:

(1) The securities business of the affiliate is physically separate and distinct from the bank;

(2) The bank and affiliate share no common officers or employees;

(3) A majority of the board of directors of the bank is composed of persons who are neither directors nor officers of the affiliate;

(4) No employee of the bank conducts securities activities on behalf of the affiliate on the premises of the bank;

(5) The bank and affiliate do not share a common name or logo; and

(6) The affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and that investments recommended, offered or sold by the affiliate are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank or its holding company nor are otherwise obligations of the bank or its holding company.

**R333-10-5. Filing a Notice.**

(1) A bank or bank holding company shall notify the Commissioner of Financial Institutions of its intent to acquire or establish a subsidiary that:

(a) sells, distributes or underwrites stocks, bonds, debentures, notes, or other securities;

(b) acts as an investment advisor to any investment company;

(c) conducts any activity for which the subsidiary is required to register with the Securities and Exchange Commission as a broker-dealer; or

(d) engages in any other securities activity.

(2) Notice shall be in writing and must be received by the commissioner at least 60 days prior to the consummation of the acquisition or operation of the subsidiary, whichever is earlier.

(3) The 60-day notice requirement may be waived at the commissioner's discretion where such notice is unpracticable in the case of a purchase and assumption transaction or a supervisory merger.

**R333-10-6. Restrictions.**

A bank which has a subsidiary or affiliate that engages in the sale, distribution or underwriting of stocks, bonds, debentures, notes, or other securities, or acts as an investment company shall not:

(1) Purchase in its discretion as fiduciary, co-fiduciary, or managing agent any security currently distributed, currently underwritten, or issued by such subsidiary or affiliate or purchase as fiduciary, co-fiduciary, or managing agent any security currently issued by an investment company advised by such subsidiary or affiliate, unless:

(a) The purchase is expressly authorized by the trust

instrument, court order, or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure;

(b) The purchase, although not expressly authorized under Subsection (1)(a), is otherwise consistent with the insured nonmember bank's fiduciary obligation, or the purchase is permissible under applicable federal or state statute or rule, or both;

(2) Transact business through its trust department with such subsidiary or affiliate unless the transactions are at least comparable to transactions with an unaffiliated securities company or a securities company that is not a subsidiary of the bank;

(3) Extend credit or make any loan directly or indirectly to any company the stock, bonds, debentures, notes or other securities of which are currently underwritten or distributed by such subsidiary or affiliate of the bank unless the company's stocks, bonds, debentures, notes or other securities that are underwritten or undistributed qualify as investment quality debt securities, or qualify as investment quality equity securities.

(4) Extend credit or make any loan directly or indirectly to any investment company whose shares are currently underwritten or distributed by such subsidiary or affiliate of the bank;

(5) Extend credit or make any loan where the purpose of the extension of credit or loan is to acquire:

(a) Any stock, bond, debenture, note, or other security currently underwritten or distributed by the subsidiary or affiliate;

(b) Any security currently issued by an investment company advised by the subsidiary or affiliate; or

(c) Any stock, bond, debenture, note or other security issued by the subsidiary or affiliate, except that a bank may extend credit or make a loan to employees of the subsidiary or affiliate for the purpose of acquiring securities of the subsidiary or affiliate through an employee stock bonus or stock purchase plan adopted by the board of directors or board of trustees of the subsidiary or affiliate.

(6) Make any loan or extension of credit to a subsidiary or affiliate of the bank that:

(a) Distributes or underwrites stocks, bonds, debentures, notes, or other securities, or

(b) Advises any investment company if the loans or extensions of credit would be in excess of the limit as to amount, and not in accordance with the restrictions imposed on "covered transactions" by Section 23A of the Federal Reserve Act, 12 U.S.C. 371c, and that are not within any exemptions established thereby.

(7) Make any loan or extension of credit to any investment company for which the bank's subsidiary or affiliate acts as an investment adviser if the loan or extension of credit would be in excess of the limit as to amount, and not in accordance with the restrictions imposed on "covered transactions" by Section 23A of the Federal Reserve Act, 12 U.S.C. 371c, and that are not within any exemptions established thereby; and

(8) Directly or indirectly condition any loan or extension of credit to any company on the requirement that the company contract with, or agree to contract with, the bank's subsidiary or affiliate to underwrite or distribute the company's securities or directly or indirectly condition any loan or extension of credit to any person on the requirement that the person purchase any security currently underwritten or distributed by the bank's subsidiary or affiliate.

**R333-10-7. Nonmember Banks Not Authorized to Participate in Securities Activities.**

Nothing in this section authorizes an insured nonmember bank to directly engage in any securities activity not authorized to it under Sections 16 and 21 of the Glass-Steagall Act, 12 U.S.C. 24, Seventh and 378.

**KEY: banks and banking, securities, subsidiaries**
**1995 7-3-21**
**Notice of Continuation September 23, 2002**

**R333. Financial Institutions, Banks.**

**R333-12. Investment by State-Chartered Banks in Real Property Other Than Bank Premises.**

**R333-12-1. Authority, Scope, and Purpose.**

(1) This rule is issued pursuant to Sections 7-1-301 and 7-3-18.

(2) This rule applies to all banks chartered by the State of Utah.

(3) The purpose of this rule is to authorize state-chartered banks with sufficient capital to invest in real property other than bank premises and prescribe requirements and restrictions to govern such activities.

**R333-12-2. Definitions.**

(1) An "Affiliate" of a bank means any corporation, business trust, association, or other similar organization:

(a) of which the bank, directly or indirectly, owns or controls either a majority of the voting shares or more than 50% of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions; or

(b) of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of the bank who own or control either a majority of the shares of the bank or more than 50% of the number of shares voted for the election of directors of the bank at the preceding election, or by trustees for the benefit of the shareholders of the bank; or

(c) of which a majority of its directors, trustees, or other persons exercising similar functions are directors of the bank; or

(d) which owns or controls, directly or indirectly, either a majority of the shares of capital stock of the bank or more than 50% of the number of shares voted for the election of directors of the bank at the preceding election, or controls in any manner the election of a majority of the directors of the bank, or for the benefit of whose shareholders or members all or substantially all of the capital stock of the bank is held by trustees.

(2) "Bank premises" means real property recorded as an asset on a bank's books or otherwise held by a bank which is used in the conduct of the bank's business, including leasehold improvements and capital leases of real property. It also includes real property acquired and held for future banking use where the minutes of the board of directors show the bank in good faith intends to utilize such property in the conduct of the bank's business within three years.

(3) "Capital stock" means the sum of

(a) the par value of all shares of the bank having a par value that have been issued,

(b) the amount of the consideration received by the bank for all shares of the bank without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law, and

(c) such amounts not included in Subsections (a) and (b) as have been transferred to stated capital of the bank, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sums as have been effected in a manner permitted by law.

(4) "Principal stockholder" means a person who owns 5% or more of any class of stock of a bank, any parent, or any affiliate thereof.

(5) "Surplus" means the total of

(a) the amount paid to the bank in excess of the par value of its capital stock, or, in the case of stock without par value, the amount designated as surplus of the total amount received for its capital stock,

(b) amounts received as capital contributions, and

(c) amounts transferred to the capital surplus account from undivided profits.

(6) "Total capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserve for loan losses, and subordinated notes and debentures with more than one year maturity.

**R333-12-3. Investment in Real Estate.**

(1) A bank, directly or through a subsidiary, may invest an amount not exceeding 10 percent of the bank's capital stock and surplus in real property or in an entity organized to acquire interests in real property, for the purpose of producing income, for inventory and sale, or other development thereof, and may hold, sell, lease, operate, and otherwise exercise the rights it acquires in any such property if:

(a) the bank has total capital equal to at least 8% of its total assets as of the date the investment is made;

(b) no officer, director, employee, principal stockholder or affiliate has any interest in any property or entity in which the bank invests; and

(c) no officer, director, employee, principal stockholder or affiliate receives any compensation for arranging or effecting the investment by the bank.

(2) The limitations established in Subsection (1) do not apply to real property which the bank may acquire and hold:

(a) in satisfaction of debts previously contracted;

(b) at sales to foreclose liens or other security interests claimed by the bank in the properties acquired; and

(c) current and former bank premises and property originally acquired for future use as bank premises.

**KEY: banks and banking, real estate investment**
**1995 7-1-301**
**Notice of Continuation September 25, 2002 7-3-18**

**R335. Financial Institutions, Consumer Credit.**
**R335-1. Rule Prohibiting Negative Amortizing Wrap Loans.**
**R335-1-1. Authority, Scope and Purpose.**

(1) This amended rule is adopted pursuant to Section 70C-8-102(1)(e).

(2) This rule shall apply to all extensions of credit subject to Title 70C, Utah Consumer Credit Code.

(3) The purpose for this rule is to prohibit wrap loans that will not fully service all obligations wrapped by the loan.

**R335-1-2. Definitions.**

"Wrap loan" means an extension of credit that includes an agreement by the lender to service all or part of the balance due on other debts owed by the borrower out of payments made on the wrap loan.

**R335-1-3. Rule Prohibiting Negative Wrap Loans.**

All wrap loans subject to Title 70C shall provide for a minimum monthly payment sufficient to pay at least the monthly interest on the wrap loan and the total monthly payment, including interest, principal, escrow or reserve payments, or both, on all obligations wrapped by the loan.

**KEY: financial institutions**
**1995 70C-8-102(1)(e)**
**Notice of Continuation September 24, 2002**

**R335. Financial Institutions, Consumer Credit.**

**R335-2. Rule Prescribing Allowable Terms and Disclosure Requirements for Variable and Adjustable Interest Rates in Consumer Credit Contracts.**

**R335-2-1. Authority, Scope, and Purpose.**

(1) This rule is adopted pursuant to Section 70C-8-102(1)(e).

(2) This rule shall apply to all credit transactions subject to the provisions of Title 70C, Utah Consumer Credit Code.

(3) The purpose for this rule is

(a) to distinguish variable or adjustable interest rates from other kinds of rate formulas or provisions, such as a demand note or a unilateral right to change terms,

(b) to specify what must be included in rate formulas represented to be variable or adjustable, and

(c) to specify certain disclosure requirements under state and federal law applicable to variable or adjustable rate and other formulas.

**R335-2-2. Definition.**

For purposes of this rule, "variable or adjustable rate" shall refer to any interest rate or finance charge in a consumer credit agreement which varies or fluctuates in accordance with a specified index, whether or not any variation is subject to a minimum or maximum change, or both, or a floor or ceiling rate, or both.

**R335-2-3. Permissible Indexes.**

(1) Any index may be used in a variable or adjustable rate formula if:

(a) it references a rate or value completely beyond the lender's control, or

(b) it is based entirely on the lender's weighted cost of funds, or

(c) it is a rate used by the lender as a basis for setting the rate on most of its non-consumer loans, provided that at least half the lender's total credit outstanding is not consumer credit during the entire period the rate is an index for any variable or adjustable rate consumer loan; and

(2) All information pertinent to setting or calculating the rate is readily available to the borrower during the entire term of the credit agreement.

**R335-2-4. Initial Disclosure Requirements.**

Except for an internal index as described in Rule R335-2-3 above, if any index is derived or calculated from two or more rates or values, or both, each rate or value, or both, must be specifically disclosed in the original credit agreement, together with the method to be used for calculating the index, and thereafter each calculation of the index must be made in the manner disclosed utilizing each rate or value, or both, described. This section shall not prevent a change of any term of a variable or adjustable rate formula in an open-end consumer credit contract in accordance with Section 70C-4-102.

**R335-2-5. Subsequent Disclosure Requirements.**

(1) Any change in the applicable rate resulting from a change in the numerical value of an index need not be disclosed in advance of the change.

(2) Each regular statement of account shall state the rate or weighted average of rates applicable to the account during the period covered by the statement; otherwise, it will not be necessary to give notice of any change in the applicable rate or describe the amount of any change.

**R335-2-6. Specific Adjustment Schedule Required.**

Any credit agreement containing a variable or adjustable rate must include a schedule stating when the rate will be adjusted and must require adjustment of the rate in accordance with that schedule.

**KEY: financial institutions**
**1995 70C-8-102(1)(e)**
**Notice of Continuation September 25, 2002**

**R335. Financial Institutions, Consumer Credit.**

**R335-4. Notice Concerning Refund of Unearned Credit Insurance Premiums Upon Prepayment of a Consumer Debt.**

**R335-4-1. Authority, Scope and Purpose.**

(1) This rule is adopted pursuant to Section 70C-8-102(1)(e).

(2) This rule shall apply to all credit transactions subject to Title 70C, Utah Consumer Credit Code.

(3) The purpose for this rule is to require all consumer creditors, including assignees or other successors in interest, to notify a borrower when a debtor may be entitled to a separate refund of unearned credit insurance premiums.

**R335-4-2. Notice Concerning Separate Refund of Unearned Credit Insurance Premiums Required.**

If a debtor becomes entitled to a refund of premiums paid for credit insurance, as defined in Section 70C-6-102, that terminates prior to the end of the term for which it was written, and if the debtor does not receive a refund or credit of the unearned insurance premiums at the time of prepayment or termination, the party receiving the final payment or to whom the obligation was last owed shall promptly notify the debtor of the right to a separate refund of the unearned insurance premiums. The notice shall also state the name and address of each party who should be contacted about obtaining the refund if known to the party providing the notice.

**KEY: financial institutions**
**1995 70C-8-102(1)(e)**
**Notice of Continuation September 24, 2002**

**R337. Financial Institutions, Credit Unions.**
**R337-2. Conversion from a Federal to a State-Chartered Credit Union.**
**R337-2-1. Authority, Scope and Purpose.**

(1) This rule is issued pursuant to Sections 7-1-301 and 7-1-706, and Subsection 7-1-713(4).

(2) This rule applies to federally chartered credit union converting to a state chartered credit union.

(3) This rule establishes the requirements and procedures for converting from a federally chartered credit union to a state chartered credit union.

**R337-2-2. Definitions.**

(1) "Applicant" means the federally chartered credit union converting to a credit union charter issued by the state.

(2) "Commissioner" means the Commissioner of Financial Institutions.

(3) "Federally chartered credit union" means a credit union organized under the laws of the United States.

(4) "State chartered credit union" means a credit union chartered by the state of Utah.

**R337-2-3. Conversion Application.**

(1) The applicant must file an application on a form acceptable to the department.

(2) As part of the application the following documents or information must be provided:

(a) Year to date financial statements for the most recent month end:

(b) Delinquent loan schedule annotated to reflect collection problems as of the most recent month end;

(c) Explanation and appropriate documents relative to any changes in insurance of member accounts;

(d) Resolution of the board of directors approving the proposed conversion;

(e) Sample of the Notice of Special Meeting of the Members;

(f) Sample of the ballot to be sent to members; and

(g) Approval of the conversion from the National Credit Union Administration.

**R337-2-4. Conversion Procedure.**

(1) The procedure set forth in Section 7-1-706 shall be followed.

(2) The effective date of the conversion will be the date on which the commissioner issued an order aproving the conversion. If a later effective date is desired, the credit union board of directors must request that effective date as part of the application.

**KEY: credit unions**
**November 3, 1997 7-1-713(4)**
**Notice of Continuation September 9, 2002**

**R337. Financial Institutions, Credit Unions.**
**R337-5. Allowance for Loan Losses - Credit Unions.**
**R337-5-1. Authority, Scope and Purpose.**

(1) This rule is issued pursuant to Section 7-9-29.

(2) This rule applies to all state-chartered credit unions.

(3) This rule requires an allowance account for loan losses and prescribes the optional methods of determining the required amount.

**R337-5-2. Definitions.**

(1) "Adjustment Method" means an allowance based on a complete review by the credit union at least quarterly, or at the close of each share account dividend period, of all loans delinquent two months or more, to estimate potential losses which will be sustained in the collection of outstanding loans.

(2) "Aging Method" means an allowance based on an amount equal to 50% of the sum of the loan balance of all loans 6-12 months past due plus 100% of the loans 12 months or more past due.

(3) "Collection Problem Loans" means an amount equal to 50% of loans classified doubtful plus 100% of loans classified loss at the most recent examination by the Department of Financial Institutions.

(4) "Commissioner" means the Commissioner of Financial Institutions.

(5) "Experience Method" means the ratio of loan losses (actual losses less recoveries) to the average total loans outstanding for the current year and for each of the preceding five years, multiplied by the total loans in the loan portfolio which are not delinquent.

**R337-5-3. Allowance Account for Loan Losses.**

(1) Each credit union is required to establish and maintain an allowance account for loan losses. It should be shown on the books as a contra-asset account, not an equity account.

(2) Adjustments necessary to maintain the account may be determined using the "Experience Method" and the "Aging Method" or the "Adjustment Method", whichever provides for the best estimation of the net realizable value of the loan portfolio. Other methods may be used subject to the approval in writing of the commissioner.

(3) Whenever the allowance for loan losses is materially less than or greater than collection problem loans or does not fairly represent the estimated losses in the portfolio, an immediate adjustment shall be made for the amount of the deficiency or surplus. Adjustments to the account will be accomplished by debit or credit entries to a "Provision for Loan Losses" expense account in accordance with generally accepted accounting principles.

(4) At the close of each accounting period and prior to the payment of a dividend, a credit union shall make a placement to the regular reserve as required by Section 7-9-30. After the required placement has been made, a credit union may transfer from the regular reserve to undivided earnings, the amount that has been expended to the provision for loan losses during the same period.

(5) The regular reserve and allowance for loan losses shall not be combined for purposes of calculating the placement to the regular reserve as required by Section 7-9-30.

**KEY: credit unions, loans**
**November 3, 1997** **7-9-29**
**Notice of Continuation September 9, 2002**

**R337. Financial Institutions, Credit Unions.**
**R337-7. Discount Securities Brokerage Service by State-Chartered Credit Unions.**
**R337-7-1. Authority, Scope, and Purpose.**

(1) This rule is issued pursuant to Subsection 7-1-301(3).

(2) This rule governs the type of securities brokerage service state chartered credit unions may offer.

(3) The purpose of this rule is to allow securities activities limited to "discount brokerage" services by state chartered credit unions, similar to the discount brokerage services allowed state chartered banks and industrial loan corporations.

**R337-7-2. Definitions.**

(1) "Discount brokerage" means the practice of executing securities transactions solely at the direction of a credit union member but not providing that member with any investment advice.

**R337-7-3. Discount Brokerage Services.**

A credit union may enter into a contractual arrangement with unrelated discount brokers where the broker executes securities transactions for credit union members and the credit union shares the commissions generated by the transaction. This service is restricted as outlined below:

(1) The credit union clearly acts solely at the member's direction;

(2) The transactions are for the account of the member and not the account of the credit union;

(3) The transactions are without recourse;

(4) The credit union makes no warranty as to the performance or quality of any security;

(5) The credit union does not advise members to make any particular investment;

(6) The credit union's promotional material clearly explains the credit union's limited role in the service; and

(7) The credit union's promotional material clearly explains that the transactions are not federally insured.

**KEY: credit unions**
**December 2, 1997 7-1-301(3)**
**Notice of Continuation October 1, 2002**

**R337. Financial Institutions, Credit Unions.**
**R337-8. Accounts for Parties Other Than Individual Members in State-Chartered Credit Unions.**
**R337-8-1. Authority, Scope, and Purpose.**

(1) This rule is issued pursuant to Subsection 7-1-301(3).

(2) This rule governs accounts and loans to parties other than individuals in state chartered credit unions.

(3) The purpose of the rule is to allow state chartered credit unions to maintain accounts in the name of businesses or entities other than individual members to the same extent as credit unions chartered under the laws of the United States.

**R337-8-2. Business and Other Accounts.**

A state chartered credit union may open a share, draft, certificate or loan account in the name of a party other than an individual member if all equity owners or, in the case of an association or cooperative, all members of the entity are within the credit union's field of membership as defined in the credit union's bylaws if the bylaws have been approved by the Commissioner of Financial Institutions. Loans to an entity other than an individual member may not exceed the entity's unencumbered shares or deposits, or both.

**KEY: credit unions**
**1995 7-1-301(3)**
**Notice of Continuation October 1, 2002**

**R337. Financial Institutions, Credit Unions.**

**R337-9. Schedule for Retention or Destruction of Records of Credit Unions Under the Jurisdiction of the Department of Financial Institutions.**

**R337-9-1. 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 credit unions.

(3) It is the purpose of this rule to require the maintenance of appropriate types of records, which have a high degree of usefulness and to prescribe the period for which records of each class are retained.

(4) This rule specifically exempts credit unions from the requirements of Rule R331-10.

**R337-9-2. Definitions.**

Key to abbreviations:

Figures - years

P - permanently

**R337-9-3. General Rule.**

All credit unions under the jurisdiction of the Department of Financial Institutions shall retain and preserve all records listed in the following schedule for the period indicated for specific type:

TABLE

| | |
|---|---|
| (1) Accounting and Auditing | |
| (a) Financial statement | 10 |
| (b) Cash received vouchers | 7 |
| (c) General ledger | P |
| (d) General journal/cash records | P |
| (e) Cash accounts reconciliation journals | 7 |
| (2) Administrative | |
| (a) Bylaws and amendments | P |
| (b) Certificates/licenses | P |
| (c) Charters | P |
| (d) Examination reports | 10 |
| (e) Supervisory and outside audits | 10 |
| (f) Minutes | 10 |
| (3) Surety and Fidelity Bond Time Period After Expiration | 10 |
| (4) Member Certificate of Deposits Time Period After Payment | 7 |
| (5) Collections (Past Due Accounts) | |
| (a) Collection files (closed) | 7 |
| (b) Schedule of delinquent loans | 2 |
| (6) Currency Transactions and Related Material | |
| (a) Copies of drafts, checks or money orders drawn on the credit union or issued and payable to it | 7 |
| (b) Copies of checks, drafts or money orders drawn on the credit union or issued and payable by it | 7 |
| (c) Copies of records of each payment or transfer of funds, checks, investment securities or other money instruments of $10,000 of more outside the United States | 7 |
| (d) Copies of records of each item of $10,000 or more received from outside the United States | 7 |
| (e) Currency Transaction Reports (Form 4789) | 7 |
| (f) Deposit slips or credit tickets of all debits over $100,000 | 7 |
| (g) Exemption statements | 7 |
| (h) Exemptions Master List | 7 |
| (i) Records of all extensions of credit over $10,000 unless the credit involves mortgage, home equity loans or refinancing | 7 |
| (j) Reports of international transportation of monetary instruments (Form 4790) | 7 |
| (k) Statements or ledgers showing all account activity | 7 |
| (7) Checking/Draft Accounts: Members | |
| (a) Checks/drafts paid | 7 |
| (b) Daily reports of overdrafts time period after overdraft is cleared | 1 |
| (c) Deposit tickets | 7 |
| (d) Individual members' account history ledgers | P |
| (e) Signature cards | P |
| (f) Stop-payment orders time period after issued | 1 |
| (g) Undelivered statements/dormant accounts log time period after date of last activity or contact with credit union | 7 |
| (h) Disclosures/Notices of check-holds | 2 |
| (8) Draft/Checking Accounts Held by Credit Unions | |
| (a) Certified checks/receipts | 7 |
| (b) Checks/drafts (canceled) | 7 |
| (c) Check/draft register | 7 |
| (d) Expense checks (canceled) | 7 |
| (e) Expense check register | 7 |
| (f) Expense vouchers or invoices | 7 |
| (g) Money orders and register | 7 |
| (9) Personnel Information | |
| (a) Disciplinary action records time period after terminated | 7 |
| (b) Earnings record | P |
| (c) Employee benefit plans | P |
| (d) Employee information reports | 7 |
| (e) Employee applications (not hired) | 3 |
| (f) Employee applications (hired) time period after terminated | 7 |
| (g) Employment eligibility verification | 3 |
| (h) Injury reports time period after report date | 5 |
| (i) Personnel files time period after terminated | 7 |
| (j) Unemployment compensation | 7 |
| (k) Training manuals and records | 7 |
| (l) Withholding authorization time period after terminated | 8 |
| (10) General Information | |
| (a) Applications for traveler's checks | 7 |
| (b) Change-of-address orders | 2 |
| (c) Paid bills, statements and invoices | 7 |
| (d) Vault records (except safe deposits) | 1 |
| (e) Wire transfer debit and credit entries | 7 |
| (f) Safe deposit access/entry tickets time period after entry date | 7 |
| (g) Safe keeping receipts | P |
| (h) Lease and contract | P |
| (11) Insurance Policy | P |
| (12) Investments | P |
| (13) Merged Credit Union Articles and Bylaws | P |
| (14) Loans | |
| (a) Loan documentation to directors | 7 |
| (b) Business loan documentation time period after account closed | 7 |
| (c) Consumer loan documentation time | |

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        period after payoff . . . . . .   7
  (d)  Real estate loans documentation
        time period after payoff  . . . . . .   7
  (e)  Real estate related documents
  (i)  HMDA-1  . . . . . .  10
  (ii)  HUD-1  . . . . . .  10
  (iii)  Good faith estimates time period
          after estimate  . . . . . .   2
(15)  Share Accounts
  (a)  Membership and signature cards  . . . .   P
  (b)  Individual share ledgers  . . . . . .   P
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**R337-9-4. Reproductions.**

Any credit union 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.

**R337-9-5. Consistency With Requirements of Other State or Federal Statute or Rule.**

This rule will not preempt any other retention requirement longer than that specified herein imposed by any other state or federal statute or rule.

**KEY: financial institutions, credit unions**
**1995 7-1 -301(7)**
**Notice of Continuation October 1, 2002**

**R339. Financial Institutions, Industrial Loan Corporations.**
**R339-4. Authority for Industrial Loan Corporations to Issue Subordinated Capital Notes or Debentures.**
**R339-4-1. Authority, Scope and Purpose.**

(1) This rule is issued pursuant to Section 7-1-301(8) and 7-1-301(13).

(2) This rule applies to all industrial loan corporations.

(3) This rule construes, applies, and elaborates on Department of Financial Institutions Rule R331-5 as it applies to industrial loan corporations in the issuance of subordinated capital notes or debentures.

**R339-4-2. Definitions.**

(1) "Affiliate" means any company under common control with the industrial loan corporation excluding any subsidiary.

(a) The following shall not be considered to be an affiliate:

(i) Any company engaged solely in holding the premises of the industrial loan corporation with which it is affiliated, and

(ii) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized by Rule R339-6-3(1)(j).

(2) "Capital" means the excess of an industrial loan corporation's assets over its liabilities detailed in the following accounts: capital stock, surplus, and undivided profits. Unpaid stock subscriptions are not part of capital.

(3) "Capital Stock" means the total of:

(a) the par value of all shares of the bank having a par value that have been issued; plus

(b) the amount of the consideration received by the bank for all shares of the bank without par value that have been issued, except that part of the consideration which has been allocated to capital surplus in a manner permitted by law; plus

(c) the amounts not included in Subsections (a) and (b) as have been transferred to stated capital of the bank, whether upon the issue of shares as a share dividend or otherwise; minus

(d) all reductions from such sum as have been effected in a manner permitted by law.

(4) "Company" means a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any form of business entity.

(5) "Control" means "control" as defined in Section 7-1-103.

(6) "Commissioner" means the Commissioner of Financial Institutions.

(7) "Department" means the Department of Financial Institutions.

(8) "Institution" means "institution" as defined by Section 7-1-103.

(9) "Parent" means any company which controls the industrial loan corporation.

(10) "Person" means "person" as defined in Section 7-1-103.

(11) "Other evidences of debt" means notes payable, bonds, subordinated capital notes or debentures, maturing within one year, mortgages payable, accrued interest payable, and all other debt obligations, but not including any evidences of debt which involve a full recourse commitment where the department can readily ascertain that the person making the commitment is fully able to honor the same.

(12) "Subsidiary" means "subsidiary" as defined in Section 7-1-103.

(13) "Surplus" is a capital account which includes the amount received by an industrial loan corporation for its capital stock in excess of the par value of the stock, or, in the case of stock without par value, the amount designated as surplus of the total amount received for its capital stock. Surplus may also include amounts received as capital contributions. Amounts may also be transferred to the industrial loan's surplus account by the board of directors from undivided profits.

(14) "Total Capital" means the sum of capital, reserve for contingencies, reserves for loan losses, and the principal outstanding amount of subordinated capital notes or debentures not maturing within one year.

(15) "Undivided Profits" is a capital account representing the industrial loan corporation's capital in excess of its capital stock and surplus accounts. The amount represented by the undivided profits account may arise from net earnings of the industrial loan corporation or out of capital funds paid into the industrial loan corporation in excess of the capital stock and surplus accounts. Undivided profits may be used to absorb losses of the industrial loan corporation, for payment of cash dividends to stockholders or for transfer into surplus, upon appropriate resolution of the industrial loan's board of directors.

**R339-4-3. Authority to Issue Capital Notes or Debentures.**

(1) Any industrial loan corporation may, with the approval of the stockholders owning two-thirds of the voting stock of the institution, or without the approval if it is authorized by its articles of incorporation, and if it has demonstrated sound performance and efficient management, apply to the commissioner for permission to issue convertible or non-convertible capital notes or debentures, subordinated to the claims of all certificates of deposit, deposits and savings accounts and all other creditors.

(2) The commissioner may grant approval for the issuance of subordinated capital notes or debentures in the amounts and under the terms and conditions as he shall deem appropriate, provided that:

(a) All relevant provisions and conditions of Rule R331-5 issued by the department have been complied with; and

(b) The principal amount of the subordinated capital notes or debentures outstanding at any time shall not exceed 50% of the capital of the industrial loan corporation; and

(c) The new issue of subordinated capital notes or debentures have a weighted average maturity of not less than seven years; and

(d) Subordinated capital notes or debentures shall not be used as collateral for loans or extensions of credit made by the industrial loan corporation.

**R339-4-4. Disclosure.**

All subordinated capital notes or debentures issued by an industrial loan corporation shall have the following provisions made in the body of the note or debenture and these provisions shall be disclosed in either a bold face type or in a size of type which is larger than the type face used in the other provisions carried in the body of the note or debenture.

(1) This obligation is NOT insured by any agency of the United States or the state.

(2) This obligation is subordinated to the claims of all certificates of deposit, deposits and savings accounts and all other creditors.

(3) Subordinated capital notes or debentures shall not be used as collateral for loans made by the industrial loan corporation.

(4) Items (1) and (2) listed above shall be prominently disclosed in all advertising of capital notes or debentures.

**R339-4-5. Use as Capital.**

(1) The outstanding principal amount of subordinated capital notes or debentures not maturing within one year shall be added to the capital of the issuing industrial loan corporation for the purpose of determining the amount of "total capital" under the provisions of Sections 7-8-5(1) and 7-8-14 and Rule R339-6.

**R339-4-6. Exception to the Limits on Amounts of Subordinated Capital Notes or Debentures which May be Issued.**

Notwithstanding the limitations of Sections 3 and 5 above, subordinated capital notes or debentures assumed under a supervisory action or plan of reorganization pursuant to Sections 7-2-1 or 7-2-12, may, at the discretion of the commissioner:

(1) Exceed the 50% of capital of the industrial loan corporation limitation imposed by Sections 3(2)(b) above; or

(2) Include the outstanding principal amount of subordinated capital notes or debentures maturing within one year in the capital of the industrial loan corporation for the purpose of determining the amount of "total capital" under the provisions of Section 7-8-14 and Rule R339-6.

**KEY: financial institutions**
**1995 7-1-301(8)(e)**
**Notice of Continuation September 25, 2002 7-1-301(13)**

**R339. Financial Institutions, Industrial Loan Corporations.**
**R339-6. Rule Clarifying Industrial Loan Corporation Investments.**
**R339-6-1. Authority, Scope, and Purpose.**

(1) This rule is issued pursuant to Section 7-1-301(8), and construes and applies to Sections 7-8-13 and 7-8-14.

(2) This rule applies to industrial loan corporations and thrift institutions.

(3) This rule defines acceptable investments for the funds of an industrial loan corporation and defines and clarifies investments in real estate pursuant to Sections 7-8-13 and 7-8-14.

**R339-6-2. Definitions.**

(1) "Affiliate" means any company under common control with the industrial loan corporation excluding any subsidiary.

(a) The following shall not be considered to be an affiliate:

(i) Any company engaged solely in holding the premises of the industrial loan corporation with which it is affiliated, and

(ii) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized by Rule 339-6-3(1)(i), below.

(2) "Capital" means the excess of an industrial loan corporation's assets over its liabilities detailed in the following accounts: capital stock, surplus, and undivided profits. Unpaid stock subscriptions are not part of capital.

(3) "Capital Stock" means the total of:

(a) the par value of all shares of the bank having a par value that have been issued; plus

(b) the amount of the consideration received by the bank for all shares of the bank without par value that have been issued, except that part of the consideration which has been allocated to capital surplus in a manner permitted by law; plus

(c) the amounts not included in Subsections (a) and (b) as have been transferred to stated capital of the bank, whether upon the issue of shares as a share dividend or otherwise; minus

(d) all reductions from such sum as have been effected in a manner permitted by law.

(4) "Commissioner" means the Commissioner of Financial Institutions.

(5) "Contractual commitment to advance funds" means an obligation on the part of the industrial loan corporation to make payments, directly or indirectly, to a designated third party contingent upon a default by the industrial loan's customer in the performance of an obligation under the terms of that customer's contract with the third party or an obligation to guarantee or stand as surety for the benefit of a third party to the extent permitted by law. The term includes standby letters of credit, guarantees, puts and other similar arrangements. Undisbursed loan or lease funds and loan or lease commitments not yet drawn upon are not considered a contractual commitment to advance funds.

(6) "Company" means a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any form of business entity.

(7) "Control" means "control" as defined in Section 7-1-103.

(8) "Depository institution" means "depository institution" as defined in Section 7-1-103.

(9) "Industrial loan corporation" means "industrial loan corporation" as defined in Section 7-1-103.

(10) "Institution" means institution as defined in Section 7-1-103.

(11) "Investment grade securities" means marketable obligations in the form of a bond, note, debenture or preferred stock rated in one of the four highest ratings of a nationally recognized rating agency; it does not include investments which are predominantly speculative in nature.

(12) "Loans and extensions of credit" means any direct or indirect advance of funds in any manner whatsoever to a person. This is made on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. "Loans and extensions of credit" includes:

(a) A purchase under repurchase agreement of securities, other assets or obligations other than investment grade securities in which the purchasing industrial loan corporation has a perfected security interest, with regard to the seller but not as an obligation of the underlying obligor of the security;

(b) An advance by means of an overdraft, cash item, or otherwise;

(c) A contractual commitment to advance funds;

(d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, or other evidence of indebtedness upon which a person may be liable as maker, drawer, endorser, guarantor, or surety;

(e) A participation without recourse, with regard to the participating industrial loan corporation, but not the originating industrial loan corporation;

(f) Existing loans, leases, or advances which have been charged off on the books of the industrial loan corporation in whole or in part and which are legally enforceable, including statutory bad debt under Section 7-3-25 or Section 7-8-15 respectively.

(13) "Loans and extensions of credit" does not include:

(a) A receipt by an industrial loan corporation of a check deposited in or delivered to the industrial loan corporation in the usual course of business unless it results in the carrying of a cash item for the granting of an overdraft other than an inadvertent overdraft in a limited amount that is promptly repaid;

(b) An acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through a merger or consolidation of financial institutions or a similar transaction by which an institution acquires assets and assumes liabilities of another institution, or foreclosure on collateral or similar proceeding for the protection of the industrial loan corporation, provided that such indebtedness is not held for a period of more than three years from the date of the acquisition, unless permission to extend the period is granted by the commissioner on the basis that holding the indebtedness beyond three years is not detrimental to the safety and soundness of the acquiring industrial loan corporation;

(c) An endorsement or guarantee for the protection of an industrial loan corporation of any loan or other asset previously acquired by the industrial loan corporation in good faith or any indebtedness to an industrial loan corporation for the purpose of

protecting the industrial loan corporation against loss or of giving financial assistance to it;

(d) Non-interest bearing deposits to the credit of the industrial loan corporation;

(e) The giving of immediate credit to an industrial loan corporation upon uncollected items received in the ordinary course of business;

(f) The purchase of investment grade securities subject to repurchase agreement in which the purchasing industrial loan corporation has a perfected security interest, or where the securities are purchased from the state or any political subdivision thereof;

(g) The sale of Federal funds;

(h) Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons.

(14) "Parent" means any company which controls the industrial loan corporation.

(15) "Person" means "person" as defined in Section 7-1-103.

(16) "Prudent Investments" means any investment not expressly prohibited by law or rule and made in the exercise of judgment and care under the circumstances then prevailing which men of prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(17) "Readily marketable government securities" means obligations in the form of a bond, bill, note or debenture issued or offered by any governmental agency, municipality or board which is rated in one of the four highest ratings of a nationally recognized rating service.

(18) "Real estate" means improved or unimproved real property.

(19) "Standby letter of credit" means any letter of credit, or similar arrangement however named or described which represents an obligation to a designated third party on the part of the issuer:

(a) To repay money borrowed by or advanced to or for the account of the issuer's customer, or

(b) To make payment on account of any indebtedness undertaken by the issuer's customer, or

(c) To make payment on account of any default by the issuer's customer in the performance of an obligation.

(20) "Subsidiary" means "subsidiary" as defined in Section 7-1-103.

(21) "Surplus" is a capital account which includes the amount received by an industrial loan corporation for its capital stock in excess of the par value of the stock, or, in the case of stock without par value, the amount designated as surplus of the total amount received for its capital stock. Surplus may also include amounts received as capital contributions. Amounts may also be transferred to the industrial loan's surplus account by the board of directors from undivided profits.

(22) "Total Capital" means the sum of capital, reserve for contingencies, reserves for loan losses, and the principal outstanding amount of subordinated capital notes or debentures not maturing within one year.

(23) "Undivided Profits" is a capital account representing the industrial loan corporation's capital in excess of its capital stock and surplus accounts. The amount represented by the undivided profits account may arise from net earnings of the industrial loan corporation or out of capital funds paid into the industrial loan corporation in excess of the capital stock and surplus accounts. Undivided profits may be used to absorb losses of the industrial loan corporation, for payment of cash dividends to stockholders or for transfer into surplus, upon appropriate resolution of the industrial loan corporation's board of directors.

**R339-6-3. Acceptable Investments for the Deposits and Other Funds of Industrial Loan Corporations.**

(1) In the absence of a statute or rule to the contrary, an industrial loan corporation is unrestricted as to a percentage of its total capital being invested in the following:

(a) Cash, demand, or time deposits in a federally insured depository institution, or in deposits maintained directly with a federal reserve bank;

(b) Obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or this state or any of its political subdivisions;

(c) Any investment grade securities;

(d) Any securities purchased under agreements to resell;

(e) Leases, loans, or extensions of credit, whether unsecured or secured;

(f) Real estate contracts;

(g) Consumer and commercial installment sales contracts and security agreements;

(h) A subsidiary with the prior written approval of the commissioner upon finding that the subsidiary is primarily engaged in activities closely related to banking; or

(i) Such real estate as the industrial loan corporation may purchase at any sale, public or private, or which may be conveyed to the industrial loan corporation in satisfaction of or on account of a debt previously contracted in the conduct of its business upon which it had a mortgage, trust deed, judgment, assignment, lien or other claim; however:

(i) Any real estate acquired under this section shall be sold within two years after the date of acquisition;

(ii) If real estate acquired under this section is not sold within the two year period, it shall be charged off the books of the industrial loan corporation at the rate of 20% of the acquisition book value thereof each year commencing one year from the date of expiration of the two year period. The same shall be entirely charged off within five years from the expiration of the two year period.

(j) Any other investment with the prior written approval of the commissioner.

(2) An industrial loan corporation is restricted to 50% of its total capital at any one time being invested in the following:

Premises used in the conduct of the business which include real property and any interest therein, property such as furniture, fixtures, and equipment for use in carrying on its own business and the stock, bonds, debentures, or other obligations of any subsidiary or affiliate having as its exclusive activity the ownership and management of the property or interests.

(a) The amount invested in premises may exceed 50% of

total capital upon application and finding by the commissioner that the additional investment is necessary to promote the viability and stability of the industrial loan corporation;

(b) If the use of any of the premises for the conduct of business of the thrift institution is discontinued, the industrial loan corporation shall consider the real property as an investment under the 10% of total capital limitation cited in Section (3) below.

(3) An industrial loan corporation is restricted to 10% of its total capital at any one time being invested in real estate other than real estate used in the premises in the conduct of the business or real estate purchased or conveyed on account of a debt previously contracted. Such limited investment by an industrial loan corporation may include real estate or participation interests in real estate whether in partnership, joint venture or participation interest in the real estate for the purpose of producing income or for inventory and sale or for improvement, including the erection of buildings on the real estate for sale or rental purposes, and the industrial loan corporation may hold, sell, lease, operate or otherwise exercise the rights of any owner of any property.

(4) An industrial loan corporation is restricted to an aggregate of 20% of its total capital at any time being invested in any other "prudent investments" not specifically mentioned above, in Rule R339-6-3(1) through (3); provided however, that the aggregate of investments in any form in any one person made pursuant to this section shall not exceed 10% of total capital.

**KEY: financial institutions**

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| **1995** | **7-1-301** |
| **Notice of Continuation September 25, 2002** | **7-8-13** |
| | **7-8-14** |

**R339. Financial Institutions, Industrial Loan Corporations.**
**R339-11. Discount Securities Brokerage Service by Industrial Loan Corporations.**
**R339-11-1. Authority, Scope, and Purpose.**

(1) This rule is issued pursuant to Subsection 7-1-301(3).

(2) This rule governs the type of securities brokerage service industrial loan corporations may offer.

(3) The purpose of this rule is to allow securities activities limited to "discount brokerage" services by industrial loan corporations, similar to the discount brokerage services allowed state chartered banks.

**R339-11-2. Definitions.**

"Discount brokerage" is the practice of executing securities transactions solely at the direction of an industrial loan customer but not providing that customer with any investment advice.

**R339-11-3. Discount Brokerage Services.**

An industrial loan corporation may enter into a contractual arrangement with unrelated discount brokers where the broker executes securities transactions for industrial loan corporation customers and the industrial loan corporation shares the commissions generated by the transaction. This service is restricted as outlined below:

(1) The industrial loan corporation clearly acts solely at the customer's direction;

(2) The transactions are for the account of the customer and not the account of the industrial loan corporation;

(3) The transactions are without recourse;

(4) The industrial loan corporation makes no warranty as to the performance or quality of any security;

(5) The industrial loan corporation does not advise customers to make any particular investment;

(6) The industrial loan corporation's promotional material clearly explains the industrial loan corporation's limited role in the service; and

(7) The industrial loan corporation's promotional material clearly explains that the transactions are not federally insured.

**KEY: financial institutions**
**December 2, 1997 7-1-301(3)**
**Notice of Continuation October 1, 2002**

**R355. Governor, Administration.** **Notice of Continuation September 3, 2002 63-2-904(2)**
**R355-1. Records Access and Management.** **63-46a-3**
**R355-1-1. Purpose.**

This rule establishes procedures by which the public can obtain access to records and information which is classified in accordance with the Government Records Access and Management Act (GRAMA), and as may be available in the Offices of the Governor and Lt. Governor; the Office of the First-Lady and Residence Staff, the Elections, Centennial Values, Governor's Initiative on Families Today, and Governor's Commission for Women and Families offices; the Commission on Criminal and Juvenile Justice (C.C.J.J.); and the Governor's Office of Planning and Budget (G.O.P.B.).

**R355-1-2. Authority.**

This rule is authorized by Sections 63-2-204(2), 63-2-904(2), and 63-46a-3.

**R355-1-3. Public Requests for Access to Records.**

(a) Requests for access to "public" records/information shall be submitted to that office/area normally providing such data. For example, demographic/planning data requests shall be submitted to the Governor's Office of Planning and Budget.

(b) Requests for access to records classified as "private", "controlled" or "protected" pursuant to Section 63-2-202, shall be submitted to: the Governor's Office, % Records Officer, Room 210 State Capitol Building, Salt Lake City, Utah, 84114.

(c) Some records, collections of data, or other information are intended to be circulated to the public and are available at no charge at the respective office. For other records, the requesting person(s) may be required to pay a fee for copies made of records, as authorized by Section 63-2-203. Fees must be paid before records are provided to a requesting party.

(d) Requests for private, controlled or protected records shall be in writing pursuant to Section 63-2-204(1). Forms may be available at, and provided by the office upon request.

(e) The governor's office records-officer will receive requests for records-access, made pursuant to Section 63-2-204, and will assign requests for records to staff records-coordinators within each area/office (i.e., Governor's Office of Planning and Budget, or C.C.J.J., etc.).

(f) Decisions to approve or deny access to records, by the Records Officer, will be made in accordance with the provisions of Section 63-2-201.

**R355-1-4. Appeals.**

Following a denial of access, the Governor's Chief of Staff, or designee, shall respond to an appeal, if filed, regarding a question(s) or request of access to records.

**R355-1-5. Record-Sharing.**

To provide for records-sharing between governmental entities pursuant to Section 63-2-206, the Governor's Office is defined as a single governmental entity for purpose of this rule; and all sub-groups and sections as listed in R355-1-1, are part of that entity.

**KEY: government documents, public records**
**November 16, 1997** **63-2-204(2)**

**R392. Health, Epidemiology and Laboratory Services, Environmental Services.**

**R392-100. Food Service Sanitation.**

**R392-100-1. Authority and Purpose.**

(1) This rule is authorized by Subsections 26-1-30(2), and 26-15-2.

(2) This rule establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

**R392-100-2. Incorporation by Reference.**

(1) The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 1999, Chapters 1 through 8 and Annex 1, are adopted and incorporated by reference, with the exclusion of Sections 3-201.17(A)(4),4-301.12(C)(5), 4-301.12(D) and (E), 4-501.115, 4-603.16(B)(1), 4-603.16(C), 8-302.14(C)(2),(D) and (E), 8-805.40, and 8-809.20; and

(2) with the following additions or amendments:

(a) Add definition 1-201.10(B)(8.5) to read:

"(8.5) "Certified Food Safety Manager" means the same as defined under subsection 26-15a-102(2) and R392-101 Food Safety Manager Certification rule."

(b) Add definition 1-201.10(B)(10.5) to read:

"(10.5) "Code" means R392-100 Utah Food Service Sanitation Rule and related rules."

(c) Amend definition 1-201.10(B)(23) to read:

"(23) "Employee" means the permit holder, person in charge, supervisor or manager, inventory person, or person with responsibilities to serve guests, cook or prepare food, wash utensils, or who has cleaning responsibilities."

(d) Add definition 1-201.10(B)(25.5) to read:

"(25.5) "FDA" means the U.S. Food and Drug Administration."

(e) Amend definition 1-201.10(B)(30) to read:

"(30) "Food employee" means the same as "food handler" under subsection 26-15-1(1)."

(f) Amend definition 1-201.10(B)(31)(a) to read:

"(a) For the purposes of this rule, "Food Establishment" shall mean "Food Service Establishment" and refers to any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off premises and regardless of whether there is a charge for the food."

(g) Amend definition 1-201.10(B)(31)(b) to read:

"(b) "Food Establishment" includes but is not limited to:

(i) bars, bed and breakfasts, breweries, cafeterias, camps, caterers, child care facilities, coffee shops, commissaries, day cares, fairs, group residences, hospitals, hotels, motels, nursing homes, penal institutions, private clubs, restaurants, satellite sites, schools, senior citizen centers, shelters, snack bars, taverns or similar food facilities;

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location;

(iii) the area of a bakery, convenience store, delicatessen, or grocery store where food is prepared and intended for individual portion service and includes areas used for storing food used in this portion of the food establishment, warewashing, utility and waste disposal facilities; and

(iv) except as exempted in subsection 1-201.10(B)(30)(c)(v), the premises of a church, temple, and synagogue where food is prepared for the public or may include both members and the public."

(h) Amend definition 1-201.10(B)(31)(c)(iv) to read:

"(iv) A private home where food is prepared or served for private family, religious, or charitable functions where the public is not invited;"

(i) Amend section 1-201.10(B)(31)(c)(v) to read:

"(v) The premises of a church, temple or synagogue where food is normally prepared or served only for private family, religious or charitable functions to which the public (other than members of the church, temple, or synagogue) is not invited;"

(j) Amend section 1-201.10(B)(31)(c)(vi) to read:

"(vi) The portion of a bakery, convenience store, delicatessen, or grocery store not covered under subsection 1-201.10(B)(30)(b)(iii); and food or water vending machines. Any portion of 1-201.10(B)(30)(c)(vi) may be amended by a Memorandum of Understanding between the local health department and the Utah Department of Agriculture and Food to allow for a more cost effective use of local and state inspection resources;"

(k) Add section 1-201.10(B)(31)(c)(viii) to read:

"(viii) A home used to provide adult or child care for four or fewer persons."

(l) Amend definition 1-201.10(B)(33) to read:

"(33) "Game Animal" means an animal, the product of which is food, that is not classified as cattle, sheep, swine, or goat in 9 CFR Subchapter A- Mandatory Meat Inspection, part 301, as poultry in 9 CFR Subchapter C - Mandatory Poultry Products Inspection, part 381, or as fish."

(m) Amend definition 1-201.10 (B)(41) to read:

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

(i) the number of potential injuries or illnesses; and

(ii) the nature, severity, and duration of the anticipated injury or illness."

(n) Amend definition 1-201.10(B)(47) to read:

"(47) "Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals as specified under Subparagraph 3-201.17(A)(3)."

(o) Amend definition 1-201.10(B)(61)(c)(v) to read:

"(v) A food for which a variance granted by FDA or USDA is based upon laboratory evidence which demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of S. Enteritidis in eggs or C. botulinum can not occur, such as a food that has an $a_w$ and a pH that are above the levels specified under Subparagraphs (c)(ii) and (iii) of this definition and that may contain a preservative, other barrier to the growth of microorganisms, or a combination

of barriers that inhibit the growth of microorganisms; or"

(p) Amend definition 1-201.10(B)(87) to read:

"(87) "Temporary food establishment" means:

(a) A food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

(b) "temporary food establishment" does not include:

(i) A food establishment that offers only commercially prepared and packaged foods that are not potentially hazardous and require no preparation or handling; or

(ii) A produce stand that offers only whole, uncut fresh fruit and vegetables."

(q) Amend the introduction to section 2-102.11 to read:

"Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge or the certified food safety manager shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of this code. The person in charge or the certified food safety manager shall demonstrate this knowledge by compliance with this code and by responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:"

(r) Adopt subsections 2-102.11(A) through (O) without changes.

(s) Add a new number/catchline and section to read:

"2-102.12 Food Employee Training.

Food employees shall be trained in food safety as required under 26-15-5 and shall hold a valid food safety permit."

(t) Amend section 2-301.12(A) to read:

"(A) Food employees shall clean their hands and exposed portions of their arms with a cleaning compound in a lavatory that is equipped as specified under section 5-202.12 by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clean water. Employees shall pay particular attention to the areas underneath the fingernails and between the fingers."

(u) Amend section 2-301.15 to read:

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

(v) Amend section 2-401.11(B) to read:

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

(w) Adopt subsections 2-401.11(B)(1) through (3) without changes.

(x) Amend section 2-403.11(B) to read:

"(B) Food employees with service animals may handle or care for their service animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in display tanks if they wash their hands as specified under sections 2-301.12, 2-301.13, and section 2-301.14(C)."

(y) Add section 3-201.11(G) to read:

"(G) Except for food establishments that prepare fruit juices at point-of-sale, the use of unpasteurized fruit juices in food establishments is prohibited."

(z) Amend section 3-201.13 to read:

"Fluid milk and milk products shall be obtained from sources that comply with Grade A Pasteurized Standards as specified in law."

(aa) Amend section 3-201.16 to read:

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

(ab) Amend section 3-201.17(A)(1) to read:

"(1) Commercially raised for food and raised, slaughtered, and processed under a voluntary meat inspection program by the Utah Department of Agriculture and Food, Division of Animal Industry;"

(ac) Amend section 3-201.17(A)(2) to read:

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

(ad) Amend the introduction to section 3-201.17(A)(3) and subsections (a) and (b) to read:

"(3) Raised, slaughtered, and processed under a routine inspection program conducted by the Utah Department of Agriculture and Food, Division of Regulatory Services. Game meat under this program shall be:

(a) Slaughtered in a facility approved by the Utah Department of Agriculture and Food and with consideration of an antemortem and postmortem examination done by a veterinarian or a trained veterinarian designee, or as approved by the regulatory authority, and

(b) Processed under a HACCP plan according to laws governing meat and poultry products; or"

(ae) Amend section 3-301.11(B) to read:

"(B) Except when washing fruits and vegetables as specified under section 3-302.15, food employees shall minimize contact with exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissues, spatulas, tongs, single-use gloves, or dispensing equipment."

(af) Amend section 3-302.13 to read:

" 3-302.13 Pasteurized Eggs, Substitute for Raw Shell Eggs for Certain Recipes.*

(A) Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, eggnog, ice cream, and egg-fortified beverages that are not cooked as specified in Subparagraphs 3-401.11(A)(1) or (2).

(B) Four or more eggs may not be pooled for use as an ingredient unless they are combined and cooked immediately."

(ag) Add section 3-304.12.5 to read:

"Utensils used for dispensing frozen desserts shall be stored using methods specified in sections 3-304.12(A), or (D)."

(ah) Amend section 3-304.13 to read:

"Linens or napkins may be used in contact with dry foods, such as breads and rolls, if the linens or napkins are replaced each time the container is refilled for a new consumer."

(ai) Amend section 3-401.11(A)(3) to read:

"74 degrees C (165 degrees F) or above for 15 seconds for poultry, wild game animals as specified under Subparagraph 3-201.17(A)(3), stuffed fish, stuffed meat, stuffed pasta, stuffed

poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites."

(aj) Add section 3-501.14 (E) to read:

"(E) Whenever the temperature of a cooling potentially hazardous food is found to be out of the temperature ranges specified in section 3-501.14 (A)-(D), it shall be the responsibility of the person in charge to demonstrate to the regulatory authority that the facility has cooling procedures which are effective in meeting those requirements and that the procedures are followed."

(ak) Amend section 3-501.16(A) to read:

"At 57 degrees C (135 degrees F) or above, except that roasts cooked to a temperature and for a time specified under section 3-401.11(B) or reheated as specified in section 3-403.11(E) may be held at a temperature of 54 degrees C (130 degrees F); or"

(al) Amend Section 3-501.16(C)(2)to read:

"(2) By October 15, 2004 the equipment is upgraded or replaced to maintain food at a temperature of 5 degrees C (41degrees F) or less."

(am) Add section 3-501.17(G) to read:

"(G) In a child care center, baby food, infant formula, and breast milk for infants that are brought from home for the individual child's use shall be:

(1) Marked with the name of the child and the date of bottling in the case of breast milk or opening of the container, such as a jar of baby food;

(2) Open containers of baby food, infant formula, and breast milk shall be refrigerated and stored for no more than 24 hours; and

(3) Infant formula shall be discarded after feeding or within two hours of initiating a feeding."

(an) Amend section 3-603.11 to read:

"3-603.11 Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens.*

(A) Except as specified in section 3-401.11(C) and subparagraph 3-401.11(D)(3), and under section 3-801.11(D), if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish that is raw, undercooked, or not otherwise processed to eliminate pathogens is offered in a ready-to-eat form as a deli, menu, vended, or other item; or as a raw ingredient in another ready-to-eat food, the permit holder shall inform consumers by identifying on the menu the foods that have significantly increased risk associated with certain especially vulnerable consumers eating such foods in raw or undercooked form. There are two components to satisfactory compliance with the consumer advisory:

Disclosure is satisfied when:

Items are asterisked to a footnote that states that the items:

(a) Are served raw or undercooked, or

(b) Contain (or may contain) raw or undercooked ingredients.

Reminder is satisfied when the items requiring disclosure are asterisked to a footnote that states:

"Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of foodborne illness. Consult your physician or public health official for further information.""

(ao) Amend section 3-801.11(D) to read:

"(D) Except when a resident or legal guardian has been informed of the hazards of eating raw or undercooked animal food per section 3-603.11(B) and signed a waiver requesting raw or undercooked animal foods, the following foods may not be served or offered for sale in a ready-to-eat form:"

(ap) Adopt subsections 3-801.11(D)(1) through(3) without changes.

(aq) Add section 4-204.124 to read:

"4-204.124 Restraint of Pressurized Containers.

Carbon dioxide, helium or other similar pressurized containers must be restrained or secured to prevent the tanks from falling over."

(ar) Amend section 4-205.10 to read:

"4-205.10 Food Equipment, Certification and Classification.

Food equipment installed after the effective date of this rule must be certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program in order to comply with Parts 4-1 and 4-2 of this chapter."

(as) Amend section 4-301.12 (C) to read:

"(C) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment may include:

(1) High-pressure detergent sprayers;

(2) Low- or line-pressure spray detergent foamers;

(3) Other task-specific cleaning equipment;

(4) Brushes or other implements; or

(5) Receptacles that substitute for the compartments of a multi-compartment sink."

(at) Amend section 4-301.14 to read:

"4-301.14 Ventilation Hood Systems, Adequacy.

(A) Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

(B) A Type I or Type II hood shall be installed at or above all commercial heat-producing appliances according to the provisions of R156-56-701(d) International Mechanical Code, and amendments adopted under R156-56-708."

(au) Amend the introduction to section 5-101.11 to read:

"Drinking water shall be obtained from an approved water system as defined under R309-101 through R309-113 that is either:"

(av) Amend section 5-101.11(A) to read:

"(A) "Community water systems"

(aw) Amend section 5-101.11(B) to read:

"(B) "Non-transient, non-community water system; or""

(ax) Add section 5-101.11(C) to read:

"(C) "Non-community water system."

(ay) Amend section 5-101.12 to read:

"A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system by:

(A) The pipe system shall be flushed with clean, potable water until dirty water does not appear at the point of outlet.

(B) The system shall be filled with a water/chlorine

solution containing:

(1) At least 50 parts per million (50mg/L) of chlorine and the system shall be valved off and allowed to stand at least 24 hours; or

(2) The system shall be filled with a water/chlorine solution containing at least 200 parts per million (200 mg/L) of chlorine and allowed to stand for three hours.

(C) Following the required standing time, the system shall be flushed with clean potable water until the chlorine is purged from the system.

(D) The procedure shall be repeated where shown by bacteriological examination that contamination remains present in the system."

(az) Amend section 5-102.11(A) to read:

"(A) Water from a public water system shall meet 40 CFR 141 - National Primary Drinking Water Regulations; and"

(ba) Amend section 5-102.11(B) to read:

"(B) R309-101 through R309-113 Rules for Public Drinking Water Systems."

(bb) Amend section 5-102.13 to read:

"Water from a non-community water system, or a non-transient, non-community water system shall be sampled as required by R309-103 Drinking Water: Water Quality Maximum Contamination Levels (MCLs) and R309-104 Drinking Water: Monitoring, Reporting, and Public Notification and local drinking water quality regulations."

(bc) Amend section 5-102.14 to read:

"The most recent sample report of the non-community water system or non-transient, non-community water system shall be retained on file in the food establishment and the report shall be maintained as required by R309-104-8."

(bd) Amend section 5-103.11(B) to read:

"(B) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment, and"

(be) Add section 5-103.11(C) to read:

"(C) Hot and cold water shall be provided through tempered mixing faucets at all handwashing lavatories, food preparation sinks, warewashing sinks, service sinks, or curbed cleaning facilities."

(bf) Amend section 5-202.11(A) to read:

"(A) A plumbing system shall be designed, constructed, and installed as required by R156-56-701(c) International Plumbing Code and R156-56-707 amendments to the International Plumbing Code."

(bg) Amend section 5-202.12(A) to read:

"(A) A handwashing lavatory shall be equipped to provide water at a temperature of at least 95ºF within 30 seconds of opening the mixing valve."

(bh) Amend section 5-203.11(C) to read:

"(C) An adequate number of handwashing stations shall be provided for each temporary food establishment to include: a minimum of one handwashing station equipped with one enclosed container with a spigot, soap, water, paper towels, and a collection container for waste water."

(bi) Amend section 5-203.14 to read:

"Except for water heater drains and clothes washers a plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by law, by:

(A) Providing an air gap as specified under section 5-202.13; or

(B) Installing an approved backflow prevention device as specified under section 5-202.14."

(bj) Amend section 5-203.15 to read:

"The water supply to carbonators shall be installed according to the requirements of R156-56-701(c) International Plumbing Code and R156-56-707 Amendments to the International Plumbing Code."

(bk) Amend section 5-205.13 to read:

"5-205.13 Scheduling Inspection and Service for a Water System Device.

(A) A device such as a water treatment devices shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.

(B) The premise owner or responsible person shall have the backflow prevention assembly tested by a certified backflow assembly tester at the time of installation, repair, or relocation and at least on an annual schedule or more often when required by the regulatory authority."

(bl) Amend section 6-201.14(A) to read:

"(A) A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerator, warewashing areas, food storage, and toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas subject to moisture, flushing, or spray cleaning methods."

(bm) Amend section 6-301.11 to read:

"6-301.11 Handwashing Cleaners and Hand Sanitizers, Availability.

(A) Each handwashing lavatory or group of 2 adjacent lavatories shall be provided with a supply of hand cleaning liquid, powder, bar soap; and

(B) When a hand sanitizer is used, each handwashing lavatory or group of 2 adjacent lavatories shall be provided with a hand sanitizer or a chemical hand sanitizing solution used as a hand dip.

(C) When a hand sanitizer is used, the dispenser for the hand sanitizer or the chemical hand sanitizing solution used as a hand dip shall be located at the handwashing lavatory and may not be located anywhere else."

(bn) Amend section 6-301.13 to read:

"Except for a combination sink approved by the regulatory authority, a sink used for food preparation or utensil washing, or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing lavatory as specified in sections 6-301.11, 6-301.12, and section 5-501.16(C)."

(bo) Amend section 6-501.111 to read:

"The presence of insects, rodents, and other pests shall be controlled by:

(A) Routinely inspecting incoming shipments of food and supplies;

(B) Routinely inspecting the premises for evidence of pests;

(C) Using methods, if pests are found, such as trapping devices or other means of pest control as specified under sections 7-202.12, 7-206.12, and 7-206.13; and

(D) Eliminating harborage conditions."

(bp) Add section 7-203.12 number/catchline to read:

"7-203.12 Food Containers Prohibited from Storing Toxic Materials."

(bq) Add section 7-203.12 to read:

"A food container may not be used to store, transport, or dispense poisonous or toxic materials.

(br) Amend section 8-103.10 to read:

"8-103.10 Modifications and Waivers.

(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment.

(B) A variance or waiver issued by the regulatory authority and the documentation required in section 8-103.11 must be copied to the Utah Department of Health, Bureau of Food Safety and Environmental Health within 5 working days of issuance.

(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health jurisdiction in the State must be approved by the Utah Department of Health prior to issuance."

(bs) Amend section 8-103.11 to add:

"(D) In addition, a variance from section 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or work station;

(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active management control of this risk factor at all times."

(bt) Amend Section 8-302.14 (C) to read:

"A statement specifying whether the food establishment is mobile or stationary and temporary or permanent."

(bu) Delete Sections 8-302.14 (D) and (E).

(bv) Amend section 8-302.14 to renumber (F) to (D), (G) to (E), and (H) to (F).

(bw) Amend section 8-304.10(A) to read:

"(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency."

(bx) Amend section 8-304.11(H) to read:

"(H) Upgrade or replace refrigeration equipment as specified under section 3-501.16(C), if the circumstances specified under Subparagraphs (G)(1)-(3) of this section do not occur first, and by no later than October 15, 2004;"

(by) Amend section 8-304.11(J) to read "Accept notices issued and served by the REGULATORY AUTHORITY according to LAW:"

(bz) Amend section 8-304.11(K) to read "Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Code or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and".

(ca) Amend section 8-401.10(A) to read:

"(A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations."

(cb) Amend section 8-403.50 to read:

"Except as specified in section 8-202.10, the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in law."

(cc) Amend section 8-501.10(B) to read:

"(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees; and"

(cd) Add section 8-501.10(C) to read:

"(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703."

(ce) Amend section 8-601.10 to read:

"Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions."

(cf) Amend section 8-701.30 to read:

"Service is effective at the time the notice is served or when service is made as specified in section 8-701.20(B)."

(cg) Amend section 8-803.10 to read:

"8-803.10 Impoundment of Adulterated Food Products Authorized.

(A) The impoundment of adulterated food is authorized under Section 26-15-9, UCA.

(B) The regulatory authority may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption,

(C) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health and

(D) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping."

(ch) Amend section 8-803.60 to read:

"The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11."

(ci) Amend section 8-803.90 to read:

"The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated."

(cj) Amend section 8-804.30 number/catchline to read:

"8-804.30 Contents of the Summary Suspension Notice."

(ck) Amend section 8-805.10(A) to read:

"(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service.

Failure to respond may result in license suspension, license revocation, or other administrative penalties."

(cl) Amend section 8-805.20 to read:

"A response to a hearing notice or a request for a hearing as specified in section 8-805.10 shall be in written form and contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

(4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section 8-805.30(B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any."

(cm) Amend the introduction to section 8-805.50(A)(1) to read:

"(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:"

(cn) Adopt subsections 8-805.50(A)(1)(a) through (c) without changes.

(co) Amend subsection 8-805.50(A)(2) to read:

"(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-805.10(C) or for matters as determined necessary by the regulatory authority."

(cp) Amend section 8-805.60 number/catchline to read:

"8-805.60 Notice of Hearing Contents."

(cq) Amend section 8-805.80 number/catchline to read:

"8-805.80 Expeditious and Impartial Hearing."

(cr) Amend section 8-805.90 number/catchline to read:

"8-805.90 Confidentially of Hearing and Proceedings."

(cs) Amend section 8-805.90(A) to read:

"(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law."

(ct) Amend the introduction to section 8-806.30(B) to read:

"(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer "

(cu) Adopt subsections 8-806.30(B)(1) through (2) without changes.

(cv) Amend section 8-807.60 to read:

"Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer."

(cw) Amend section 8-808.20 to read:

"Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review."

(cx) Amend section 8-811.10(B) to read:

"(B) Any person who violates any provision of this rule may be assessed a civil penalty not to exceed the sum of $5,000.00 or be punished for violation of a class B misdemeanor for the first violation. For any subsequent similar violation within two years, the person may be punished for violation of a class A misdemeanor as provided in section 26-23-6."

(cy) Amend section 8-813.10 number/catchline to read:

"8-813.10 Petitions, Penalties, Contempt, and Continuing Violations."

(cz) Amend section 8-813.10(B) to replace the phrase "(designate amount)" with the phrase "$5,000".

(da) Add paragraph 8-813.10(D) to read:

"(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of the its order."

**KEY: public health, food services**

**September 3, 2002 26-1-30(2)**

**Notice of Continuation May 17, 2002 26-15-2**

**R398. Health, Community and Family Health Services, Children with Special Health Care Needs.**
**R398-5. Birth Defects Reporting.**
**R398-5-1. Purpose and Authority.**

This rule establishes reporting requirements for birth defects for births in Utah and for birth-defect related test results. Sections 26-1-30(2)(c), (d), (e), (g), (p), (t), 26-10-1(2), and 26-10-2 authorize this rule.

**R398-5-2. Definitions.**

As used in this rule:

(1) "Birthing center" means a birthing center licensed under Title 26, Chapter 21.

(2) "Birth defect" means a congenital anomaly listed in the ICD-9-CM (International Classification of Diseases, 9th Revision, Clinical Modification, established by the United States Center for Health Statistics) with a diagnostic code from 740.0 to 759.9 or in the ICD-10 (International Classification of Diseases, 10th Revision, established by the World Health Organization) with a diagnostic code from Q00-Q99.

(3) "Hospital" means general acute hospital, children's specialty hospital, remote-rural hospital licensed under Title 26, Chapter 21.

**R398-5-3. Reporting by Hospitals and Birthing Centers.**

Each hospital or birth center that admits a patient and detects a birth defect as a result of any outcome of pregnancy, or admits a child under 24 months of age with a birth defect shall report or cause to report to the department within 40 days of discharge the following:

(1) child's name;
(2) child's date of birth;
(3) mother's name;
(4) mother's date of birth;
(5) delivery hospital;
(6) birth defects diagnoses;
(7) mother's state of residency at delivery;
(8) child's sex; and
(9) mother's zip code.

**R398-5-4. Reporting by Laboratories.**

Each laboratory operating in the state that identifies a human chromosomal or genetic abnormality or other evidence of a birth defect shall report the following on a calendar quarterly basis to the department within 40 days of the end of the preceding calendar quarter:

(1) if live born, child's name and date of birth;
(2) mother's name;
(3) mother's date of birth;
(4) date the sample is accepted by the laboratory;
(5) test conducted;
(6) test result; and
(7) mother's state of residency at delivery.

**R398-5-5. Record Abstraction.**

Hospitals and birthing centers required to report pursuant to this rule as well as community health care providers who participate voluntarily shall allow personnel from the department or its contractors to abstract information from the mother's and child's files on their demographic characteristics, family history of birth defects, prenatal information and outcomes of that and other pregnancies by that mother.

**R398-5-6. Liability.**

As provided in Title 26, Chapter 25, persons who report, either voluntarily or as required by this rule, information covered by this rule may not be held liable for reporting the information to the Department of Health.

**R398-5-7. Penalties.**

Pursuant to Section 26-23-6, any person that willfully violates any provision of this rule may be assessed an administrative civil money penalty not to exceed $1,000 upon an administrative finding of a first violation and up to $3,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed $5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

**KEY: birth defects, birth defect reporting**
**September 17, 2002** **26-1-30(2)(c), (d), (e), (g), (p), (t)**
**26-10-1(2)**
**26-10-2**
**26-25-1**

**R432. Health, Health Systems Improvement, Licensing.**
**R432-101. Specialty Hospital - Psychiatric.**
**R432-101-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

**R432-101-2. Purpose.**

This rule applies to a hospital that chooses to be licensed as a specialty hospital and where its major single service is psychiatric service. If a specialty hospital chooses to have a dual service, e.g., psychiatric and substance abuse or chemical dependency, then both of the appropriate specialty hospital rules apply.

**R432-101-3. Time for Compliance.**

All psychiatric specialty hospitals obtaining initial licensure shall fully comply with this rule.

**R432-101-4. Definitions.**

(1) See Common Definitions in R432-1-3.

(2) Special Definitions.

(a) "Specialty Hospital" means a facility with the following:

(i) a duly constituted governing body with overall administrative and professional responsibility;

(ii) an organized medical staff which provides 24 hour inpatient care;

(iii) a chief executive officer to whom the governing body delegates the responsibility for the operation of the hospital;

(iv) a distinct nursing unit of at least six inpatient beds;

(v) current and complete medical records;

(vi) provide continuous registered nursing supervision and other nursing services;

(vii) provide in house the following basic services:

(A) laboratory;

(B) pharmacy;

(C) emergency services and provision for interim care of traumatized patients coordinated with an appropriate emergency transportation service;

(D) specialized diagnostic and therapeutic facilities, medical staff, and equipment required to provide the type of care in the recognized specialty or specialties for which the hospital is organized.

(viii) provide on-site all basic services required of a general hospital that are needed for the diagnosis, therapy and treatment offered or required by patients admitted to or cared for in the specialty facility;

(b) "Investigational Drug" means a drug that is being investigated for human or animal use by the manufacturer or the Food and Drug Administration (FDA); a drug which has not been approved for use by the FDA;

(c) A "physical restraint" means an involuntary intervention employing any device intended to control or restrict the physical movement of a patient, whether applied directly to the patient's body or applied indirectly to act as a barrier to voluntary movement. Simple safety devices are a type of physical restraint.

(d) "Seclusion" means an involuntary intervention employing a procedure that isolates the patient in a specific room or designated area to temporarily remove the patient from the therapeutic community and reduce external stimuli.

(e) "Secure hospital" means a hospital where traffic in and out of the hospital setting is controlled in order to maintain safety for both patients and the community.

(f) "Stable" means a patient is no longer a danger to himself or others, and is able to function and demonstrate the ability to maintain improvements outside the hospital setting.

(g) "Time out" means isolating a patient for a period of time, on a voluntary basis in an unlocked room. This shall be based on hospital policy, as a procedure designed to remove the patient who is exhibiting a specified behavior from the source of stimulation or reinforcement.

(h) "Activity services" means therapies which involve the principles of art, dance, movement, music, occupational therapy, recreational therapy and other disciplines.

(i) "Plan for Patient Care Services" means a written plan which ensures the care, treatment, rehabilitation, and habilitation services provided are appropriate to the needs of the patient population served and the severity of the disease, condition, impairment, or disability.

(j) "Partial Hospitalization" means a time-limited, ambulatory, active treatment program that offers therapeutically intensive, coordinated and structured clinical services where the daily stay lasts no more than 23 hours with the goal of stabilizing the patient to avert inpatient hospitalization or of reducing the length of a hospital stay.

**R432-101-5. Licensure.**

License required. See R432-2.

**R432-101-6. General Construction Rules.**

See R432-7, Psychiatric Construction Rule.

**R432-101-7. Organization.**

(1) The Governing Body, R432-100-5 applies.

(2) The governing body shall develop through its officers, committees, medical and other staff, a mission statement that includes a Plan for Patient Care Services.

**R432-101-8. Administrator.**

(1) Refer to R432-100-6.

(2) The administrator shall organize and staff the hospital according to the nature, scope and extent of services offered.

**R432-101-9. Professional Staff.**

(1) The psychiatric services of the hospital shall be organized, staffed and supported according to the nature, scope and extent of the services provided.

(2) Medical and professional staff standards shall comply with R432-100-7. The medical direction of the psychiatric care and services of the hospital shall be the responsibility of a licensed physician who is a member of the medical staff, appointed by the governing body and certified or eligible for certification by the American Board of Psychiatry and Neurology.

(3) Nursing staff standards shall comply with R432-100-12.

(4) The hospital shall provide sufficient qualified, and competent, health care professional and support staff to assess

and address patient needs within the Plan for Patient Care Services.

(5) Qualified professional staff members may be employed on a full-time, on a part-time basis or be retained by contract.

(6) Professional staff shall be assigned or assume specific responsibilities on the treatment team as qualified by training and educational experience and as permitted by hospital policy and the scope of the professional license.

**R432-101-10. Personnel Management Service.**

(1) The hospital shall provide licensed, certified or registered personnel who are able and competent to perform their respective duties, services, and functions.

(2) Written personnel policies and procedures shall include:

(a) job descriptions for each position, including job title, job summary, responsibilities, minimum qualifications, required skills and licenses, and physical requirements;

(b) a method to handle and resolve grievances from the staff.

(3) All personnel shall have access to hospital policy and procedure manuals, a copy of their position description, and other information necessary to effectively perform duties and carry out responsibilities.

(a) The facility shall conduct a criminal background check with the Department of Public Safety for all employees prior to beginning employment.

(b) The facility is responsible for the security and confidentiality of all information obtained in the criminal background check.

(4) All employees shall be oriented to job requirements and personnel policies, and be provided job training beginning the first day of employment. Documentation shall be signed by the employee and supervisor to indicate basic orientation has been completed during the first 30 days of employment.

(a) Registered nurses, licensed practical nurses and psychiatric technologists shall receive additional orientation to the following:

(i) concepts of treatment provided within the hospital;

(ii) roles and functions of nurses in the treatment programs;

(iii) psychotropic medications.

(b) In-service sessions shall be planned and held at least quarterly and be available to all employees. Attendance standards shall be established by policy.

(c) Licensed professional staff shall receive continuing education to keep informed of significant new developments and to be able to develop new skills.

(d) The following in-service staff development topics shall be addressed annually:

(i) fire prevention;

(ii) review and drill of emergency procedures and evacuation plan;

(iii) prevention and control of infections;

(iv) training in the principles of emergency medical care and cardiopulmonary resuscitation for physicians, licensed nursing personnel, and others as appropriate;

(v) proper use and documentation of restraints and seclusion;

(vi) patients' rights, refer to R432-101-15;

(vii) confidentiality of patient information;

(viii) reporting abuse, neglect or exploitation of adults or children; and

(ix) provision of care appropriate to the age of the patient population served.

(5) Volunteers may be utilized in the daily activities of the hospital but shall not be included in the hospital's staffing plan in lieu of hospital employees.

(a) Volunteers shall be screened by the administrator or designee and supervised according to hospital policy.

(b) Volunteers shall be familiar with the hospital's policies and procedures on volunteers, including patient rights and facility emergency procedures.

(6) All hospital personnel shall be licensed, registered, or certified as required by the Utah Department of Commerce. Copies of the current license, registration or certification shall be in the personnel files. Failure to ensure that the individual is appropriately licensed, registered or certified may result in sanctions to the facility license.

**R432-101-11. Quality Assurance.**

(1) The facility shall have a well-defined quality assurance plan designed to improve the delivery of patient care through evaluation of the quality of patient care services and resolution of identified problems. The plan shall be consistent with the Plan for Patient Care Services.

(2) The plan shall be implemented and include a method for:

(a) identification and assessment of problems, concerns, or opportunities for improvement of patient care;

(b) implementation of actions that are designed to:

(i) eliminate identified problems where possible;

(ii) improve patient care;

(c) documentation of corrective actions and results;

(d) reporting findings and concerns to the medical, nursing, and allied health care staffs, the administrator, and the governing board.

(3) Documentation of minutes of meetings shall be maintained for Department review.

**R432-101-12. Infection Control.**

(1) The facility shall have a written plan to effectively prevent, identify, report, evaluate and control infections.

(2) The plan shall include a method to collect and monitor data and carry out necessary follow-up actions.

(3) Infection control actions shall be documented consistent with the requirements of the plan and in accordance with Department requirements and standards of medical practice.

(4) In-service education and training of employees shall be provided to all service and program components of the hospital.

(5) The infection control plan shall be reviewed and revised as necessary, but at least annually.

(6) The hospital shall implement an employee health surveillance program and infection control policy which meets the requirements of R432-100-10 and the following:

(a) complete at the time a person is hired, an employee health inventory that includes the following:

(i) conditions that may predispose the employee to acquiring or transmitting infectious diseases;

(ii) conditions that may prevent the employee from satisfactorily performing assigned duties.

(b) develop employee health screening and immunization components of personnel health programs in accordance with Rule R386-702, concerning communicable diseases;

(c) conduct employee skin testing by the Mantoux Method and follow up for tuberculosis in accordance with R388-804, concerning measures for control of tuberculosis:

(i) skin testing must be conducted on each employee annually and after suspected exposure to a resident with active tuberculosis;

(ii) all employees with known positive reaction to skin tests are exempt from skin testing.

(d) report all infections and communicable diseases reportable by law to the local health department in accordance with Section R386-702-2, concerning reportable diseases; and

(e) comply with the Occupational Safety and Health Administration's Bloodborne Pathogen Standard.

**R432-101-13. Patient Security.**

(1) The facility shall provide sufficient internal and external security measures consistent with the Plan for Patient Care Services. There shall be positive supervision and control of the patient populations at all times to assure patient and public safety.

(2) If a facility offers more than one treatment program or serves more than one age group, patient population or program, the patients shall not be mixed or be co-mingled.

(3) There shall be sufficient supervision to ensure a safe and secure living environment which is defined in the Plan for Patient Care Services.

**R432-101-14. Special Treatment Procedures.**

There shall be a hospital policy regarding the use of special treatment procedures. It shall include as a minimum:

(1) the use of seclusion, refer to R432-101-23;

(2) the use of restraint, refer to R432-101-23;

(3) the use of convulsive therapy including electroconvulsive therapy;

(4) the use of psychosurgery or other surgical procedures for the intervention or alteration of a mental, emotional or behavioral disorder;

(5) the use of behavior modification with painful stimuli;

(6) the use of unusual, investigational and experimental drugs;

(7) the use of drugs associated with abuse potential and those having substantial risk or undesirable side effects;

(8) an explanation as to whether the hospital will conduct research projects involving inconvenience or risk to the patient; and

(9) involuntary medication administration for emergent and ongoing treatment.

**R432-101-15. Patients' Rights.**

(1) Each patient shall be provided care and treatment in accordance with the standards and ethics accepted under Title 58 for licensed, registered or certified health care practitioners.

(2) There shall be a committee appointed by the administrator that consists of members of the facility staff, patients or family members, as appropriate, other qualified persons with knowledge of the treatment of mental illness, and at least one person who has no ownership or vested interest in the facility. This committee shall:

(a) review, monitor and make recommendations concerning individual treatment programs established to manage inappropriate behavior, and other programs that, in the opinion of the committee, involve risks to patient safety or restrictions of a patient's rights, or both;

(b) review, monitor and make recommendations concerning facility practices and policies as they relate to drug usage, restraints, seclusion and time out procedures, applications of painful or noxious stimuli, control of inappropriate behavior, protection of patient rights and any other area that the committee believes need to be addressed;

(c) keep minutes of all meetings and communicate the findings to the administrator for appropriate action;

(d) designate a person to act as a patient advocate, to be available to respond to questions and requests for assistance from the patients and to bring to the attention of the committee any issues or items of interest that concern the rights of the patients or their care and status;

(e) recommend written policies with regard to patient rights which are consistent with state law. Once adopted, these policies shall be posted in areas accessible to patients, and made available upon request to the patient, family, next of kin or the public.

(3) The individual treatment plan and clinical orders shall address the following rights to ensure patients are permitted communication with family, friends and others. Restrictions to these rights shall be reviewed by the Patient Rights or Ethics Committee. Limitations to the rights identified in R432-101-15(3)(a) through (d) may be established to protect the patient, other patients or staff or where prohibited by law.

(a) Each patient shall be permitted to send and receive unopened mail.

(b) Each patient shall be afforded reasonable access to a telephone to make and receive unmonitored telephone calls.

(c) Each patient shall be permitted to receive authorized visitors and to speak with them in private.

(d) Each patient shall be permitted to attend and participate in social, community and religious groups.

(e) Each patient shall be afforded the opportunity to voice grievances and recommend changes in policies and services to hospital staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal.

(f) Each patient shall be permitted to communicate via sealed mail with the Utah Department of Human Services, the Utah Department of Health, the Legal Center for the People with Disabilities, legal counsel and the courts. The patient shall be permitted to communicate with and to visit with legal counsel or clergy of choice or both.

(4) Each patient shall be afforded the opportunity to participate in the planning of his care and treatment. The patient's participation in the treatment planning shall be documented in the medical record.

(a) Each patient shall receive an explanation of treatment

goals, methods, therapies, alternatives and associated costs.

(b) Each patient shall be able to refuse care and treatment, as permitted by law, including experimental research and any treatment that may result in irreversible conditions.

(c) Each patient shall be informed of his medical condition, upon request, unless medically contraindicated. If contraindicated, the circumstances must be documented in the patient record.

(d) Each patient shall be free from mental and physical abuse and free from chemical and physical restraints except as part of the authorized treatment program, or when necessary to protect the patient from injury to himself or to others.

(5) Each patient shall be afforded the opportunity to exercise all civil rights, including voting, unless the patient has been adjudicated incompetent and not restored to legal capacity.

(a) Patients shall not be required to perform services for the hospital that are not included for therapeutic purposes in the plans of care.

(b) Patients shall not be required to participate in publicity events, fund raising activities, movies or anything that would exploit the patients.

(c) Each patient shall be permitted to exercise religious beliefs and participate in religious worship services without being coerced or forced into engaging in any religious activity.

(d) Each patient shall be permitted to retain and use personal clothing and possessions as space permits, unless doing so would infringe upon rights of other patients or interfere with treatment.

(e) Each patient shall be permitted to manage personal financial affairs, or to be given at least a monthly accounting of financial transactions made on their behalf should the hospital accept a patient's written delegation of this responsibility.

**R432-101-16. Emergency and Disaster.**

(1) The hospital shall be responsible to assure the safety and well-being of patients.

(a) There must be provisions for the maintenance of a safe environment in the event of an emergency or disaster.

(b) An emergency or disaster may include to utility interruption, such as gas, water, sewer, fuel and electricity, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The administrator or his designee shall be responsible for the development of a plan, coordinated with state and local emergency or disaster offices, to respond to emergencies or disasters.

(a) This plan shall be in writing and list the coordinating authorities by name and title.

(b) The plan shall be distributed or made available to all hospital staff to assure prompt and efficient implementation.

(c) The plan shall be reviewed and updated as necessary in coordination with local emergency or disaster management authorities. The plan shall be available for review by the Department.

(d) The administrator shall be in charge of operations during any significant emergency. If not on the premises, the administrator shall make every reasonable effort to get to the hospital to relieve subordinates and take charge of the situation.

(e) Disaster drills, in addition to fire drills, shall be held semiannually for all staff. Drills and staff response to drills shall be documented.

(f) The facility shall identify and post in a prominent location the name of the person in charge and names and telephone numbers of emergency medical personnel, agencies and appropriate communication and emergency transport systems.

(3) The hospital's emergency response procedures shall address the following:

(a) evacuation of occupants to a safe place within the hospital or to another location;

(b) delivery of essential care and services to hospital occupants by alternate means regardless of setting;

(c) delivery of essential care and services when additional persons are housed in the hospital during an emergency;

(d) delivery of essential care and services to hospital occupants when staff is reduced by an emergency;

(e) maintenance of safe ambient air temperatures within the hospital.

(i) Emergency heating must have the approval of the local fire department.

(ii) An ambient air temperature of 58 degrees F (14 degrees C) or lower may constitute a danger to the health and safety of the patients in the hospital. The person in charge shall take immediate and appropriate action.

(4) The hospital's emergency plan shall delineate shall include:

(a) the person or persons with decision-making authority for fiscal, medical, and personnel management;

(b) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(c) assignment of personnel to specific tasks during an emergency;

(d) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(e) the individuals who shall be notified in an emergency in order of priority;

(f) method of transporting and evacuating patients and staff to other locations;

(g) conversion of hospital for emergency use.

(5) The facility shall schedule and hold at least one fire drill per shift per quarter. The facility shall document the date and time the drill was held, including a brief description of the event and participants. Documentation shall be maintained for review by the Department.

(a) There shall be a fire emergency evacuation plan, written in consultation with qualified fire safety personnel.

(b) A physical plant evacuation diagram delineating evacuation routes, location of fire alarm boxes and fire extinguishers, and emergency telephone numbers of the local fire department shall be posted in exit access ways throughout the hospital.

(c) The written plan shall include fire-containment procedures and how to use the hospital alarm systems and signals.

(d) The actual evacuation of patients during a drill is optional.

**R432-101-17. Admission and Discharge.**

(1) The hospital shall develop written admission, exclusion and discharge policies consistent with the Plan for Patient Care Services and the Utilization Review plan. These policies shall be available to the public upon request.

(2) The hospital shall make available to the public and each potential patient information regarding the various services provided, methods and therapies used by the hospital, and associated costs of such services.

(3) Admission criteria shall be clearly stated in writing in hospital policies.

(a) The facility shall assess and screen all potential patients prior to admission and admit a patient only if it determines that the facility is the least restrictive setting appropriate for their needs. The pre-screening process shall include an evaluation of the patient's past criminal and violent behavior.

(b) Patients shall be admitted for treatment and care only if the hospital is properly licensed for the treatment required and has the staff and resources to meet the medical, physical, and emotional needs of the patient.

(c) Patients shall be admitted by, and remain under the care of, a member of the medical staff. There shall be a written order for admission and care of the patient at the time of admission. A documented telephone order is acceptable.

(d) There shall be procedures to govern the referral of ineligible patients to alternate sources of treatment where possible.

(e) Involuntary commitment must be in accordance with Section 62A-12-234.

(4) The patient shall be discharged when the hospital is no longer able to meet the patient's identified needs, when care can be delivered in a less restrictive setting, or when the patient no longer needs care.

(a) There shall be an order for patient discharge by a member of the medical staff except as indicated in R432-101-17(4)(b) below.

(b) In cases of discharge against medical advice, AMA, the attending physician or qualified designee shall be contacted and the response documented in the patient record.

(c) Discharge planning shall be coordinated with the patient, family, and other parties or agencies who are able to meet the patient's needs.

(d) Upon discharge of a patient, all money and valuables of that patient which have been entrusted to the hospital shall be surrendered to the patient in exchange for a signed receipt.

**R432-101-18. Transfer Agreements.**

(1) The hospital shall maintain a written transfer agreement with one or more general acute hospitals to facilitate the placement of patients and transfer of essential patient information in case of medical emergency.

(2) Patients shall not be referred to another facility without prior contact with that facility.

**R432-101-19. Pets in Hospitals.**

(1) If a hospital chooses to allow pets in the facility, it shall develop a written policy in accordance with these rules and local ordinances.

(2) Household pets, such as dogs, cats, birds, fish, and hamsters, can be permitted only under the following conditions:

(a) pets must be clean and disease free;

(b) the immediate environment of pets must be kept clean;

(c) small pets such as birds and hamsters are kept in appropriate enclosures;

(d) pets not confined in enclosures must be hand held, under leash control, or under voice control;

(e) pets that are kept at the hospital or are frequent visitors shall have current vaccinations, including, but not limited to, rabies, as recommended by a designated licensed veterinarian.

(3) The hospital shall have written policies and procedures for pet care.

(a) The administrator or designee shall determine which pets may be brought into the hospital. Family members may bring a patient's pet to visit provided they have approval from the administrator and offer reasonable assurance that the pets are clean, disease free, and vaccinated as appropriate.

(b) Hospitals with birds shall have procedures which protect patients, staff, and visitors from psittacosis. Procedures should ensure minimum handling of droppings. Droppings shall be placed in a plastic bag for disposal.

(c) Hospitals with pets that are kept overnight shall have written policies and procedures for the care, feeding, and housing of such pets and for proper storage of pet food and supplies.

(4) Pets are not permitted in food preparation or storage areas. Pets shall not be permitted in any area where their presence would create a significant health or safety risk to others. Persons caring for any pets shall not have patient care or food handling responsibilities.

**R432-101-20. Inpatient Services.**

(1) Upon admission, a physician or qualified designee shall document the need for admission. A brief narrative of the patient's condition, including, the nurses admitting notes, temperature, pulse, respirations, blood pressure, and weight, shall be documented in the patient's record. The admission record shall be completed according to hospital policy.

(a) A physician or qualified designee shall make an assessment of each patient's physical health and a preliminary psychiatric assessment within 24 hours of admission. The history and physical exam shall include appropriate laboratory work-up, a determination of the type and extent of special examinations, tests, or evaluations needed, and when indicated, a thorough neurological exam.

(b) A psychiatrist or psychologist or qualified designee shall make an assessment of each patient's mental health within 24 hours of admission. A written emotional or behavioral assessment of each patient shall be entered in the patient's record.

(c) There shall be a written assessment of the patient's legal status to include but not be limited to:

(i) a history with information about competency, court commitment, prior criminal convictions, and any pending legal actions;

(ii) the urgency of the legal situation;

(iii) how the individual's legal situation may influence treatment.

(2) A written individual treatment plan shall be initiated

for each patient upon admission and completed no later than 7 working days after admission. The individual treatment plan shall be based upon the information resulting from the assessment of patient needs, see R432-101-20(1).

(a) The individual treatment plan shall be part of the patient record and signed by the person responsible for the patient's care. Patient care shall be administered according to the individual treatment plan.

(b) Individual treatment plans must be reviewed on a weekly basis for the first three months, and thereafter at intervals determined by the treatment team but not to exceed every other month.

(c) The written individual treatment plan shall be based on a comprehensive functional assessment of each patient. When appropriate, the patient and family shall be invited to participate in the development and review of the individual treatment plan. Patient and family participation shall be documented.

(d) The individual treatment plan shall be available to all personnel who provide care for the patient.

(e) The Utah State Hospital is exempt from the R432-101-20(2) and R432-101-20(2)(b) time frames for initiating and reviewing the individual treatment plan. The Utah State Hospital shall initiate for each patient admitted an individual treatment plan within 14 days and shall review the plan on a monthly basis.

**R432-101-21. Adolescent or Child Treatment Program.**

(1) A hospital that admits adolescents or children for care and treatment shall have the organization, staff, and space to meet the specialized needs of this specific group of patients.

(a) Children shall be classified as age five to 12 and adolescents ages 13 - 18.

(b) If a child is considered for admission to an adolescent program, the facility shall assess and document that the child's developmental growth is appropriate for the adolescent program.

(c) Adolescent patients who reach their eighteenth birthday, the age of majority, may remain in the facility on the adolescent unit to complete the treatment program.

(2) A mental health professional with training in adolescent or child psychiatry, or adolescent or child psychology, as appropriate, shall be responsible for the treatment program.

(3) Adolescent or child nursing care shall be under the direction of a registered nurse qualified by training, experience, and ability to effectively direct the nursing staff. All nursing personnel shall have training in the special needs of adolescents or children.

(4) There must be educational provision for all patient's of school age who are in the hospital over one month.

(5) Adolescents may be admitted to an adult unit when specifically ordered by the attending member of the medical staff, but may not remain there more than three days unless the clinical director approves orders for the adolescent to remain on the adult unit.

(6) Specialized programs for children must be flexible enough to meet the needs of the children being served.

(a) There shall be a written statement of philosophy, purposes and program orientation including short and long term goals.

(b) The types of services provided and the characteristics of the child population being served shall also be included in the service's policy document. It shall be available to the public on request.

(c) There shall be a written description of the program's overall approach to family involvement in the care of the patient.

(d) There shall be a written policy regarding visiting and other forms of patient communication with family, friends and significant others.

(e) There shall be a written plan of basic daily routines. It shall be available to all personnel and shall be revised as necessary.

(f) There shall be a written complaint process for children in clear and simple language that identifies an avenue to make a complaint without fear of retaliation.

(g) There shall be a comprehensive written guide of preventive, routine, and emergency medical care for all children in the program, including written policies and procedures on the use and administration of psychotropic and other medication.

(h) There shall be a complete health record for each child including:

(i) immunizations;

(ii) medications;

(iii) medical examination;

(iv) vision and dental examination, if indicated by the medical examination;

(v) a complete record of treatment for each specific illness or medical emergency.

(i) The use of emergency medication shall be specifically ordered by a physician or other person licensed to prescribe and be related to a documented medical need.

(j) In addition to the medical record requirements, the child's record shall contain:

(i) documents related to the referral of the child to the program;

(ii) documentation of the child's current parental custody status or legal guardianship status;

(iii) the child's court status, if applicable;

(iv) cumulative health records, where possible;

(v) education records and reports.

(k) The following standards apply to children's programs within a secure, locked treatment facility:

(i) There shall be a statement in the child's record identifying the specific security measures employed and demonstrating that these measures are necessary in order to provide appropriate services to the child.

(ii) There shall be evidence that the staff and the child are aware of the hospital's emergency procedures and the location of emergency exits.

(iii) If children are locked in their rooms during sleeping hours, there shall be a method to unlock the rooms simultaneously from a central point or upon activation of a fire alarm system.

(iv) There shall be a recreational program offering a wide variety of activities suited to the interests and abilities of the children in care.

**R432-101-22. Residential Treatment Services.**

(1) If offered, the residential treatment service shall be organized as a distinct part of the hospital service, either free-standing or as part of the licensed facility. Residential treatment services shall be under the direction of the medical director or designee.

(2) "Residential Treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider. Individuals are assisted in acquiring the social and behavioral skills necessary for living independently.

(3) The hospital administrator shall appoint a program manager responsible for the day-to-day operation and resident supervision.

(a) The program manager's responsibilities shall be clearly defined in the job description.

(b) Whenever the manager is absent, a substitute manager shall be appointed.

(4) Residential treatment staff shall have specialized training in the area of psychiatric treatment. Staff shall consist of:

(a) a licensed physician;

(b) a certified or licensed clinical social worker;

(c) a licensed psychologist;

(d) a licensed registered nurse; and

(e) unlicensed staff who are trained to work with psychiatric residents and who shall be supervised by a health care practitioner.

(5) Programs admitting children or adolescents shall ensure that their education is continued through grade 12.

(a) Curriculum shall be approved by the Utah Office of Education.

(b) Education services provided by the licensee must be accredited by the Utah State Board of Education or Board Northwest Association of School and Colleges.

(c) Teachers must be certified by the Utah State Board of Education. Certification in Special Education is required where clearly necessary to supervise or carry out educational curriculum.

(6) An individual treatment plan developed by an interdisciplinary team shall be initiated for each resident upon admission and a completed copy placed in the resident record within seven days.

(a) The treatment plan shall identify the resident's needs, as described by a comprehensive functional assessment.

(b) The resident, his responsible party (if available), and facility staff shall participate in the planning of treatment. The facility staff shall encourage the resident's attendance at interdisciplinary team meetings.

(c) The written treatment plan shall set forth goals and objectives stated in terms of desirable behavior that prescribes an integrated program of activities, therapies, and experiences necessary for the resident to reach the goals and objectives.

(7) The comprehensive functional assessment shall consider the resident's age and the implications for treatment. The assessment shall identify:

(a) the presenting problems and disabilities for admission and, where possible, their cause;

(b) specific individual strengths;

(c) special behavioral management needs;

(d) physical health status to include:

(i) a history and physical exam performed by a physician or nurse practitioner which includes appropriate laboratory work-up;

(ii) a determination of the type and extent of special examinations, tests or evaluations needed.

(e) alcohol and drug history;

(f) degree of psychological impairment and measures to be taken to relieve treatable diseases;

(g) the capacity for social interaction and habilitation and rehabilitation measures to be taken;

(h) the emotional or behavioral status based on an assessment of:

(i) a history of previous emotional or behavioral problems and treatment;

(ii) the resident's current level of emotional or behavioral functioning;

(iii) an evaluation by a psychiatrist, psychologist or qualified designee within 30-days prior to admission, or within 24 hours after admission.

(i) if indicated, psychological testing shall include intellectual and personality testing.

(8) The comprehensive assessment shall be amended to reflect any changes in the resident's condition.

(9) An individual treatment plan shall be implemented which provides services to improve the resident's condition which are offered in an environment that encompasses physical, interpersonal, cultural, therapeutic, rehabilitative, and habilitative components.

(10) The resident shall be encouraged to participate in professionally developed and supervised activities, experiences or therapies in accordance with the individualized treatment plan.

(11) The provisions of R432-101-23. Physical Restraints, Seclusion, and Behavior Management shall apply.

**R432-101-23. Physical Restraints, Seclusion, and Behavior Management.**

(1) Physical restraints, including seclusion shall only be used to protect the patient from injury to himself or to others or to assist patients to attain and maintain optimum levels of physical and emotional functioning.

(2) Restraints shall not be used for the convenience of staff, for punishment or discipline, or as substitutes for direct patient care, activities, or other services.

(3) Each hospital shall develop written policies and procedures that will govern the use of physical restraints and seclusion. A major focus of these policies shall be to provide patient safety and ensure civil and patient rights.

(4) Policies shall incorporate and address at least the following:

(a) examples of the types of restraints and safety devices that are acceptable for use and possible patient conditions for which the restraint may be used;

(b) guidelines for periodic release and position change or exercise, with instructions for documentation of this action.

(5) Bed sheets or other linens shall not be used as restraints.

(6) Restraints shall not unduly hinder evacuation of the patient in the event of fire or other emergency.

(7) Physical restraints must be authorized by a member of the medical staff in writing every 24 hours. PRN orders for restraints are prohibited. If a physical restraint is used in behavior management, there must be an individualized behavior management program and an ongoing monitoring system to assure effectiveness of the treatment, see Subsection R432-101-4(2)(c).

(a) Use of restraints will be reviewed routinely in the patient care conference, as the order is renewed by the member of the medical staff, and on a day-to-day basis as care is delivered. This shall be considered an ongoing process, and documented in the patient's record.

(b) Use of physical restraints, including simple safety devices, may be used only if a specific hazard or need for restraint is present. The physician order must indicate the type of physical restraint or safety device to be used and the length of time to be used. A facility restraint policy may be developed addressing the above items and accepted by reference in the patient care plan.

(c) Physical restraints must be applied by properly trained staff, to ensure a minimum of discomfort, allowing sufficient body movement to ensure that circulation will not be impaired. No restraint shall be used or applied in such a manner as to cause injury or the potential for injury.

(d) Staff shall monitor and assess a patient who is restrained. The restraint shall be released or the patient's position changed at least every two hours, unless written justification is provided for why such restraint release is dangerous to the patient or others.

(e) Physical restraints may be used in an emergency, if there is an obvious threat to life or immediate safety, as follows:

(i) Verbal orders may be given by the physician to a licensed nurse by telephone.

(ii) A licensed health care professional, identified by policy, may initiate the use of a restraint; however, verbal or written approval from the physician must be obtained within one hour.

(iii) A verbal order must be signed by a physician within 24 hours.

(iv) Staff members shall document in the patient's record the circumstances necessitating emergency use of the restraint and the patient's response.

(8) Seclusion must be used in accordance with hospital policy and authorized by a member of the medical staff.

(a) If seclusion is used for behavior management, there must be an individualized behavior management program and an ongoing monitoring system to assure effectiveness of the treatment, see Subsection R432-101-4(2)(e).

(b) Use of seclusion shall be reviewed routinely in the patient care conference, as the order is renewed by the member of the medical staff, and on a day-to-day basis as care is delivered. This shall be considered an ongoing process. The patient shall be monitored for adverse effects. The evaluations and reviews shall be part of the patient record.

(9) Time out shall be used in accordance with hospital policy, but does not have to be authorized by a member of the medical staff for each use.

The use of time out shall be included in the patient care plan and documented in the patient record.

(10) Hospital policy must establish criteria for admission and retention of patients who require behavior management programs, and shall specify the data to be collected and the location of these data in the clinical record.

(a) The program must be developed by the interdisciplinary team. There must be an opportunity for involvement of the patient, next of kin or designated representative.

(b) A behavior management program must be approved for a patient by the team leader, as described by hospital policy.

(c) Behavior management programs must employ the least restrictive methods to produce the desired outcomes and incorporate a process to identify and reinforce desirable behavior. Consent for use of any behavior management program that employs aversive stimuli must be obtained from the patient, next of kin, or designated representative.

(d) The behavior management program shall be incorporated into the patient care plan.

(e) The behavior management program shall be reviewed routinely by the interdisciplinary team as the patient care conference is conducted, as the order is renewed by the member of the medical staff, and on a day-to-day basis as care is delivered. This shall be considered an ongoing process.

(f) Documentation in the patient's record shall include:

(g) a behavior baseline profile, including a description of the undesirable behavior, as well as a statement whether there is a known history of previous undesirable behaviors and prior treatment;

(i) conditions under which the behavior occurs;

(ii) interventions used and their results;

(iii) a behavior management program including specific measurable behavioral objectives, time frames, names, titles, and signature of the person responsible for conducting the program, and monitoring and evaluation methods;

(iv) summaries and dates of the evaluations and reviews by the interdisciplinary team.

**R432-101-24. Involuntary Medication Administration.**

(1) The facility shall adopt and implement a policy and procedure for patients who refuse a prescribed medication. The policy shall include the following:

(a) the facility staff shall document the refusal of medications in the individual care plan; and

(b) the interdisciplinary team shall review and assess the patient's refusal of medication, ensuring that the patient's rights are protected.

(2) If the interdisciplinary team determines that the patient requires medication, as part of a behavior management program, or for emergency patient management, or for clinical treatment, and a physician or licensed practitioner orders the medication, then the facility staff shall document the physician's order in the individual treatment plan and administer the medication.

(3) If a patient is administered involuntary medications, the facility staff shall review the administration of medications in a patient care conference, each time the physician renews the medication order, and on a day-to-day basis as care is delivered.

(4) The facility staff shall evaluate and assess the patient for adverse side effects. The facility staff shall document the evaluation and assessment in the patient record.

**R432-101-25. Outpatient Emergency Psychiatric Services.**

(1) If the hospital offers outpatient emergency psychiatric services, the service shall be organized as a service specifically designated for this purpose and under the direction of the medical director or designee.

(a) Services shall be available 24 hours a day to persons presenting themselves for assistance.

(b) If the hospital chooses not to offer emergency outpatient psychiatric services, it shall have a written plan for referral of persons making inquiry regarding such services or presenting themselves for assistance.

(2) The outpatient service shall be supported by policies and procedures including admission, and treatment procedures, and medical and psychiatric reference materials.

(3) Involuntary detention of a person must be according to applicable hospital policy and Utah Law.

**R432-101-26. Emergency Services.**

(1) Each facility shall provide physician and registered nurse coverage 24 hours per day. Nursing and other allied health professional staff shall be readily available in the hospital. Staff may have collateral duties elsewhere in the hospital, but must be able to respond when needed without adversely affecting patient care or treatment elsewhere in the hospital.

(2) The facility shall have trained staff to triage emergency care for each patient, staff and visitor, to stabilize the presenting condition, and transfer to an appropriately licensed facility.

(3) The facility must have an emergency area which includes a treatment room, storage for supplies and equipment, provisions for reception and control of patients, convenient patient toilet room, and communication hookup and access to a poison control center.

(4) If the hospital offers additional or expanded emergency services, the service must comply with the provisions of the appropriate sections of R432-100-16.

(5) The hospital shall have protocols for contacting local emergency medical services.

**R432-101-27. Clinical Services.**

(1) If the following services are used, R432-100 shall apply:

(a) Surgical Services, R432-100-14.

(b) Critical Care Unit, R432-100-13.

(c) Inpatient Hospice, R432-750.

(2) If chemical dependency or substance abuse services are provided, the R432-102 Specialty Hospital - Chemical Dependency/Substance Abuse Rules apply.

**R432-101-28. Laboratory.**

(1) Each specialty hospital must have a CLIA certificate. If an outside lab is contracted for providing services, the outside lab shall have a CLIA certificate.

(2) If outside laboratory services are secured through contract, the hospital must maintain an in-house ability to collect, preserve and arrange for delivery to the outside laboratory for testing. If additional laboratory services are provided, the hospital must comply with the appropriate sections of R432-100-22.

**R432-101-29. Pharmacy.**

(1) Each specialty hospital must have the ability to provide in house certain basic services, such as storage, dispensing, and administration of medication.

(2) All pharmacy services must comply with the appropriate sections of R432-100-24.

(3) The facility must have a policy approved by the board and the medical staff on the use of investigational drugs.

**R432-101-30. Social Services.**

(1) The facility shall provide social services to assist staff, patients, and patients' families to understand and cope with a patient's social, emotional, and related health problems.

(a) Social services shall be under the direction of a licensed clinical social worker. The role and function of social services shall be listed in policy documents and meet generally accepted practices of Mental Health Professional Practice Act.

(b) Social services personnel shall serve as a patient advocate to:

(i) provide services to maximize each patient's ability to adjust to the social and emotional aspects of his situation, treatments, and continued stay in the hospital;

(ii) participate in ongoing discharge planning to assure continuity of care for the patient;

(iii) initiate referrals to official agencies when the patient needs legal or financial assistance;

(iv) maintain appropriate liaison with the family or other responsible persons concerning the patient's placement and rights;

(v) preserve the dignity and rights of each patient.

(2) Each hospital shall develop social services policies and procedures which include at least the following:

(a) a system to identify, plan, and provide services according to the social and emotional needs of patients;

(b) job descriptions, including title and qualifications of all persons who provide social services;

(c) a method to refer patients to outside social services agencies when the hospital is unable to resolve a patient's problems.

(3) The Social Service director shall participate in any pertinent quality assurance activities of the hospital.

**R432-101-31. Activity Therapy.**

(1) The hospital shall provide activity therapy services to meet the physical, social, cultural, recreational, health maintenance and rehabilitational needs of patients as defined in the patient care plan.

(a) The activity therapy service shall have policies that describe the organization of the service and provision for services to the patient population.

(i) Program goals and objectives shall be stated in writing.

(ii) Appropriate activities shall be provided to patients during the day, in the evening, and on the weekend.

(iii) Patient participation in planning shall be sought, whenever possible.

(iv) Activity schedules shall be posted in places accessible to patients and staff.

(b) Activity therapy shall be incorporated into the patient care plan.

(c) Patients shall be permitted leisure time and encouraged to use it in a way that fulfills their cultural and recreational interests and their feelings of human dignity.

(2) The activity therapy service shall be supervised by an individual.

(3) The facility shall provide sufficient space, equipment, and facilities to meet the needs of the patients. Space, equipment, and facilities shall meet federal, state and local requirements for safety, fire prevention, health, and sanitation.

**R432-101-32. Other Services.**

If the following services are provided, R432-100 shall apply:

(a) Anesthesia Services, R432-100-15.

(b) Rehabilitation Therapy Services, R432-100-20.

(c) Radiology, R432-100-21.

(d) Respiratory Care Services, R432-100-19.

**R432-101-33. Medical Records.**

(1) The hospital shall comply with the provisions of R432-100-33.

(2) Contents of the patient record shall describe a patient's physical, social and mental health status at the time of admission, the services provided, the progress made, and a patient's physical, social and mental health status at the time of discharge.

(a) The patient record identification data recorded on standardized forms shall include the patient's name, home address, date of birth, sex, next of kin, marital status, and date of admission.

(b) The patient record shall include:

(i) involuntary commitment status, including relevant legal documents;

(ii) date the information was gathered, and names and signatures of the staff members gathering the information.

(c) The patient record shall contain pertinent information on the course of treatment to include:

(i) signed orders by physicians and other authorized practitioners for medications and treatments;

(ii) relevant physical examination, medical history, and physical and mental diagnoses using a recognized diagnostic coding system;

(iii) information on any unusual occurrences, such as treatment complications, accidents, or injuries to or inflicted by the patient, and procedures that place the patient at risk;

(iv) documentation of patient and family involvement in the treatment program;

(v) progress notes written by the psychiatrist, psychologist, social worker, nurse, and others significantly involved in active treatment;

(vi) temperature, pulse, respirations, blood pressure, height, and weight notations, when indicated;

(vii) reports of laboratory, radiologic, or other diagnostic procedures, and reports of medical or surgical procedures when performed;

(viii) correspondence with signed and dated notations of telephone calls concerning the patient's treatment;

(ix) a written plan for discharge including an assessment of patient needs;

(x) documentation of any instance in which the patient was absent from the hospital without permission;

(xi) the patient care plan.

(d) There shall be a discharge summary signed by the attending member of the medical staff and entered into the patient record within 30 calendar days from the date of discharge. In the event a patient dies, the discharge statement shall include a summary of events leading to the death.

(e) The patient record shall contain evidence of informed consent or the reason it is unattainable.

(f) The patient record shall contain consent for release of information, the actual date the information was released, and the signature of the staff member who released the information. The patient shall be informed of the release of information as soon as possible.

(g) The hospital may release pertinent information to personnel responsible for the individual's care without the patient's consent under the following circumstances:

(i) in a life-threatening situation;

(ii) when an individual's condition or situation precludes obtaining written consent for release of information;

(iii) when obtaining written consent for release of information would cause an excessive delay in delivering essential treatment to the individual.

**R432-101-34. Ancillary Services.**

If the following services are used, R432-100 shall apply:

(1) Central Supply, R432-100-34.

(2) Dietary, R432-100-31.

(3) Laundry, R432-100-35.

(4) Maintenance Services, R432-100-37.

(5) Housekeeping, R432-100-36.

**R432-101-35. Partial Hospitalization Services.**

(1) If the hospital offers a partial hospitalization program, the following services may be included:

(a) crisis stabilization or the provision of intensive, short-term daily programming which averts psychiatric hospitalization or offers transitional treatment back into community life in order to shorten an episode of acute inpatient care; and

(b) intermediate term treatment which provides more extended, daily, goal directed clinical services for a population at high risk for hospitalization or readmission due to the serious or persistent nature of their psychiatric, emotional behavioral, or addictive disorder.

(2) If the specialty hospital offers partial hospitalization services, the hospital shall establish policies and procedures to address the following:

(a) Criteria for admission indicating a DSM IV Mental or Nervous condition;

(b) Assessment;

(c) Treatment Planning;

(d) Active treatment;

(e) Coordination of Care; and

(f) Discharge criteria.

**R432-101-36. Penalties.**

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6

and be punished for violation of a class A misdemeanor as provided in 26-21-16.

**KEY: health facilities**

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|---|---|
| **May 1, 1997** | **26-21-2.1** |
| **Notice of Continuation December 23, 1997** | **26-21-5** |
| | **26-21-6** |
| | **26-21-20** |

**R432. Health, Health Systems Improvement, Licensing.**
**R432-105. Specialty Hospital - Orthopedic.**
**R432-105-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

**R432-105-2. Purpose.**

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance of an orthopedic specialty hospital.

**R432-105-3. Time for Compliance.**

All Orthopedic Specialty hospitals shall be licensed and in full compliance with R432-105.

**R432-105-4. Definitions.**

(1) Refer to Common Definitions in R432-1-3.

(2) Special definitions.

(a) "Orthopedic Specialty Hospital" means a specialty hospital that provides evaluation, diagnosis, and treatment of individuals with a primary diagnosis of musculoskeletal disorders and injuries as defined in the Orthopaedic ICD-9-CM.

(b) "Donor center" means a facility that procures, prepares, processes, stores and transports blood and blood components.

(c) "Transfusion service" means a facility that may prepare blood components, but also stores, determines compatibility, transfuses blood and blood components and monitors transfused patients for any ill effect.

(d) "Blood bank" means a facility that combines the functions of a donor center and transfusion service within the same facility.

(3) See definition of "specialty hospital", R432-101-4(2).

**R432-105-5. Licensure.**

License required. Refer to R432-2.

**R432-105-6. General Construction Rules.**

Refer to R432-11. Orthopedic Specialty Hospital Construction Rule.

**R432-105-7. Organization and Staff.**

The following services and policies shall comply with R432-100:

(1) Administrator, R432-100-6.
(2) Medical and Professional Staff, R432-100-7.
(3) Nursing Care Services, R432-100-12.
(4) Personnel Management Service, R432-100-8.
(5) Infection Control, R432-100-10.
(6) Quality Improvement Plan, R432-100-9.
(7) Patient Rights, R432-100-11.
(8) Governing Body, R432-100-5.

**R432-105-8. Admission Policy.**

An orthopedic specialty hospital is limited to serving patients that meet the following criteria:

(1) Each patient shall have a primary admitting diagnosis that requires evaluation, diagnosis and treatment of a musculoskeletal disorder or injury, as defined in the Orthopaedic ICD-9-CM, the International Classification of Diseases, 9th Edition, Clinical Modification, Expanded, published by the American Academy of Orthopaedic Surgeons which is adopted and incorporated by reference and;

(2) There is a reasonable expectation that the patient's needs can be met by the services provided by the orthopedic specialty hospital.

**R432-105-9. Clinical Services.**

The following services shall comply with R432-100:

(1) Surgical Services, R432-100-14.
(2) Critical Care Unit, R432-100-13.
(3) Outpatient Services, R432-100-28.
(4) Pediatric Services, R432-100-18.

**R432-105-10. Emergency Services.**

(1) Each specialty hospital shall have the ability to provide emergency first aid treatment to patients, staff, visitors, and to persons who may be unaware of or unable to immediately reach services in other facilities.

(2) Provisions shall include a treatment room, storage for supplies and equipment, provisions for reception and control of patients, convenient patient toilet room, and communication access to a poison control center.

(3) Additional Emergency Services.

Any additional or expanded emergency services offered shall comply with the provisions of the appropriate sections of R432-100-16.

**R432-105-11. Complementary Services.**

The following services shall comply with R432-100:

(1) Anesthesia Services, R432-100-15.
(2) Blood Services, R432-100-23.
(3) Laboratory and Pathology, R432-100-22.
(4) Pharmacy, R432-100-24.
(5) Radiology, R432-100-21.
(6) Respiratory Care, R432-100-19.
(7) Social Services, R432-100-25.

**R432-105-12. Ancillary Services.**

The following services shall comply with R432-100:

(1) Central Supply, R432-100-34.
(2) Dietary, R432-100-31.
(3) Laundry, R432-100-35.
(4) Medical Records, R432-100-33.
(5) Emergency and Disaster Plans, R432-100-38.
(6) Maintenance Services, R432-100-37.
(7) Housekeeping Services, R432-100-36.

**R432-105-13. Penalties.**

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

**KEY: health facilities**

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|---|---|
| **March 3, 1995** | **26-21-2.1** |
| **Notice of Continuation December 15, 1997** | **26-21-5** |
| | **26-21-6** |
| | **26-21-20** |

**R432. Health, Health Systems Improvement, Licensing.**
**R432-200. Small Health Care Facility (Four to Sixteen Beds).**
**R432-200-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

**R432-200-2. Purpose.**

This rule allows services at varying levels of health care intensity to be provided in structures that depart from the traditional institutional setting. Health care may be delivered in a less restrictive, residential, or home-like setting. Small health care facilities are categorized as Level I, Level II, Level III, or Level IV according to the resident's ability or capability for self-preservation: to exit a building unassisted in an emergency.

**R432-200-3. Compliance.**

All small health care facilities shall be in full compliance at the time of licensure. All Medicare and Medicaid certified facilities must comply with Title XVIII and Title XIX regulations.

**R432-200-4. Definitions.**

(1) See common definitions in R432-1-3.

(2) Special Definitions:

(a) "Levels of Care" mean the range of programs and the physical facilities in which they may be offered according to these rules.

(b) "Level I" refers to a skilled nursing care facility that provides at least 24-hour care and licensed nursing services to persons who are non-mobile and non-ambulatory. All Level I facilities shall conform to the requirements in the Utah Department of Health, Nursing Care Facility rules R432-150. A Level I facility with a bed capacity of 16 beds or less, may request a variance from some construction standards for nursing care facilities, if the health, safety, and welfare of residents can be preserved.

(i) Skilled Nursing Facility shall maintain and operate 24-hour skilled nursing services for the care and treatment of chronically ill or convalescent residents whose primary need is the availability of skilled nursing care or related service on an extended basis.

(ii) Intermediate Care Facility shall provide 24-hour in resident care to residents who need licensed nursing supervision and supportive care, but who do not require continuous nursing care.

(c) "Level II" refers to a facility that provides at least 24-hour care, 24-hour staff coverage, and licensed therapy or nursing care (based on program requirements) to 4-16 persons who are non-mobile and non-ambulatory. Level II facilities may include:

(i) Health Care Nursery shall provide full-time supervision and care to children under six years of age who do not require continuous nursing care. The facility shall provide at least the following:

(A) Twenty-four hour care and/or staff availability;

(B) Provision for medical coverage;

(C) Provision for dietary services;

(D) Provision for licensed therapies, as required.

(ii) Intermediate Care Facility for the Mentally Retarded shall provide 24-hour supervisory care to developmentally disabled and mentally retarded individuals, (note: An ICF/MR facility may be categorized as a Level IV facility if no resident is under therapy that utilizes chemical or physical restraints which may render the resident incapable of self-preservation in an emergency), who need supervision in a coordinated and integrated program of health, habilitative and supportive services, but who do not require continuous nursing care. The facility shall, except as indicated in the supplement, provide the following:

(A) Twenty-four hour care and staff availability;

(B) Provision for medical coverage;

(C) Provision for dietary services;

(D) Provision for licensed therapies, as required.

(iii) Home for the Aging shall provide group housing, supervision, social support, personal care, therapy, and some nursing care to elderly persons who do not need intermediate or skilled nursing care. The facility shall provide at least the following:

(A) Twenty-four hour staff availability;

(B) Provision for medical coverage;

(C) Provision for dietary services for at least three meals;

(D) Provision for licensed therapies, as necessary.

(iv) Social Rehabilitation Facility shall provide group housing, personal care, social rehabilitation, and treatment for alcoholism, drug abuse, or mental problems to persons who do not require intermediate or skilled nursing care. (Note: if each resident in the program is certified by a physician or QMRP as ambulatory and in an alcohol or drug abuse rehabilitation program designed to lead to independent living, then the facility may be categorized as a Level IV facility.) The facility shall provide the following:

(A) Twenty-four hour staff availability or program care;

(B) Provision for medical coverage;

(C) Provision for dietary services for at least three meals;

(D) Provision for licensed therapies, as necessary.

(d) "Level III" refers to a facility that provides at least 24-hour staff coverage and licensed therapy (based on program requirements) to 4-16 persons who are ambulatory and mobile but who are under chemical or physical restraints. Level III facilities may include:

(i) Mental Health Facility shall provide 24 hour care to persons with mental illness who require medical and psychiatric supervision including diagnosis and treatment. The facility shall provide at least the following:

(A) Twenty-four hour staff coverage;

(B) Provision for medical and psychiatric supervision;

(C) Provision for dietary services;

(D) Provision for licensed therapies, as necessary.

(ii) Youth Correction Center shall provide 24-hour supervision, care, training, treatment, and therapy to persons who by court order may be restricted in their daily activities, and under security control that includes lock-up. The facility shall provide at least the following:

(A) Twenty-four hour staff coverage;

(B) Provision for medical and psychiatric supervision;

(C) Provision for dietary services;

(D) Provision for licensed therapies, as necessary.

(e) "Level IV" refers to a facility that provides specialized

program and support care to 4-16 persons who are ambulatory and mobile, who require programs of care and more supervision than provided in a residential care facility. Level IV facilities may include:

(i) Intermediate Care Facility for the Mentally Retarded. All mentally retarded residents in a Level IV facility must be ambulatory to qualify for Medicaid/Medicare reimbursement.

(ii) Mental Health Facility. (See R432-200-4(2)(d)(i), Level III)

(iii) Home for the Aging. (See R432-200-4(2)(c)(iii), Level II)

(iv) Social Rehabilitation Facility. (See R432-200-4(2)(c)(iv), Level II)

**R432-200-5. License Required.**

See R432-2.

**R432-200-6. Construction and Physical Environment.**

(1) See R432-12, Small Health Care Facility Construction rules.

**R432-200-7. Administration and Organization.**

(1) Organization.

Each facility shall be operated by a licensee.

(2) Duties and Responsibilities.

The licensee shall be responsible for compliance with Utah law and licensure requirements and for the organization, management, operation, and control of the facility. Responsibilities shall include at least the following:

(a) Comply with all federal, state and local laws, rules, and regulations;

(b) Adopt and institute by-laws, policies and procedures relative to the general operation of the facility including the health care of the residents and the protection of their rights;

(c) Adopt a policy that states the facility will not discriminate on the basis of race, color, sex, religion, ancestry or national origin in accordance with Section 13-7-1;

(d) Appoint, in writing, a qualified administrator to be responsible for the implementation of facility by-laws and policies and procedures, and for the overall management of the facility;

(e) Secure and update contracts for professional and other services;

(f) Receive and respond, as appropriate, to the annual licensure inspection report by the Department;

(g) Notify the Department, in writing, at least 30 days prior to, but not later than five days after, a change of administrator. The notice shall include the name of the new administrator and the effective date of the change.

(3) Administrator.

(a) Administrator's Appointment.

Each facility shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce in a health care field.

(b) A copy of the administrator's license or credentials shall be posted alongside the facility's license in a place readily visible to the public.

(c) The administrator shall act as the administrator of no more than four small health care facilities (or a maximum of 60 beds) at any one time.

(d) The administrator shall have sufficient freedom from other responsibilities and shall be on the premises of the facility a sufficient number of hours in the business day (at least four hours per week for each six residents) and as necessary to properly manage the facility and respond to appropriate requests by the Department.

(e) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in his absence. This person shall have sufficient power, authority, and freedom to act in the best interests of resident safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(4) Administrator Responsibilities.

The administrator shall have the following responsibilities:

(a) Complete, submit and file all records and reports required by the Department;

(b) Act as a liaison among the licensee, medical and nursing staff, and other supervisory staff of the facility, as appropriate, and respond to recommendations of the quality assurance committee;

(c) Assure that employees are oriented to their job functions and receive appropriate in-service training;

(d) Implement policies and procedures for the operation of the facility;

(e) Hire and maintain the required number of licensed and non-licensed staff as specified in these rules to meet the needs of residents;

(f) Maintain facility staffing records for 12 months;

(g) Secure and update contracts required for professional and other services not provided directly by the facility;

(h) Verify all required licenses and permits of staff and consultants at the time of hire and effective date of contract;

(i) Review all incident and accident reports and take appropriate action.

(5) Medical Director.

The administrator of each facility shall retain, by formal agreement, a licensed physician to serve as medical director or advisory physician on a consulting basis according to the residents' and facility's needs.

(6) Medical Director Responsibilities.

The medical director or advisory physician shall have responsibility for at least the following:

(a) Review or develop written resident-care policies and procedures including the delineation of responsibilities of attending physicians;

(b) Review resident-care policies and procedures annually with the administrator;

(c) Serve as liaison between the resident's physician and the administrator;

(d) Serve as a member of the quality assurance committee (see R432-200-10);

(e) Review incident and accident reports at the request of the administrator to identify health hazards to residents and employees;

(f) Act as consultant to the health services supervisor in matters relating to resident-care policies.

(7) Staff and Personnel.

(a) Organization.

The administrator shall employ qualified personnel who are able and competent to perform their respective duties, services, and functions.

(b) Qualifications and Orientation.

(i) The administrator shall develop job descriptions including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements for each position or employee.

(ii) Periodic employee performance evaluations shall be documented.

(iii) All personnel shall have access to the facility's policies and procedures manuals, resident- care policies, therapeutic manuals, and other information necessary to effectively perform their duties and carry out their responsibilities.

(8) Health Surveillance.

(a) The facility shall establish a policy and procedure for the health screening of all facility personnel which conforms with the provisions of R432-150-10(4).

(b) All dietary and other staff who handle food shall obtain a Food Handler's Permit from the local health department.

(9) In-service Training.

There shall be planned and documented in-service training for all facility personnel. The following topics shall be addressed annually:

(a) Fire prevention (see R432-200-11);

(b) Accident prevention and safety procedures including instruction in the following:

(i) Body mechanics for all employees required to lift, turn, position, or ambulate residents;

(ii) Proper safety precautions when floors are wet or waxed;

(iii) Safety precautions and procedures for heat lamps, hot water bottles, bathing and showering temperatures;

(c) Review and drill of emergency procedures and evacuation plan (See R432-200-11);

(d) Prevention and control of infections (see R432-150-25);

(e) Confidentiality of resident information;

(f) Residents' rights;

(g) Behavior Management and proper use and documentation of restraints;

(h) Oral hygiene and first aid; and

(i) Training in the principles of Cardiopulmonary Resuscitation (CPR) for licensed nursing personnel and others as appropriate;

(j) Training in habilitative care;

(k) Reporting abuse, neglect and exploitation.

**R432-200-8. Smoking Policies.**

Smoking policies shall comply with Title 26, Chapter 38 the, "Utah Indoor Clean Air Act", and Section 31-4.4 of the 1991 Life Safety Code.

**R432-200-9. Contracts and Agreements.**

(1) Contracts.

(a) The licensee shall secure and update contracts for required professional and other services not provided directly by the facility.

(b) Contracts shall include:

(i) The effective and expiration dates of the contract;

(ii) A description of goods or services provided by the contractor to the facility;

(iii) A statement that the contractor will conform to the standards required by Utah law or rules.

(c) The contract shall be available for review by the Department.

(2) Transfer Agreements.

(a) The licensee shall maintain, a written transfer agreement with one or more hospitals (or nearby health facilities) to facilitate the transfer of residents and essential resident information.

(b) The transfer agreement shall include provisions for:

(i) Criteria for transfer;

(ii) Appropriate methods of transfer;

(iii) Transfer of information needed for proper care and treatment of the individual being transferred;

(iv) Security and accountability of the personal property of the individual being transferred;

(v) Proper notification of the hospital and next of kin or responsible person before transfer.

**R432-200-10. Quality Assurance.**

(1) The administrator shall monitor the quality of services offered by the facility through the formation of a committee that addresses infection control, pharmacy, therapy, resident care, and safety, as applicable.

(2) The committee shall include the administrator, consulting physician or medical director, health services supervisor, and consulting pharmacist. Special program directors and maintenance and housekeeping personnel shall serve as necessary.

(3) The committee shall meet quarterly and keep minutes of the proceedings.

(4) Infection Control Requirements.

See R432-150-11.

(5) Pharmacy Requirements.

Based on the services offered, the committee shall:

(a) Monitor the pharmaceutical services in the facility;

(b) Recommend changes to improve pharmaceutical services;

(c) Evaluate medication usage; and

(d) Develop and review pharmacy policies and procedures annually, and recommend changes to the administrator and licensee.

(6) Resident Care Requirements.

Based on the services offered, the committee shall address the following:

(a) Review, at least annually, the facility's resident care policies including rehabilitative and habilitative programs, as appropriate.

(b) Make recommendations to the medical director and advisory physician as appropriate;

(c) Review recommendations from other facility committees to improve resident care.

(7) Safety Requirements.

Based on the services offered, the committee shall address

the following:

(a) Review all incident and accident reports and recommend changes to the administrator to prevent or reduce their reoccurrence;

(b) Review facility safety policies and procedures, at least annually, and make recommendations;

(c) Establish a procedure to inspect the facility periodically for hazards. An inspection report shall be filed with the Committee.

**R432-200-11. Emergency and Disaster.**

(1) Facilities have the responsibility to assure the safety and well-being of their residents in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, or epidemic.

(2) Policies and Procedures.

(a) The licensee and the administrator shall be responsible for the development of a plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters.

(b) The written plan shall be distributed to all facility staff to assure prompt and efficient implementation.

(c) The plan shall be reviewed and updated to conform with local emergency plans, at least annually, by the administrator and the licensee.

(d) The plan shall be available for review by the Department.

(3) Staff and residents shall receive education, training, and drills to respond in an emergency.

(a) Drills and training shall be documented and comply with applicable laws and regulations.

(b) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and emergency transport systems shall be posted.

(4) Emergency Procedures.

The facility's response procedures shall address the following:

(a) Evacuation of occupants to a safe place within the facility or to another location;

(b) Delivery of essential care and services to facility occupants by alternate means;

(c) Delivery of essential care and services when additional persons are housed in the facility during an emergency;

(d) Delivery of essential care and services to facility occupants when staff is reduced by an emergency;

(e) Maintenance of safe ambient air temperatures within the facility;

(i) Emergency heating plans must have the approval of the local fire department.

(ii) An ambient air temperature of 58 degrees F (14 degrees C) or less constitutes an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate and appropriate action in the best interests of the resident.

(5) Emergency Plan.

(a) The facility's emergency plan shall delineate:

(i) The person or persons with decision-making authority for fiscal, medical, and personnel management;

(ii) On-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(iii) Assignment of personnel to specific tasks during an emergency;

(iv) Methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) The individuals who shall be notified in an emergency in the order of priority. Telephone numbers shall be accessible to staff at each nurse's station;

(vi) Methods of transporting and evacuating residents and staff to other locations;

(vii) Conversion of facility for emergency use.

(b) Documentation of emergency events and responses and a record of residents and staff evacuated from the facility to another location shall be kept. Any resident emergency shall be documented in the resident's record.

(c) Drills shall be held semi-annually for all residents and staff.

(d) There shall be regular in-service training on disaster prepare

(6) Fire Emergencies.

(a) The licensee and administrator shall develop a written fire-emergency and evacuation plan in consultation with qualified fire safety personnel.

(b) An evacuation plan delineating evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department shall be posted throughout the facility.

(c) The written fire-emergency plan shall include fire-containment procedures and how to use alarm systems and signals.

(d) Fire and internal disaster drills shall be held, at least quarterly, under varied conditions for each shift.

(i) The actual evacuation of residents during a drill is optional except in a facility caring for residents who are capable of self-preservation.

(ii) The actual evacuation of residents during a drill on the night shift is optional.

**R432-200-12. Residents' Rights.**

(1) Residents' Rights Policies and Procedures.

(a) A committee shall be appointed to update policy, evaluate, and act on residents' rights complaints.

(b) Written residents' rights shall be established, posted in areas accessible to residents, and made available to the resident, or guardian, or next of kin.

(c) These shall be available to the public and the Department upon request.

(2) Each resident admitted to the facility shall have the following rights:

(a) To be fully informed, as evidenced by the resident's written acknowledgement prior to or at the time of admission and during stay, of residents' rights and of all rules governing resident conduct;

(b) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under

Titles XVIII or XIX of the Social Security Act;

(c) To be fully informed of his medical condition, by a physician, unless medically contraindicated and documented in the resident's health record by the attending physician;

(d) To be afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;

(e) To refuse treatment to the extent permitted by law and to be informed of the medical consequences of such refusal;

(f) To be transferred or discharged only for medical reasons, or his welfare or that of other residents, or for nonpayment for his stay, and to be given reasonable advance notice to ensure orderly transfer or discharge; such actions shall be documented in his health record;

(g) To be encouraged and assisted throughout the period of stay to exercise rights as a resident and as a citizen, and to this end to voice grievances and recommend changes in policies and services to facility staff or outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

(h) To manage his personal financial affairs, or to be given at least quarterly or upon request an accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility;

(i) To be free from mental and physical abuse and to be free from chemical and (except in emergencies) physical restraints except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the resident from injury to himself or to others (see R432-150-12);

(j) To be assured confidential treatment of his personal and medical records and to approve or refuse their release to any individual outside the facility, except in the case of his transfer to another health facility, or as required by law or third party payment contract;

(k) To be treated with consideration, respect and full recognition of his dignity and individuality, including privacy in treatment and in care for personal needs;

(l) Not to be required to perform services for the facility that are not included for therapeutic purposes in his plan of care;

(m) To associate and communicate privately with persons of his choice, and to send and receive personal mail unopened;

(n) To meet with and participate in activities of social, religious, and community groups at his discretion;

(o) To retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

(p) If married, to be assured privacy for visits by his spouse and if both are residents in the facility, to be permitted to share a room;

(q) To have daily visiting hours established;

(r) To have members of the clergy admitted at the request of the resident or person responsible at any time;

(s) To allow relatives or persons responsible to visit residents at any time;

(t) To be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes;

(u) To have reasonable access to telephones both to make and receive confidential calls.

(v) To wear appropriate personal clothing and religious or other symbolic items as long as they do not interfere with diagnostic procedures or treatment.

(3) Safeguards for Residents' Monies and Valuables

Each facility to whom a resident's money or valuables have been entrusted according to R432-200- 12(2)(h), above shall comply with the following:

(a) No licensee shall use residents' monies or valuables as his own or mingle them with his own.

(i) Residents' monies and valuables shall be separated and intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(ii) Each licensee shall maintain adequate safeguards and accurate records of residents' monies and valuables entrusted to the licensee's care.

(b) Records of residents' monies which are maintained as a drawing account shall include a control account for all receipts and expenditures, an account for each resident and supporting vouchers filed in chronological order. Each account shall be kept current with columns for debits, credits, and balance.

(c) Records of residents' monies and other valuables entrusted to the licensee for safekeeping shall include a copy of the receipt furnished to the resident or to the person responsible for the resident.

(d) Residents' monies not kept in the facility shall be deposited within five days of receipt of such funds in an interest-bearing account in a local bank authorized to do business in Utah, the deposits of which must be insured.

(e) A person, firm, partnership, association or corporation which is licensed to operate more than one health facility shall maintain a separate account for each such facility and shall not commingle resident funds from one facility with another.

(f) When the amount of residents' money entrusted to a licensee exceeds $150, all money in excess of $150 shall be deposited in an interest-bearing account as specified in R432-200-12(3)(c) and (d) above.

(g) Upon discharge of a resident, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the resident in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within three normal banking days.

(h) Within 30 days following the death of a resident, except in a coroner or medical examiner case, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the person responsible for the resident or to the executor or the administrator of the estate in exchange for a signed receipt. When a resident dies without a representative or known heirs, immediate written notice thereof shall be given by the facility to the State Medical Examiner and the registrar of the local probate court, and a copy of said notice shall be filed with the Department.

**R432-200-13. Admission and Discharge.**

Each facility shall develop admission and discharge policies that shall be available to the public upon request.

(1) Admission Policies.

(a) Residents shall be accepted for treatment and care only

if the facility is properly licensed for the treatment required and has the staff and resources to meet the medical, physical, and emotional needs of the resident.

(b) Residents shall be admitted by, and remain under the care of, a physician or individual licensed to prescribe care for the resident.

(c) There shall be a written order (a documented telephone order is acceptable) for admission and care at the time of admission.

(d) A resident shall be assessed within seven days of admission unless otherwise indicated by a program requirement. Admission policies shall define the assessment process including an identification of the resident's medical, nursing, social, physical, and emotional needs.

(e) A physical examination shall be performed, in accordance with R432-200-14(2), by the attending physician or by an individual licensed and so authorized.

(f) Upon admission, a brief narrative of the resident's condition including his temperature, pulse, respiration, blood pressure, and weight shall be documented.

(g) The resident shall be informed of his rights as a resident.

(i) A written copy of the facility's residents' rights shall be explained and given to the resident.

(ii) If the resident is unable to comprehend his rights, a written copy shall be given to the next of kin or other responsible party.

(iii) The inability of the resident to provide consent shall be documented in the resident's record.

(2) Discharge Policies.

(a) The resident shall be discharged when the facility is no longer able to meet the resident's identified needs.

(b) There shall be an order for the resident's discharge by the physician or person in charge of the resident's care.

(c) A discharge summary containing a brief narrative of the resident's diagnoses, course of treatment, conditions, and final disposition shall be documented in the medical record.

(d) Upon discharge of a resident, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the resident in exchange for a signed receipt (see R432-200-12(3)).

**R432-200-14. Physician Services.**

(1) General Requirements.

(a) Each resident in need of nursing services, habilitative, or rehabilitative care shall be under the care of a licensed physician.

(b) Each resident shall be permitted to choose his physician.

(c) Upon admission, each resident shall have orders for treatment and care.

(2) Physician Responsibilities.

(a) Each resident shall have a medical history and pertinent physical examination at least annually.

(b) Each intermediate care resident shall be seen at least once during the first 60 days of residency.

(c) The attending physician or medical practitioner shall see the resident whenever necessary but at least every 60 days, unless the attending physician or practitioner documents in the resident's record why the resident does not need to be seen this frequently.

(d) The physician or practitioner shall establish and follow a schedule alternating visits.

(e) Each visit and evaluation shall be documented in the resident's record.

(3) Policies and Procedures.

There shall be policies and procedures that provide for:

(a) Access to physician services in case of medical emergency or when the attending physician is not available;

(b) Names and telephone numbers of on-call physicians in the health services supervisor's office;

(c) Reevaluation of the resident and review of care and treatment orders when there is a change of attending physician which shall be completed within 15 days of such change.

(4) Non-Physician Practitioners.

The following practitioners may render medical services according to state law:

(a) Nurse practitioners licensed to practice in the state of Utah;

(b) Physicians' assistants working under the supervision of a licensed physician and performing only those selected diagnostic and therapeutic tasks identified in Rules and Regulations and Standards for Utilization of Physician Assistants.

(5) Physician Orders and Notes.

(a) The following items shall be part of the treatment record and shall be signed and dated by a physician:

(i) Admission orders;

(ii) Medication, treatment, therapy, laboratory, and diet orders;

(iii) History and physical examinations;

(iv) Physician's progress notes;

(v) The discharge summary;

(vi) All discharge orders;

(b) All telephone orders shall be recorded immediately and include:

(i) date and time of order;

(ii) the receiver's signature and title; and

(iii) the order shall be countersigned and dated within 15 days by the physician who prescribed the order.

(c) The attending physician shall complete the resident's medical record within 60 days of the resident's discharge, transfer, or death.

(6) Notification of Physician.

(a) The attending physician shall be notified promptly upon:

(i) Admission of the resident;

(ii) A sudden and/or marked adverse change in the resident's signs, symptoms, or behavior;

(iii) Any significant weight change in a 30-day period unless the resident's physician stipulates another parameter in writing;

(iv) Any adverse response or reaction by a resident to a medication or treatment;

(v) Any error in medication administration or treatment;

(vi) The discovery of a decubitus ulcer, the beginning of treatment, and if treatment is not effective. Notification shall be documented.

(b) The physician shall be notified if the facility is unable to obtain or administer drugs, equipment, supplies, or services promptly as prescribed. If the attending physician or his designee is not readily available, emergency medical care shall be provided. The telephone numbers of the emergency care physician shall be posted at the control station.

(c) All attempts to notify physicians shall be noted in the resident's record including the time and method of communication and the name of the person acknowledging contact, if any.

**R432-200-15. Nursing Care.**

(1) Organization.

(a) Each facility shall provide nursing care services commensurate with the needs of the residents served.

(b) All licensed nursing personnel shall maintain current Utah licenses to practice nursing.

(2) Responsibilities of the Health Services Supervisor.

The health services supervisor shall have the following responsibilities and comply with R432-1-3(55):

(a) Direct the implementation of physician's orders;

(b) Plan and direct the delivery of nursing care, treatments, procedures, and other services to assure that each resident's needs are met;

(c) Review the health care needs of each resident admitted to the facility and formulate with other professional staff a resident care plan according to the attending physician's orders;

(d) Review the medication system for completeness of information, accuracy in the transcription of physician's orders, and adherence to stop-order policies;

(e) Ensure that nursing notes describe the care rendered including the resident's response. Instruct staff on the legal requirements of charting;

(f) Supervise clinical staff to assure they perform restorative measures in their daily care of residents;

(g) Teach and coordinate habilitative and rehabilitative care to promote and maintain optimal physical and mental functioning of the resident;

(h) Keep the administrator and attending physician informed of significant changes in the resident's health status;

(i) Plan with the physician, family, and health-related agencies the care of the resident upon discharge;

(j) Coordinate resident services through the quality assurance committees (see R432-200-10);

(k) Assign qualified supervisory and supportive staff throughout the day and night to assure that the health needs of residents are met;

(l) Develop written job descriptions for all health service personnel and orient all new personnel to the facility and their duties and responsibilities;

(m) Evaluate and document the performance of each member of the staff at least annually. This evaluation shall be available for Departmental review;

(n) Plan and conduct documented orientation and in-service programs for staff.

(3) Required Staffing Hours.

(a) Any facility that provides nursing care shall provide at least two hours (120 minutes) of nursing-staff coverage (RN + LPN + Aides) per resident per 24 hours of which 20 percent or 24 minutes per resident shall be provided by licensed staff (RN + LPN).

(b) Facilities providing rehabilitative or habilitative care shall:

(i) Provide adequate staff care and supervision to meet the resident's needs based on the resident-care plan, or;

(ii) Conform to the specific program requirements in the appropriate supplement.

(c) The above requirements are minimum only. Additional staff may be necessary to ensure adequate coverage in the event of staff illness, turnover, sudden increase in resident population, or similar event.

(d) Facilities that participate in the Medicare/Medicaid programs shall, as a condition of such participation, meet the staffing standards approved through administrative rule.

(4) Nursing or Health Care Services.

(a) The health services procedure manual shall be reviewed and updated annually by the health services supervisor.

(b) The manual shall be accessible to all clinical staff and available for review by the Department.

(c) The procedures shall address the following:

(i) Bathing;

(ii) Positioning;

(iii) Enema administration;

(iv) Decubitus prevention and care;

(v) Bed making;

(vi) Isolation procedures;

(vii) Clinitest procedures;

(viii) Laboratory requisitions;

(ix) Telephone orders;

(x) Charting;

(xi) Rehabilitative nursing;

(xii) Diets and feeding residents;

(xiii) Oral hygiene and denture care;

(xiv) Naso-gastric tube insertion and care (by registered nurses, LPNs, with appropriate training, or physicians only).

(5) Measures to Reduce Incontinence.

Measures shall be implemented to prevent and reduce incontinence for each resident.

(a) There shall be a written assessment by a licensed nurse to determine the resident's ability to participate in a bowel and bladder management program.

(b) An individualized plan for each incontinent resident shall begin within two weeks of the initial assessment.

(c) A weekly evaluation of the resident's performance in the bowel/bladder management program shall be recorded in the resident's record by a licensed nurse.

(d) Fluid intake and output shall be recorded for each resident as ordered by the physician or charge nurse.

(i) Intake and output records shall be evaluated at least weekly and each evaluation shall be included in the resident's record;

(ii) Physician's or nurse's orders shall be reevaluated periodically.

(6) Rehabilitative Nursing.

Nursing personnel shall be trained in rehabilitative nursing.

(a) Rehabilitative nursing services shall be performed daily for residents who require such services and shall be documented

in the resident's record when provided.

(b) Rehabilitative services shall be provided to maintain function or to improve the resident's ability to carry out the activities of daily living.

(c) Rehabilitative nursing services shall include the following:

(i) Turning and positioning of residents;

(ii) Assisting residents to ambulate;

(iii) Improving resident's range of motion;

(iv) Restorative feeding;

(v) Bowel and bladder retraining;

(vi) Teaching residents self-care skills;

(vii) Teaching residents transferring skills;

(viii) Teaching residents self-administration of medications, as appropriate;

(ix) Taking measures to prevent secondary disabilities such as contractions and decubitus ulcers.

**R432-200-16. General Resident Care Policies.**

(1) Each resident shall be treated as an individual with dignity and respect in accordance with Residents' Rights (R432-200-12).

(2) Each facility shall develop and implement resident care policies to be reviewed annually by the health services supervisor.

(3) These policies shall address the following:

(a) Each resident upon admission shall be oriented to the facility, services, and staff.

(b) Each admission shall comply with R432-200-13(1).

(c) Each resident shall receive care to ensure good personal hygiene. This care shall include bathing, oral hygiene, shampoo and hair care, shaving or beard trimming, fingernail and toenail care.

(d) Linens and other items in contact with the resident shall be changed weekly or as the item is soiled.

(e) Each resident shall be encouraged and assisted to achieve and maintain the highest level of functioning and independence including:

(i) teaching the resident self-care,

(ii) assisting residents to adjust to their disabilities and prosthetic devices,

(iii) directing residents in prescribed therapy exercises, and

(iv) redirecting residents interests as necessary.

(f) Residents must be reevaluated annually to determine if a less restrictive setting might be more appropriate to help them achieve independence.

(g) Each resident shall receive care and treatment to ensure the prevention of decubiti, contractions, and deformities.

(h) Each resident shall be provided with good nutrition and adequate fluids for hydration.

(i) All residents shall have ready access to water and drinking glasses;

(ii) Residents unable to feed themselves shall be assisted to eat in a prompt, orderly manner;

(iii) Residents shall be provided with adapted equipment to assist in eating and drinking.

(i) Visual privacy shall be provided for each resident during treatments and personal care.

(j) Call lights or signals (where required) shall be answered promptly.

(k) Humidifier bottles on oxygen equipment shall be sterile and changed every 24 hours or at the manufacturers direction.

(4) Notification of Family.

The person in charge shall immediately notify the resident's family or guardian of any accident, injury, or adverse change in the resident's condition after the first attempt to notify the physician. This notification shall be documented in the resident's record.

**R432-200-17. Resident-Care Plans.**

(1) General Provisions.

(a) A written resident-care plan, coordinated with nursing and other services, shall be initiated for each resident upon admission.

(b) The resident-care plan shall be personalized and indicate measurable and time-limited objectives, the actual plan of care, and the professional discipline responsible for each element of care.

(c) The resident care plan shall be developed, reviewed, revised, and updated at least annually through conferences with all professionals involved in the resident's care. Such conferences shall be documented.

(d) Each resident's care shall be based on this plan.

(e) The resident-care plan shall be available to all personnel who care for the resident.

(f) The resident and family shall participate in the development and review of the resident's plan.

(g) Upon transfer or discharge of the resident, relevant information from the resident-care plan shall be available to the responsible institution or agency.

(h) A licensed nurse or other clinical specialist, where appropriate, shall summarize, each month, the resident's status and problems identified in the resident-care plan.

(2) Resident-Care Plans Contents.

The resident-care plan shall include at least the following:

(a) Name, age, and sex of resident;

(b) Diagnosis, symptoms, complaints;

(c) A description of the functional level of the individual;

(d) Care objectives and time frames for accomplishment, reevaluation, and completion;

(e) Discipline or person responsible for each objective;

(f) Discharge plan;

(g) Date of admission;

(h) Name of attending physician or medical practitioner.

**R432-200-18. Medication Administration.**

(1) Standing Orders.

Standing orders for medications, treatments, and laboratory procedures shall not be used. All orders shall be written for the individual resident.

(2) Administration of Medication and Treatments.

Medication and treatment shall be administered as follows:

(a) No medication or treatment shall be administered except on the order of a person lawfully authorized to give such order.

(b) Medications and treatments shall be administered as prescribed and according to facility policy.

(c) All medications and treatments shall be administered by licensed medical or licensed nursing personnel. Student doctors and nurses may administer medication and treatment only in the course of study and when supervised by a licensed instructor or designated staff.

(d) Monitoring of vital signs and other observations done in conjunction with the administration of medication shall be carried out as ordered by the physician or practitioner and as indicated by accepted professional practice.

(e) Preparation of doses for more than one scheduled time of administration shall not be permitted.

(f) Medication shall be administered when ordered or as soon thereafter as possible but no more than two hours after the dose has been prepared.

(g) Medication shall be administered by the same person who prepared the dose for administration.

(h) Residents shall be identified prior to the administration of any drug or treatment.

(i) No medication shall be used for any resident other than the resident for whom it was prescribed.

(j) If the person who prescribed a medication does not limit the duration of the drug order or the number of doses, the facility's automatic stop-order policy shall indicate how long a drug may be administered. The prescriber shall be notified before the medication is discontinued.

(k) All orders for treatment or therapy shall contain:

(i) the name of the treatment or therapy,

(ii) the frequency and time to be administered,

(iii) the length of time the treatment or therapy is to continue,

(iv) the name and professional title of the practitioner who gave the order,

(v) the date of order, and

(vi) signature of the person prescribing the treatment or therapy.

(l) All nursing personnel shall comply with the provisions for administration of medication according to standards and ethics of the profession.

(m) Injectable medications shall be administered only by authorized persons.

(i) If a physician certifies that a resident is capable of administering his own insulin or oral medications, the resident may self-inject the prescribed insulin or self-administer the prescribed medications.

(ii) The physician's order, authorizing the resident's self-administration of medications, shall be documented and available for Departmental review.

**R432-200-19. Behavior Management and Restraint Policy.**

See R432-150-14.

**R432-200-20. Resident Care Equipment.**

(1) The facility shall provide equipment, in good working order, to meet the needs of residents.

(2) Disposable and single-use items shall be properly disposed of after use.

(3) Resident care equipment shall include at least the following:

(a) Self-help ambulation devices such as wheelchairs, walkers, and other devices deemed necessary in the resident plan of care. Facility policy may require that residents obtain their own equipment for long-term use;

(b) Blood pressure apparatus and stethoscopes, appropriate to the needs and number of residents;

(c) Thermometers appropriate to the needs of residents;

(d) Weight scales to weigh all residents;

(e) Bedpans, urinals, and equipment to clean them;

(f) Water pitchers, drinking glasses, and resident gowns;

(g) Drug service trays;

(h) Access to emergency oxygen including equipment for its administration;

(i) Emesis basins;

(j) Linens including sheets, blankets, bath towels, and wash cloths for not less than three complete changes for the facility's licensed bed capacity. There shall be a bedspread for each resident bed;

(k) Personal items including toothbrush, comb, hair brush, soap for bathing and showering, denture cups, shaving apparatus, and shampoo;

(l) An individual chart for each resident;

(m) Gloves (sterile and unsterile);

(n) Ice bags.

**R432-200-21. Pharmacy Service.**

The facility shall make provision for pharmacy service.

(1) This service shall be under the direction of a qualified pharmacist currently licensed in the state of Utah.

(2) The pharmacist may be retained by contract.

(3) The pharmacist shall develop policies, direct, supervise and assume responsibility for any pharmacy services offered in the facility.

(4) Pharmacy services shall meet R432-150-19.

**R432-200-22. Dietary Services.**

(1) Organization.

(a) There shall be an organized dietary service that provides safe, appetizing, and nutritional food service to residents.

(b) The service shall be under the supervision of a qualified dietetic supervisor or consultant.

(c) If a facility contracts with an outside food management company, the company shall comply with all applicable requirements of these rules.

(2) See R432-150-24.

**R432-200-23. Social Services.**

(1) The facility shall provide social services which assist staff, residents, and residents' families to understand and cope with residents' personal, emotional, and related health and environmental problems.

(2) This service may be provided by a consultant.

(3) See R432-150-17.

(4) Responsibilities.

Whether provided directly by the facility or by agreement with other agencies, social service personnel shall:

(a) Provide services to maximize each resident's ability to adjust to the social and emotional aspects of their condition, treatments, and continued stay in the facility;

(b) Participate in ongoing discharge planning to guarantee continuity of care;

(c) Initiate referrals to official agencies when the resident needs financial assistance;

(d) Maintain appropriate liaison with the family or other responsible person concerning the resident's placement and rights;

(e) Preserve the dignity and rights of each resident;

(f) Maintain records, including a social history and social-services-needs evaluation, (updated annually);

(g) Integrate social services with other elements of the resident-care plan.

**R432-200-24. Recreation Services.**

(1) There shall be an organized resident activity program for the group and for each resident in the facility.

(2) See R432-150-20.

**R432-200-25. Laboratory and Radiology Services.**

(1) The facility shall make provision for laboratory and radiology services.

(2) See R432-150-18, Laboratory Services, and R432-150-23, Ancillary Health Services.

**R432-200-26. Dental Services.**

The facility shall make provision for annual and emergency dental care for residents. Such provisions shall include:

(1) Developing oral hygiene policies and procedures with input from dentists;

(2) Presenting oral hygiene in-service programs by knowledgeable persons to both staff and residents;

(3) Allowing resident's freedom of choice in selecting their own private dentists;

(4) Developing an agreement with a dental service for those residents who do not have a personal dentist;

(5) Arranging transportation to and from the dentist's office.

**R432-200-27. Specialized Rehabilitative Services.**

(1) Organization.

(a) A facility that provides specialized rehabilitative services may offer these services directly or through agreements with outside agencies or qualified therapists.

(b) Services may be offered either on-site or off-site.

(c) If the facility does not provide specialized rehabilitative services, the facility shall neither admit nor retain residents in need of such services.

(2) Personnel.

(a) Specialized rehabilitative services shall be provided by qualified licensed therapists in accordance with Utah law and accepted practices.

(b) Therapists shall offer the full scope of services to the resident.

(c) All therapy assistants shall be qualified and shall work under the direct supervision of a licensed therapist at all times.

(d) Speech pathologists shall be licensed under Title 58, Chapter 41.

(3) Policies and Procedures.

(a) Services shall be provided only on the written order of an attending physician.

(b) Safe and adequate space and equipment shall be available commensurate with the needs of residents.

(c) An appropriate plan of treatment shall be initiated by an attending physician and developed by the therapist in consultation with the nursing staff.

(d) An initial progress report shall be submitted to the attending physician two weeks after treatment has begun or when specified by the physician.

(e) The physician and therapist shall review and evaluate the plan of treatment monthly, unless, the physician recommends an alternate schedule in writing.

(f) There shall be documentation in the resident's record of the specialized plan of treatment.

**R432-200-28. Medical Records.**

(1) Organization.

(a) Medical records shall be complete, accurately documented, and systematically organized to facilitate retrieval and compilation.

(b) There shall be written policies and procedures to accomplish these purposes.

(c) The medical record service shall be under the direction of a registered record administrator (RRA) or an accredited record technician (ART).

(d) If an RRA or an ART is not employed at least part-time, the facility shall consult at least annually with an RRA or ART according to the needs of the facility.

(e) A designated individual in the facility shall be responsible for day-to-day record keeping.

(2) Retention and Storage.

(a) Provision shall be made for the filing, safe storage, and easy accessibility of medical records.

(i) The record and its contents shall be safeguarded from loss, defacement, tampering, fires, and floods.

(ii) Records shall be protected against access by unauthorized individuals.

(b) Medical records shall be retained for at least seven years after the last date of resident care. Records of minors shall be retained until the minor reaches age 18 or the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(c) All resident records shall be retained within the facility upon change of ownership.

(d) When a facility ceases operation, provision shall be made for appropriate safe storage and prompt retrieval of all medical records.

(3) Release of Information.

(a) There shall be written procedures for the use and removal of medical records and the release of information.

(b) Medical records shall be confidential.

(i) Information may be disclosed only to authorized persons in accordance with federal, state, and local laws.

(ii) Requests for other information which may identify the resident (including photographs) shall require the written consent of the resident or guardian if the resident is judged incompetent.

(c) Authorized representatives of the Department may review records to determine compliance with licensure rules and

standards.

(4) Physician or Licensed Practitioner Documentation

Rubber-stamp signatures may be used in lieu of the written signature of the physician or licensed practitioner if the facility retains the signator's signed statement acknowledging ultimate responsibility for the use of the stamp and specifying the conditions for its use.

(5) Medical Record.

(a) Records shall be permanent (typewritten or hand written legibly in ink) and capable of being photocopied.

(b) Records shall be kept for all residents admitted or accepted for treatment and care.

(c) Records shall be kept current and shall conform to good medical and professional practice based on the service provided to each resident.

(d) All records of discharged residents shall be completed and filed within 60 days of discharge.

(e) All entries shall be authenticated including date, name or identified initials, and title of persons making entries.

(6) Contents of the Medical Record

A facility shall maintain an individual medical record for each resident which shall include:

(a) Admission record (face sheet) including the resident's name; social security number; age at admission; birth date; date of admission; name, address, telephone number of spouse, guardian, authorized representative, person or agency responsible for the resident; and name, address, and telephone number of the attending physician;

(b) Admission and subsequent diagnoses and any allergies;

(c) Reports of physical examinations signed and dated by the physician;

(d) Signed and dated physician orders for drugs, treatments, and diet;

(e) Signed and dated progress notes including but not limited to:

(i) Records made by staff regarding the daily care of the resident;

(ii) Informative progress notes by appropriate staff recording changes in the resident's condition. Progress notes shall describe the resident's needs and response to care and treatment, and shall be in accord with the plan of care;

(iii) Documentation of administration of all "PRN" medications and the reason for withholding scheduled medications;

(iv) Documentation of use of restraints in accordance with facility policy including type of restraint, reason for use, time of application, and removal;

(v) Documentation of oxygen administration;

(vi) Temperature, pulse, respiration, blood pressure, height, and weight notations, when required;

(vii) Laboratory reports of all tests prescribed and completed;

(viii) Reports of all x-rays prescribed and completed;

(ix) Records of the course of all therapeutic treatments;

(x) Discharge summary including a brief narrative of conditions and diagnoses of the resident and final disposition;

(xi) A copy of the transfer form when the resident is transferred to another health care facility;

(xii) Resident-care plan.

**R432-200-29. Housekeeping Services.**

Organization.

(1) There shall be adequate housekeeping services to maintain a clean sanitary and healthful environment in the facility.

(2) See R432-150-26.

**R432-200-30. Laundry Services.**

(1) There shall be adequate laundry service to provide clean linens and clothing for residents and staff.

(2) See R432-150-27.

**R432-200-31. General Maintenance.**

(1) Each facility shall develop and implement maintenance policies and procedures that shall be reviewed and updated annually.

(2) See R432-150-28.

**R432-200-31. Penalties.**

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

**KEY: health facilities**

**March 3, 1995 26-21-5**

**Notice of Continuation December 15, 1997 26-21-6**

**R432. Health, Health Systems Improvement, Licensing.**
**R432-600. Abortion Clinic Rule.**
**R432-600-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

**R432-600-2. Purpose.**

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance of abortion clinics for providing safe and effective facilities and services.

**R432-600-3. Time for Compliance.**

All facilities governed by these rules shall be in full compliance at the time of licensure.

**R432-600-4. Licensure.**

A license is required to operate an abortion clinic. The licensee and facility shall maintain documentation that they are members in good standing with the National Abortion Federation which is required for licensure.

**R432-600-5. Construction.**

(1) See R432-4-1 through R432-4-24 General Construction Requirements.

(2) Each facility shall conform to the functional, space, and equipment specifications of U. S. Department of Health and Human Services, Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1992-93 edition, including Appendix A, specifically, Chapter 9, Outpatient Facilities, sections 9.1 and 9.2. Modifications or deletion of space and functional requirements may be made with Departmental written approval.

(3) Treatment rooms shall be a minimum of 110 square feet exclusive of vestibules or cabinets.

**R432-600-6. Organization.**

(1) Each clinic shall be operated by a licensee. If the licensee is other than a single individual, there shall be an organized functioning governing body to assure accountability.

(2) The licensee shall be responsible for the organization, management, operation, and control of the facility.

(3) Responsibilities shall include at least the following:

(a) Comply with all applicable federal, state and local laws, rules and requirements;

(b) Adopt and institute by-laws, protocols, policies and procedures relative to the operation of the clinic;

(c) Appoint, in writing, a qualified administrator to be responsible for the implementation of facility bylaws, policies and procedures, and for the overall management of the facility;

(d) Appoint, in writing, a qualified medical director to be responsible for clinical services;

(e) Establish a quality assurance committee in conjunction with the medical staff;

(f) Secure contracts for services not provided directly by the clinic;

(g) Receive and respond to the annual inspection report by the Department;

(h) Notify the Department in writing the name of a new administrator within five days of a change of administrator.

(i) Compile statistics on the distribution of the informed consent material as required in Section 76-7-313.

**R432-600-7. Clinic Protocols, Policies, and Procedures.**

Clear, explicit written protocols, criteria, policies and procedures in accordance with Section 76-7-302, shall be established by the licensee with consultation of the medical director and the administrator in the following areas:

(1) Patient eligibility criteria;

(2) Physician competency criteria;

(3) Informed consent;

(4) Abortion procedure protocols to include;

(a) Clinic policy must indicate a limit on the number of weeks within the second trimester of pregnancy during which abortions can be safely performed in the clinic.

(b) If an abortion is performed when an unborn child is sufficiently developed to have any reasonable possibility of survival outside its mother's womb, the medical procedure used must be that which, in the best medical judgement of the physician, will give the unborn child the best chance of survival. (Refer to Section 76-7-307.)

(5) Pre and post counseling;

(6) Clinic operational functions;

(7) Patient care and patient rights policies;

(8) A quality assurance committee;

(9) Ongoing relevant training program for all clinic personnel;

(10) Emergency and disaster plans;

(11) Fire evacuation plans.

**R432-600-8. Administrator.**

(1) Each facility shall designate, in writing, an administrator who shall have sufficient freedom from other responsibilities to be on the premises of the clinic a sufficient number of hours in the business day to permit attention to the management and administration of the facility.

(2) The administrator shall designate a person to act as administrator in his absence. This person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being. It is not the intent to permit a de facto administrator to supplant or replace the designated facility administrator.

(3) The administrator shall be 21 years of age or older.

(4) The administrator shall be experienced in administration and supervision of personnel, and shall be knowledgeable about the medical aspects of abortions to interpret and be conversant in medical protocols.

(5) The administrator's responsibilities shall be included in a written job description.

(6) Responsibilities shall include at least the following:

(a) Develop and implement facility policies and procedures;

(b) Maintain an adequate number of qualified and competent staff to meet the needs of clinic patients;

(c) Develop clear and complete job descriptions for each position;

(d) Implement recommendations made by the quality assurance committee;

(e) Notify the Department promptly in the event of the death of a patient;

(f) Notify appropriate authorities when a serious communicable disease is diagnosed;

(g) File a fetal death certificate as required in Section 26-2-14, for each fetal death of 20 weeks gestation or more calculated from the date the last normal menstrual period began to date of delivery;

(h) Review all incident and accident reports and document what action was taken.

**R432-600-9. Medical Director.**

(1) The licensee of the abortion clinic shall retain, by formal agreement, a physician to serve as medical director.

(2) The medical director shall meet the following qualifications:

(a) Be currently licensed to practice medicine in Utah;

(b) Have sufficient training and expertise in abortion procedures to enable him to supervise the scope of service offered by the clinic;

(c) Be a diplomate of the American Board of Obstetrics and Gynecology or the American Board of Surgery; or submit evidence to the Department that other training and experience will qualify him for admission to an examination by either board; or

(d) Be certified by the American College of Osteopathic Obstetricians and Gynecologists or the American Board of Osteopathic Surgeons; or submit evidence to the Department that his training and experience qualifies him for admission to an examination by the College or Board;

(e) Be a member in good standing with the National Abortion Federation.

(3) The medical director shall have overall responsibility for the administration of medication and treatment delivered in the facility. Applicable laws relating to abortions, professional licensure acts and clinic protocols shall govern both medical staff and employee performance.

(4) The medical director shall be responsible for at least the following:

(a) To develop and review facility protocols;

(b) To establish competency criteria for staff physicians and personnel, including training in abortion procedures and abortion counseling;

(c) To supervise the performance of the medical staff;

(d) To serve as a member of the clinic's quality assurance committee;

(e) To act as consultant to the director of nursing;

(f) Ensure that a physician's report is filed as required in Section 76-7-313, for each abortion performed.

**R432-600-10. Director of Nursing.**

(1) Each clinic shall employ and designate in writing a director of nursing who will be responsible for the organization and functioning of the nursing staff and related service.

(2) The director of nursing shall be a registered nurse who has academic or post graduate training acceptable to the medical director.

(3) The director of nursing in consultation with the medical director shall plan and direct the delivery of nursing care by nursing staff.

**R432-600-11. Health Surveillance.**

(1) The Facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and clients commensurate with the service offered.

(2) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(3) The health inventory shall obtain at least the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(b) condition which may prevent the employee from performing certain assigned duties satisfactorily;

(4) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R388-804. Communicable Disease Rules;

(5) Employee skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R386-702-5, Special Measures for control of Tuberculosis;

(a) Skin testing must be conducted on each employee annually and after suspect exposure to a resident with active tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(6) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

**R432-600-12. Personnel.**

(1) The Administrator shall employ a sufficient number of professional and support staff who are competent to perform their respective duties, services and functions.

(a) All staff shall be licensed, certified or registered as required by the Utah Department of Commerce.

(b) Copies shall be maintained for Department review that all licenses, registration and certificates are current.

(c) Failure to ensure that all personnel are licensed, certified or registered may result in sanctions to the facility license.

(2) There shall be planned, documented, in-service training program held regularly for all facility personnel.

(3) The training program shall address all clinic protocols and policies.

(4) All clinic personnel shall have access to the facility's policies and procedures manuals and other information necessary to effectively perform assigned duties and carry out responsibilities.

**R432-600-13. Contracts.**

(1) The licensee shall make arrangements for professional and other required services not provided directly by the facility. If the facility contracts for services, there shall be a signed, dated agreement that details all services provided.

(2) The contract shall include:

(a) The effective and expiration dates;

(b) A description of goods or services to be provided;

(c) Copy of the professional license, if applicable.

**R432-600-14. Emergency Transfer Agreements.**

(1) The licensee shall maintain a written transfer agreement with one or more full-service JCAHO-accredited hospitals located within an overall travel time of 15 minutes or less from the clinic.

(2) The transfer agreement shall include provisions for:

(a) Hospital admitting privileges for the clinic medical director or the attending physician;

(b) Transfer of information needed for proper care and treatment of individual transferred;

(c) Security and accountability of the personal effects of the individual transferred.

**R432-600-15. Quality Assurance.**

(1) The administrator, in conjunction with the medical staff, shall establish a quality assurance committee and program. This committee shall review regularly clinic operations, protocols, policies and procedures, incident reports, infection control, patient care policies and safety.

(2) The committee shall include a representative from the clinic administration, a physician, and a nurse.

(3) The committee shall meet at least quarterly and keep minutes of the proceedings. The minutes shall be available for review by the Department.

(4) The committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the licensee.

**R432-600-16. Emergency and Disaster.**

(1) Each facility has the responsibility to assure the safety and well-being of patients in the event of an emergency or disaster. An emergency or disaster may include but is not limited interruption of public utilities, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The administrator shall be in charge of facility operations during any significant emergency. If not on the premises, he should make every reasonable effort to get to the facility to relieve subordinates and take charge during the emergency.

(3) The licensee and the administrator shall be responsible for the development of a plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters.

(a) This plan shall be in writing and shall be distributed or made available to all facility staff to assure prompt and efficient implementation.

(b) The plan shall be reviewed and updated at least annually by the administrator and the licensee.

(4) The names and telephone numbers of clinic staff, emergency medical personnel, and emergency service systems shall be posted.

(5) The facility's emergency plan shall address the following:

(a) Evacuation of occupants to a safe place within the facility or to another location;

(b) Delivery of emergency care and services to facility occupants when staff is reduced by an emergency;

(c) The person or persons with decision-making authority for fiscal, medical, and personnel management;

(d) An inventory of available personnel, equipment, and supplies and instructions on how to acquire additional assistance;

(e) Assignment of personnel to specific tasks during an emergency;

(f) Names and telephone numbers of on-call physicians and staff at each nurses' station;

(g) Documentation of emergency events.

(6) The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) The evacuation plan shall identify evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department and shall be posted throughout the facility.

(b) The written fire emergency plan shall include fire-containment procedures and how to use the facility alarm systems and signals.

(c) Fire drills shall be held quarterly--one drill per shift per quarter. The actual evacuation of patients during a drill is optional.

**R432-600-17. Patients' Rights.**

(1) The clinic shall provide informed consent material (see Section 76-7-305.5) to any patient or potential patient.

(2) Written policies regarding the rights of patients shall be made available to the patient, public, and the Department upon request.

(3) Each patient admitted to the facility shall have the following rights:

(a) To be fully informed, prior to or at the time of admission and during stay, of these rights and of all facility rules that pertain to the patient;

(b) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of any charges for which the patient may be liable;

(c) To refuse to participate in experimental research;

(d) To refuse treatment and to be informed of the medical consequences of such refusal;

(e) To be assured confidential treatment of personal and medical records and to approve or refuse release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(f) To be treated with consideration, respect, and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

**R432-600-18. General Patient Care Policies.**

(1) Each patient shall be treated as an individual with dignity and respect.

(2) Each clinic shall develop and implement patient care policies to be reviewed annually by the director of nursing.

(a) Patient care policies shall be developed and revised through patient-care conferences with all professionals involved in patient care.

(b) Admission and discharge policies shall be included in general patient care policies.

(3) The facility shall have a policy to notify next of kin in the event of serious injury to, or death of, the patient.

(4) Each patient shall be under the care of a physician who is a member of the clinic staff.

**R432-600-19. Nursing Services.**

(1) Each facility shall provide nursing services commensurate with the needs of the patients served.

(2) All non-medical patient services shall be under the general direction of the director of nursing, except as specifically exempted by facility policy.

(3) Nursing service personnel shall assist the physician, plan and deliver nursing care, treatments, and procedures commensurate with the patient's needs and clinic protocols.

(4) All nursing personnel shall maintain a current Utah nursing license.

(5) The facility shall provide adequate equipment in good working order to meet the needs of patients.

(a) Disposable and single-use items shall be properly disposed after use.

(b) The type and amount of equipment shall be identified in clinic policy and approved by the medical director.

**R432-600-20. Medication and Treatments.**

Documentation of medications and treatments shall comply with generally accepted professional practice and clinic policy.

**R432-600-21. Pharmacy Service.**

(1) There shall be written policies and procedures, approved by the medical director and administrator, to govern the acquisition, storage, and disposal of medications.

(2) There shall be provision for the supply of necessary drugs and biologicals on a prompt and timely basis.

(3) The clinic shall obtain reference material containing monographs on all drugs used in the facility. The drug monographs shall include generic and brand names, available strengths, dosage forms, indications and side effects, and other pharmacological data.

(4) All medications, solutions, and prescription items shall be kept in a secure controlled storage area, convenient to the nurses station and separate from non-medicine items.

(5) A accessible emergency drug supply shall be maintained in the facility.

(a) Specific drugs and dosages to be included in the emergency drug supply shall be approved by the medical director.

(b) Contents of the emergency drug supply shall be listed on the outside of the container.

(c) The use and regular inventory of the contents shall be documented by nursing staff.

(6) Medications stored at room temperature shall be maintained within 59 degrees - 80 degrees F (15 degrees to 30 degrees C). Refrigerated medications shall be maintained within 36 degrees - 46 degrees F (2 degrees to 8 degrees C).

(7) Medications and other items that require refrigeration shall be stored securely and segregated from food items.

**R432-600-22. Laboratory and Radiology Services.**

(1) The facility shall make provisions, as appropriate, for Laboratory and Radiology services.

(2) There shall be a valid order, documented in the patients medical record, from a physician or a person licensed to prescribe such services.

(3) Services shall be performed by a qualified licensed provider.

(4) If the facility provides its own laboratory service, these services shall comply with R432-100-22 in the General Hospital Facility Rules.

(5) If the facility provides its own radiology services, these shall comply with R432-100-21.

(6) If laboratory and radiology services are not provided directly, provision shall be made for such services. Reports or results shall be reported promptly to the attending physician and documented in the patient's medical record.

**R432-600-23. Anesthesia Services.**

Anesthesia services provided in the clinic shall comply with the General Hospital Rules R432-100-15.

**R432-600-24. Medical Records.**

(1) Medical records shall be complete, accurately documented, and systematically organized to facilitate storage and retrieval. There shall be written policies and procedures to accomplish these purposes.

(2) A permanent individual medical record shall be maintained for each patient.

(3) All entries shall be permanent (typed or handwritten legibly in ink) and capable of being photocopied. Entries must be authenticated including date, name or identified initials, and title of the person making the entry.

(4) Records shall be kept for all patients admitted or accepted for treatment and care. Records shall be kept current and shall conform to good medical and professional practice based on the service provided to each patient.

(5) All records of discharged patients shall be completed and filed as soon as possible or within 30 days of discharge.

(6) Each patient's medical record shall include the following:

(a) An admission record (face sheet) including the patient's name; age; date of admission; name, address, and telephone number of physician and responsible person;

(b) Reports of physical examinations, laboratory tests and X-rays prescribed and completed, including ultrasound reports;

(c) Signed and dated physician orders for drugs and treatments;

(d) Signed and dated nurse's notes regarding the care of the patient. The notes shall include vital signs, medications, treatments and other pertinent information;

(e) Discharge summary which contains a brief narrative of conditions and diagnoses of the patient and final disposition;

(f) The pathologist's report of human tissue removed during an abortion;

(g) All information indicated in Section 76-7-313.

(7) Medical records shall be retained for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches age 18 or the age of majority

plus an additional two years. In no case shall the record be retained less than seven years.

(8) All patient records shall be retained within the clinic upon change of ownership.

(9) Provision shall be made for filing, safe storage, security, and easy accessibility of medical records.

(10) Medical record information shall be confidential. There shall be written procedures for the use and removal of medical records and the release of patient information.

(a) Information may be disclosed only to authorized persons in accordance with federal and state laws, and clinic policy.

(b) Requests for information which may identify the patient (including photographs) shall require the written consent of the patient.

**R432-600-25. Housekeeping Services.**

(1) There shall be adequate housekeeping services to maintain a clean, sanitary, and healthful environment in the facility.

(2) The housekeeping service shall meet all the requirements of this section.

(3) Written housekeeping policies and procedures shall be developed and implemented by each facility, and reviewed and updated as necessary.

(4) The facility shall employ housekeeping staff to maintain both the exterior and interior of the facility in a safe, clean, orderly manner.

(5) Housekeeping equipment shall be for institutional use and properly maintained.

(6) Cleaning solutions for floors shall be prepared in proper strengths according to the manufacturer's instructions and be checked to insure that the proper germicidal concentrations are maintained.

(7) There shall be sufficient number of noncombustible trash containers. Lids shall be provided where appropriate.

(8) Storage areas containing cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials, shall be safeguarded. Toilet rooms shall not be used as storage places.

**R432-600-26. Laundry Services.**

(1) Each facility shall have provisions for storage and processing of clean and soiled linen as required for patient care.

(2) Processing may be done within the facility, in a separate building or in a commercial or shared laundry.

(3) Each facility shall develop and implement policies and procedures relevant to operation of the laundry which shall be reviewed and updated annually.

(4) Clean linen shall be stored, handled, and transported in a manner to prevent contamination.

(a) Clean linen shall be stored in clean ventilated closets, rooms, or alcoves used only for that purpose.

(b) Clean linen shall be covered if stored in alcoves and transported through the facility.

(c) Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.

(d) Linens shall be maintained in good repair.

(e) A supply of clean washcloths and towels shall be provided and available to staff to meet the care needs of patients.

(5) Soiled linen shall be handled, stored and processed in a manner that will prevent the spread of infections.

(a) Soiled linen shall be sorted in a separate room by methods affording protection from contamination, according to facility policy and applicable rules.

(b) Soiled linen shall be stored and transported in a closed container which prevents airborne contamination of corridors, areas occupied by patients, and precludes cross contamination of clean linens.

(6) Laundry chutes shall be maintained in a clean sanitary state.

**R432-600-27. Maintenance Services.**

(1) There shall be adequate maintenance service to ensure that the facility, equipment, and grounds are maintained in a clean and sanitary condition and in good repair at all times for the safety and well-being of patients, staff, and visitors.

(2) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance.

(3) The facility shall develop and implement a written maintenance program, including preventive maintenance, to ensure continued operation and sanitary practices throughout the facility.

(4) All buildings, fixtures, equipment and spaces shall be maintained in operable conditions.

(5) A pest control program shall be conducted to ensure the facility is free from vermin and rodents by a licensed pest control contractor or an employee certified in pest control procedures.

(6) Equipment used in the clinic shall be approved by Underwriter's Laboratory and meet all applicable Utah Occupational Safety and Health Act requirements in effect at the time of purchase.

(7) Electrical systems including appliances, cords, equipment, call lights, and switches shall be maintained to guarantee safe functioning and compliance with the National Electrical Code.

(8) Heating and cooling systems shall be inspected annually to guarantee safe operation. Documentation of these inspection reports shall be maintained for Department review.

(9) There shall be regular inspections, to clean or replace all filters installed in heating, air conditioning, and ventilation systems, to maintain the systems in operating condition.

**R432-600-28. Emergency Electric Service.**

(1) The clinic shall make provision for emergency electrical power to provide lighting and power to critical areas essential for patient safety in the event of an interruption of normal electrical power service.

(2) The method utilized for emergency electrical power is subject to Departmental review and approval.

(3) There shall be provision for emergency exit lighting according to NFPA 101.

(4) Flashlights shall be available for emergency use by staff.

(5) All emergency electrical power systems shall be

maintained in operating condition and tested as follows:

(a) Emergency generators shall be tested every 14-days, and run under load for 20 minutes every month.

(b) Transfer switches and battery operated equipment shall be tested every 14-days.

(6) A written record of inspection, performance, test period, and repair of the emergency electrical system shall be maintained on the premises for review.

**R432-600-29. Storage and Disposal of Solid Wastes.**

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

**R432-600-30. Oxygen.**

If oxygen is utilized:

(1) Provision shall be made for safe handling and storage of oxygen according to the National Fire Protection Association 101 manual.

(2) Facility personnel shall not transfer gas from one cylinder to another.

(3) Piped oxygen system shall be tested in accordance with NFPA 56F and 56K.

(4) A written report shall be filed with the Utah Department of Health as follows:

(a) Upon completion of initial installation;

(b) Whenever changes are made to a system; and

(c) Whenever the integrity of the system has been breached.

**R432-600-31. Lighting.**

(1) Sodium and mercury vapor lights may not be used inside the facility, but may be utilized as a source of exterior lighting.

(2) At least 30 foot-candles of light shall illuminate reading, patient care (bed level) and working areas in patient treatment areas and not less than 20 foot-candles of light shall be provided in the rest of the room.

(3) All accessible storeroom, stairway, ramp, exit and entrance areas shall be illuminated by at least 20 foot-candles of light at floor level.

(4) All corridors shall be illuminated with a minimum of 20 foot-candles of light at floor level.

(5) Other areas shall be provided with the following minimum foot-candles of light at working surfaces:

(a) Operating rooms 50 Foot-candles

(b) Medication preparation areas 50 foot-candles

(c) Charting areas 50 foot-candles

(d) Reading rooms 50 foot-candles

(e) Laundry areas 20 foot-candles

(f) Bath and shower rooms 20 foot-candles

**R432-600-32. Water Supply.**

(1) Plumbing and drainage facilities shall be maintained in compliance with Utah Plumbing Code.

(2) Backflow prevention devices shall be maintained in operating condition and tested when required by the Utah Plumbing Code and Utah Public Drinking Water Regulations.

(3) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by patients. The facility shall endeavor to maintain hot water delivered to patient care areas at temperature between 105 degrees and 115 degree F.

(4) There shall be grab bars at each toilet, bathtub, and shower used by patients.

(5) Toilet, hand washing facilities, shall be maintained in operating condition and in the number and types specified in construction requirements.

**R432-600-33. Smoking Policy.**

The smoking policy shall comply with the "Utah Clean Air Act", Title 26, Chapter 38, and Section 31-4.4 of the Life Safety Code, 1991.

**R432-600-33. Penalties.**

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

**KEY: health facilities**

**February 24, 1998 26-21-5**

**Notice of Continuation December 15, 1997 26-21-6**

**26-21-16**

**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 Americans with 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.**
**R477-6. 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 Americans with Disabilities 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.**
**R477-9. 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.

(vii) Excessive reimbursement of funds from flexible reimbursement accounts.

(viii) 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.**
**R477-15. Unlawful Harassment Policy and Procedure.**
**R477-15-1. Purpose.**

It is the State of Utah's policy to:

(1) provide all employees a working environment that is free from unlawful harassment based on race, religion, national origin, color, sex, age, disability, or protected activity under the anti-discrimination statute: and

(2) comply with state and federal laws regarding discrimination based on unlawful harassment.

**R477-15-2. Policy.**

(1) Unlawful harassment means discriminatory treatment based on race, religion, national origin, color, sex, age, protected activity or disability. Discrimination based on unlawful harassment will not be tolerated. Violators shall be subject to corrective action or disciplined and may be referred for criminal prosecution. Discipline may include termination of employment.

(2) Unlawful harassment includes the following subtypes:

(a) Behavior or conduct in violation of R477-15-2(1) that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment.

(b) Behavior or conduct in violation of R477-15-2(1) that results in a tangible employment action being taken against the harassed employee.

(3) The imposition of corrective action and discipline is governed by R477-10-2 and R477-11.

(4) An employee shall be subject to corrective action or discipline for unlawful harassment towards another employee even if that harassment occurs outside of scheduled work time or work location provided that the harassment meets the requirements of R477-15-2(2).

(5) Individuals affected by alleged unlawful harassment may, but shall not be required to, confront the accused harasser before filing a complaint.

(6) Once a complaint has been filed, the accused shall not communicate with the complainant regarding allegations of harassment.

**R477-15-3. Retaliation.**

(1) No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this policy or is otherwise engaged in protected activity.

(2) Any act of retaliation toward the complainant, witnesses or others involved in the investigation shall be subject to corrective action or disciplinary action. Prohibited actions include:

(a) open hostility to complainant, participant or others involved;

(b) exclusion/ostracism of the complainant, participant or others;

(c) creation of or the continued existence of a hostile work environment;

(d) discriminatory remarks about the complainant, participant or others;

(e) special attention to or assignment of the complainant, participant or others to demeaning duties not otherwise performed;

(f) tokenism or patronizing behavior;

(g) discriminatory treatment;

(h) subtle harassment; or

(i) unreasonable supervisory imposed time restrictions on employees in preparing complaints or compiling evidence of unlawful harassment activities or behaviors.

**R477-15-4. Complaint Procedure.**

Individuals affected by unlawful harassment may file complaints and engage in an administrative process free from bias, collusion, intimidation or retaliation.

(1) Individuals who feel they are being subjected to unlawful harassment should do the following:

(a) document the occurrence;

(b) continue to report to work;

(c) identify a witness if applicable;

(2) An employee may file an oral or written complaint of unlawful harassment with their immediate supervisor, any other supervisor within their direct chain of command, the Agency or Department's Human Resource Office or the Department of Human Resource Management.

(3) Any complaint of unlawful harassment shall be acted upon following receipt of the complaint

(a) Complaints may be submitted by any individual, witness, volunteer or other employee.

(b) Complaints may be made through either verbal or written notification and shall be handled in compliance with confidentiality guidelines.

(c) Any supervisor who has knowledge of unlawful harassment shall take immediate, appropriate action and document the actions.

(4) If an immediate investigation by the agency is not warranted, a meeting shall be held with the complainant, the supervisor or manager of the appropriate division, and others as appropriate to communicate the findings and management's resolution of the complaint.

**R477-15-5. Investigative Procedure.**

(1) The investigative procedures established by agencies shall allow the complainant to make specific requests relating to the investigation process and about the person or persons who will conduct the investigation. The agency shall attempt to comply with these requests, but may take whatever action necessary and appropriate to resolve the complaint.

(2) Preliminary reviews and investigations must be conducted in accordance with procedures issued by the Department of Human Resource Management.

(3) Results of Investigation

(a) If the investigation reveals that disciplinary action is warranted, the agency head shall take appropriate action as provided in R477-11.

(b) If an investigation reveals evidence of criminal conduct in unlawful harassment allegations, the Executive Director of the agency or DHRM, may refer the matter to the Attorney General's Office or County/ District Attorney as appropriate.

(c) If an investigation of unlawful harassment reveals that

the accusations are unfounded, the findings shall be documented, the investigation terminated, and appropriate parties notified.

(d) Investigations shall be conducted by qualified individuals based on DHRM standards.

**R477-15-6. Records.**

(1) A separate protected record of all unlawful harassment complaints shall be maintained and stored in the agency's human resource office, DHRM office or in the possession of an authorized official. Removal or disposal of records in the protected file may only be done with the approval of the agency head or Executive Director, DHRM, and only after minimum timelines specified herein have been met. Records shall be kept for: a minimum of three years from the resolution of the complaint or investigative proceeding.

(2) Supervisors shall not keep separate files related to complaints of unlawful harassment.

(3) All information contained in the complaint file shall be classified as protected pursuant to requirements of Section 63-2-304, Government Records Access and Management Act.

(4) Information contained in the unlawful harassment protected file shall only be released by the agency head or Executive Director, DHRM, when in compliance with the requirements of law.

(5) Participants in any unlawful harassment proceeding shall treat all information as protected.

(6) Final disposition of unlawful harassment cases shall be communicated to appropriate parties.

**R477-15-7. Training.**

(1) Departments shall comply with the Unlawful Harassment Prevention Training Standards set by DHRM. As a minimum, these shall contain:

(a) Course curriculum standards.

(b) Training presentation requirements.

(c) Trainer qualifications.

(d) Training records management criteria.

**KEY: administrative procedures, hostile work environment**
**July 3, 2001 67-19-6**
**Notice of Continuation June 11, 2002 67-19-18**
**Governor's Executive Order on Sexual Harassment, March 17, 1993**

**R477. Human Resource Management, Administration.**
**R477-100. Americans With Disabilities Act (ADA) Complaint Procedure.**
**R477-100-1. Authority and Purpose.**

This rule applies only to DHRM. Agencies shall adopt, define and publish their own rules pursuant to the Americans with Disabilities Act (ADA). The Department of Human Resource Management, pursuant to 28 CFR 35.107, 1991 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.

The provision of 28 CFR 35, 1991 edition implements the provisions of Title II of the Americans With Disabilities Act, 42 USC 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 Department, or be subjected to discrimination by this or any such entity.

**R477-100-2. Definitions.**

"The ADA Coordinator" means the Department of Human Resource Management's coordinator or his designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

100-2.(1) "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(1) Office of Planning and Budget;
(2) Department of Human Resource Management;
(3) Division of Risk Management;
(4) Division of Facilities Construction Management; and
(5) Office of the Attorney General.

100-2.(2) "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.

100-2.(3) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

100-2.(4) "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the Department, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

100-2.(5) "Department" means the Department of Human Resource Management, divisions and units therein.

**R477-100-3. Filing of Complaints.**

The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 180 days of the effective date of this rule.

100-3.(1) The complaint shall be filed with the Department's ADA Coordinator in writing or in another accessible format suitable to the individual.

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.

100-3.(2) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

**R477-100-4. Investigation of Complaint.**

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.

100-4.(1) When conducting the investigation, the coordinator may seek assistance from the Department's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:

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

(2) facility modifications; or

(3) reclassification or reallocation in a salary range; the coordinator shall consult with the ADA State Coordinating Committee.

**R477-100-5. Issuance of Decision.**

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

100-5.(1) 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.

**R477-100-6. Appeals.**

The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

100-6.(1) The appeal shall be filed in writing with the Department's executive director or a designee other than the Department's ADA Coordinator.

100-6.(2) 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.

100-6.(3) 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.

100-6.(4) The executive director shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve the executive director or designee to:

(1) an expenditure of funds which is not absorbable and would require appropriation authority;

(2) facility modifications; or

(3) reclassification or reallocation in a salary range; he shall also consult with the State ADA Coordinating Committee.

100-6.(5) 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.

100-6.(6) If the executive director is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another acceptable or suitable format why the decision is being delayed and the additional time needed to reach a decision.

**R477-100-7. 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.

**R477-100-8. 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 35, Subpart F, beginning with Part 35.107, 1991 edition); or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

**KEY: developmentally disabled, physically handicapped, grievance**
**1994 63-46a-3(2)**
**Notice of Continuation September 4, 2002**

**R510. Human Services, Aging and Adult Services.**
**R510-302. Adult Protective Services.**
**R510-302-1. Authority and Purpose.**

1.1 This rule is promulgated in accordance with the provisions of Section 62A-3-301, et seq. This purpose is to define services provided by the Office of Adult Protective Services in the Division of Aging and Adult Services, which may be provided to eligible clients.

1.2 Definitions:

A. "Abuse, neglect or exploitation" as defined in Section 62A-3-301, et seq.

B. "Adult Day Care" means providing daily care and supervision designed to meet the needs of functionally impaired adults through a comprehensive program that provides a variety of social, recreational and related support services in a protective setting which allows for the maximum functioning of disabled adults.

C. "Adult Foster Care" means the provision of family-based care for disabled adults who are unable to live independently.

D. "Family Support" means the provision of services or payments to increase the capabilities of families to care for disabled or elder adults in the natural home setting.

E. "Office" means the Office of Adult Protective Services in the Division of Aging and Adult Services within the Department of Human Services.

F. "Protective Payee" means a person who is eligible for adult protective services, is having difficulty managing their own funds, and voluntarily requests assistance in managing those funds.

G. "Protective Supervision" means the provision of services to assist a disabled or elder adult to remain in a safe community setting through coordination with concerned agencies, families, or individuals, and may include such services as short-term counseling or crisis intervention.

1.3 Procedure, Services and Assistance:

A. Pursuant to Section 62A-3-301, et seq., this rule establishes the procedure by which the Division of Aging and Adult Services will operate the adult-protective-service program as authorized by law.

B. The Office of Adult Protective Services shall accept referrals from any person who has reason to believe that a disabled or elder adult (as defined in Section 62A-3-301) has been harmed or threatened with harm, including abuse, neglect or exploitation.

C. Adult Protective Services' aid and assistance is available, on a voluntary basis, to all eligible disabled or elder adults who are being or have been abused, neglected, or exploited, but shall be limited to the availability of budgetary resources being sufficiently allocated to the office.

D. The office of Adult Protective Services shall, through their intake system by telephone communication, accept referrals which are intended to enlist the office to provide the client with protection from abuse, neglect, or exploitation. Adult Protective Services may be accessed for and in behalf of any eligible citizen of the State.

E. In order for the office of Adult Protective Services to take action, those persons supplying appropriate referrals, shall include the following information:

1) The approximate age of the alleged victim. (Note: a victim must be 18 years of age, or older, to be eligible.)

2) A description or specific name of the disabling condition which the victim appears to have.

3) A statement of a specific allegation of abuse, neglect or exploitation being perpetrated or inflicted upon the victim.

F. The Office of Adult Protective Services shall make a record of each referral received. The office shall then evaluate each referral for possible follow-up and investigation. Some referrals may not be approved for further investigation if other relevant conditions are determined to be non existent.

G. Adult Protective Services investigations will be conducted on all screened and approved referrals. Under normal conditions, investigations will begin within 3 working days of receipt of the referral. Investigations will be completed within 60 days unless an extension waiver has been obtained.

H. To obtain an extension waiver:

1) The caseworker shall, with or without being requested by the client, submit a "Investigation Policy Waiver" form to the Supervisor for approval

2) The form shall document the reasons for the extension request, and how the extension will assist in protecting the client.

I. Eligible Adult Protective Services clients may receive emergency placements in a safe environment until a resolution of the immediate problem/crisis can be made.

J. Private homes used as emergency shelter homes must meet the same standards as Adult Foster Care providers. Facilities used as emergency shelter placements shall be either certified or licensed as a residential facility or have a current business license.

K. If the victim has lost or stands to lose a significant level of such activities as are involved in daily living, the protective service staff may determine that the victim is eligible to receive Adult Protective Supervision to assure that a reasonable amount of the activities of daily living are maintained. Nevertheless, the person receiving these services must be capable of voluntarily consenting to and accepting the services. If consent is withdrawn by the person, the services will cease unless a court order is obtained for such services to continue.

L. Eligible Adult Protective Services clients may receive Protective Payee services to assure that basic living needs are being met and money management skills are being learned at a level appropriate to the client's level of functioning. Protective payee services may be provided to clients who:

1) Have a protective need and a disabling condition which directly relates to the need for payee services, and are assessed by the worker to be incapable of handling their own funds.

2) Have no other person/institution to assume payee responsibility.

3) Are capable of consenting to the obtaining of services, and are then able to accept the services. (Note: If consent is withdrawn, the payee services will cease unless court ordered.)

4) Do not reside in a health care facility, residential treatment program, or other facility that is capable of providing payee services. Have an income which falls within the Adult Services income guidelines. The Client may be assessed a fee for services based on the Adult Protective Services Payment Schedule.

M. Eligible Adult Protective Services clients may receive an immediate payment of funds in emergency situations. These funds will be issued through an Over-the-Counter-Check and may be issued for such purposes as shelter, food, clothing, medicine or other emergencies which are needed immediately and cannot be funded from any other source. The worker is authorized to request that an agreement-for-repayment of the funds document be signed by the client, if appropriate.

N. Eligible Adult Protective Services clients may receive Adult Day Care to assist them in improving their ability to personally function and provide self-care. Adult Day Care may also be provided as respite for eligible caregivers. Clients may qualify for Adult Day Care if they require one or more of the following:

1) Assistance with activities of daily living.

2) 24 hour supervision.

3) Assistance due to significant loss of memory or cognitive function.

4) Assistance due to developmental disabilities.

5) Assistance in overcoming isolation related to their disability or to support the transition from independent living to group care or vice versa.

6) Assistance to prevent premature institutionalization.

O. Eligible Adult Protective Services clients may receive Adult Foster Care to enable them to remain in a community setting and prevent premature institutionalization. Individuals who are unable to live alone or whose mental, emotional and physical conditions are such that the care given by a foster care provider will meet the person's needs may be appropriate for adult foster care. Individuals with the following medical, mental and behavioral problems will not be normally considered appropriate for Adult Foster Care assistance:

1) Require medication which they are unable to manage and administer themselves.

2) Are considered by the Office to be a danger to themselves of others.

3) Are incontinent, unless they are capable of self care.

4) Are bedridden or confined to wheelchairs without having sufficient transfer skills from the wheelchair.

5) Have mental or neurological problems requiring professional supervision and treatment.

6) Require constant assistance with toileting, dressing, grooming, hygiene or bathing.

7) Exhibit destructive verbal and behavioral problems under normal living conditions.

8) Require supervision at night time due to wandering or agitated behavior.

P. Adult Foster Care services will only be provided in homes which are licensed in accordance with State standards.

Q. Eligible Adult Protective Services clients may receive Family Support payments to increase the capabilities of families to care for them in the natural home setting when no other services are available. These services are intended to help maintain the individual in a family member's home and prevent premature institutionalization. Disabled adult clients are eligible for this service when:

1) The client is unable to live unassisted due to mental, emotional and physical conditions and requires assistance or care in order to be able to remain safely in the community.

2) A Physician's statement indicates that the disabled adult is able to remain in his own home or the home of a relative and would benefit from Family Support Services.

3) The disabled adult meets income eligibility guidelines established by the Division.

R. The Office of Adult Protective Services may petition the courts for legal authority to intervene when it has determined that the disabled adult cannot be protected in any less restrictive manner and there is evidence that the disabled adult lacks the capacity to consent to services.

S. Services provided by Adult Protective Services will be terminated when:

1) the circumstances which directly or indirectly caused, or were primary reasons for the abuse, neglect or exploitation, no longer exist; and the disabled or elder adult is protected, or

2) when the disabled or elder adult receiving voluntary services requests that those services be terminated.

**KEY: elderly, domestic violence, shelter care facilities, adult protective services**
**May 16, 2000 62A-3-301 et seq.**
**Notice of Continuation September 19, 2002**

**R527. Human Services, Recovery Services.**
**R527-37. Closure Criteria for Support Cases.**
**R527-37-1. Closure Criteria for Support Cases.**

This rule establishes the criteria a support case must meet in order to be eligible for case closure under federal regulations. The Office of Recovery Services adopts the federal regulations as published in 45 CFR 303.11, October 1, 1991 ed., which are incorporated by reference.

**KEY: child support**
**1992 62A-11-107**
**Notice of Continuation September 11, 2002**

**R527. Human Services, Recovery Services.**
**R527-200. Administrative Procedures.**
**R527-200-1. Authority.**

This rule establishes procedures for informal adjudicative proceedings as required by Section 63-46b-5 of the Administrative Procedures Act.

**R527-200-2. Definitions.**

1. Terms used in this rule are defined in Sections 62A-11-202, 62A-11-303, and 63-46b-2.

2. In addition,

a. "office" means the Office of Recovery Services;

b. "participate" means

(i) in a proceeding that was initiated by a notice of agency action, present relevant information to the presiding officer within the time period described by statute or rule for requesting a hearing; and

(ii) if a hearing is scheduled, participate means attend the hearing;

c. "party" means the Office of Recovery Services and the respondent.

d. in a proceeding to determine the noncooperation of a IV-A or Non-IV-A Medicaid recipient or applicant, the recipient or applicant is the respondent and is therefore a "party".

e. "location information" means the current, verified residential address of a custodial or noncustodial parent and, if different and known to the office, the current, verified residence of any child named in a parent-time order that specifies time periods during which the child shall be with the noncustodial parent as provided in Sections 30-3-32 through 30-3-38. If a current, verified residential address is not available, "location information" means an employment address if known.

f. "other location information" means a verified, non-residential mailing address such as a Post Office Box or Rural Route, at which a party whose location information is being sought receives mail.

g. "files" on custodial and noncustodial parents means records contained in open child support services cases, in which both paper and electronic case information may be stored.

**R527-200-3. Purpose.**

The purpose of this rule is to:

1. establish the form of proceedings;

2. provide procedures for requesting and obtaining a hearing when a proceeding is initiated by a notice of agency action;

3. provide procedures and standards for orders resulting from the administrative process;

4. provide procedures for informal proceedings;

5. provide procedures for the conduct of hearings, conferences, and administrative reviews;

6. provide procedures for requesting reconsideration;

7. provide procedures for a motion to set aside a default order;

8. provide procedures for amending an administrative order;

9. provide procedures for setting aside an administrative order; and

10. provide procedures for requesting judicial review.

**R527-200-4. Designation of Presiding Officers.**

The following persons are designated presiding officers in adjudicative proceedings:

1. agents;
2. senior agents;
3. team managers;
4. program coordinators;
5. program specialists;
6. quality assurance specialists;
7. associate regional directors;
8. regional directors;
9. directors;
10. other persons designated by the director of the Office of Recovery Services.

**R527-200-5. Form of Proceeding.**

All adjudicative proceedings commenced by the office through a notice of agency action, or commenced by other persons affected by the office's actions through a request for agency action shall be informal adjudicative proceedings.

**R527-200-6. Informal Adjudicative Proceedings.**

The following actions are considered to be informal adjudicative proceedings:

1. hearings, conferences, or administrative reviews to establish or modify child support orders;

2. conferences to determine paternity;

3. conferences or hearings to establish a judgment for genetic testing costs;

4. conferences or hearings to establish a judgment for birth expenses;

5. conferences or hearings to establish or modify an order regarding liability for medical and dental expenses of a dependent child;

6. administrative reviews to establish an order when a notice to enroll a child in a medical insurance plan is contested;

7. conferences or hearings to establish an order against a garnishee enforcing an administrative garnishment;

8. administrative reviews to determine whether the information concerning a support debt which will be reported to consumer reporting agencies is accurate;

9. conferences or hearings to establish the cause of an overpayment obligation, and to modify, or renew the obligation;

10. hearings, conferences, or administrative reviews to amend an administrative order;

11. hearings, conferences, or administrative reviews to set aside an administrative order;

12. administrative reviews to establish an order which determines past-due support following a request for agency action;

13. administrative reviews to establish an order when an office determination of noncooperation is contested by IV-A or Non-IV-A Medicaid recipients;

14. conferences or hearings to establish a judgment against a responsible party for costs and/or fees, and to impose penalties associated with legal action taken by the office;

15. administrative reviews to establish an order of non-disclosure when a determination is made not to disclose a parent's identifying information to another state in an interstate

case action;

16. conferences or hearings to approve or deny requests for waiver or deferral of estate recovery for reimbursement of Medicaid; and

17. administrative reviews to determine whether location information or other location information available in files on custodial or noncustodial parents may be released to the requesting party or to the requesting party's legal counsel in accordance with the provisions of Utah Code Title 62A, Chapter 11.

**R527-200-7. Service of Notice and Orders.**

Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Section 63-46b may be served using methods provided by Section 63-46b or the Utah Rules of Civil Procedure.

**R527-200-8. Procedures for Informal Adjudicative Proceedings.**

The procedures for informal adjudicative proceedings are as follows:

1. In proceedings initiated by a notice of agency action, the presiding officer will issue an order of default unless the respondent does one of the following in response to service of the notice:

a. pays the entire amount in full;

b. participates as provided in R527-200-12;

c. or, for overpayment programs, requests a hearing as provided in R527-200-9.

2. In proceedings initiated by a notice of agency action, the presiding officer shall schedule a hearing if available under R527-200-9 and the office receives the respondent's written request:

a. within 30 days of service of notice of agency action; or

b. before an order is issued by the presiding officer.

3. In administrative garnishment proceedings, the presiding officer shall schedule an administrative review if the office receives the obligor's written request for agency action within 10 days of the financial institution sending notice to the obligor of an administrative garnishment, or if the obligor requests the administrative review prior to any request by the garnishee for the issuance of an order to the garnishee to pay the office;

4. Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing which states the following:

a. the decision;

b. the reason for the decision;

c. a notice of the right to request reconsideration and the right to petition for judicial review; and

d. the time limits for requesting reconsideration or filing a petition for judicial review.

5. The presiding officer's order shall be based on the facts appearing in the agency's case records and on the facts presented in evidence at any hearings, conferences, or administrative reviews.

6. A copy of the presiding officer's order shall be promptly mailed to each of the parties.

**R527-200-9. Availability of a Hearing or Administrative Review in Informal Adjudicative Proceedings.**

1. A hearing before a presiding officer in the Office of Administrative Hearings, Department of Human Services is permitted in an informal adjudicative proceeding if:

a. the proceeding was initiated by a notice of agency action; and

b. the respondent in a properly filed request for hearing or in the course of participation raises a genuine issue as to a material fact as provided in R527-200-10; and

c. for child support services, participates in a preliminary agency conference.

2. An administrative review before a presiding officer in the Office of Recovery Services, Department of Human Services is permitted if an informal adjudicative proceeding is initiated by a request for agency action.

a. The presiding officer shall conduct a review of all documentation provided by the requesting party and in the agency files, and issue a Decision and Order stating the decision and the reasons for the decision.

b. The requesting party shall not be required to appear, either in person or through representation when the administrative review is conducted, but may choose to attend.

**R527-200-10. Hearings in Informal Adjudicative Proceedings.**

1. In proceedings initiated by a notice of agency action, all hearing requests shall be referred to the presiding officer appointed to conduct hearings.

2. The presiding officer shall give timely notice of the date and time of the hearing to all parties.

3. Before granting a hearing in a case referred, the presiding officer appointed to conduct the hearing may decide whether the respondent raises a genuine issue as to a material fact. Upon determining there is no genuine issue as to a material fact, the presiding officer may deny the request for hearing, and close the adjudicative proceeding.

4. The respondent may object to the denial of a hearing as grounds for relief in a request for reconsideration.

5. There is no genuine issue as to a material fact if:

a. the evidence gathered by the office and the evidence presented for acceptance by the respondent are sufficient to establish the obligation of the respondent under applicable law; and

b. no other evidence in the record or presented for acceptance by the respondent in the course of respondent's participation conflicts with the evidence to be relied upon by the presiding officer in issuing an order.

6. Evidence upon which a presiding officer may rely in issuing an order when there has been no hearing:

a. documented wage information from employers or governmental sources;

b. failure of the respondent to produce upon request of the presiding officer canceled checks as evidence of payments made;

c. failure of the respondent to produce a record kept by the clerk of court, a financial institution, or the office, showing payments made;

d. failure of the respondent to produce a written agreement

in a Non-IV-A case which was signed by both the absent parent and the custodial parent providing for an alternate means of satisfying a child support obligation;

e. birth certificates of the children whose support is sought from the respondent;

f. certified copies of the latest support orders;

g. other applicable documentation.

**R527-200-11. Telephonic Hearings.**

Telephonic hearings will be held at the discretion of the Office of Administrative Hearings, Department of Human Services.

**R527-200-12. Procedures and Standards for Orders Resulting from Service of a Notice of Agency Action.**

1. If the respondent agrees with the notice of agency action, he may stipulate to the facts and to the amount of the debt and current obligation to be paid. A stipulation, and judgment and order based on that stipulation is prepared by the office for the respondent's signature. Orders based on stipulation are not subject to reconsideration or judicial review.

2. If the respondent participates by attending a preliminary conference or otherwise presents relevant information to the presiding officer, but does not reach an agreement with the office or is unavailable to sign a stipulation, and does not request a hearing, the presiding officer shall issue a judgment and order based on that participation.

3. If the respondent participates in any way after receiving a notice of agency action to establish paternity and child support, but fails to appear for genetic testing or respond to the notice of test results, the presiding officer shall issue an order of paternity and child support based on existing information and circumstances.

4. If the respondent requests a hearing and participates by attending a preliminary agency conference, and after that conference the respondent does not agree with the notice of agency action, and participates by attending the hearing, the presiding officer who conducts the hearing shall issue an order based upon the hearing.

5. If the respondent fails to participate as follows, the appropriate presiding officer may issue an order of default and default judgment:

a. the respondent fails to respond to the notice of agency action and does not request a hearing;

b. after proper notice the respondent fails to attend a preliminary conference scheduled by the presiding officer to consider matters which may aid in the disposition of the action; or

c. after proper notice the respondent fails to attend a hearing scheduled by the presiding officer pursuant to a written request for a hearing.

6. The default judgment is taken for the same amount and for the same months specified in the notice of agency action which was served on the respondent. The judgment cannot be taken for more than the amount or time periods specified in the notice of agency action. If there is no previous court order and the best available information supports the amount, the judgment may be taken for less than the amount specified in the notice of agency action. The respondent may seek to have the default order set aside, in accordance with Section 63-46b-11.

7. If a respondent's request for a hearing is denied under R527-200-10, the presiding officer issues a judgment and order based upon the information in the case record.

8. Notwithstanding any order which sets payments on arrearages, the office reserves the right to periodically report the total past-due support amount to consumer reporting agencies, intercept state and federal tax refunds, submit cases to the federal administrative offset program where permitted by federal regulation, levy upon real and personal property, and to reassess payments on arrearages.

**R527-200-13. Conduct of Hearings, Conferences, and Administrative Reviews in Informal Adjudicative Proceedings.**

1. The hearing, conference, or administrative review shall be conducted by a duly qualified presiding officer. The presiding officer shall not have been involved in preparing the information alleged in the notice which is the basis of the adjudicative proceeding. No presiding officer shall conduct a hearing, conference, or administrative review in a contested case if it is alleged and proved that good cause exists for the removal of the presiding officer assigned to the case. The party or representative requesting the change of presiding officer shall make the request in writing, and the request shall be filed and called to the attention of the presiding officer not less than 24 hours in advance of the hearing.

2. Duties of the presiding officer when conducting a hearing:

a. Based upon the notice of agency action, objections thereto, if any, and the evidence adduced at the hearing, the presiding officer shall determine the liability and responsibility, if any, of the respondent under Section 62A-11-304.2. Following determination of liability, the presiding officer shall refer the obligor to the team handling the case for determination of acceptable periodic payment or alternative means of satisfaction of any arrearage obligation.

b. The presiding officer conducting the hearing may:

(i) regulate the course of hearing on all issues designated for hearing;

(ii) receive and determine procedural requests, rule on offers of proof and evidentiary objections, receive relevant evidence, rule on the scope and extent of cross-examination, and hear argument and make determination of all questions of law necessary to the conduct of the hearing;

(iii) request testimony under oath or affirmation administered by the presiding officer;

(iv) upon motion, amend the notice of agency action to conform to the evidence.

3. Rules of Evidence in hearings:

a. Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence.

b. Any person who is a party to the proceedings may call witnesses and present such oral, documentary, and other evidence and comment on the issues and conduct such cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for fact hearing and as may affect the disposition of any interest

which permits the person participating to be a party.

c. Any evidence may be presented by affidavit rather than by oral testimony subject to the right of any party to call and examine or cross-examine the affiant.

d. All relevant evidence shall be admitted.

e. Official notice may be taken of all facts of which judicial notice may be taken in the courts of this state.

f. All parties shall have access to information contained in the office's files and to all materials and information gathered in the investigation, to the extent permitted by law and subject to R527-5.

g. Intervention is prohibited.

h. In child support cases the hearing shall be open to the obligee and all parties, as defined in R527-200-2.

4. Rights of the parties in hearings: A respondent appearing before the presiding officer for the purpose of a hearing may be represented by a licensed attorney, or, after leave of the presiding officer, any other person designated to act as the respondent's representative for the purpose of the hearing. The office's supporting evidence for the office's claim shall be presented at a hearing before a presiding officer by an agent or representative from the office. The supporting evidence may, at the office's discretion, be presented by a representative from the office of the Attorney General or by a staff attorney.

**R527-200-14. Agency Review.**

Agency review shall not be allowed. Nothing in this rule prohibits a party from filing a request for reconsideration or for judicial review as provided in Sections 63-46b-13 and 63-46b-14.

**R527-200-15. Reconsideration.**

Either the respondent or the office may request reconsideration in accordance with Section 63-46b-13 once during an informal adjudicative proceeding.

**R527-200-16. Setting Aside Administrative Orders.**

1. The office may set aside an administrative order for reasons including the following:

a. A rule or policy was not followed when the order was taken.

b. The respondent was not properly served with a notice of agency action.

c. The respondent was not given due process.

d. The order has been replaced by a judicial order which covers the same time period.

2. The office shall notify the respondent of its intent to set the order aside by serving the respondent with a notice of agency action. The notice shall be signed by a presiding officer.

3. If after serving the respondent with a notice of agency action, the presiding officer determines that the order shall be set aside, the office shall notify the respondent.

**R527-200-17. Amending Administrative Orders.**

1. The office may amend an order for reasons including the following:

a. A clerical mistake was made in the preparation of the order.

b. The time periods covered in the order overlap the time periods in another order for the same participants.

2. The office shall notify the respondent of its intent to amend the order by serving the respondent with a notice of agency action. The notice shall be signed by a presiding officer.

3. If after serving the respondent with a notice of agency action, the presiding officer determines that the order shall be amended, the office shall provide a copy of the amended order to the respondent.

**R527-200-18. Amending an Administrative Paternity Order.**

1. If an administrative paternity order has been entered and the individual determined to be the father requests that paternity be disestablished based on genetic test results from an accredited lab which appear to exclude him as the biological father and genetic testing has not previously been completed, the presiding officer shall initiate an adjudicative proceeding to amend the paternity order prospectively.

2. The presiding officer shall notify the mother and the previously determined legal father of the intent to amend the order by sending notices of intent to amend based on the genetic test results.

3. If the mother or previously determined legal father do not present other evidence which calls into doubt the credibility of the genetic test results and the mother does not contest the administrative action, the presiding officer shall issue an order which amends the original order, finding the previously determined legal father to no longer be the legal father effective the date the amended order is issued. The presiding officer shall send a copy of the order to both the mother and the former legal father.

4. If other evidence is presented which calls into doubt the credibility of the genetic test results or the mother contests the administrative action, the presiding officer shall not amend the original paternity order. The presiding officer shall send notice of the decision to the mother and the father, which will inform the father of his right to administrative reconsideration of the decision and to appeal the decision to a court of competent jurisdiction.

**KEY: administrative law, child support, overpayment, welfare fraud**

**September 4, 2002 30-3-32 through 30-3-38**
**Notice of Continuation May 7, 2001 62A-11-203**
**62A-11-304.1**
**62A-11-304.2**
**62A-11-304.4**
**62A-11-307.2**
**63-46b**

**R527. Human Services, Recovery Services.**
**R527-201. Medical Support Services.**
**R527-201-1. Federal Requirements.**

The Office of Recovery Services/Child Support Services, (ORS/CSS), adopts the federal regulations as published in 45 CFR 303.30 and 303.31 (2000), and 45 CFR 303.32 which are incorporated by reference in this rule.

**R527-201-2. Definition.**

1. The National Medical Support Notice (NMSN) is the federally approved form that ORS/CSS shall use, when appropriate, to notify an employer to enroll dependent children in an employment-related group health insurance plan in accordance with a child support order.

**R527-201-3. Limitation of Services.**

ORS/CSS shall not:

1. pursue establishment of specific amounts for ongoing medical support,

2. initiate an action to obtain a judgment for uninsured medical expenses, or

3. collect and disburse premium payments to insurance companies.

**R527-201-4. Medical Support Services in Non-IV-A Cases.**

Medical Support Services shall be provided in conjunction with child support services to applicants who are not receiving Medicaid unless the applicant notifies ORS/CSS that the children are already covered under a health insurance plan and provides ORS/CSS with the insurance information.

**R527-201-5. Conditions Under Which Non-IV-A Medicaid Recipients May Decline Support Services.**

ORS/CSS shall provide child and spousal support services; however, a Non-IV-A Medicaid recipient may decline child and spousal support services if paternity is not an issue and there is an order for the non-custodial parent to provide medical support.

**R527-201-6. Securing a Medical Support Provision in the Support Order.**

1. Notice to potentially obligated parents: The notice to potentially obligated parents shall include a provision that an administrative or judicial proceeding will occur to determine whether either parent should be ordered to purchase and maintain appropriate medical insurance for the children. This notification shall be provided when either of the following conditions is met:

a. the state initiates an action to establish a final support order or to adjust an existing child support order; or

b. the state joins a divorce or modification action initiated by either the custodial or the non-custodial parent.

2. If a judicial support order does not include a medical support provision, ORS/CSS shall commence judicial action to modify the order to include a medical support provision.

**R527-201-7. Reasonable Cost of Insurance Premiums.**

Employment-related or other group coverage that does not exceed 5% of the obligated parent's monthly gross income is generally considered reasonable in cost. However, an employer may not withhold more than the lesser of the amount allowed under the Consumer Credit Protection Act, the amount allowed by the state of the employee's principal place of employment, or the amount allowed for health insurance premiums by the child support order. If the combined child support and medical support obligations exceed the allowable deduction amount, the employer shall withhold according to the law, if any, of the state of the employee's principal place of employment requiring prioritization between child support and medical support. If the employee's principal place of employment is in Utah, the employer shall deduct current child support before deducting amounts for health insurance coverage. If the amount necessary to cover the health insurance premiums cannot be deducted due to prioritization or limitations on withholding, the employer shall notify ORS/CSS.

**R527-201-8. Credit for Premium Payments and Effect of Changes to the Premium Amount Subsequent to the Order.**

1. If the order or underlying worksheet gives credit of a specific amount for the children's portion of the premium and the amount of the premium decreases, ORS/CSS may reduce the amount of the credit without seeking a modification of the order.

2. If the order or underlying worksheet does not mention a specific credit for insurance premiums, ORS/CSS shall give credit for the child(ren)'s portion of the insurance premium when the obligated parent provides the necessary verification coverage.

3. When a support order does not include a medical insurance provision, and a parent voluntarily enrolls the child(ren) in an insurance plan:

a. in Non-IV-A cases, if the parents agree to share equally the cost of the insurance, ORS/CSS shall give credit or offset the other parent's share of the expense. If the parents disagree, the order must be modified to include an insurance provision before the credit or the offset shall be given.

b. in IV-A cases, ORS/CSS shall give credit for 50% of the child(ren)'s portion of the insurance premium.

4. ORS/CSS shall notify both parents in writing whenever the credit is changed.

**R527-201-9. Establishing Costs for Pregnancy and Confinement.**

1. When establishing a judgment for medical costs for pregnancy and confinement in IV-A and Non-IV-A Medicaid paternity and separation cases, ORS/CSS shall research the exact pregnancy and confinement costs which have accumulated to date.

2. When establishing a judgment for medical costs for pregnancy and confinement in Non-IV-A Non-Medicaid Cases, ORS/CSS shall consult with the mother to determine the amount of the uninsured pregnancy and confinement expenses.

3. When establishing any judgment for medical costs for pregnancy and confinement, one half of the uninsured pregnancy and confinement costs shall be charged to the non-custodial parent.

**R527-201-10. Enforcement of Obligation to Maintain Medical and Dental Insurance.**

1. In Non-IV-A cases and in IV-A Medicaid cases, appropriate steps shall be taken to ensure compliance with orders which require the obligated parent to maintain insurance. Obligated parents shall demonstrate compliance by providing ORS/CSS with policy numbers and the insurance provider name for the dependent children for whom the medical support is ordered.

2. In Non-IV-A cases and in IV-A Medicaid cases, if an obligated parent has been ordered to maintain employer-based medical insurance and insurance is available at a reasonable cost according to R527-201-7 through an employment-related group health plan, ORS/CSS shall use the NMSN to transfer notice of the insurance provision to the obligated parent's employer unless ORS/CSS is notified pursuant to Section 62A-11-326.1 that the children are already enrolled in an insurance plan in accordance with the order.

3. When appropriate, ORS/CSS shall send the NMSN to the obligated parent's employer within two business days after the name of the obligated parent has been entered into the registry of the State Directory of New Hires, matched with ORS/CSS records, and reported to ORS/CSS in accordance with Subsection 35A-7-105(2).

4. The employer shall transfer the NMSN to the appropriate group health plan for which the children are eligible within twenty business days of the date of the NMSN if all of the following criteria are met:

a. the obligated parent is still employed by the employer;

b. the employer maintains or contributes to plans providing dependent or family health coverage;

c. the obligated parent is eligible for the coverage available through the employer; and

d. state or federal withholding limitations, prioritization, or both, do not prevent withholding the amount required to obtain coverage.

5. If more than one coverage option is available under a group insurance plan and the obligated parent is not already enrolled, ORS/CSS in consultation with the custodial parent may select the least expensive option if the option complies with the child support order and benefits the children. The insurer shall enroll the children in the plan's default option or least expensive option in accordance with Subsection 62A-11-326.2(1)(b) unless another option is specified by ORS/CSS.

6. The employer shall determine if the necessary employee contributions for the insurance coverage are available. If the amounts necessary are available, the employer shall begin withholding when appropriate and remit directly to the plan.

7. In accordance with Subsections 62A-11-326.1(2) and (3), the obligated parent may contest withholding insurance premiums based on a mistake of fact. The employer shall continue withholding under the NMSN until notified by ORS/CSS to terminate withholding insurance premiums.

8. If a parent successfully contests the action to enroll the children in a group health plan based on a mistake of fact, ORS/CSS shall notify the employer to discontinue enrollment and withholding insurance premiums for the children.

9. In accordance with Subsection 62A-11-406(9), the employer shall promptly notify ORS/CSS when the obligated parent's employment is terminated.

10. ORS/CSS shall promptly notify the employer when a current order for medical support is no longer in effect for which ORS/CSS is responsible.

**R527-201-11. Obligated Parent Receiving Medicaid.**

1. If an obligated parent is receiving Medicaid or was receiving Medicaid at the time the medical debt was incurred, ORS/CSS shall not enforce payment of the medical debt regardless of medical support provisions in the order.

2. In an unestablished paternity case, if the father's income was taken into consideration when determining the household's eligibility for Medicaid, ORS/CSS shall not enforce payment of medical expenses regardless of the medical support provisions in the order, but shall enforce the health insurance provision.

**KEY: child support, health insurance, Medicaid**

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| **September 4, 2002** | **63-46b-1 et seq.** |
| **Notice of Continuation January 30, 2002** | **62A-11-326.1** |
| | **62A-11-326.2** |
| | **62A-11-326.3** |
| | **62A-11-406(9)** |
| | **78-45-7.15** |
| | **35A-7-105(2)** |

**R527. Human Services, Recovery Services.**
**R527-253. Collection of Child Support Judgments.**
**R527-253-1. Collection of Child Support Judgments.**

1. The Office of Recovery Services/Child Support Services (ORS/CSS) may demand and collect immediate payment in full, or may demand and collect payments that will result in payment in full within a period of time that is deemed to meet the interests of the state in child support judgment matters.

2. ORS/CSS may collect a child support judgment through income withholding, liens, tax refund intercepts, and any other legal remedy available. Initiation of a particular remedy shall not limit ORS/CSS from initiating any other remedy at the same time.

**KEY: administrative law, child support**
**August 17, 1998 62A-11-320**
**Notice of Continuation September 11, 2002**

**R527. Human Services, Recovery Services.**
**R527-255. Change in Circumstances.**
**R527-255-1. Change in Circumstances.**

1. If the change in circumstances is temporary, defined as less than 6 months in prospective duration, the current support order shall not be modified.

2. If the change in circumstances is more extended, defined as 6 to 12 months in prospective duration, the office has the discretion to determine whether the change is minimal such that the original order should not be adjusted, or significant enough to justify initiating proceedings to adjust the award pursuant to Sections 78-45-7.2 through 78-45-7.21.

3. If the change in circumstances is long term or permanent, defined as over 12 months in prospective duration, the office shall initiate proceedings to adjust the award pursuant to Sections 78-45-7.2 through 78-45-7.21.

**KEY: child support**
**August 15, 1997 78-45-7 through 78-45-7.21**
**Notice of Continuation September 11, 2002 62A-11-320.5**
**62A-11-320.6**

**R527. Human Services, Recovery Services.**

**R527-257. Enforcing Child Support When the Obligor is Incarcerated.**

**R527-257-1. Enforcing Child Support When the Obligor is Incarcerated.**

1. If at the time of assessment, the obligor is incarcerated in prison, jail, or in a halfway house and has income or assets:

a. If there is no order for support, the office shall establish a support order using the child support guidelines pursuant to Section 78-45-7.

b. If a court order for child support exists, the debt shall accrue as ordered.

2. The Office of Recovery Services caseworker shall review the obligor's circumstances with a Department of Corrections caseworker before taking steps to collect the child support.

**KEY: administrative law, child support, halfway houses**
**1992 78-45-7**
**Notice of Continuation September 11, 2002 62A-11-320**

**R527. Human Services, Recovery Services.**
**R527-258. Enforcing Child Support When the Obligor is an Ex-Prisoner.**
**R527-258-1. Enforcing Child Support When the Obligor is an Ex-Prisoner.**

1. The AFDC support debt which accrued while the obligor was incarcerated may be forgiven if he makes assessed monthly payments on both current support and arrears for twelve consecutive months.

2. During the first six months of a period of twelve consecutive months, no enforcement action will be taken without the consent of the probation officer. If the obligor does not make the full assessed payments each month, enforcement action may begin in the seventh month.

3. The obligor's arrearage payment shall be reassessed if his financial situation changes during the twelve-month period.

4. If at the end of twelve months, the full assessed amount has been paid each month, the remaining AFDC support debt for the time period of incarceration shall be discharged.

**KEY: administrative law, child support**
**1987 78-45-7**
**Notice of Continuation September 11, 2002 62A-11-320**

**R527. Human Services, Recovery Services.**
**R527-300. Income Withholding.**
**R527-300-1. Income Withholding.**

1. Income withholding is defined as withholding child support from an obligor's income. The payor of income forwards the amount withheld to the Office of Recovery Services/Child Support Services (ORS/CSS).

2. Income withholding may be initiated in a IV-D case, with concurrent notice to the obligor:

a. in a case which has an order issued prior to October 13, 1990, which has not been modified since October 13, 1990, even though the obligor is not delinquent as defined in Section 62A-11-401(5) or R527-300-2, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month, or

b. in a case which has an order issued or modified after October 13, 1990, which found a demonstration of good cause or entered a written agreement that immediate income withholding is not required, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month.

**R527-300-2. Determining Delinquency.**

1. If current support has been ordered but is not presently in effect; for example, the children are 18 years old, the children have been adopted, custody has changed, or the obligor is paying current support to the obligee; delinquency has occurred when the obligor has accrued a debt in an amount equal to or greater than the previously ordered current support for one month.

2. If there was not a previous current support order but there is a judgment for arrears, delinquency has occurred when the obligor fails to pay as agreed, provided the judgment was for at least one month's current support amount used to compute the judgment for arrears. If the judgment was by default and the judgment amount was for at least one month's current support amount used to compute the judgment, income withholding may begin immediately upon entry of the judgment.

3. A delinquency could be the result of an underpayment for several months that totals at least one month's current support.

4. A delinquency can occur prior to the end of the month if the obligor was ordered to pay on specific days of the month and failed to do so.

**R527-300-3. Affidavit of Delinquency.**

The Non-IV-A applicant prepares a month-by-month computation of the support debt, which is referred to as a statement of arrears. The statement of arrears is part of the application packet. As part of the statement of arrears, the applicant attests that the statement is true and accurate to the best knowledge and belief of the applicant. This signed statement shall satisfy the verified statement requirement of Section 62A-11-405.

**R527-300-4. Administrative Review.**

1. Section 62A-11-405(2)(b)(ii)(B) requires the obligor to file a written request for review with the office within 15 days to contest withholding. This written request for review shall state the obligor's basis for contesting the withholding.

2. If an administrative review is conducted pursuant to Section 62A-11-405(3), the notice of decision required may be mailed or delivered to the obligor in the ordinary course of business.

**R527-300-5. Income Subject To Withholding.**

Section 62A-11-406 limits the total amount of the income withheld for child support to the maximum permitted under Section 303(b) of the Consumer Credit Protection Act 15 U.S.C. Section 1673(b). In general, income withholding will be limited to withholding 50% of the obligor's disposable income. However, if 50% does not result in withholding enough to cover the current support obligation, the office may review an obligor's circumstances under the provisions of the Consumer Credit Protection Act to determine whether a higher percentage is permitted.

**R527-300-6. Modification of Withholding Amounts.**

1. Once a Notice to Withhold Income for Child Support has been sent to the obligor's payor of income, any changes to the withholding amount will be made by sending the payor a modified Notice to Withhold Income for Child Support. The obligor will be provided concurrent notice of any changes.

2. If the obligor changes from one payor of income to another payor of income, a new Notice to Withhold Income for Child Support must be sent to the new payor in accordance with ORS/CSS assessment procedures.

**R527-300-7. Income Withholding Termination.**

1. Income withholding should be terminated if:

a. the obligor no longer has an obligation for current child support, and no longer has a debt to Utah or another state on whose behalf Utah is acting or to a Non-IV-A obligee on whose behalf Utah is acting;

b. the Non-IV-A obligee terminates the ORS/CSS case, income withholding was administratively implemented and the obligor no longer owes child support to Utah or other state on whose behalf Utah is acting, and the obligee does not want withholding to continue;

c. the obligor successfully contests the withholding which is currently in effect through the court or administrative review process. If income withholding was terminated based on a court or administrative order and the obligor later becomes delinquent, income withholding will be reinstated.

**KEY: child support, income, wages**

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|---|---|
| **June 16, 1998** | **62A-11-401** |
| **Notice of Continuation September 11, 2002** | **62A-11-405** |
| | **62A-11-406** |
| | **62A-11-413** |
| | **62A-11-414** |

**R527. Human Services, Recovery Services.**
**R527-330. Posting Priority of Payments Received.**
**R527-330-1. Posting Priority of Payments Received.**

The Office of Recovery Services shall determine to which debt payment will be credited in instances where the obligor has more than one case, and the obligor has not expressed his intention.

For Child Support Services cases, if the obligor expresses intent, the payment shall be credited to the case indicated. When the obligor has not expressed his intention, the Office of Recovery Services/Child Support Services (ORS/CSS) shall pro-rate payments, other than payments received from the Federal tax refund intercept program, among all of the obligor's current support obligations. Once the current support obligations have been met, a payment shall be split equally among all of the obligor's child support cases with arrears.

A payment credited to a case with arrears shall be applied to the oldest debt, and arrears owed to the family shall be paid before arrears owed to the State according to the priority specified in 42 USC Sec. 657.

**KEY: child support, debt, public assistance programs**
**December 16, 1999 62A-11-107**
**Notice of Continuation September 11, 2002**

**R527. Human Services, Recovery Services.**
**R527-378. Withholding of Social Security Benefits.**
**R527-378-1. Withholding of Social Security Benefits.**

If social security is the obligor's sole means of support and the case is an arrears only case, the notice to the Social Security Administration to withhold income shall be limited to 25 percent of the social security benefit amount.

**KEY: child support, social security**
**January 15, 1999 62A-11-107**
**Notice of Continuation September 11, 2002**

**R527. Human Services, Recovery Services.**
**R527-412. Intercept of Unemployment Compensation.**
**R527-412-1. Intercept of Unemployment Compensation.**

1. Unemployment compensation shall be subject to income withholding if the case meets the criteria in R527-300. If for any reason the unemployment compensation is not subject to income withholding, the unemployment compensation may be subject to garnishment.

2. The obligor may volunteer but shall not be required to pay more than 50% of his gross Unemployment Compensation benefit, or the maximum amount permitted under Section 303(b), Consumer Credit Protection Act, 15 USC 1673(b). If the obligor volunteers to pay more than 50% of the Unemployment Compensation benefit or more than the maximum amount permitted under Section 303(d), Consumer Credit Protection Act, 15 USC 1673(b), that agreement shall be in writing.

**KEY: child support, unemployment compensation**
**1992 35A-4-103(5)**
**Notice of Continuation September 11, 2002 62A-11-401**

**R527. Human Services, Recovery Services.**

**R527-601. Establishing or Modifying an Administrative Award for Child Support.**

**R527-601-1. Documentation of Income.**

When complete documentation of current income as required by Subsection 78-45-7.5(5) is not available for both parents in an administrative default, participation, or stipulation proceeding, the office shall use the best evidence available to determine the appropriate child support award, in accordance with Section 78-45-7.3.

**R527-601-2. Definition.**

Best evidence available shall include the following: an affidavit from a cooperating parent concerning the income of a parent who is not cooperating in providing documentation of his/her income; historical records including old tax returns, pay stubs, employer statements, or Department of Workforce Services records; market rate earned by persons with the same occupation as reported by the Department of Workforce Services; or the federal minimum wage.

**R527-601-3. Procedures.**

Prior to using the best evidence available to establish or modify an administrative order, the office shall mail a copy of an affidavit describing the evidence to the last known address of the uncooperative parent against whom the evidence is being used.

**KEY: child support**

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| **October 16, 1997** | **78-45-7.3** |
| **Notice of Continuation September 11, 2002** | **78-45-7.5** |

**R539. Human Services, Services for People with Disabilities.**
**R539-3. Service Coordination.**
**R539-3-1. Waiting List.**

A. Policy.

If no services are currently available, an applicant will be placed on a waiting list following the eligibility determination for Division of Services for People with Disabilities services. The case manager will determine the array of needed services with the individual applicant and legal representatives. If an appropriate service is not available and the person accepts a more restrictive placement, the person will be maintained on the waiting list for placement in a less restrictive and more appropriate setting of their choice. When services become available, the region shall inform the individual on the waiting list most in need of service. Individuals with disabilities residing out-of-state cannot be put on the waiting list for services in Utah. Applicants or their legal guardian must be a resident of the State.

B. Procedures.

1. Region offices will develop and maintain prioritized waiting lists for services based on rational criteria. A prioritization of the individual's need for the identified service will be rated as having a (1) critical, (2) immediate, or (3) future level of need, according to the following criteria:

a. Severity of the disabling condition;

b. Critical needs of the individual and/or family;

c. Length of time on the waiting list;

d. Appropriate alternatives available; and

e. Other factors determined by the region to reflect accurately on individual need.

2. Persons who are 20 years of age and currently in a school district special education program may be placed on the waiting list for application to day training/supported work programs.

**R539-3-2. The Individual Plan.**

A. Policy.

An Individual Plan will be developed for each recipient of Division residential and day services to ensure that the appropriate array of services and supports is designed to address the identified needs and desires of the individual. The plan must either follow a person-centered planning approach or the traditional behavioral approach. The traditional behavioral approach must be used for individuals receiving any type of residential service, level 5 or higher, or any type of day service, level 3 or higher. Integrated plans across providers are optimal and encouraged where feasible.

B. Procedures.

1. The initial Individual Plan will be developed within 30 calendar days of program admission during a meeting of the members of the planning team. Team members include:

a. the individual receiving services;

b. the family and/or legal representative;

c. the qualified region case manager and other Professionals whenever appropriate;

d. appropriate provider staff; and

e. anyone else the individual or legal representative invites.

2. It is the responsibility of the provider to schedule the meeting and provide written notification to all Individual Plan team members at least ten days in advance; however, if the individual or legal representative desires to schedule the meeting and/or send out invitations the provider shall assist them to do so as requested.

3. In the event the region case manager is not able to attend the planning meeting, the meeting will be rescheduled (the new meeting time should be on or before the due date).

4. In the event consensus is not reached by the members of the planning team, members should not sign the document and should instead follow R539-2-5, Notice and Hearings for Service Changes.

5. It is the responsibility of the provider to produce the Individual Plan document, implement services and supports they are responsible for as specified by the Individual Plan, evaluate the individual's progress, and revise the plan as needed with the planning team. The document shall:

a. be dated, including the month, day, and year of the plan. The plan shall be updated at least annually and dated within the same month as the original plan.

b. list the following demographic information:

(1) person's full name;

(2) date of birth, including month, day, and year; and

(3) date the person entered the program.

c. include the individual's services and supports needed and outcomes or goals as stated on the Individual Support Plan document which are relevant to the particular service.

d. identify individualized outcomes, or long term goals and short term objectives in major life areas which generally include, but are not limited to, self-care, receptive language, mobility, self direction, capacity for independent living, and economic self-sufficiency.

6. Prior to the planning meeting, the provider shall ensure that each person receiving Division services will have had an appropriate assessment which identifies the individual's preferences, choices, strengths, and needed supports; however, if the assessment occurs, as a part of the person-centered planning process, at the time of the planning meeting, it does not have to be completed prior to the meeting.

a. Formal assessment documentation will be maintained in the individual record.

b. The assessment used must either be standardized or an agency prepared document which identifies the individual's preferences, strengths, and needed services and supports. Assessments shall include:

(1) a formal assessment instrument, or a well documented person-centered planning process such as Personal Futures Planning, etc.;

(2) input and observation from team members, including the individual receiving services and supports; and

(3) other pertinent information.

c. Assessments will be reviewed and updated annually prior to the planning meeting and findings will be shared with the team at the scheduled meeting; however, if the assessment review and update occur, as a part of the person-centered planning process, at the time of the planning meeting, they do not have to be completed prior to the meeting.

7. If using a person-centered planning approach, specific outcomes shall be provided which relate to the individual's preferences and choices. If using the traditional behavioral

approach, short term objectives in a specific skill area shall be established and prioritized in order to achieve long-term goals. This traditional approach should also address the individual's preferences and choices as much as possible.

a. Outcomes shall be observable if using a person-centered planning process (outcomes may not necessarily be written in measurable and behavioral terms). If using the traditional approach, objectives shall be measurable, observable, and written in behavioral terms. If the person has complex maladaptive behaviors, including all individuals receiving any type of residential service, level 5 or higher, or any type of day service, level 3 or higher, the Individual Plan must contain objectives to address these behaviors which are measurable, observable, and written in behavioral terms. The following information must be included as it relates to either outcomes or objectives:

(1) For each outcome, a statement of the conditions under which the person will receive specific supports or services. For each objective, a statement of where, when, and under what conditions the person shall be expected to perform a task.

(2) The person's name.

(3) For each outcome, the current status of the expected observable outcome. For each objective, the baseline data, which is the level of the person's current performance.

(4) For each outcome, an observable indicator of when the outcome has been achieved. For each objective, the level of performance that the individual must exhibit in order to complete the objective.

8. For each outcome, a specific outline of actions to be taken by staff or others in providing supports or services to the individual. For each objective, training methods will be identified which outline what the staff will do to assist or support the individual to reach the identified objective.

a. The following information must be included as it relates to either outcomes or objectives:

(1) For both outcomes and objectives, the name of the responsible staff or person and their relationship to the individual.

(2) For outcomes, an outline of staff actions to be taken in providing services or supports to achieve the outcome. For objectives, a task analysis or sequential outline of training steps.

(3) For both outcomes and objectives, the level and type of assistance or supports to be rendered by the staff.

(4) For both outcomes and objectives, the method of withdrawing the level of assistance or supports (if applicable) as the person masters the objective or achieves the outcome.

(5) For outcomes, if applicable, the method of withdrawing or increasing supports as the person requires. For objectives, identification of the reinforcer(s) and any methodology to be used to withdraw the reinforcement when the objective is achieved.

(6) For outcomes, system to be used to track the status of observable indicators. For objectives, data collection to be used to record the individual's performance.

(7) For outcomes, a plan to maintain the desired observable outcome or transition the outcome to a system of natural supports, unless it is a one-time achievement and does not require maintenance. For objectives, measures of maintenance and generalization of the desired skill.

b. Supports or training should be provided in a functional context and in the natural routine of daily living to include:

(1) Setting;

(2) Time period;

(3) Frequency; and

(4) Other relevant factors.

9. Monthly progress notes will be written by the provider for each outcome or objective to document the progress or lack of progress made by the individual receiving services and supports, utilizing the following guidelines:

a. For objectives, data reported will be substantiated with raw data collection sheets.

b. For both outcomes and objectives, necessary Individual Plan modifications will be discussed in the progress notes.

c. Progress notes must contain the responsible staff's signature, relationship to the individual, and date (day, month, year).

10. The planning team members will sign the document to indicate approval of outcomes, or goals and objectives identified for the upcoming year.

a. The Individual Plan document is signed at the annual planning meeting within the same month of the effective date on the original or previous Individual Plan.

b. Signatures will include the name, date, and relationship of the team members to the individual.

11. A formal written review of the Individual Plan will occur annually and dated within the same month as the original or previous Individual Plan effective date and shall be documented in the Individual Support Plan annual review. The provider shall maintain documentation of the Individual Plan review in the individual record.

12. The effective date of the Individual Plan may serve as the time-line for annual reviews rather than the Individual Plan team signature date. The planning team meeting may occur up to 30 days prior to the effective date. The team may meet to review the Individual Plan as often as the team determines necessary, but the Plan shall be reviewed at least annually, due within the same month as the original or previous Plan effective date.

13. Should the region case manager determine that the Individual Plan is not being implemented as outlined, or receives a complaint from the individual or legal guardian, the case manager shall implement the following corrective action.

a. Step 1: Hold a conference with the provider and the individual or legal guardian if appropriate to review the problem, outcomes or objectives, and methods for possible corrections.

b. Step 2: If resolution cannot be reached in Step 1, the case manager will hold a conference with the region supervisor, the region director, if applicable, the individual and the legal representative, if any, and the provider. The involved parties will attempt to resolve the problem.

c. Step 3: If resolution is not reached, and following written notification to the provider, the case manager will inform the Division Contract Administrator and the Division will review the matter and take appropriate action.

d. Step 4: If there is not resolution through the above process, or if the case manager is unable to negotiate a solution, the Department Hearing process will be followed (R539-2-5,

Notice and Hearings for Service Changes).

**R539-3-3. Referral to Services.**

A. Procedures.

1. Referrals for services are made by the case manager to established providers of service in the following fashion:

a. The individual and legal representative select a service with the case manager.

b. A referral packet with current information is submitted to the identified service provider.

c. The Provider will schedule a placement meeting. The purchase of service provider will coordinate the placement meeting, which consists of the person with disabilities, legal representative (advocate), case manager(s), and other relevant members, including the Utah State Developmental Center staff, education representative for school-age individuals, and Division staff. The meeting should be held at the prospective site of placement whenever possible. The prospective Provider shall chair the meeting.

2. The prospective Provider will submit an acceptance or denial letter within ten working days to the case manager(s), person with disabilities, and legal representative. The referral file contents of a person denied for services will be returned to the case manager.

a. An acceptance letter shall include a written description of the following:

(1) services to be provided.

(2) location of the service.

(3) name and address of the primary care physician or other medical specialists, including, for example, neurologist or dentist.

(4) a training and in-service schedule for the staff to meet with the admitted person.

(5) proposed date of admission.

b. A denial letter shall include a written description of the specific reason for the denial. The letter will be submitted with the returned file.

c. A copy of the denial or acceptance letter will be submitted to the Director of Planning and Program Development and the Chairperson of the Community Based Committee.

3. Admission to Division programs from a Nursing Facility under OBRA 1987 will be coordinated by the OBRA specialist at the Division with the nursing facility social worker, the case manager, the prospective provider, and the person with disabilities.

4. The physical move to a receiving residential facility will be the responsibility of the Provider who submits the billing as the first day of service or last day as negotiated with the new Provider.

**R539-3-4. Discharge.**

A. Policy.

1. Any interested member of the interdisciplinary team who recommends that a recipient be discharged or may benefit from service change shall contact the individual's case manager.

B. Procedures.

1. In the event that a request for discharge is received, the DSDP case manager shall arrange with the Provider for a discharge meeting. The following people shall be invited to attend:

a. The individual with disabilities.

b. Legal representative, as appropriate.

c. DSDP case manager.

d. Provider, teacher.

e. Receiving agency, as appropriate.

2. Topics in the discharge meeting shall include at a minimum:

a. A detailed discussion of the recipient's progress and current status in the program.

b. Specific reasons for the request for discharge outlined by the individual initiating the request.

3. Consensus decision must be reached regarding discharge from a program (see R539-2-5, Notice and Hearings). The decision shall be documented in the Individual Program Plan.

4. If the decision is to discharge an individual, a discharge summary shall be completed prior to the actual date of such action. A discharge summary shall be written by the Provider to include:

a. Reason for termination.

b. Summary of services provided.

c. Evaluation of strengths and needs; achievement of goals and objectives.

d. Signature and title of Provider preparing the summary.

5. The written summary will be sent to the receiving case manager, client and legal representative, discharging case manager, and provider within ten days of the person's last day of service.

6. A Provider may not request discharge of a person who has been identified by the Division as "zero reject", that is an individual with severe challenges, without 90 days notice.

**R539-3-5. Consumer Placement Review.**

A. Policy.

It is the intent of the Division of Services for People with Disabilities that service providers shall offer programs that best meet the needs of individuals with disabilities, and promote a sufficient choice of service options for individuals and legal representatives to consider. An existing provider of services, therefore, will have the opportunity to proper notice and the opportunity to resolve concerns regarding services to a consumer.

B. Procedures.

1. The recipient of services or legal representative must be notified in writing of all actions taken pursuant to the above process, must be invited to all meetings to discuss individual services, and must receive notice of final resolution within 30 working days of the first meeting of the Individual Program Plan team to discuss the issue.

2. If a review is requested by the service provider, it must be made in writing to the appropriate Region Supervisor or Director within ten working days of the Individual Program Plan team meeting. Except in an emergency or unless requested by the individual or legal representative, services will continue unchanged during the review process. It is the responsibility of the Region Supervisor or Director to attempt to resolve the disagreement.

3. If the issue is not resolved to the services provider's

satisfaction, a subsequent joint review by the Division Director and Region Director may be requested in writing by the service provider within 20 days of the date of the original Individual Program Plan meeting.

4. Providers may pursue their right to a formal hearing with the Department of Human Services via the Utah Administrative Procedures Act.

**R539-3-6. Targeted Case Management.**

A. Policy

The Division of Services for People with Disabilities will provide Targeted Case Management for people with disabilities who are eligible in accordance with R414-33. Targeted Case Management is available only to individuals eligible for Division services who are also eligible for Medicaid. Pending a change in the state Medicaid Plan, only individuals under the age of 21 are eligible for Targeted Case Management. Individuals receiving case management services under the Home and Community-Based Waiver are not eligible.

B. Procedures

Documentation of eligibility will include a form 19 (Eligibility for Services), an Inventory for Client and Agency Planning (documenting the need for targeted case management services), and verification the individual is eligible for Medicaid.

**R539-3-7. Individual Family Support Plan.**

A. Policy.

An Individual Family Support Plan will be developed for all individuals receiving family support services funded by the Division. These services are provided to help support a family in keeping a relative with a disability at home.

B. Procedures.

1. The Individual Family Support Plan will be developed by the family, the region case manager and the providers within 30 days following approval for service.

2. It is the responsibility of the agency provider to write the portion of the Plan document regarding the supports and services they will provide.

**KEY: social services, disabled persons***
**October 16, 1995 62A-5-103**
**Notice of Continuation September 6, 2002**

**R590. Insurance, Administration.**

**R590-96. Rule to Recognize New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities.**

**R590-96-1. Authority.**

This rule is promulgated by the Insurance Commissioner pursuant to Sections 31A-2-201, and 31A-17-505.

**R590-96-2. Purpose.**

The purpose of this rule is to recognize the following mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts: the 1983 Table "a", the 1983 Group Annuity Mortality (1983 GAM) Table, the Annuity 2000 Mortality Table, and the 1994 Group Annuity Reserving (1994 GAR) Table.

**R590-96-3. Definitions.**

A. As used in this rule 1983 Table "a" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners.

B. As used in this rule "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners.

C. As used in this rule "1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force and shown on pages 866-867 of Volume XLVII of the Transactions of the Society of Actuaries, 1995, and adopted as a recognized mortality table for annuities in December 1996 by the National Association of Insurance Commissioners.

D. As used in this rule "Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research and shown on page 240 of Volume XLVII of the Transactions of the Society of Actuaries (1995) and adopted as a recognized mortality table for annuities in December 1996 by the National Association of Insurance Commissioners.

E. The tables identified in R590-96-3.C. and D., are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours.

**R590-96-4. Individual Annuity or Pure Endowment Contracts.**

A. Except as provided in Subsections B. and C. of this section, the 1983 Table "a" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after April 2, 1980.

B. Except as provided in Subsection C. of this section, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1985.

C. Except as provided in Subsection D of this section, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1999.

D. The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after July 1, 1999, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

(1) Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;

(2) Settlements involving similar actions such as worker's compensation claims; or

(3) Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

**R590-96-5. Group Annuity or Pure Endowment Contracts.**

A. Except as provided in Subsections B. and C. of this section, the 1983 GAM Table, the 1983 Table "a" and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for an annuity or pure endowment purchased on or after April 2, 1980 under a group annuity or pure endowment contract.

B. Except as provided in Subsection C of this section, either the 1983 GAM Table or the 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after July 1, 1985 under a group annuity or pure endowment contract.

C. The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after July 1, 1999 under a group annuity or pure endowment contract.

**R590-96-6. Application of the 1994 GAR Table.**

In using the 1994 GAR Table, the mortality rate for a person age x in year (1994 + n) is calculated as follows: $q_x^{1994+n} = q_x^{1994} (1 - AA_x)^n$; where the $q_x^{1994}$ and $AA_x$s are as specified in the 1994 GAR Table.

**R590-96-7. Separability.**

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances may not be affected by it.

**KEY: insurance law**
**March 16, 1999 31A-2-201**
**Notice of Continuation September 17, 2002 31A-17-505**

**R590. Insurance, Administration.**
**R590-119. Surplus Lines Stamping Fee.**
**R590-119-1. Authority.**

This rule is adopted pursuant to Subsection 31A-2-201(3), Utah Code Annotated, which authorizes rules to implement the Insurance Code, and Subsection 31A-15-103(11)(d), U.C.A., which requires the commissioner to adopt a rule specifying the amount of the stamping fee collected by the surplus lines advisory organization.

**R590-119-2. Purpose and Scope.**

A. The purpose of this rule is to comply with the statutory requirement of Subsection 31A-15-103(11)(d), U.C.A., to adopt a rule establishing the amount of the surplus lines transaction stamping fee.

B. This rule shall apply to the advisory organization authorized to examine surplus lines transactions under Section 31A-15-111 and Subsection 31A-15-103(11), U.C.A.

**R590-119-3. Definitions.**

In addition to the definitions of Section 31A-1-301, U.C.A., the following definitions shall apply for the purpose of this rule:

A. "Stamping Fee" shall mean a percentage of the policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11), U.C.A.

B. "Surplus Lines Transactions" shall mean insurance transactions placed with unauthorized insurers in accordance with Section 31A-15-103, U.C.A.

**R590-119-4. Rule.**

The stamping fee to be collected by the surplus lines advisory organization for the examination described in Subsection 31A-15-103(11)(b) shall be 1/4 of 1% of the policy premium payable in connection with the transaction.

**R590-119-5. Separability.**

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 the rule and the application of such provision to other persons or circumstances shall not be affected.

**KEY: insurance law**
**1993 31A-15-103**
**Notice of Continuation September 17, 2002**

**R590. Insurance, Administration.**
**R590-154. Unfair Marketing Practices Rule.**
**R590-154-1. Authority.**

This rule is adopted pursuant to Subsection 31A-2-201(3) in which the commissioner is empowered to adopt rules to implement the provisions of the Utah Insurance Code and Subsection 31A-23-302(8), which provides that the commissioner may find certain practices to be misleading, deceptive, unfairly discriminatory, provide an unfair inducement, or unreasonably restrain competition, and to prohibit them by rule.

**R590-154-2. Purpose and Scope.**

The purpose of this rule is to provide guidance to all licensees regarding unfair marketing practices.

**R590-154-3. Definitions.**

A. "Agency" means

1. A person other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and

2. An insurance organization licensed or required to be licensed under Section 31A-23-212(3).

B. "Barter" means the sale of an insurance or annuity contract for anything of value other than cash or other negotiable instruments.

C. "Producer" means a person licensed or required to be licensed under the laws of this state to sell, solicit, or negotiate insurance. With regards to the selling, soliciting, or negotiating of an insurance product to an insurance customer or an insured:

1. "Producer for the insurer" means a producer who is compensated directly or indirectly by an insurer for selling, soliciting, or negotiating any product of that insurer.

2. "Producer for the insured" means a producer who is compensated directly and only by an insurance customer or an insured and receives no compensation directly or indirectly from an insurer for selling, soliciting, or negotiating any product of that insurer to that insurance customer or insured.

**R590-154-4. Findings.**

The commissioner finds that each of the practices prohibited in this rule constitute misleading, deceptive or unfairly discriminatory practices or provide an unfair inducement or unreasonably restrain competition, except as specifically allowed in this rule.

**R590-154-5. Producer, Limited Lines Producer or Consultant Agency Name.**

A. An insurance producer, limited lines producer or consultant agency licensed under the laws of this state shall not use any name that is:

(1) misleading or deceptive;

(2) likely to be mistaken for another licensee already in business; or

(3) implies association or connection with any other organization where actual bona fide association or connection does not exist.

B. A producer, limited line producer or consultant agency licensee shall comply with either Subsection 154-6.B.1. or B.2.

1. The agency shall include words such as "insurance agency" or "insurance consultant" or other similar words in the agency's name.

(a) Other similar words such as "insurance services", "insurance benefits", "insurance counselors", or "insurance advisors" may also be used.

(b) "Insurance consulting," "insurance consultants" or similar words shall only be used if the agency is licensed as a consultant.

2. The agency shall state that the licensee is an insurance agency in any letterhead, business cards, advertising, slogan, emblem, or other promotional material used or distributed by the agency in the State of Utah.

**R590-154-6. Individual Licensee Name.**

A. An individual shall be licensed using the individual's full legal name - first name or initial, middle name or initial, last name, suffix, jr/sr/II/III/etc.

B. An individual may file with the department a preferred name or nickname to use in combination with the individual's full legal name.

**R590-154-7. Sale, Solicitation, or Negotiation of Insurance.**

A. An individual licensee and a producer, limited line producer or consultant agency licensee shall not mislead or deceive a person or organization through oral contact or through any letterhead, business cards, advertising, slogan, emblem, or other promotional material used or distributed in Utah by:

1. failing to disclose that the licensee is an individual insurance licensee or a producer, limited line producer or consultant agency licensee in every oral or written contact; or

2. using or implying license classifications not held by the individual licensee or natural persons designated to the producer, limited line producer or consultant agency licensee; or

3. using a name other than the exact name appearing on the producer, limited line producer or consultant agency license; or

4. using a name other than the individual licensee's full legal name exactly as filed with the department; or

5. using an individual's preferred name or nickname when the preferred name or nickname has not been filed with the department; and

B. the use of an initial letter, rather than the full first or middle name is not a violation of this section.

C. An individual may only use the name of a producer, limited line producer or consultant agency that has its own separate agency license if the individual licensee is designated to act under that agency's license.

D. An individual may not sell, solicit, or negotiate insurance as a producer, limited line producer or consultant agency unless the individual has a separate producer, limited line producer or consultant agency license and the individual is designated to act under the agency's license.

**R590-154-8. Claiming or Representing Department Approval.**

A. A licensee may not represent, either directly or indirectly, that the Utah Insurance Department, the insurance

commissioner, or any employee of the department, has approved, reviewed, endorsed, or in any way favorably passed upon any marketing program, insurance product, insurance company, practice or act.

B. A licensee may report the fact of the filing of any form, financial report, or other document with the Insurance Department, or of licensure, examination or other action involving the department, or the commissioner but may not misrepresent their effect or import.

**R590-154-9. Bartering for Insurance.**

Any licensee bartering for the sale of insurance or an annuity contract shall fully document the receipt of goods, services or other thing of value, establishing the value of the thing received and how the value was established, from whom received, the date received, and the premium cost of the insurance or annuity contract bartered for, and shall retain said documentation for three years following the expiration of the policy period or bartering transaction, whichever is longer. Any licensee bartering for the sale of an insurance or annuity contract shall disclose at the time of application to the insurer said bartering arrangement.

**R590-154-10. Prohibited Insurance Sales Tie-Ins.**

Multi-level marketing programs, investment programs, memberships, or other similar programs, designed or represented to produce or provide funds to pay all or any part of the cost of insurance constitutes an illegal inducement. This does not preclude the provision of insurance through a bona fide employee benefits program.

**R590-154-11. Inducements, Gifts and Merchandise Given in Connection With Solicitation or Sale of Insurance.**

A. A licensee may not give or offer to give any prizes, goods, wares, merchandise or item of value as an inducement to enter into any insurance or annuity contract or as an inducement to receive a quote, submit an application or in connection with any other solicitation for the sale of an insurance or annuity contract. However, anything with an acquisition cost of $3.00 or less shall not be considered an inducement.

B. Subsection A of this section does not prohibit the giving of promotional gifts or merchandise that is generally available to the public and not given in a manner to constitute an inducement to receive a quote or other solicitation or to purchase any insurance or annuity contract, nor does it prohibit insurers from providing sales incentives to producers.

C. This section does not prohibit the usual kinds of social courtesies as long as they are not related to a particular transaction as stated in Subsection 31A-23-302(2)(a). If the receiving of the social courtesy is dependant on obtaining a quote, submitting an application or purchasing a policy or contract, it is related to a particular transaction.

D. This section does not apply to title insurers or agents. Rule R590-153 is the applicable rule for the marketing of title insurance.

**R590-154-12. Commission Contributions.**

A licensee shall not give or offer to give a premium reduction by means of commission contribution back to the insurer for any purpose, including competition, unless the reduction is for expense savings and is justified by a reasonable standard and with reasonable accuracy. The insurer's underwriting files must document the savings in order to enable the commissioner to verify compliance. This documentation must demonstrate legitimate expense savings realized by the insurer and its agent.

**R590-154-13. Prohibited Financing Arrangements.**

A licensee may not obtain or arrange for third party financing of premium without the knowledge and consent of the insured.

**R590-154-14. Acting as An Individual or Agency Licensee in Other Jurisdictions.**

An individual or agency licensee licensed in the State of Utah under a resident license, may not sell, solicit, or negotiate insurance in another jurisdiction unless licensed or permitted by law to do so in that jurisdiction.

**R590-154-15. Use of Comparative Information.**

A. Every insurer marketing insurance in the State of Utah shall establish written marketing procedures to assure that any comparison of insurance contracts, annuities or insurance companies by its producers will be fair and accurate.

B. A licensee may not use any published rating information regarding an insurer in connection with the marketing of any insurance contract or annuity unless that person also provides at the same time an explanation of what the rating means as defined by the rating service.

**R590-154-16. Disclosure of Insurer in Group Insurance.**

Every certificate of insurance or booklet describing coverage of a group insurance policy shall prominently state on the cover of the certificate or booklet the name of the actual insurer.

**R590-154-17. Enforcement Date.**

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

**R590-154-18. Severability.**

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstance shall not be affected thereby.

**KEY: insurance**
**August 7, 2002** **31A-2-201**
**Notice of Continuation June 10, 1998** **31A-23-302**

**R590. Insurance, Administration.**

**R590-203. Health Grievance Review Process and Disability Claims.**

**R590-203-1. Authority.**

This rule is specifically authorized by 31A-22-629(4) and 31A-4-116 which requires the commissioner to establish minimum standards for grievance review procedures. The rule is also 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. The authority to examine insurer records, files, and documentation is provided by 31A-2-203.

**R590-203-2. Purpose.**

The purpose of this rule is to ensure that health insurer's grievance review procedures for individual and employer health benefit plans comply with the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, Utah Code Sections 31A-4-116 and 31A-22-629.

**R590-203-3. Applicability and Scope.**

This rule applies to all health insurance policies and health maintenance organization contracts, as defined by 31A-1-301 covering individual and group benefit plans issued or renewed and effective on or after January 1, 2001. Long Term Care and Medicare supplement policies are not considered health insurance for the purpose of this rule.

**R590-203-4. Definitions.**

For the purposes of this rule:

(1) "Benefit Plans" means health insurance as defined in 31A-1-301.

(2) "Medical Necessity" means:

(a) health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or it symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract; and

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(a) scientific evidence;

(b) professional standards; and

(c) expert opinion.

(3) "Scientific evidence" means:

(a) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(b) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(c) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

**R590-203-5. Adverse Benefit Determination Reviews.**

(1) An insurer's adverse benefit determination review procedure shall be compliant with the adverse benefit determination review requirements set forth in the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, effective January 20, 2001. This document is incorporated by reference and available for inspection at the Insurance Department and the Department of Administrative Rules.

(2) The provision of this rule and federal regulation applies to claims filed under individual or group plans on or after the first day of the first plan year beginning on or after July 1, 2002, but no later than January 1, 2003.

(3) An insurer's adverse benefit determination appeal board or body shall include at least one consumer representative that shall be present at every meeting.

**R590-203-6. Independent and Expedited Adverse Benefit Determination Reviews.**

(1) An insurer shall provide an independent review procedure as a voluntary option for the resolution of adverse benefit determinations of medical necessity.

(2) An independent review procedure shall be conducted by an independent review organization, person, or entity other than the insurer, the plan, the plan's fiduciary, the employer, or any employee or agent of any of the foregoing, that do not have any material professional, familial, or financial conflict of interest with the health plan, any officer, director, or management employee of the health plan, the enrollee, the enrollee's health care provider, the provider's medical group or independent practice association, the health care facility where service would be provided and the developer or manufacturer of the service being provided.

(3) Independent review organizations shall be designated by the insurer, and the independent review organization chosen shall not own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise control with a health insurance plan, a national, state, or local trade association of health insurance plans, and a national, state, or local trade association of health care providers.

(4) The submission to an independent review procedure is purely voluntary and left to the discretion of the claimant.

(5) An insurer's voluntary independent review procedure shall:

(a) waive any right to assert that a claimant has failed to

exhaust administrative remedies because the claimant did not elect to submit a dispute of medical necessity to a voluntary level of appeal provided by the plan;

(b) agree that any statute of limitations or other defense based on timeliness is tolled during the time a voluntary appeal is pending;

(c) allow a claimant to submit a dispute of medical necessity to a voluntary level of appeal only after exhaustion of the appeals permitted under 29 CFR Subsection 2560.503-1(c)(2), of the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulation for the Administration and Enforcement: Claims Procedure.

(d) upon request from any claimant, provide sufficient information relating to the voluntary level of appeal to enable the claimant to make an informed decision about whether to submit a dispute of medical necessity to the voluntary level of appeal. This information shall contain a statement that the decision to use a voluntary level of appeal will not effect the claimant's rights to any other benefits under the plan and information about the applicable rules, the claimants right to representation, the process for selecting the decision maker.

(6) Standards for voluntary independent review:

(a) The insurer's internal adverse benefit determination process must be exhausted unless the insurer and insured mutually agree to waive the internal process.

(b) Any adverse benefit determination of medical necessity may be the subject of an independent review.

(c) The claimant has 180 calendar days from the date of the final internal review decision to request an independent review.

(d) An insurer shall use the same minimum standards and times of notification requirement for an independent review that are used for internal levels of review, as set forth in 29 CFR Subsection 2560.503-1(h)(3),(i)(2) and (j).

(7) An insurer shall provide an expedited review process for cases involving urgent care claims.

(8) A request for an expedited review of an adverse benefit determination of medical necessity may be submitted either orally or in writing. If the request is made orally an insurer shall, within 24 hours, send written confirmation to the claimant acknowledging the receipt of the request for an expedited review.

(9) An expedited review requires:

(a) all necessary information, including the plan's original benefit determination be transmitted between the plan and the claimant by telephone, facsimile, or other available similarly expeditious method;

(b) an insurer to notify the claimant of the benefit review determination, as soon as possible, taking into account the medical urgency, but not later than 72 hours after receipt of the claimant's request for review of an adverse benefit determination; and

(c) an insurer to use the same minimum standard for timing and notification as set forth in 29 CFR Subsection 2560.503-1(h), 503-1(i)(2)(i), 503-1(j).

**R590-203-7. File and Record Documentation.**

An insurer shall make available upon request by the commissioner, or the commissioner's duly appointed designees, all adverse benefit determination reviews files and related documentation.

**R590-203-8. Compliance.**

Insurers are to be compliant with the provisions of this rule and the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, by July 1, 2002.

**R590-203-9. Relationship to Federal Rules.**

If an insurer complies with the requirements of the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, then this rule is not applicable to employer benefit plans, except for Sections R590-203-4, R590-203-5, R590-203-6, and R590-203-7. All individual health benefit plans will remain subject to this rule in its entirety.

**R590-203-10. Severability.**

If a provision or clause of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.

**KEY: insurance**
**May 17, 2002** **31A-2-201**
**31A-2-203**
**31A-22-629**

**R590. Insurance, Administration.**

**R590-216. Standards for Safeguarding Customer Information.**

**R590-216-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505 (15 United States Code (U.S.C.) 6805)) empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act of 1999(15 U.S.C. 6801 through 6820). Title V, Section 505 (15 U.S.C. 6805(b)(2)) authorizes the commissioner to issue rules to implement the requirements of Title V, Section 501(b)of the federal act. The commissioner is also authorized under Subsection 31A-23-317(3) to adopt rules implementing the requirements of Title V, Section 501(b) of the federal act.

**R590-216-2. Purpose and Scope.**

(1) This rule establishes standards applicable to the department's licensees to assist them in developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, pursuant to Sections 501, 505(b), and 507 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807.

(2) Section 501(a) provides that it is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information. Section 501(b) requires the state insurance regulatory authorities to establish appropriate standards relating to administrative, technical and physical safeguards:

(a) to ensure the security and confidentiality of customer records and information;

(b) to protect against any anticipated threats or hazards to the security or integrity of such records; and

(c) to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer.

(3) Under Section 505(b)(2) state insurance regulatory authorities are to implement the standards prescribed under Section 501(b) by rule with respect to persons engaged in providing insurance.

(4) Section 507 provides, among other things, that a state rule may afford persons greater privacy protections than those provided by Subtitle A of Title V of the Gramm-Leach-Bliley Act. This rule requires that the safeguards established pursuant to the rule shall apply to nonpublic personal information, including nonpublic personal financial information and nonpublic personal health information that licensees of the department obtain from their customers.

**R590-216-3. Definitions.**

For purposes of this rule, the following definitions apply:

(1) "Customer" means a customer of the licensee as the term customer is defined in Rule R590-206, Privacy of Consumer Financial and Health Information Rule, Subsection 4(9).

(2) "Customer information" means nonpublic personal information as defined in Subsection R59-206-4(19) about a customer, whether in paper, electronic or other form, that is maintained by or on behalf of the licensee.

(3) "Customer information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.

(4) "Licensee" means a licensee as that term is defined in Subsection R590-206-4(17)(a), except that "licensee" shall not include: a purchasing group; manufacturer or seller warranty provider and manufacturer or seller service contract provider exempted by R590-210, Privacy of Consumer Information Exemption for Manufacturer Warranties and Service Contract; or an unauthorized insurer in regard to the excess line business conducted pursuant to Section 31A-15-103.

(5) "Service provider" means a person that maintains, processes or otherwise is permitted access to customer information through its provision of services directly to the licensee.

**R590-216-4. Information Security Program.**

Each licensee shall implement a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of customer information. The administrative, technical and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

**R590-216-5. Objectives of Information Security Program.**

A licensee's information security program shall be designed to:

(1) Ensure the security and confidentiality of customer information;

(2) Protect against any anticipated threats or hazards to the security or integrity of the information; and

(3) Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

**R590-216-6. Examples of Methods of Development and Implementation.**

The actions and procedures described in this section are examples of methods of implementation of the requirements of Sections 4 and 5 of this rule. These examples are non-exclusive illustrations of actions and procedures that licensees may adopt to implement Sections 4 and 5 of this rule.

(1) For risk assessment, the licensee may:

(a) identify reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of customer information or customer information systems;

(b) assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and

(c) assess the sufficiency of policies, procedures, customer information systems and other safeguards in place to control

risks.

(2) For risk management and control, the licensee may:

(a) design its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;

(b) train staff, as appropriate, to implement the licensee's information security program; and

(c) regularly test or otherwise regularly monitor the key controls, systems and procedures of the information security program. The frequency and nature of these tests or other monitoring practices are determined by the licensee's risk assessment.

(3) For service provider arrangement oversight, the licensee may:

(a) exercise appropriate due diligence in selecting its service providers; and

(b) require its service providers to implement appropriate measures designed to meet the objectives of this rule, and, where indicated by the licensee's risk assessment, takes appropriate steps to confirm that its service providers have satisfied these obligations.

(4) For program adjustment, the licensee may monitor, evaluate and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to customer information systems.

**R590-216-7. Determined Violation.**

Violation of any provision of the rule will result in appropriate enforcement action by the department, which may include forfeiture, penalties, and revocation of license as provided in Section 31A-2-308.

**R590-216-8. Enforcement Date.**

The commissioner will begin enforcing the provisions of this rule 120 days from the effective date of the rule.

**KEY: insurance**

**September 26, 2002**

**31A-2-201**
**31A-2-202**
**31A-23-317**
**15 U.S.C. 6801**
**15 U.S.C. 6805**
**15 U.S.C. 6807**

**R600. Labor Commission, Administration.**
**R600-2. Operations.**
**R600-2-1. Business Hours.**

The offices of the Commission shall be open for receipt of official documents during regular business days between the hours of 8:00 a.m. to 5:00 p.m. Any official document, including fax transmissions, received after 5:00 p.m. shall be considered received on the next working day.

**KEY: labor commission, hours of business**
**December 3, 1996 34A-1-104**
**Notice of Continuation September 5, 2002**

**R602. Labor Commission, Adjudication.**
**R602-1. General Provisions.**
**R602-1-1. Time.**

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing will be allowed.

**R602-1-2. Witness Fees.**

Each witness who shall appear before the Commission by its order shall receive from the Commission for his/her attendance fees and mileage as provided for witnesses by the Utah Rules of Civil Procedure. Otherwise, each party is required to subpoena witnesses at their own expense.

**KEY: witness fees, time, administrative procedure, filing deadlines**
**December 3, 1996 34A-1-302**
**Notice of Continuation September 5, 2002 63-46b-1 et seq.**

**R602. Labor Commission, Adjudication.**
**R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.**
**R602-2-1. Pleadings and Discovery.**

A. For the purposes of this rule, "Commission" means the Labor Commission. "Division" means the Division of Adjudication within the Labor Commission. Adjudicative proceedings for workers' compensation and occupational disease claims may be commenced by the injured worker or dependent filing a request for agency action with the Commission. The Administrative Law Judge is afforded discretion in allowing intervention of other parties pursuant to Section 63-46b-9. The Application for Hearing is the request for agency action. All such applications shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications without supporting documentation will not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided.

B. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests on the applicant to initiate the action by filing an Application for Hearing with the Commission.

C. When an Application for Hearing is filed with the Commission, the Commission shall forthwith mail a copy to the employer or to the employer's insurance carrier.

D. The employer or insurance carrier shall have 30 days following the date of the mailing of the application to file a written answer with the Commission, admitting or denying liability for the claim. The answer shall state all affirmative defenses with sufficient accuracy and detail that an applicant may be fully informed of the nature of the defense asserted. All answers shall include a summary and categorization of benefits paid to date on the claim. A copy shall be sent to the applicant or, if there is one, to the applicant's attorney by the defendant.

E. When an employer or insurance carrier fails to file an answer within the 30 days provided above, the Commission may enter a default against such employer or insurance carrier. The Commission may then set the matter for hearing, take evidence bearing on the claim, and enter an Order based on the evidence presented. Such defaults may be set aside by following the procedure outlined in the Utah Rules of Civil Procedure. Said default shall apply to the defendant employer or insurance carrier and may not be construed to deprive the Employers' Reinsurance Fund or the Uninsured Employers' Fund of any appropriate defenses.

F. When the answer denies liability solely on the medical aspects of the case, the applicant, through his/her attorney or agent, and the employer or insurance carrier, with the approval of the Commission or its representative, may enter into a stipulated set of facts, which stipulation, together with the medical documents bearing on the case in the Commission's file, may be used in making the final determination of liability.

G. When deemed appropriate, the Commission or its representatives may have a pre-hearing or post-hearing conference.

H. Upon filing of the Answer, the defendant may commence discovery with appropriate sets of interrogatories. Such discovery should focus on the accident event, witnesses, as well as past and present medical care. The defendant shall also be entitled to appropriately signed medical releases to allow gathering of pertinent medical records. The defendant may also require the applicant to submit to a medical examination by a physician of the defendant's choice. Failure of an applicant to comply with such requests may result in the dismissal of a claim or a delay in the scheduling of a hearing.

I. Commission subpoena forms shall be used in all discovery proceedings and shall be signed, unless good cause is shown for a shorter period, at least one week prior to any scheduled hearing.

J. All medical records shall be filed by the employer or its insurance carrier as a single joint exhibit at least one week before the scheduled hearing. Claimant must cooperate and submit all pertinent medical records contained in his/her file to the employer or its insurance carrier for the joint exhibit submission two weeks in advance of a scheduled hearing. Exhibits are to be placed in an indexed binder arranged by care provider in chronological order. Exhibits shall include all relevant treatment records which tend to prove or disprove a fact in issue. Pages shall be numbered consecutively. Hospital nurses' notes, duplicate materials, and other non-relevant materials may not be included.

K. The Administrative Law Judge shall be notified one week in advance of any proceeding when it is anticipated that more than four witnesses will be called, or where it is anticipated that the hearing of the evidence will require more than two hours.

L. Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63-46b-5 or 63-46b-10.

M. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63-46b-12 and Section 34A-1-303. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. Thereafter, the Administrative Law Judge shall:

1. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary,

2. Amend or modify the prior Order by a Supplemental order, or

3. Refer the entire case for review under Section 34A-2-801.

If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

N. In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, or as may be otherwise modified by the presiding officer.

O. A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63-46b-13. Any petition for judicial

review of final agency action shall be governed by the provisions of Section 63-46b-14.

**R602-2-2. Guidelines for Utilization of Medical Panel.**

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting medical opinions related to causation of the injury or disease;

2. Conflicting medical reports of permanent physical impairment which vary more than 5% of the whole person,

3. Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days;

4. Conflicting medical opinions related to a claim of permanent total disability, and/or

5. Medical expenses in controversy amounting to more than $10,000.

B. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. The Administrative Law Judge may authorize an injured worker to be examined by another physician for the purpose of obtaining a further medical examination or evaluation pertaining to the medical issues involved, and to obtain a report addressing these medical issues in all cases where:

1. The treating physician has failed or refused to give an impairment rating, and/or

2. A substantial injustice may occur without such further evaluation.

D. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

**R602-2-3. Compensation for Medical Testimony.**

Compensation for medical panel examination, medical testimony, and preparation by medical panel members at hearings shall be $87.50 per half hour and shall be $100 per half hour for the medical panel chair.

**R602-2-4. Attorney Fees.**

Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants before the Commission in all cases wherein such fees are awarded after January 1, 2002.

A. The concept of a contingency fee is recognized. A retainer in advance of a Commission approved fee is not allowed. Benefits are only deemed generated within the meaning of this rule when they are paid as a result of legal services rendered after an Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the claimant's attorney.

B. By creating this rule, the commission does not intend that an applicant's attorney be paid a fee where the assistance the attorney renders involves only an incidental expenditure of time. For example, no attorney's fee shall be paid when compensation agreements are merely reviewed, simple documents are prepared, or an apparent dispute is quickly resolved as a result of oral or written communication.

C. "Benefits" within the meaning of this rule shall be limited to weekly death or disability compensation and accrued interest thereon paid to or on behalf of an applicant pursuant to the terms of Title 34A, Utah Code Annotated.

D. An attorney's fee deducted from the benefits generated shall be awarded for all legal services rendered through final Commission action with the following constraints:

1. 20% of weekly benefits generated for the first $20,500, plus 15% of the weekly benefits generated in excess of $20,500 but not exceeding $41,000, plus 10% of the weekly benefits generated in excess of $41,000.

2. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

3. Not withstanding the above, in no case shall the maximum fee exceed $10,352.

E. After either successfully prosecuting or defending an appeal following final Commission action, an increased attorney's fee shall be awarded amounting to:

1. 25% of the benefits in dispute before the Utah Court of Appeals, plus the amount awarded in part D of this rule, not to exceed $15,130.

2. 30% of the benefits in dispute before the Supreme Court, plus the amount awarded in part D of this rule, plus the amount awarded in part E.1 of this rule, not to exceed $19,900.

F. An attorney's fee shall be deducted from and paid out of the benefits generated and shall be paid directly to the applicant's attorney upon order of the Commission.

G. If a controversy over an attorney's fee develops, the Commission shall have the discretion, pursuant to Section 34A-1-309, and this rule, to award fees or otherwise resolve the dispute by Order delineating the Commission's findings along with the evidence and reasons supporting the decision.

**R602-2-5. Settlement Agreements.**

A. Statutory authority:

Section 34A-2-420 requires the Commission to review all agreements for the settlement or commutation of claims for workers' compensation or occupational disease benefits and grants the Commission discretion to approve such agreements. The Commission's authority under Section 34A-2-420 applies to all claims arising under the Utah Workers' Compensation Act or Occupational Disease Act, regardless of the date of accident or occupational disease. This rule sets forth the requirements for Commission approval of such agreements.

B. General Considerations:

Settlement agreements may be appropriate in claims of disputed validity or when the parties' interests are served by

payment of benefits in a manner different than otherwise prescribed by the workers' compensation laws. However, settlement agreements must also fulfill the underlying purposes of the workers' compensation laws. Once approved by the Commission, settlement agreements are permanently binding on the parties. The Commission will not approve any proposed settlement that is manifestly unjust.

C. Procedure:

1. Parties interested in a present or potential workers' compensation claim, whether or not an application for hearing has been filed, may submit their settlement agreement to the Commission for review and approval. The Commission may delegate its authority to review and approve such agreements.

2. Each settlement agreement shall be in writing, executed by each party and such party's attorney, if any, and shall include a proposed order for Commission approval of the agreement.

3. Each settlement agreement shall set forth the nature of the claim being settled and what claims are in dispute, if any.

4. Each settlement agreement shall contain a statement that each party understands that the agreement is permanent, binding and constitutes full and final settlement of any right the claimant may otherwise have to future benefits, including medical benefits. The Commission may establish an approved form for complying with the foregoing disclosure requirement.

5. Attorneys' fees shall be allowed as provided by Rule R602-2-4. Each settlement agreement shall describe the amount to be paid to claimant's counsel as attorney's fees and costs, the manner in which such amounts are computed and the method of payment thereof.

6. The settlement agreement may provide for payment of benefits through insurance contract or by other third parties if the Commission determines a) such payment provisions are secure and b) such payment provisions do not relieve the parties of their underlying liability for payments required by the agreement.

7. Upon receipt of a proposed settlement agreement meeting the requirements of this rule, the Commission shall review such proposed agreement:

a. As needed, the Commission may contact the parties and others to obtain further information about the proposed settlement;

b. If the Commission determines that a proposed settlement agreement conforms with this rule, the Commission shall approve such agreement and notify the parties in writing.

c. If the Commission determines that a proposed settlement agreement does not comply with this rule, the Commission shall notify the parties in writing of its reasons for rejecting the proposed agreement.

d. The Commission shall retain a record of its action on all settlement agreements submitted to it for approval.

**KEY: workers' compensation, administrative procedure, hearings, settlement**
**January 15, 2002 34A-1-301 et seq.**
**Notice of Continuation September 5, 2002 63-46b-1 et seq.**

**R612. Labor Commission, Industrial Accidents.**
**R612-1. Workers' Compensation Rules - Procedures.**
**R612-1-1. Definitions.**

A. "Commission" means the Labor Commission.

B. "Division" means the Division of Industrial Accidents within the Labor Commission.

C. "Applicant/Plaintiff" means an injured employee or his/her dependent(s) or any person seeking relief or claiming benefits under the Workers' Compensation and/or Occupational Disease and Disability Laws.

D. "Defendant" means an employer, insurance carrier, self-insurer, the Employers' Reinsurance Fund, and/or the Uninsured Employers' Fund.

E. "Administrative Law Judge" means a person duly designated by the Commission to hear and determine disputed or other cases under the provisions of Title 34A, Chapters 2 and 3, and of Title 63, Chapter 46b.

F. "Insurance Carrier" includes all insurance companies writing workers' compensation and occupational disease and disability insurance, the Workers' Compensation Fund, and self-insurers who are granted self-insuring privileges by the Commission. In all cases involving no insurance coverage by the employer, the term "Insurance Carrier" includes the employer.

G. "Medical Panel" means a panel appointed by an Administrative Law Judge pursuant to the standards set forth in Section 34A-2-601, which is responsible to make findings regarding disputed medical aspects of a compensation claim, and may make any additional findings, perform any tests, or make any inquiry as the Administrative Law Judge may require.

H. "Award" means the finding or decision of the Commission or Administrative Law Judge as to the amount of compensation or benefits due any injured employee or the dependent(s) of a deceased employee.

**R612-1-2. Authority.**

This rule is enacted under the authority of Section 34A-1-104.

**R612-1-3. Official Forms.**

A. "Employer's First Report of Injury - Form 122" - This form is used for reporting accidents, injuries, or occupational diseases as per Section 34A-2-407. This form must be filed within seven days of the occurrence of the alleged industrial accident or the employer's first knowledge or notification of the same. This form also serves as OSHA Form 101.

B. "Physician's Initial Report of Work Injury or Occupational Disease - Form 123" - This form is used by physicians and chiropractors to report their initial treatment of an injured employee.

C. "Restorative Services Authorization - Form 221" - This form is to be used by any medical provider billing under the restorative services section of the Commission's adopted Resource-Based Relative Value Scale and the Medical Fee Guidelines. The medical provider shall file this form with the insurance carrier or self-insured employer and the division within ten days of the initial evaluation. After the initial filing, an updated Restorative Services Authorization form must be filed for approval or denial at least every six visits until a fixed state of recovery has been reached.

D. "Statement of Insurance Carrier or Self-Insurer with Respect to Payment of Benefits - Form 141" - This form is used for reporting the initial benefits paid to an injured employee. This form must be filed with or mailed to the division on the same date the first payment of compensation is mailed to the employee. A copy of this form must accompany the first payment.

E. "Employee Notification of Denial of Claim - Form 089" - This form is used by insurance carriers or self-insured employers to notify the claimant that his or her claim, in whole or part, is denied and the reason(s) why the claim is being denied. An insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and the division in writing that the claim, in whole or part, is denied.

F. "Insurance Carriers/ Self-Insurer's Notice of Further Investigation of a Workers' Compensation Claim - Form 441" - This form is used by insurance carriers or self-insured employers to notify the claimant and the commission that further investigation is needed and the reasons for further investigation. This form or letter containing similar information is to be filed within 21 days of notification of claim that further investigation is needed.

G. "Statement of Insurance Carrier or Self-Insurer with Respect to Suspension of Benefits - Form 142" - This form is to be used by insurance carriers or self-insured employers to notify an employee of the suspension of weekly compensation benefits. The form must be mailed to the employee and filed with the division five days before the date compensation is suspended. The insurance carrier or self-insured employer must specify the reason for the suspension of beneftis.

H. "Application for Hearing - Form 001" - Used by an applicant for instituting an industrial claim against an insurance carrier, self-insured employer, or uninsured employer. This form, obtainable from the division, must be filed and signed by the injured employee or his/her agent. All blanks must be completed to the best knowledge, belief, or information of the injured employee.

I. "Claim for Dependents' Benefits and/or Burial Benefits - Form 025" - This form is used by the dependent(s) of a deceased employee to seek benefits as a result of a fatal accident or occupational disease occurring in the course of employment.

1. This form must be filed before a hearing or an award is made, and pleadings will not be accepted in lieu thereof. If pleadings are submitted, the attorney so filing will be supplied the form for filing before any proceedings are initiated.

2. The filing of this form by the surviving spouse on behalf of the surviving spouse and the surviving spouse's dependent minor children is sufficient for all dependents.

3. Unless otherwise directed by an Administrative Law Judge, the following information shall be supplied before an Order or an Award is made:

(a) A certified copy of the marriage license and birth certificates of dependent minor children. If such evidence is not readily available, the Administrative Law Judge will determine the adequacy of substitute evidence.

(b) Adoption papers or other decrees of courts of record

establishing legal responsibility for support of dependent children.

(c) If either the deceased employee or surviving spouse has been involved in divorce proceedings, copies of decrees and orders of the court should be supplied.

J. "Insurance Company's and Self-Insurer's Final Report of Injury and Statement of Total Losses - Form 130" - This form is used by insurance carriers and self-insurers to report the total losses occurring in a claim for any benefits. This form must be filed with the division as soon as final settlement is made but in no event more than 30 days from such settlement. This form shall be filed for all losses including medical only, compensation, survivor benefits, or any combination of all so as to provide complete loss information for each claim.

K. "Dependents' Benefit Order - Form 151" - This form is used by the division in all accidental death cases where no issue of liability for the death or establishment of dependency is raised and only one household of dependents is involved. The carrier indicates acceptance of liability by completing the top half of the form and filing it with the division.

L. "Medical Information Authorization - Form 046" - This form is used to release the applicant's medical records to the Commission or the chairman of a medical panel appointed by an Administrative Law Judge.

M. "Application to Change Doctors - Form 102" - This form must be used by the employee pursuant to the provisions of Rule R612-2-9 as contained herein.

N. "Employee's Notification of Intent to Leave Locality or State, and to Change Doctor or Hospital - Form 044" - As per Section 34A-2-604, this form is used by the employee and must be accompanied by the "Attending Physician's Statement - Form 043" before Commission approval can be granted. Otherwise, compensation may not be allowed.

O. "Attending Physician's Statement - Form 043" - This form must be completed by employee and his last attending physician in the state to establish the medical condition of the employee. It must be accompanied by Form 044.

P. "Compensation Agreement - Form 219" - This form is used by the parties to a workers' compensation claim to enter into an agreement as to a permanent partial impairment award, and must be submitted to the Division of Industrial Accidents for approval.

Q. "Application for Lump Sum or Advance Payment - Form 134" - This form is used by an employee to apply for a lump sum or advance payment for a permanent partial impairment award.

R. "Release to Return to Work - Form 110" - This form may be used to meet the requirements of Rule R612-2-3(D), as contained herein.

S. "Request for Copies From Claimant's File - Form 205" - This form is used to request copies from a claimant's file in the Commission with the appropriate authorized release.

T. Reemployment Program Forms

1. "Initial Assessment Report - Form 206" - This form is completed either by the self-insured employer, the workers' compensation insurance provider, or by a rehabilitation agency contracted by the employer/carrier. The report contains claimant demographics and insurance coverage details, and addresses the issue of need for vocational assistance.

2. "Request for Decision of Administrative Review - Form 207" - This form is completed when the employee wishes to contest the information/decision made by the carrier or rehabilitation agency.

3. "U.S.O.R. Rehabilitation Progress Report - Form 208A" - This form shall be requested from the Utah State Office of Rehabilitation at each stage of the reemployment process (eligibility determination, reemployment plan development/implementation and case closure) or at any interruption of the process. An Individualized Written Rehabilitation Program (USOR 5 IWRP) shall also be requested when a plan is developed. All other private rehabilitation providers shall submit a Form 206 for any plan progress, postponement, or interruption in the plan.

4. "Reemployment Plan - Form 209" - This form is used for either an original or amended work plan. The form contains the details and estimated costs in returning the injured worker to the work force.

5. "Reemployment Plan Closure Report - Form 210" - This form is submitted to the division upon completion of the reemployment plan. The closure report shall detail costs by category either by dollar amounts or time expended (only in the categories of evaluation and counseling). The report shall also contain all the details on the return to work.

6. "Application for Certification as a Reemployment Provider - Form 212" - This form is completed by rehabilitation providers who wish to be certified by the division. It contains provider demographics, Utah staff credentials, services/fees, and references.

7. "Administrative Review Determination - Form 213" - This form is used by the division to summarize the outcome of the administrative review.

U. "Medical Records - Copies - Form 302" - This form is used by a claimant to request a free copy of his/her medical records from a medical provider. This form must be signed by a staff member of the division.

V. The division may approve change of any of the above forms upon public notice. Carriers may print these forms or approved versions.

**R612-1-4. Discount.**

Eight percent shall be used for any discounting or present value calculations. Lump sums ordered by the Commission or for any attorney fees paid in a single up-front amount, or of any other sum being paid earlier than normally paid under a weekly benefit method shall be subject to the 8% discounting. The Commission shall create and make available a precise discount or present value table based on a 365 day year. For those instances where discount calculations are not routinely utilized or where the Commission's precise table is not available, the following table, which is a shortened version of the precise table, may be utilized by interpolating between the stated weeks and the related discount.

TABLE

| Unaccrued Weeks | X | Weekly Benefit $ | X | Cumulative Discount | = | Discount $ |
|---|---|---|---|---|---|---|
| 1 | | | | .001475 | | |

| | |
|---|---|
| 10 | .008076 |
| 20 | .015343 |
| 30 | .022538 |
| 40 | .029663 |
| 50 | .036719 |
| 60 | .043706 |
| 70 | .050626 |
| 80 | .057478 |
| 90 | .064264 |
| 100 | .070984 |
| 110 | .077639 |
| 120 | .084229 |
| 130 | .090756 |
| 140 | .097221 |
| 150 | .103623 |
| 160 | .109963 |
| 170 | .116243 |
| 180 | .122463 |
| 190 | .128623 |
| 200 | .134724 |
| 210 | .140767 |
| 220 | .146752 |
| 230 | .152680 |
| 240 | .158552 |
| 250 | .164368 |
| 260 | .170129 |
| 270 | .175835 |
| 280 | .181488 |
| 290 | .187087 |
| 300 | .192633 |
| 312 | .199219 |

**R612-1-5. Interest.**

A. Interest must be paid on each benefit payment which comprises the award from the date that payment would have been due and payable at the rate of 8% per annum.

B. For the purpose of interest calculation, benefits shall become "due and payable" as follows:

1. Temporary total compensation shall be due and payable within 21 days of the date of the accident.

2. Permanent partial compensation shall be due and payable on the next day following the termination of a temporary total disability. However, where the condition is not fixed for rating purposes, the interest shall commence from the date the permanent partial impairment can be medically determined.

3. Permanent partial or permanent total disability compensation payable by the Employers' Reinsurance Fund or the Uninsured Employers' Fund shall be due and payable as soon as reasonably practical after an order is issued.

**R612-1-6. Issuance of Checks.**

A. Any entity issuing compensation checks or drafts must make those checks/drafts payable directly to the injured worker and must mail them directly to the last known mailing address of the injured worker, with the following exceptions:

1. If the employer provides full salary to the injured worker in return for the worker's compensation benefits, the check may be mailed to the worker at the place of employment;

2. If the employer coordinates other benefits with the worker's compensation benefits, the check may be mailed to the worker at the place of employment.

B. In no case may the check be made out to the employer.

C. Where attorney fees are involved, a separate check should be issued to the worker's attorney in the amount approved or ordered by the Commission, unless otherwise directed by the Commission. Payment of the worker's attorney by issuing a check payable to the worker and his attorney jointly constitutes a violation of this rule.

**R612-1-7. Acceptance/Denial of a Claim.**

A. Upon receiving a claim for workers' compensation benefits, the insurance carrier or self-insured employer shall promptly investigate the claim and begin payment of compensation within 21 days from the date of notification of a valid claim or the insurance carrier or self-insured employer shall send the claimant and the division written notice on a division form or letter containing similar information, within 21 days of notification, that further investigation is needed stating the reason(s) for further investigation. Each insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and division in writing that the claim is denied and the reason(s) why the claim is being denied.

B. The payment of compensation shall be considered overdue if not paid within 21 days of a valid claim or within the 45 days of investigation unless denied.

C. Failure to make payment or to deny a claim within the 45 day time period without good cause shall result in a referral of the insurance company to the Insurance Department for appropriate disciplinary action and may be cause for revocation of the self-insurance certification for a self-insured employer. Good cause is defined as:

1. Failure by an employee claiming benefits to sign requested medical releases;

2. Injury or occupational disease did not occur within the scope of employment;

3. Medical information does not support the claim;

4. Claim was not filed within the statute of limitations;

5. Claimant is not an employee of the employer he/she is making a claim against;

6. Claimant has failed to cooperate in the investigation of the claim;

7. A pre-existing condition is the sole cause of the medical problem and not the claimed work-related injury or occupational disease;

8. Tested positive for drugs or alcohol; or

9. Other - a very specific reason must be given.

D. If an insurance carrier or self-insured employer begins payment of benefits on an investigation basis so as to process the claim in a timely fashion, a later denial of benefits based on newly discovered information may be allowed.

**R612-1-8. Insurance Carrier/Employer Liability.**

A. This rule governs responsibility for payment of workers' compensation benefits for industrial accidents when:

1. The worker's ultimate entitlement to benefits is not in dispute; but

2. There is a dispute between self-insured employers and/or insurers regarding their respective liability for the injured worker's benefits arising out of separate industrial accidents which are compensable under Utah law.

B. In cases meeting the criteria of subsection A, the self-insured employer or insurer providing workers' compensation

coverage for the most recent compensable injury shall advance workers' compensation benefits to the injured worker. The benefits advanced shall be limited to medical benefits and temporary total disability compensation. The benefits advanced shall be paid according to the entitlement in effect on the date of the earliest related injury.

1. The self-insured employer or insurance carrier advancing benefits shall notify the non-advancing party(s) within the time periods as specified in rule R612-1-7, that benefits are to be advanced pursuant to this rule.

2. The self-insured employers or insurers not advancing benefits, upon notification from the advancing party, shall notify the advancing party within 10 working days of any potential defenses or limitations of the non-advancing party(s) liability.

C. The parties are encouraged to settle liabilities pursuant to this rule, however, any party may file a request for agency action with the Commission for determination of liability for the workers' compensation benefits at issue.

D. The medical utilization decisions of the self-insured employer or insurer advancing benefits pursuant to this rule shall be presumed reasonable with respect to the issue of reimbursement.

**R612-1-9. Compensation Agreements.**

A. An applicant, insurance company, and/or employer may enter into a compensation agreement for the purpose of resolving a worker's compensation claim. Compensation agreements must be approved by the Commission. The compensation agreement must be that contained on Form 019 of the Commission forms and shall include the following information:

1. Signatures of the parties involved;
2. Form 122 - Employer's First Report of Injury;
3. Doctor's report of impairment rating;
4. Form 141 - Payment of Benefits Statement.

B. Failure to provide any of the above documentation and forms may result in the return of the compensation agreement to the carrier or self-insured employer without approval.

**R612-1-10. Permanent Total Disability.**

A. This rule applies to claims for permanent total disability compensation under the Utah Workers' Compensation Act.

1. Subsection B applies to permanent total disability claims arising from accident or disease prior to May 1, 1995.

2. Subsection C applies to permanent total disability claims arising from accident or disease on or after May 1, 1995.

B. For claims arising from accident or disease on or after July 1, 1988 and prior to May 1, 1995, the Commission is required under Section 34A-2-413, to make a finding of total disability as measured by the substance of the sequential decision-making process of the Social Security Administration under Title 20 of the Code of Federal Regulations, amended April 1, 1993. The use of the term "substance of the sequential decision-making process" is deemed to confer some latitude on the Commission in exercising a degree of discretion in making its findings relative to permanent total disability. The Commission does not interpret the code section to eliminate the requirement that a finding by the Commission in permanent and total disability shall in all cases be tentative and not final until rehabilitation training and/or evaluation has been accomplished.

1. In the event that the Social Security Administration or its designee has made, or is in the process of making, a determination of disability under the foregoing process, the Commission may use this information in lieu of instituting the process on its own behalf.

2. In evaluating industrial claims in which the injured worker has qualified for Social Security disability benefits, the Commission will determine if a significant cause of the disability is the claimant's industrial accident or some other unrelated cause or causes.

3. To make a tentative finding of permanent total disability the Commission incorporates the rules of disability determination in 20 CFR 404.1520, amended April 1, 1993. The sequential decision making process referred to requires a series of questions and evaluations to be made in sequence. In short, these are:

a. Is the claimant engaged in a substantial gainful activity?

b. Does the claimant have a medically severe impairment?

c. Does the severe impairment meet or equal the duration requirement in 20 CFR 404.1509, amended April 1, 1993, and the listed impairments in 20 CFR Subpart P Appendix 1, amended April 1, 1993?

d. Does the impairment prevent the claimant from doing past relevant work?

e. Does the impairment prevent the claimant from doing any other work?

4. After the Commission has made a tentative finding of permanent total disability:

a. In those cases arising after July 1,1994, the Commission shall order initiation of payment of permanent total disability compensation;

b. the Commission shall review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act, as well as any qualified reemployment plan submitted by the employer or its insurance carrier; and

c. unless otherwise stipulated, the Commission shall hold a hearing to consider the possibility of rehabilitation and reemployment of the claimant pending final adjudication of the claim.

5. After a hearing, or waiver of the hearing by the parties, the Commission shall issue an order finding or denying permanent total disability based upon the preponderance of the evidence and with due consideration of the vocational factors in combination with the residual functional capacity which the commission incorporates as published in 20 CFR 404 Subpart P Appendix 2, amended April 1, 1993.

C. For permanent total disability claims arising on or after May 1, 1995, Section 34A-2-413 requires a two-step adjudicative process. First, the Commission must make a preliminary determination whether the applicant is permanently and totally disabled. If so, the Commission will proceed to the second step, in which the Commission will determine whether the applicant can be reemployed or rehabilitated.

1. First Step– Preliminary Determination of Permanent Total Disability: On receipt of an application for permanent total disability compensation, the Adjudication Division will assign an Administrative Law Judge to conduct evidentiary

proceedings to determine whether the applicant's circumstances meet each of the elements set forth in Subsections 34A-2-413(1)(b) and (c).

(a) If the ALJ finds the applicant meets each of the elements set forth in Subsections 34A-2-413(1)(b) and (c), the ALJ will issue a preliminary determination of permanent total disability and shall order the employer or insurance carrier to pay permanent total disability compensation to the applicant pending completion of the second step of the adjudication process. The payment of permanent total disability compensation pursuant to a preliminary determination shall commence as of the date established by the preliminary determination and shall continue until otherwise ordered.

(b) A party dissatisfied with the ALJ's preliminary determination may obtain additional agency review by either the Labor Commissioner or Appeals Board pursuant to Subsection 34A-2-801(3). If a timely motion for review of the ALJ's preliminary determination is filed with either the Labor Commissioner or Appeals Board, no further adjudicative or enforcement proceedings shall take place pending the decision of the Commissioner or Board.

(c) A preliminary determination of permanent total disability by the Labor Commissioner or Appeals Board is a final agency action for purposes of appellate judicial review.

(d) Unless otherwise stayed by the Labor Commissioner, the Appeals Board or an appellate court, an appeal of the Labor Commissioner or Appeals Board's preliminary determination of permanent total disability shall not delay the commencement of "second step" proceedings discussed below or payment of permanent total disability compensation as ordered by the preliminary determination.

(e) The Commissioner or Appeals Board shall grant a request for stay if the requesting party has filed a petition for judicial review and the Commissioner or Appeals Board determine that:

(i) the requesting party has a substantial possibility of prevailing on the merits;

(ii) the requesting party will suffer irreparable injury unless a stay is granted; and

(iii) the stay will not result in irreparable injury to other parties to the proceeding.

2. Second Step–Reemployment and Rehabilitation: Pursuant to Subsection 34A-2-413(6), if the first step of the adjudicatory process results in a preliminary finding of permanent total disability, an additional inquiry must be made into the applicant's ability to be reemployed or rehabilitated, unless the parties waive such additional proceedings.

(a) The ALJ will hold a hearing to consider whether the applicant can be reemployed or rehabilitated.

(i) As part of the hearing, the ALJ will review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act;

(ii) The employer or insurance carrier may submit a reemployment plan meeting the requirements set forth in Subsection 34A-2-413(6)(a)(ii) and Subsections 34A-2-413(6)(d)(i) through (iii).

(b) Pursuant to Subsection 34A-2-413(4)(b) the employer or insurance carrier may not be required to pay disability compensation for any combination of disabilities of any kind in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate.

(i) Any overpayment of disability compensation may be recouped by the employer or insurance carrier by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.

(ii) An advance of disability compensation to provide for the employee's subsistence during the rehabilitation process is subject to the provisions of Subsection 34A-2-413(4)(b), described in subsection 2.(b) above, but can be funded by reasonably offsetting the advance of disability compensation against future liability normally paid after the initial 312 weeks.

(iii) To fund an advance of disability compensation to provide for an employee's subsistence during the rehabilitation process, a portion of the stream of future weekly disability compensation payments may be discounted from the future to the present to accommodate payment. Should this be necessary, the employer or insurance carrier shall be allowed to reasonably offset the amounts paid against future liability payable after the initial 312 weeks. In this process, care should be exercised to reasonably minimize adverse financial impact on the employee.

(iv) In the event the parties cannot agree as to the reasonableness of any proposed offset, the matter may be submitted to an ALJ for determination.

(c) Subsections 34A-2-413(7) and (9) require the applicant to fully cooperate in any evaluation or reemployment plan. Failure to do so shall result in dismissal of the applicant's claim or reduction or elimination of benefit payments including disability compensation and subsistence allowance amounts, consistent with the provisions of Section 34A-2-413(7) and (9).

(d) Subsection 34A-2-413(6) requires the employer or its insurance carrier to diligently pursue any proffered reemployment plan. Failure to do so shall result in a final award of permanent total disability compensation to the applicant.

(e) If, after the conclusion of the foregoing "second step" proceeding, the ALJ concludes that successful rehabilitation is not possible, the ALJ shall enter a final order for continuing payment of permanent total disability compensation. The period for payment of such compensation shall be commence on the date the employee became permanently and totally disabled, as determined by the ALJ.

(f) Alternatively, if after the conclusion of the "second step" proceeding, the ALJ concludes that successful rehabilitation and/or reemployment is possible, the ALJ shall enter a final order to that effect, which order shall contain such direction to the parties as the ALJ shall deem appropriate for successful implementation and continuation of rehabilitation and/or reemployment. As necessary under the particular circumstances of each case, the ALJ's final order shall provide for reasonable offset of payments of any disability compensation that constitute an overpayment under Subsection 34A-2-413(4)(b).

(g) The ALJ's decision is subject to all administrative and judicial review provided by law.

**R612-1-11. Burial Expenses.**

(1) Pursuant to Section 34A-2-418 if death results from an industrial injury or occupational disease, burial expenses in

ordinary cases shall be paid by the employer or insurance carrier up to $8,000. Unusual cases may result in additional payment, either voluntarily by the employer or insurance carrier or through commission order.

(2) Beginning in the year 2004 and every two years thereafter, the Commission shall review this rule and shall make such adjustments as are necessary so that the burial expense provided by this rule remains equitable when compared to the average cost of burial in this state.

**KEY: workers' compensation, time, administrative procedure, filing deadlines**
**March 5, 2002 34A-2-101 et seq.**
**Notice of Continuation September 5, 2002 34A-3-101 et seq.**
**34A-1-104 et seq.**
**63-46b-1 et seq.**

**R614. Labor Commission, Occupational Safety and Health.**
**R614-1. General Provisions.**
**R614-1-1. Authority.**

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

**R614-1-2. Scope.**

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

**R614-1-3. Definitions.**

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronyum of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "First aid" is any one-time treatment, and any follow-up visit for the purpose of observation of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require the attention of a physician. Such one-time treatment, and follow-up visit for the purpose of observation, is considered first aid even though provided by a physician or trained personnel provided that the records comply with R614-1-7.B. and are readily available to the Administrator or his representatives, by direct contact, telephone, or mail.

S. "Hearing" means a proceeding conducted by the commission.

T. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

U. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

V. "Medical treatment" includes treatment administered by a physician or trained personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or trained personnel.

W. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

X. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

Y. "Publish" means publication in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Z. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

AA. "Recordable occupational injuries and illnesses" means any occupational injuries or illnesses which result in:

1. Fatalities, regardless of the time between the injury and death, or the length of the illness;

2. Lost time cases, other than fatalities, that result in lost time; or

3. Nonfatal cases without lost time which result in transfer to another job or termination of employment, or require medical

treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost time case.

BB. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

CC. "Secretary" means the Secretary of the United States Department of Labor.

DD. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

EE. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

FF. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

GG. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

HH. "Workplace" means any place of employment.

**R614-1-4. Incorporation of Federal Standards.**

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2001, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2001, is incorporated by reference.

3. 29 CFR 1904, July 1, 2001, is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2001, edition is incorporated by reference.

**R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.**

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

2. Each employer shall within 12 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901 or one of the individuals on the following personnel list.

TABLE 1

LABOR COMMISSION
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
BAGLEY, Jay W. (Administrator)
Kaysville, Utah 84037
543-1369
ADAMS, William W. Jr.
Park City, Utah 84060
649-4309

BURNS, Tori L.
Salt Lake City, Utah 84102
364-6673

ANDERSON, Neil A.
Kaysville, Utah 84037
544-2791

KING, Daniel L.
Lake Point, Utah 84074
250-6781

3. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational diseases which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

4. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

5. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational diseases resulting in medical treatment, loss of consciousness, loss of work, restriction of work, or transfer to another job.

6. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor Commission or one of its Compliance Officers.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be

tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX.

**R614-1-6. Personal Protective Equipment.**

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

**R614-1-7. Inspections, Citations, and Proposed Penalties.**

A. The Utah Occupational Safety and Health Act (Title

34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its

equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the

inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature

of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof,

unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

**R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.**

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

B. Exceptions to Recordkeeping and Reporting Requirements.

1. Small Employers. An employer who had no more than ten (10) employees at any time during the calendar year immediately preceding the current calendar year need not

comply with any of the requirements of this part except the following:

a. Obligation to report under R614-1-5.C. concerning fatalities or accidents; and

b. Obligation to maintain a log of occupational injuries and illnesses under R614-1-8.C. and to make reports under R614-1-8.N. upon being notified in writing by the Commission's Statistics Section that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

2. Employers who are engaged in farming operations, having 10 or fewer employees are not subject to the Act, including the provisions of this part.

3. Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89, (except 52-54, 70, 75, 76, 79 and 80.) An employer whose establishment is classified in SIC's 52-89, (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

a. Obligation to report under R614-1-5.C. concerning fatalities or serious injury.

b. Obligation to maintain a log of occupational injuries and illnesses under R614-1-8.K. and L. upon being notified in writing by the federal Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses; and

c. Those employers who engage in activities classified as high risk industries (i.e., a real estate establishment engaged in construction activities) must maintain records on the High Risk portions of their operations.

C. Log and summary of occupational injuries and illness.

1. Each employer shall maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment, except that under the circumstances described in R614-1-8.C.2. an employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment. Each employer shall enter all recordable occupational injury and illness on the log and summary as early as practicable but no later than 6 working days after receiving information that a recordable case has occurred. For this purpose, the federal OSHA Form No. 200 or any private equivalent form may be used. OSHA Form No. 200 or its equivalent shall be completed in the detail provided in the form and instructions contained in OSHA Form No. 200. If an equivalent of OSHA Form No. 200 is used, such as a printout from data-processing equipment, the information shall be as readable and comprehensible to a person not familiar with the data-processing equipment as the OSHA Form No. 200 itself.

2. Any employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment or by means of data-processing equipment, or both, under the following circumstances:

a. There is available at the place where the log and summary is maintained sufficient information to complete the log to a date within 6 working days after receiving information that a recordable case has occurred, as required by R614-1-8.C.

b. At each of the employer's establishments, there is available a copy of the log and summary which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days.

D. Period covered.

Records shall be established on a calendar year basis.

E. Supplementary record.

In addition to the log and summary of occupational injuries and illnesses provided for under R614-1-8.C.1., each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 101. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 101. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 101 shall be used or the necessary information shall be otherwise maintained.

F. Annual Summary.

1. Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the form OSHA Form No. 200 and the following information from that form: calendar year covered, company name, establishment address, certification signature, title, and date. An OSHA Form No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered in the totals line, and the form must be posted.

2. The summary shall be completed by February 1 beginning with calendar year 1979. The summary of 1977 calendar year's occupational injuries and illnesses shall be posted on OSHA form No. 102.

3. Each employer or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the annual summary certifying that the annual summary is true and complete.

4. Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under R614-1-7.B.1. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who receives pay during that month. For multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

a. Failure to post a copy of the establishment's annual

summary may result in the issuance of citations and assessment of penalties pursuant to Sections 34A-6-302 and 34A-6-307 of the Act.

G. Retention of records.

1. Records provided for in R614-1-8.A.,E., and F. (including OSHA Form No. 200 and its predecessor OSHA Forms No. 100 and No. 102) shall be retained in each establishment for 5 years following the end of the year to which they relate.

2. Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

H. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

I. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

J. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

K. Change of ownership.

Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned or operated such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this Part. These records shall be retained at each establishment to which they relate, for the period or remainder thereof, required under R614-1-8.G.

L. Petitions for record-keeping exceptions.

1. Submission of petition. Any employer who wishes to maintain records in a manner different from that required by this part may submit a petition containing the information specified in R614-1-8.L.3. the Bureau of Labor Statistics of the U.S. Department of Labor.

2. Opportunity for comment. Affected employees or their representatives shall have an opportunity to submit written data, views, or arguments concerning the petition to the Administrator within 10 working days following the receipt of notice under R614-1-8.L.3.e.

3. Contents of petition. A petition filed under R614-1-8.L.1. shall include:

a. The name and address of the applicant;

b. The address of the places or employment involved.

c. Specifications of the reasons for seeking relief;

d. A description of the different record-keeping procedures which are proposed by the applicant;

e. A statement that the applicant has informed his affected employees of the petition by giving a copy thereof to them or to their authorized representative and by posting a statement giving a summary of the petition and by other appropriate means. A statement posted pursuant to this subparagraph shall be posted in each establishment in the same manner that notices are required to be posted under R614-1-7.B. The applicant shall also state that he has informed his affected employees of their rights under R614-1-8.L.2.

f. In the event an employer has more than one establishment he shall submit a list of the locations and the number of establishments in the state.

4. Additional notice, conferences.

a. In addition to the actual notice provided for in R614-1-8.L.3.e., the Administrator may provide such additional notice of the petition as he may deem appropriate.

b. The Administrator may also afford an opportunity to interested parties for informal conference or hearing concerning the petition.

5. Action. After review of the petition, and of any comments submitted in regard thereto, and upon completion of any necessary appropriate investigation concerning the petition, if the Administrator finds that the alternative procedure proposed will not hamper or interfere with the purposes of the Act and will provide equivalent information, he may grant the petition subject to such conditions as he may determine appropriate.

6. Publication. Whenever any relief is granted to an applicant under this Act, notice of such relief, and the reasons therefore, shall be published in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act. The U.S. Department of Labor shall have been consulted and approval given prior to the granting of relief by the Administrator.

7. Revocation. Whenever any relief under this rule is sought to be revoked for any failure to comply with the conditions thereof, and opportunity for informal hearing or conference shall be afforded to the employers and affected employees, or their representatives. Except in cases of willfulness or where public safety or health requires otherwise, before the commencement of any such informal proceeding, the employer shall:

a. Be notified in writing of the facts or conduct which may warrant the action; and

b. Be given an opportunity to demonstrate or achieve compliance.

8. Compliance after submission of a petition or any delay by the Administrator, in acting upon a petition shall not relieve any employer from any obligation to comply with this Part. However, the Administrator shall give notice of the denial of any petition within a reasonable time.

M. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

N. Duties of employers.

1. Upon receipt of an Occupational Injuries and Illnesses Survey Form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions.

2. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of R614-1-8.C., E., and G. with respect to such employees by:

a. Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

b. Having the address and telephone number of the central place available at each work-site; and

c. Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

**R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)**

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected

employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the

variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

**R614-1-10. Discrimination.**

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63, Chapter 46b, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the

particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63, Chapter 46a, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the

Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

**R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.**

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee

medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those

who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally

identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

**R614-1-12. Access to Employee Exposure and Medical Records.**

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the

employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data

contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

**R614-1-12A. Appendix A to R614-1-12 SAMPLE.**

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

**R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).**

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial

hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

**KEY: safety**
**September 5, 2002** **34A-6**

**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. $9.00 per private motor vehicle or $4.00 per person for pedestrians or bicycles for the following parks:

TABLE 1

| | |
|---|---|
| Deer Creek | Jordanelle |
| Utah Lake | Willard Bay |

2. $7.00 per private motor vehicle or $4.00 per person for pedestrians or bicycles for the following parks:

TABLE 2

| |
|---|
| Dead Horse Point |
| East Canyon |
| Rockport |

3. $6.00 per private motor vehicle or $3.00 per person for pedestrians or bicycles for the following parks:

TABLE 3

| | |
|---|---|
| Bear Lake | Quail Creek |
| Scofield | Yuba |

4. $5.00 per private motor vehicle or $3.00 per person for pedestrians or bicycles for the following parks:

TABLE 4

| | |
|---|---|
| Antelope Island | Coral Pink |
| Escalante | Goblin Valley |
| Green River | Gunlock |
| Huntington | Hyrum |
| Kodachrome | Lost Creek |
| Millsite | Minersville |
| Otter Creek | Palisade |
| Pineview | Piute |
| Snow Canyon | Starvation |
| Steinaker | Wasatch Mountain |

5. $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 |

6. $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**

**September 16, 2002** **63-11-17(2)**
**Notice of Continuation August 7, 2001**

**R655. Natural Resources, Water Rights.**

**R655-1. Wells Used for the Discovery and Production of Geothermal Energy in the State of Utah.**

**R655-1-1. General Provisions.**

1.1 Authority: In Section 73-22-5, the Division of Water Rights is given jurisdiction and authority to require that all wells for the discovery and production of water to be used for geothermal energy production of water in the State of Utah, be drilled, operated, maintained, and abandoned in a manner as to safeguard life, health, property, the public welfare, and to encourage maximum economic recovery.

1.2 Definitions:

(a) "Applicant" means any person submitting an application to the Division of Water Rights to appropriate water, brine or steam for geothermal purposes and for the construction and operation of any well or injection well.

(b) "BOPE" is an abbreviation for Blow-Out Prevention Equipment which is designed to be attached to the casing in a geothermal well in order to prevent a blow-out.

(c) "Completion." A well is considered to be completed thirty days after drilling operations have ceased unless a suspension of operation is approved by the Division, or thirty days after it has commenced producing a geothermal resource, whichever occurs first, unless drilling operations are resumed before the end of the thirty-day period or at the end of the suspension.

(d) "Correlative Rights" means the owners' or operators' just and equitable share in the geothermal resource.

(e) "Division" means the Division of Water Rights, Department of Natural Resources, State of Utah.

(f) "Drilling Logs" means the recorded description of the lithologic sequence encountered in drilling a well.

(g) "Drilling Operations" means the actual drilling, redrilling, or recompletion of the well for production or injection including the running and cementing of casing and the installation of well head equipment. Drilling operations do not include perforating, logging, and related operations.

(h) "Exploratory Well" means a well drilled for the discovery or evaluation of geothermal resources either in an established geothermal field or in unexplored areas.

(i) "Geothermal Area" means the same general land area which in its subsurface is underlaid or reasonably appears to be underlaid by geothermal resources from or in a reservoir, pool, or other source or interrelated sources.

(j) "Geothermal Field" means an area designated by the Division which contains a well or wells capable of commercial production of geothermal resources.

(k) "Geothermal Resource" means the natural heat energy of the earth, the energy in whatever form which may be found in any position and at any depth below the surface of the earth, present in, resulting from, or created by, or which may be extracted from natural heat and all minerals in solution or other products obtained from the material medium of any geothermal resource.

(l) "Injection Well" means any special well, converted producing well, or reactivated or converted abandoned well employed for injecting material into a geothermal area or adjacent area to maintain pressures in a geothermal reservoir, pool, or other source, or to provide new material to serve as a material medium therein, or for reinjecting any material medium or the residue thereof, or any by-product of geothermal resource exploration or development into the earth.

(m) "Material Medium" means any substance including, but not limited to, naturally heated fluids, brines, associated gases and steam in whatever form, found at any depth and in any position below the surface of the earth, which contains or transmits the natural heat energy of the earth, but excluding petroleum, oil, hydrocarbon gas, or other hydrocarbon substances.

(n) "Notice" means a statement to the Division that the applicant intends to do work.

(o) "Operator" means any person drilling, maintaining, operating, pumping, or in control of any well. The term operator also includes owner when any well is or has been or is about to be operated by or under the direction of the owner.

(p) "Owner" means the owner of the geothermal lease or well and includes operator when any well is operated or has been operated or is about to be operated by any person other than the owner.

(q) "Person" means any individual natural person, general or limited partnership, joint venture, association, cooperative organization, corporation, whether domestic or foreign, agency or subdivision of this or any other state or municipal or quasi-municipal entity whether or not it is incorporated.

(r) "Production Well" means any well which is commercially producing or is intended for commercial production of a geothermal resource.

(s) "State Engineer" is the Director of the Division of Water Rights, which is the agency having general administrative supervision over the waters of the State. The duties of this Division are primarily set forth in Title 73, Chapters 1 through 6.

(t) "Suspension of Operations" means the cessation of drilling, redrilling, or alteration of casing before the well is officially abandoned or completed. All suspensions must be authorized by the Division.

(u) "Waste" means any physical waste including, but not limited to:

(1) Underground waste resulting from inefficient, excessive, or improper use, or dissipation of geothermal energy, or of any geothermal resource pool, reservoir, or other source; or the locating, spacing, constructing, equipping, operating, or producing of any well in a manner which results, or tends to result in reducing the quantity of geothermal energy to be recovered from any geothermal area in the State.

(2) The inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; the escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well.

(v) "Well" means any well drilled for the discovery or production of geothermal resources or any well on lands producing geothermal resources or reasonably presumed to contain geothermal resources, or any special well, converted producing well or reactivated or converted abandoned well

employed for reinjecting geothermal resources or the residue thereof.

1.3 All administrative procedures involving applications, approvals, hearings, notices, revocations, orders and their judicial review, and all other administrative procedures required or allowed by these rules are governed by rules for administrative procedures adopted by the Division, including R655-6, Administrative Procedures for Informal Proceedings Before the Division of Water Rights of the State of Utah.

**R655-1-2. Drilling.**

2.1 Applications:

2.1.1 Application to drill for Geothermal Resources.

Any person, owner or operator, who proposes to drill a well for the production of geothermal resources or to drill an injection well shall first apply to the Division in accordance with Title 73, Chapter 3. Applications to appropriate water for geothermal purposes will be processed and investigated by the Division, and if they meet the requirements of Section 73-3-8, they will be approved by the State Engineer on a well-to-well basis or as a group of wells which comprise an operating unit and have like characteristics.

Appropriation of water for geothermal purposes shall not be considered mutually interchangeable with water for any other purpose. Water, brine, steam or condensate produced during a geothermal operation may be subject to further appropriation if physical conditions permit.

2.1.2 Plan of Operations:

Before drilling an exploratory or production well, the applicant shall submit a plan of operations to the State Engineer for his approval. The plan shall include:

(a) Location, elevation and layout.

(b) Lease identification and Well Number.

(c) Tools and equipment description including maximum capacity and depth rating.

(d) Expected depth and geology.

(e) Drilling, mud, cementing and casing program.

(f) BOPE installation and test.

(g) Logging, coring and testing program.

(h) Methods for disposal of waste materials.

(i) Environmental considerations.

(j) Emergency procedures.

(k) Other information as the State Engineer may require.

2.1.3 Application to deepen or modify an existing well.

If the owner or operator plans to deepen, redrill, plug, or perform any operation that will in any manner modify the well, an application shall be filed with the Division and written approval must be received prior to beginning work; however, in an emergency, the owner or operator may take action to prevent damage without receiving prior written approval from the Division, but in those cases the owner or operator shall report his action to the Division as soon as possible.

2.1.4 Application for permit to convert to injection.

If the owner or operator plans to convert an existing geothermal well into an injection well with no change of mechanical condition, written request shall be filed with the Division and written approval must be received prior to beginning injection.

2.1.5 Amendment of permit.

No changes in the point of diversion, place or nature of use shall be allowed until an amendment to the application is approved by the State Engineer in accordance with Section 73-3-3.

2.1.6 Notice to other agencies.

Notice of applications, permits, orders, or other actions received or issued by the Division may be given to any other agency or entity which may have information, comments, or interest in the activity involved.

2.2 Fees: Any application filed with the State Engineer shall be accompanied by a filing fee in accordance with Section 73-2-14.

2.3 Bonds:

2.3.1 Any operator having approval to drill, re-enter, test, alter or operate a well, prior to any construction or operation, shall file with the Division of Water Rights and obtain its approval of a surety bond, payable to the Division of Water Rights for not less than $10,000 for each individual well or $50,000 for all wells. The bond shall be on a form prescribed by the Division and shall be conditioned on faithful compliance with all statutes and these rules.

2.3.2 Bonds remain in force for the life of the well or wells and may not be released until the well or wells are properly abandoned or another valid bond is substituted.

2.3.3 Transfer of property does not release the bond. If any property is transferred and the principal desires to be released from his bond, the operator shall:

a. Assign or transfer ownership in the manner prescribed in Sections 73-1-10 and 73-3-18, identifying the right by application number, well number or location and,

b. Provide the Division with a declaration in writing from the assignee or transferee that he accepts the assignment and tenders his own bond therewith or therein accepts responsibility under his blanket bond on file with the Division.

2.4 Well Spacing:

2.4.1 Any well drilled for the discovery or production of geothermal resources or as an injection well shall be located 100 feet or more from and within the outer boundary of the parcel of land on which the well is situated, or 100 feet or more from a public road, street, or highway dedicated prior to the commencement of drilling. This requirement may be modified or waived by the State Engineer upon written request if it can be demonstrated that public safety is preserved and that the integrity of the geothermal source is not jeopardized.

2.4.2 For several contiguous parcels of land in one or different ownerships that are operated as a single geothermal field, the term outer boundary line means the outer boundary line of the land included in the field. In determining the contiguity of parcels of land, no street, road, or alley lying within the lease or field shall be determined to interrupt such contiguity.

2.4.3 The State Engineer shall approve the proposed well spacing programs or prescribe modifications to the programs as he deems necessary for proper development giving consideration to factors as, but not limited to, topographic characteristics of the area, the number of wells that can be economically drilled to provide the necessary volume of geothermal resources for the intended use, protecting correlative rights, minimizing well interference, unreasonable interference

with multiple use of lands, and protection of the environment.

2.4.4 Directional drilling.

Where the surface of the parcel of land is unavailable for drilling, the surface well location may be located upon property which may or may not be contiguous. Surface well locations shall not be less than 25 feet from the outer boundary of the parcel on which it is located, nor less than 25 feet from an existing street or road. The production or injection interval of the well shall not be less than 100 feet from the outer boundary of the parcel into which it is drilled. Directional surveys must be filed with the Division for all wells directionally drilled.

2.5 Identification: Each well being drilled or drilled and not abandoned shall be identified by a durable sign posted in a conspicuous place near the well. The lettering shall be large enough to be legible at 50 feet under normal conditions and shall show the name of the applicant, well number, location by 10-acre tract, and name of lease.

The well number shall be according to the modified Kettleman Well Numbering System adopted by the U.S. Geological Survey.

2.6 Unit Agreements: At the request of any interested party or on his own initiative, the State Engineer may establish a unit plan or agreement for a geothermal area to prevent waste, protect correlative rights and avoid drilling unnecessary wells. Proper notice to interested parties must be given and a hearing held before the State Engineer before the unit may be created.

2.7 Casing Requirements:

2.7.1 General.

All wells shall be cased in a manner to protect or minimize damage to the environment, usable ground waters and surface waters, geothermal resources, life, health, and property. The permanent well head completion equipment shall be attached to the production casing or to the intermediate casing if production casing does not reach the surface.

Specifications for casing strings shall be determined or approved on a well-to-well basis. All casing strings reaching the surface shall provide adequate anchorage for blowout-prevention equipment, hole pressure control and protection for all natural resources. The casing requirements given are general but should be used as guidelines in submitting proposals to drill.

2.7.2 Conductor Casing.

A minimum of 40 feet of conductor casing shall be installed. The annular space is to be cemented solid to the surface. A 24-hour cure period for the grout must be allowed prior to drilling out the shoe unless additives approved by the State Engineer are used to obtain early strength. An annular blowout preventer shall be installed on all exploratory wells and on development wells when deemed necessary by the Division. For low-temperature geothermal wells less than 90 degrees C. this requirement may be reduced or waived by the State Engineer.

2.7.3 Surface Casing.

Except in the case of low-temperature geothermal wells, the surface casing hole shall be logged with an induction electrical log, or equivalent, before running casing or by gamma-neutron log. This requirement may vary from area to area, depending upon the amount of pre-existing subsurface geological data available. If sufficient subsurface geologic data is available, the State Engineer may not require additional logging of the surface casing hole. However, permission to omit this requirement must be granted by the Division prior to running surface casing.

Surface casing shall provide for control of formation fluids, for protection of shallow usable ground water and for adequate anchorage for blowout-prevention equipment. All surface casing shall be cemented solid to the surface. A 24-hour cure period shall be allowed prior to drilling out the shoe of the surface casing unless additives approved by the State Engineer are used to obtain early strength.

2.7.3.1 Length of Surface Casing.

(a) In areas where subsurface geological conditions are variable or unknown, surface casing in general shall be set at a depth of wells drilled in those areas. A minimum of surface casing shall be set through a sufficient series of low permeability, competent lithologic units to ensure a solid anchor for blowout-prevention equipment and to protect usable ground water and surface water from contamination. A second string or intermediate casing may be required if the first string has not been cemented through a sufficient series of low permeability, competent lithologic units and either a rapidly increasing geothermal gradient or rapidly increasing formation pressures are encountered.

(b) In areas of known high formation pressure, surface casing shall be set at a depth approved by the Division after a careful study of geological conditions.

(c) Within the confines of designated geothermal fields, the depth to which surface casing shall be set shall be approved by the Division on the basis of known field conditions.

(d) These requirements may be reduced or waived by the State Engineer for low-temperature geothermal wells.

2.7.3.2 Mud Return Temperatures.

The temperature of the return mud shall be monitored regularly during the drilling of the surface casing hole. Either a continuous temperature monitoring device shall be installed and maintained in working condition, or the temperature shall be read manually. In either case, return mud temperature shall be logged after each joint of pipe has been drilled down 30 feet.

2.7.3.3 Blowout-Prevention Equipment.

BOPE capable of shutting-in the well during any operation shall be installed on the surface casing and maintained ready for use at all times. BOPE pressure tests shall be witnessed by Division personnel on all exploratory wells prior to drilling out the shoe of the surface casing. The decision to require and witness BOPE pressure tests on all other wells shall be made on a well-to-well basis. The Division must be contacted 24 hours in advance of a scheduled pressure test. The State Engineer may give verbal permission to proceed with the test upon request by the operator.

2.7.4 Intermediate Casing.

Intermediate casing shall be required for protection against unusual pressure zones, cave-ins, wash-outs, abnormal temperature zones, uncontrollable lost circulation zones or other drilling hazards. Intermediate casing strings shall be cemented solid to the surface or to the top of the liner hanger whenever the intermediate casing string is run as a liner. The liner lap shall be pressure tested prior to resumption of drilling.

2.7.5 Production Casing.

Production casing may be set above or through the producing or injection zone and cemented above the injection

zones. Sufficient cement shall be used to exclude overlying formation fluids from the geothermal zone, to segregate zones and to prevent movement of fluids behind the casing into zones that contain usable ground water. Production casing shall either be cemented solid to the surface or lapped into intermediate casing, if run. If the production casing is lapped into an intermediate casing, the casing overlap shall be at least 100 feet, the lap shall be cemented solid, and it shall be pressure tested to ensure its integrity.

2.8 Electric Logging:

All wells, except observation wells for monitoring purposes only, shall be logged with an induction electrical log or equivalent or gamma-neutron log from the bottom of the hole to the bottom of the conductor pipe. This requirement may be modified or waived by the Division upon written request if such request demonstrates sufficient existing data of surrounding wells.

**R655-1-3. Blowout Prevention.**

3.1 General.

3.1.1 Blowout-Prevention Equipment (BOPE) installations shall include high temperature-rated packing units and ram rubbers, if available, and shall have a minimum working-pressure rating equal to or greater than the lesser of:

(a) A pressure equal to the product of the depth of the BOPE anchor string in feet times one psi per foot.

(b) A pressure equal to the rated burst pressure of the BOPE anchor string.

(c) A pressure equal to 2,000 psi.

Specific inspections and tests of the BOPE may be made by the Division. The requirements for tests will be included in the Division's answer to the notice of the intention to drill.

3.1.2 A Division employee may be present at the well at any time during the drilling.

3.1.3 A logging unit equipped to regularly record the following data shall be installed and operated continuously after drilling out the shoe of the conductor pipe and until the well has been drilled to the total depth.

(a) Drilling mud temperature.

(b) Drilling mud pit level.

(c) Drilling mud pump volume.

(d) Drilling mud weight.

(e) Drilling rate.

(f) Hydrogen sulfide gas volume.

The Division may waive the requirement for installation of a logging unit on evidence that the owner or operator has engaged a qualified mud engineer to monitor, log and record the data specified in the above subparagraphs a. through d. The drilling rate required in subparagraph e. shall be logged with standard industry recording devices, and hydrogen sulfide monitoring and safety equipment shall be provided whenever needed to satisfy the requirement of subparagraph f.

3.2 Requirements Using Mud as the Drilling Fluid.

The following requirements are for exploratory areas, unstable areas containing fumaroles, geysers, hot springs, mud pots, and for fields with a history of lost circulation, a blowout, or zone pressures less than 1000 psi. These requirements may be reduced by the State Engineer where the geothermal formations are known to be shallow and of low pressure and temperature.

(a) An annular BOPE and a spool, fitted with a low-pressure safety pop-off and blow-down line, installed on the conductor pipe may be required to ensure against possible gas blowouts during the drilling of the surface casing hole.

(b) Annular BOPE and pipe-ram/blind-ram BOPE with a minimum working pressure rating of 2,000 psi shall be installed on the surface casing so that the well can be shut-in at any time. The double-ram preventer shall have a mechanical locking device.

(c) A hydraulic actuating system utilizing an accumulator of sufficient capacity and a high pressure auxiliary back-up system. This total system shall be equipped with dual controls: one at the driller's station and one at least 50 feet away from the well head.

(d) Kelly cock and standpipe valve.

(e) A fill-up line installed above the BOPE.

(f) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary.

(g) A blow-down line fitted with two valves installed below the BOPE. The blow-down line shall be directed in a manner to permit containment of produced fluids and to minimize any safety hazard to personnel.

(h) All lines and fittings shall be steel and have a minimum working-pressure rating of at least that required of the BOPE.

(i) The temperature of the return mud during the drilling of the surface casing hole shall be monitored regularly. Either a continuous temperature monitoring device shall be installed and maintained in working condition, or the temperature shall be read manually. In either case, return mud temperatures shall be logged after each joint of pipe is drilled down every 30 feet.

3.3 Requirements Using Air as the Drilling Fluid.

The following requirements are for areas where it is known that dry steam exists at depth or formation pressures are less than hydrostatic:

(a) A rotating-head installed at the top of the BOPE stack.

(b) A pipe-ram/blind-ram BOPE, with a minimum working-pressure rating of 1,000 psi, installed below the rotating-head so that the well can be shut-in at any time.

(c) A banjo-box or mud-cross steam diversion unit installed below the double-ram BOPE fitted with a muffler capable of lowering sound emissions to within State standards.

(d) A blind-ram BOPE, with a minimum working-pressure rating of 1,000 psi, installed below the banjo-box or mud-cross so that the well can be shut-in while removing the rotating-head during bit changes.

(e) A master gate valve, with a minimum working-pressure rating of 600 psi, installed below the blind-ram so that the well can be shut-in after the well has been completed, prior to removal of the BOPE stack.

(f) All ram-type BOPE shall have a hydraulic actuating system utilizing an accumulator of sufficient capacity and a high-pressure backup system.

(g) Dual control stations for hydraulic backup system: one at the driller's station and the other at least 50 feet away from the well head.

(h) Float and standpipe valves.

(i) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary.

(j) All lines and fittings must be steel and have a minimum working-pressure rating of 1,000 psi.

**R655-1-4. Records.**

4.1 General: The owner or operator of any well shall keep or cause to be kept a careful and accurate log, core record, and history of the drilling of the well. These records shall be kept in the nearest office of the owner or operator or at the well site and together with all other reports of the owner and operator regarding the well shall be subject to the inspection by the Division during business hours. All records, unless otherwise specified, must be filed with the Division within 90 days after completion of the well.

4.2 Records to be Filed with the Division:

4.2.1 Drilling Logs and Core Record -- the drilling log shall include the lithologic characteristics and depths of formations encountered, the depth and temperatures, chemical compositions and other chemical and physical characteristics of fluids encountered from time to time so far as ascertained. The core record shall show the depth, lithologic character, and fluid content of cores obtained so far as determined.

4.2.2 Well History -- the history shall describe in detail in chronological order on a daily basis all significant operations carried out and equipment used during all phases of drilling, testing, completion, and abandonment of any well.

4.2.3 Well Summary Report -- the well summary report shall accompany the core record and well history reports. It is designed to show data pertinent to the condition of a well at the time of completion of work done.

4.2.4 Production Records -- the owner or operator of any well producing geothermal resources shall file with the Division on or before the tenth day of each month for the preceding month, a statement of production utilized in a form as the Division may designate.

4.2.5 Injection Records -- the owner or operator of any well injecting geothermal fluids or waste water for any purpose shall file with the Division on or before the tenth day of each month for the preceding month a report of the injection as the Division may designate.

4.2.6 Electric Logs and Directional Surveys if Conducted -- electric logs and directional surveys shall be filed upon recompletion of any well. Like copies shall be filed upon recompletion of any well. Upon a showing of hardship, the Division may extend the time within which to comply for a period not to exceed one year.

4.3 Confidential Status: Any reports, logs, records, or histories filed with the Division shall not be available for public inspection and shall be kept confidential by the Division unless agreed to by the owner, provided, however, that the Division may use any reports, logs, records, or histories in any action in any court to enforce the provisions of Title 73, Chapter 22, or any order adopted hereunder. The following information may be made public by the Division:

(a) Owner or operator's name.

(b) Well designation or number.

(c) Elevation of derrick floor or ground elevation.

(d) Location of well.

(e) The application and all information pertaining to it, including its current status.

4.4 Inspection of Records: The records filed by an operator with the Division shall be open to inspection only to those authorized in writing by the operator and to designated Division personnel. The records of any operator filed for a completed or producing well that has been transferred by sale, lease, or otherwise shall be available to the new owner or lessee for his inspection or copying and shall be available for inspection or copying by others upon written authorization of new owner or lessee.

**R655-1-5. Injection Wells.**

5.1 Construction: The owner or operator of a proposed injection well or series of injection wells shall provide the Division with information it deems necessary for evaluation of the impact of injection on the geothermal reservoir and other natural resources. Information shall include existing reservoir conditions, method of injection, source of injection fluid, estimates of daily amount of material medium to be injected, zones or formations affected, and analysis of fluid to be injected and of the fluid from the intended zone of the injection, if available.

5.2 Surveillance:

5.2.1 When an operator or owner proposes to drill or modify an injection well or convert a well to an injection well, he shall be required to demonstrate to the Division by means of a test that the casing has complete integrity. This test shall be conducted in a method approved by the Division.

5.2.2 To establish the integrity of the annular cement above the shoe of the casing, the owner or operator shall make sufficient surveys within thirty days after injection is started into a well to prove that all the injected fluid is confined to the intended zone of injection. Thereafter, surveys shall be made at least every two years or more often if necessary. The Division shall be notified 48 hours in advance of surveys in order that a representative may be present if deemed necessary. If the operator can substantiate by existing data that these tests are not necessary, then, after review of the data, the State Engineer may grant a waiver exempting the operator from the tests.

5.2.3 After a well has been placed into injection, the injection well site will be visited periodically by Division personnel. The operator or owner will be notified of any necessary remedial work. Unless modified by the State Engineer, this work must be performed within ninety days of approval for the injection well, or approval for the injection well issued by the Division will be rescinded.

**R655-1-6. Abandonment and Sealing.**

6.1 Objectives: The objectives of abandonment are to block interzonal migration of fluids so as to:

(a) Prevent contamination of fresh waters or other natural resources.

(b) Prevent damage to geothermal reservoirs.

(c) Prevent loss of reservoir energy.

(d) Protect life, health, environment and property.

6.2 General Requirements: The following are general requirements which are subject to review and modification for

individual wells or field conditions:

(a) A notice of intent to abandon geothermal resource wells is required to be filed with the Division five days prior to beginning abandonment procedures. A permit to abandon may be given orally by the State Engineer provided the operator submits a written request for abandonment within 24 hours of the oral request.

(b) A history of geothermal resource wells shall be filed within sixty days after completion of abandonment procedures.

(c) All wells abandoned shall be monumented and the description of the monument shall be included in the history of well report. Monument shall consist of a four-inch diameter pipe 10 feet in length of which four feet shall be above ground. The remainder shall be imbedded in concrete. The applicant's name, application number, and location of the well shall be shown on the monument. An abandoned well on tilled land shall be marked in a manner approved by the State Engineer.

(d) Good quality, heavy drilling fluid shall be used to replace any water in the hole and to fill all portions of the hole not plugged with grout.

(e) All grout plugs with a possible exception of the surface plug shall be pumped into the hole through drill pipe or tubing.

(f) All open annuli shall be filled solid with grout to the surface.

(g) A minimum of 100 feet of grout shall be emplaced straddling the interface or transition zone at the base of ground water aquifers.

(h) One hundred feet of grout shall straddle the placement of the shoe plug on all casings including conductor pipe.

(i) A surface plug of either neat cement or concrete mix shall be in place from the top of the casing to at least 50 feet below the top of the casing.

(j) All casing shall be cut off at least five feet below land surface.

(k) Grout plugs shall extend at least 50 feet over the top of any liner installed in the well.

(l) Injection wells are required to be abandoned in the same manner as other wells.

(m) Other abandonment procedures may be approved by the Division if the owner or operator can demonstrate that the geothermal resource, ground waters, and other natural resources will be protected. Approval must be given in writing prior to the beginning of any abandonment procedures.

(n) Within five days after the completion of the abandonment of any well or injection well, the owner or operator of the abandoned well or injection well shall report in writing to the Division on all work done with respect to the abandonment.

**R655-1-7. Maintenance.**

7.1 General: All well heads, separators, pumps, mufflers, manifolds, valves, pipelines, and other equipment used for the production of geothermal resources shall be maintained in good condition in order to prevent loss of or damage to life, health, property, and natural resources.

7.2 Corrosion: All surface well head equipment and pipelines and subsurface casing and tubing will be subject to periodic corrosion surveillance in order to safeguard health, life, property, and natural resources.

7.3 Tests: The Division may require tests or remedial work as in its judgment are necessary to prevent damage to life, health, property, and natural resources, to protect geothermal reservoirs from damage or to prevent the infiltration of detrimental substances into underground or surface water suitable for irrigation or other beneficial uses to the best interest of the neighboring property owners and the public. Tests may include, but are not limited to, casing tests, cementing tests, and equipment tests.

**R655-1-8. Temperature Gradient Wells.**

8.1 General: Wells may be drilled upon approval of the State Engineer for measurement of subsurface temperatures and conductive heat flow.

8.2 Information: Request for a temperature gradient well program shall include the following information:

(a) Well number.

(b) Well location, elevation and expected depth.

(c) Geologic interpretation of area under investigation, including any known or inferred temperature data.

(d) Proposed drilling program, including method and casing schedule.

(e) Proposed method of abandonment.

(f) The State Engineer may require other data and impose restrictions or supervision by the Division as his studies may indicate.

8.3 Conditions: The following general conditions shall apply to temperature gradient wells:

(a) The depth of the hole shall not exceed 500 feet unless otherwise authorized by the State Engineer.

(b) The wells are to be cased and sealed against the water in the formations to be drilled.

(c) Return mud or air temperatures shall be monitored at, at least 30 foot intervals and should the temperature reach 125 degrees F. the drilling shall cease and the casing installed or the hole abandoned. Plastic casing may be used at temperatures under 125 degrees F.; otherwise, steel casing shall be used.

(d) Upon completion of the testing program, the casings are to be capped, or the casings are to be pulled and the holes cemented from bottom to top.

(e) The driller must be bonded and have a current well driller's permit from the State Engineer. Before starting, he must give this Division notice of the day he will begin drilling.

(f) Temperature data and logs of each hole surveyed are to be submitted to the State Engineer. These will be held in confidential status until released by the owner.

(g) The driller shall exercise due caution in all drilling operations to prevent blowouts, explosions or fires.

**R655-1-9. Environment.**

9.1 General: The owner shall conduct exploration and development operations in a manner that provides maximum protection of the environment; rehabilitate disturbed lands; take all necessary precautions to protect the public health and safety; and conduct operations in accordance with the spirit and objectives of all applicable environmental legislation, and executive orders.

Adverse environmental impacts from geothermal-related activity shall be prevented or mitigated through enforcement of

applicable Federal, State, and local standards, and the application of existing technology. Inability to meet these environmental standards or continued violation of environmental standards due to operations of the lessee, after notification, may be construed as grounds for the State Engineer to order a suspension of operations.

**R655-1-10. Penalties.**

As stated in Section 73-22-10, any willful violation of or failure to comply with any provision of these rules shall be a misdemeanor and each day that the violation continues shall constitute a separate offense.

**KEY: geothermal resources**
**1992 73-22**
**Notice of Continuation September 30, 2002**

**R655. Natural Resources, Water Rights.**

**R655-2. Procedure for Administrative Proceedings Before the Division of Water Rights Commenced Prior to January 1, 1988.**

**R655-2-1. General Provisions.**

1.1 Procedure Governed. These rules shall govern all hearings which are held by the State Engineer on matters within his jurisdiction for all adjudicative proceedings commenced prior to January 1, 1988. Adjudicative proceedings commenced on and after January 1, 1988, are governed by R655-6 of these rules.

1.2 Definitions.

(a) "Division" means Division of Water Rights.

(b) "State Engineer" is the Administrator of the Division of Water Rights, which is the agency having general administrative supervision over the waters of the State. The duties of this Division are primarily set forth in Title 73, Chapters 1 through 6.

(c) "Staff" means the Division of Water Rights staff.

(d) "Hearing officer" is the individual conducting a hearing which is provided for in these rules and will be either the State Engineer or a designated member of his staff.

(e) "Application" means any application which has been filed pursuant to Title 73, Chapters 1 through 3, and shall include -- but not be limited to -- applications to appropriate, change applications, requests for extension of time, exchange applications, segregation applications, applications to resume the use of water, and applications for stream channel changes. The rules governing the filing and perfecting of these documents are specified in said Chapters, and the following rules govern only the hearing procedures for those applications which have been properly filed and have proceeded to the point that they are ready for hearing.

(f) "Applicant" is a person applying for an application.

(g) "Petitioner" is any person, other than the applicant, seeking relief from the State Engineer where the relief sought falls within the jurisdiction of the State Engineer's statutory duties and responsibilities.

(h) "Protestant" means a person who protests an application before the State Engineer.

(i) "Person" means any governmental subdivision or agency, individual, corporation, partnership or association.

(j) "Proceeding" shall include -- but not be limited to -- hearings, petitions, orders to show cause, and formal investigations made by the State Engineer.

(k) "Party" means each person named or admitted as a party in a proceedings before the State Engineer.

(l) "Water user" means any person using water and subject to the regulatory authority of the State Engineer.

1.3 Liberal Construction. These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented to the State Engineer.

1.4 Deviation from Rules. During emergency situations where it is essential to restore or establish water for the preservation of life or critical crops, the State Engineer may permit a deviation from these rules except where precluded by statute.

1.5 Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor State holiday. For good cause shown, the State Engineer may extend or waive any time limit prescribed or allowed by these rules.

1.6 Notice. The State Engineer shall give written notice of hearings to all persons who have become parties to a proceeding, by regular mail at least ten days prior to the hearing.

**R655-2-2. Parties.**

2.1 Generally. Parties to a proceeding before the State Engineer shall be:

(a) Persons who have a statutory right to be a party;

(b) Persons who may become a party when they have established to the satisfaction of the State Engineer that they have a substantial interest in the subject matter of the proceeding and that their intervention will not unduly broaden the issues.

2.2 Rights of Parties. All parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

**R655-2-3. Intervention.**

3.1 Order Granting Leave to Intervene Required. Persons desiring to intervene in a proceeding shall obtain permission from the State Engineer granting leave to intervene before being allowed to participate. Permission shall be requested by means of a petition in the following manner, provided that for good cause shown leave to intervene may be requested orally at the hearing.

(a) Content of Petition. Petitions for leave to intervene must be in writing and must identify the proceeding by water right number, if known. The petition must contain a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding and the manner in which the proceeding will affect his interests.

(b) When Petition Must be Filed. A petition for leave to intervene must be filed with the State Engineer at least five days prior to the date set for the hearing.

(c) Granting of Petition. If a petition for leave to intervene shows a direct and substantial interest in the subject matter of the proceeding and does not unduly broaden the issues, the State Engineer may grant leave to intervene.

**R655-2-4. Pleadings.**

4.1 Pleadings before the State Engineer for administrative hearings shall consist of:

(a) Applications.

For purposes of a hearing before the State Engineer, applications which have been filed with the State Engineer in accordance with the provisions of Title 73, Chapters 1 through 3, and which have been protested, shall be deemed pleadings for purposes of the administrative hearing procedure provided for in these rules.

(b) Formal Protests.

Formal protests shall consist of those protests which have been filed with the State Engineer in objection to the granting of an application. The provisions for filing formal protests and

the time within which they must be filed is provided in Section 73-3-7. The formal protest shall set forth clearly and concisely the grounds for the protest. Two or more grounds of protest concerning the same application may be included in one formal protest, but should be numbered and stated separately. Two or more protestants may join in one formal protest if their respective protests are against the same application and deal substantially with the same issue.

(c) Informal Protests.

Informal protests may be made by a letter or other writing, and no particular form is required. The writing must clearly state the matters complained of and must identify the party complained against and must be signed by the protestant or his attorney and show the address of protestant or his attorney.

Informal protests may be handled by the State Engineer by informal conference, correspondence, or otherwise with the parties affected in an endeavor to bring about adjustment of the protest without a formal hearing.

(d) Orders to Show Cause or Other Notice.

Pleadings before the State Engineer shall also include Orders to Show Cause or other notices used by the State Engineer to initiate a hearing on his own motion.

(e) Petitions.

All pleadings other than applications requesting affirmative relief, including requests to intervene or for re-hearing, shall be entitled "petitions". A petition shall set forth clearly and concisely the basis and grounds for the petition and the relief requested.

(f) Title and Content of Pleadings.

Applications and other similar documents must only be filed upon the forms provided by the State Engineer. All other pleadings filed with the State Engineer should include the water right number as it appears in the State Engineer's office, if the water right which is the subject matter of the pleading has been assigned a number by the State Engineer. The pleading should also identify the name and address of the water user against whom the protest is directed.

If the water right involved in the pleading has not been assigned a water right number by the State Engineer, then the protestant or petitioner should identify the water right involved by other means -- the name and address of the water user, the water source, nature and location of the use, and other information as will aid in the identification of the water right.

Protests and petitions should be filed on legal-sized paper, type-written and double-spaced, but may be submitted in hand-written form. Protests and petitions should identify the water right by number and should contain a clear, concise statement of the matter relied upon as the basis for the pleading, together with an appropriate request for relief when relief is sought.

(g) Signing of Pleadings.

Pleadings shall be signed by the party or by the party's attorney or other authorized representative, and shall show the signer's address. The signature shall be deemed to be a certification by the signer that he has read the pleading and that, to the best of his knowledge and belief, the statements are true.

(h) Amendments to Pleadings.

The State Engineer may allow pleadings to be amended or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that applications and other similar documents which are governed by specific statutory provisions shall be amended only as provided by statute.

**R655-2-5. Filing and Service.**

5.1 Filing of Pleadings. Applications and protests shall be filed in accordance with the applicable statutory provisions. Petitions shall be filed with the State Engineer as specified in these rules.

5.2 Service. The State Engineer, upon receipt of a protest or petition, shall mail copies to those parties against whom relief is sought.

5.3 Service on Attorney. When any party has appeared by an attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party he represents.

5.4 Time for Filing. Protests and other documents which are governed by statute shall be filed in accordance with the time specified in the statute. Other pleadings which are provided for in these rules shall be filed within the time specified.

**R655-2-6. Appearances and Representation.**

6.1 Taking Appearances. Parties shall enter their appearances at the beginning of a hearing or at a time designated by the State Engineer by giving their names and addresses and stating their positions or interests in the proceeding.

6.2 Representation of Parties.

(a) An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent his or its interest in the proceeding.

(b) Any party may be represented by an attorney at law.

**R655-2-7. Pre-Hearing Procedure.**

The State Engineer may, upon written notice to all parties or record, hold a pre-hearing conference for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement.

**R655-2-8. Hearings.**

8.1 Initiation of Formal Hearing in Contested Cases.

(a) By the State Engineer. The State Engineer may initiate a formal hearing upon his own motion to determine matters within his authority. If the hearing is directed toward an applicant or water user, the State Engineer shall serve on that person an order to show cause or other notice or order suitable to the purposes of the hearing which shall set forth in ordinary and concise language the acts or omissions with which the person is charged, or the issues to be determined at the hearing. The notice or order shall specify the statutes and rules involved in the proceeding.

(b) By Other Persons. A formal hearing may be initiated by other persons by filing with the State Engineer a formal protest or petition. Upon the filing of a formal protest or petition which is directed toward an applicant or water user, the

State Engineer shall serve a copy of the formal protest or petition upon the applicant or water user, except as provided in the following sub-paragraphs (c) and (d) of this rule.

(c) Dismissal of Formal Protest or Petition. If it appears to the State Engineer upon the filing of a formal protest or petition that the matters alleged in the formal protest or petition are not within his jurisdiction or regulatory powers, the State Engineer in his discretion need not serve a copy of the formal protest or petition on the applicant or water user, but shall serve a notice on the protestant or petitioner which shall state the reasons why the formal protest or petition has not been served, and shall set a time at which the protestant or petitioner may appear before the State Engineer or submit a written memorandum setting forth reasons why the State Engineer has jurisdiction and authority to resolve the matter. Following appearance or submission of memorandum, the State Engineer may proceed to serve the formal protest or petition on the applicant or water user, or may -- upon his own motion -- dismiss the formal protest or petition if he concludes that he does not have jurisdiction over or the authority to resolve the matter. The State Engineer shall mail a written notice to the protestant or petitioner of his action, and, if he dismisses the formal protest or petition, the notice shall contain a statement of the reasons for his decision. If the State Engineer proceeds to serve the protestant or petitioner, no action taken pursuant to this paragraph shall preclude the applicant or water user from challenging the jurisdiction and authority of the State Engineer over the matter in issue.

(d) Protest or Petition Insufficient. If a formal protest or petition filed with the State Engineer does not contain sufficient information in the opinion of the State Engineer to adequately apprise the applicant or water user of the matters which are complained of and to enable the applicant or water user to prepare his defense, the State Engineer may require the protestant or petitioner to furnish additional information, or to file a new protest or petition before the formal protest or petition is served on the applicant or water user.

8.2 Setting of Hearing. Upon the filing of a formal protest or petition which does not require a responsive pleading, or when the State Engineer initiates a proceeding upon his own motion and no responsive pleading is required, the State Engineer shall set a time and place for hearing. No hearing shall take place within the ten-day period immediately following the filing of the formal protest or petition unless the parties consent to a shorter period of time. Notice of the hearing will be served on all parties by regular mail at least ten days prior to the hearing.

8.3 Failure to Appear. When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the State Engineer may dismiss or continue the matter, or may proceed to hear the matter in the absence of the defaulting party.

8.4 Continuance. If application is made to the State Engineer within a reasonable time prior to the date of hearing, upon proper notice to the other parties the State Engineer may grant a continuance of the hearing.

8.5 Hearings. All hearings held by the State Engineer shall be open to the public.

8.6 Testimony. At a hearing, the State Engineer or his hearing officer shall accept oral or written testimony from any party. Further, the hearing officer shall have the right to question and examine any witnesses called to present testimony at a hearing. The testimony and statements which are received at hearings before the State Engineer may be under oath.

8.7 Order of Presentation of Evidence. Unless otherwise directed by the State Engineer at a hearing, the presentation of evidence shall be as follows:

(a) Upon applications and other documents filed in connection with the appropriation and use of water:

1. applicant;
2. protestants.

(b) Upon petitions or objections concerning the exercise of a water right:

1. protestants;
2. water user whose use is being protested.

(c) Upon complaints by the State Engineer and orders to show cause --

1. Division of Water Rights staff;
2. party against whom the action is being taken.

During any of the hearings specified above, a party may offer rebuttal evidence.

8.8 Rules of Evidence. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in a judicial proceeding. The hearing officer shall admit all relevant and material evidence, except evidence which is unduly repetitious, even though evidence may be inadmissible under rules of evidence in judicial proceedings. The weight to be given to evidence shall be determined by the State Engineer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent men in the conduct of their affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible in a judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence shall be excluded.

8.9 Documentary Evidence. Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

8.10 Official Notice. The State Engineer may take official notice of the following matters:

(a) Rules, regulations, official reports, decisions and orders of the State Engineer and any other regulatory agency, state or federal;

(b) Official documents introduced into the record by proper reference; provided, however, that documents shall be made available so that the parties to the hearing may examine the documents and present rebuttal testimony if they so desire;

(c) Matters of common knowledge and generally recognized technical or scientific facts within the State Engineer's specialized knowledge and of any factual information which he may have gathered from a field inspection of the water sources or area involved in the proceeding.

8.11 Oral Argument and Memoranda. Upon the conclusion of the taking of evidence, the State Engineer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the State Engineer.

8.12 Record of Hearing. A record of any hearing may be made at the option of either the State Engineer or any party to the hearing. However, should a party desire a record of any hearing, that party must notify the State Engineer within a reasonable time prior to the time the hearing begins. When a record is made by the State Engineer, it shall be done by means of an automatic recording device. If the tape of the hearing is later transcribed, the transcript will be made available for inspection by any party. The State Engineer will make a transcription only if he deems it advisable and necessary to do so.

If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the State Engineer free of charge. This transcript shall be available at the State Engineer's office to any party to the hearing.

**R655-2-9. Decisions and Orders.**

9.1 Report and Order. After the State Engineer has reached a final decision upon any proceeding, he shall make and enter a decision containing his findings of fact and conclusions and order.

9.2 Service of Decisions. A copy of the decision shall be served on the parties of record or their representatives by regular mail.

9.3 Judicial Review of State Engineer's Decision. Any person aggrieved by a decision of the State Engineer may, within 60 days after notice thereof, bring a civil action in the district court for a plenary review thereof in accordance with Sections 73-3-14 and -15.

**R655-2-10. Re-Hearings.**

10.1 Time for Filing. A petition for re-hearing must be filed within 20 days after notice of a written order or decision of the State Engineer.

10.2 Contents of Petition. A petition for re-hearing shall set forth specifically the grounds upon which the petitioner considers the order or decision of the State Engineer to be in error.

10.3 Action on the Petition. Upon the filing of a petition for re-hearing, the State Engineer may set a time for hearing the petition or may summarily grant or deny the petition in whole or in part.

10.4 Re-Hearings Limited. If an order is made granting the petition for re-hearing, it shall be limited to the matter specified in the order. Upon re-hearing, the State Engineer may affirm his former decision or may abrogate it, change or modify the same in any particular. That decision shall have the same force and effect as the original decision, but shall not affect any right or the enforcement of any right arising out of or by virtue of the original decision unless so ordered by the State Engineer.

**R655-2-11. Declaratory Rulings.**

Any interested person may petition the State Engineer for a declaratory ruling on the applicability of any decision, rule, regulation, or statutory provision relating to the State Engineer. The petition will be in the same form as other petitions and will set forth in detail the specific facts for which the ruling is requested and the manner in which the petitioner claims the rule, regulation, decision or statutory provision may affect him. If the petition sets forth information which requires the issuance of a ruling, the State Engineer shall set the matter down for hearing as in other cases.

The State Engineer may in his discretion decline to issue declaratory rulings where he deems the facts presented to be conjectural, or where the public interest would best be served by not issuing a ruling.

**KEY: water rights procedures**

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| **1992** | **73-3** |
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**R655. Natural Resources, Water Rights.**

**R655-6. Administrative Procedures for Informal Proceedings Before the Division of Water Rights.**

**R655-6-1. Authority and Effective Date.**

A. These rules establish and govern the administrative procedures for informal adjudicative proceedings before the Division of Water Rights as required by Section 63-46b-5.

B. These rules govern all informal adjudicative proceedings commenced on or after January 1, 1988. Adjudicative proceedings commenced prior to January 1, 1988, are governed by R655-2.

**R655-6-2. Designation of Informal Proceedings.**

All adjudicative proceedings of the Division of Water Rights are hereby designated as informal proceedings and include, but are not limited to, all requests for agency action and notices of agency action concerning applications to appropriate water, change applications, exchange applications, applications to segregate; requests for reinstatement and extension of time; proofs of appropriation and change; applications for extension of time within which to resume use of water and proofs of resumption of use; applications to renovate or replace existing wells; permits and authorizations for dam construction, repair and use; applications and other procedures for utilization of geothermal resources; licenses and other permits for water well drillers; applications for stream alteration; and other adjudicative proceedings involving water right administration.

**R655-6-3. Definitions.**

A. "Adjudicative Proceeding" means a Division action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all Division actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend the authority, right, or license; and judicial review of all such actions. Those matters not governed by Title 63, Chapter 46b shall not be included within this definition.

B. "Division" means the Division of Water Rights.

C. "State Engineer" is the Director of the Division of Water Rights, which is the agency having general administrative supervision over the waters of the State. The duties of this Division are primarily set forth in Title 73, Chapters 1 through 6.

D. "Staff" means the Division of Water Rights staff.

E. "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or other agency.

F. "Party" means the Division or other person commencing an adjudicative proceeding, all respondents, all protestants, all persons permitted by the Presiding Officer to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

G. "Presiding Officer" means the State Engineer, or an individual or body of individuals designated by the State Engineer, designated by the agency's rules, or designated by statute to conduct a particular adjudicative proceeding.

H. "Respondent" means any person against whom an adjudicative proceeding is initiated, whether by the Division or any other person.

I. "Application" means any application which has been filed pursuant to Title 73, Chapters 1, 2, 3, 5 and 6, and shall include, but not be limited to, applications enumerated in R655-6-5.B.3. An application is also a request for agency action. The substantive rules governing the filing and perfecting of these documents are specified in the above Chapters and in other Division rules, and R655-6 governs only the administrative procedures for those applications which have been properly filed.

J. "Applicant" is a person applying for an application.

K. "Protestant" means a person who timely protests an application before the State Engineer pursuant to Section 73-3-7 or who files a protest pursuant to Section 73-3-13.

**R655-6-4. Construction.**

A. These rules shall be construed in accordance with Title 63, Chapter 46b, and these rules supersede any conflicting provision of procedural rules promulgated by the Division.

B. These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented to the Division.

C. 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 a Saturday, Sunday, or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, or State holiday.

D. Any pleading or other document required to be filed with the Division shall be considered to be filed on the date the signed original is actually deposited with the Division and not on the date of postmark.

**R655-6-5. Commencement of Proceedings.**

A. Proceedings Commenced by the Division.

1. All informal adjudicative proceedings commenced by the Division shall be initiated by a notice of agency action as provided by applicable statute, Division policies, and Subsection 63-46b-3(2).

2. The Presiding Officer may require the person against whom the agency action is commenced to file a response within 30 days of the mailing or publication date of the notice of agency action.

B. Proceedings Commenced by Persons Other Than the Division.

1. All informal adjudicative proceedings commenced by persons other than the Division shall be commenced by either completing and submitting prepared forms requesting agency action which are available at the Division or, if no forms are required to initiate a particular proceeding, by submitting in writing a request for agency action which shall include at least 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 Division's file number or other reference number, if known;

c. the date that the request for agency action was mailed;

d. a statement of the legal authority and jurisdiction under

which agency action is requested;

e. a statement of the relief or action sought from the Division;

f. a statement of the facts and reasons forming the basis for relief or agency action;

g. the name, address and telephone number of the person requesting agency action;

h. the signature of the person requesting agency action; and

i. any filing fees required by statute.

2. For purposes of requests for agency action filed pursuant to Title 73, the adjudicative proceeding commences on the date the request is received by the Division and not on the date of postmark.

3. Forms Requesting Agency Action

The following forms requesting agency action shall be used by persons requesting a particular agency action and are available from the Division:

a. Application to Appropriate Water

b. Temporary Application to Appropriate Water

c. Application for Permanent Change of Water

d. Application for Temporary Change of Water

e. Application to Segregate a Water Right

f. Request for Reinstatement and Extension of Time

(i) Before Fourteen Years

(ii) After Fourteen Years

g. Proof of Appropriation of Water

h. Proof of Permanent Change of Water

i. Application for Exchange of Water

j. Application for Extension of Time Within Which to Resume Use of Water

k. Proof of Resumption of Use of Water

l. Application to Renovate or Replace an Existing Well

m. Application to Construct a Dam Impounding Less Than 20 Acre-Feet

n. Application for Well Driller's License

o. Permit Application to Alter a Natural Channel

4. Upon receipt of a request for agency action, the Presiding Officer shall promptly review the request and shall act in accordance with Subsections 63-46b-3(3)(d) and (e).

5. Protests filed pursuant to Title 73, Chapters 1, 2, 3, 5 and 6 shall be filed in accordance with the governing statutes and these rules.

a. Protests should be filed on letter-sized paper, typewritten and double-spaced, but may be submitted in legible handwritten form. Protests should identify the water right by water right number, state the complete mailing address of the protestant, and should contain a clear, concise statement of the matter relied upon as the basis for the protest, together with an appropriate request for relief. If the name or address of the protestant is not legible, the Division shall not be obligated to give the protestant notice of any further proceedings.

b. Protests signed by more than one person shall be accepted. However, persons filing a multiple-person protest are encouraged to designate a representative for the group of protestants who shall receive all notices on behalf of all who signed the protest. If no representative is designated, each person signing the protest shall be considered a protestant, and shall receive notice of any further proceedings, if their name, mailing address and phone number are clearly legible.

c. Upon the filing of a protest the Presiding Officer shall mail a copy of the protest to the applicant. The applicant may file with the Division an answer to the protest within the time designated by the Presiding Officer. The Presiding Officer shall mail copies of any answer to the protestant, or attorney or authorized representative, if any. The protestant may file a response to the answer with the Division within the time designated by the Presiding Officer. The Presiding Officer shall mail a copy of the response to the applicant.

d. Protests filed after the protest period has expired shall be placed on file and become part of the record. Any person filing a late protest is not a party and may receive notice of any further proceeding, hearing or order.

**R655-6-6. Pleadings.**

A. Pleadings before the Presiding Officer for administrative hearings may consist of a notice of agency action, a request for agency action, responses, protests, answers to protests, responses to answers, motions together with affidavits, briefs, memoranda of law and fact in support thereof, requests for reconsideration, and other pleadings as allowed by Title 63, Chapter 46b.

B. Motions may be submitted for the Presiding Officer's decision on either written or oral argument, and the filing of affidavits in support or contravention thereof may be permitted. Any written motion may be accompanied by a supporting memorandum of fact and law.

C. Amendments to Pleadings.

The Presiding Officer may allow pleadings to be amended or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that applications and other similar documents which are governed by specific statutory provisions shall be amended only as provided by statute.

D. Service of Pleadings.

Except as otherwise specified in R655-6-5.B.5.c., all persons filing pleadings after the request for agency action or the notice of agency action have been filed shall serve copies of the pleadings by regular mail to all parties or their attorney of record or authorized representative on the date of filing the pleadings with the Division. Service upon any attorney or authorized representative constitutes service on the represented party. Service shall be deemed complete on the date of mailing.

E. Post-Hearing Pleadings.

Before or after a hearing is concluded, any party may seek permission from, or may be asked by, the Presiding Officer to file a memorandum or other information. All other parties shall have 20 days, unless shortened or lengthened by the Presiding Officer, from the date of service within which to file responsive pleadings. The filing of any further post-hearing pleadings shall be by permission of the Presiding Officer.

**R655-6-7. Hearings.**

A. The Division shall hold a hearing if a hearing is required by statute or rule.

B. The Division shall hold a hearing if a hearing is permitted by rule and is requested by a party in writing within 10 days of when the adjudicative proceeding commences, or

within the time prescribed in the notice of agency action or by the Presiding Officer.

C. The Division may hold a hearing if a hearing is requested in a timely filed protest.

D. The Division may at its discretion hold a hearing on any adjudicative proceeding to determine matters within its authority.

E. Notice of the hearing will be served on all parties by regular mail at least ten days prior to the hearing.

F. Hearings shall be held for most adjudicative proceedings in the county where the water source is located or the county where the majority of the parties reside. Hearings may be held outside the county at the discretion of the state engineer.

G. If no hearing is held for a particular adjudicative proceeding, the Division shall within a reasonable time issue a decision pursuant to R655-6-16.

**R655-6-8. Intervention.**

Intervention is prohibited except where a federal statute or rule requires that a state permit intervention.

**R655-6-9. Pre-Hearing Procedure.**

The Presiding Officer may, upon written notice to all parties of record, hold a pre-hearing conference for the purposes of identifying and simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement thereof.

**R655-6-10. Continuance.**

If application is made to the Presiding Officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties the Presiding Officer may grant a continuance of the hearing.

**R655-6-11. Parties to a Hearing.**

A. All hearings shall be open to all parties and all parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

B. Any person not a party to the adjudicative proceeding may participate at a hearing as a witness for a party or, upon the consent of the Presiding Officer, may participate as part of the Division's investigative and fact finding powers. Such a person is not a party to the adjudicative proceeding and may not seek judicial review.

**R655-6-12. Appearances and Representation.**

A. Taking Appearances.

Parties shall enter their appearances at the beginning of a hearing or at a time designated by the Presiding Officer by giving their names and addresses and stating their positions or interests in the proceeding.

B. Representation of Parties.

1. An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent his or its interest in the proceeding.

2. Any party may be represented by an attorney at law.

**R655-6-13. Failure to Appear--Default.**

When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the Presiding Officer at his discretion may continue the matter, or may enter an order of default as provided by Section 63-46b-11, or may proceed to hear the matter in the absence of the defaulting party.

**R655-6-14. Discovery, Testimony, Evidence and Argument.**

A. Discovery is prohibited but the Division may issue subpoenas or other orders to compel production of necessary evidence.

B. All parties shall have access to non-confidential and non-privileged information contained in the Division's files of public record, and to all materials and information gathered in any investigation, to the extent permitted by law.

C. Testimony.

At the hearing, the Presiding Officer shall accept oral or written testimony from any party or witness. Further, the Presiding Officer shall have the right to question and examine any party or witnesses called to present testimony at a hearing. The testimony and statements received at hearings may be under oath.

D. Order of Presentation of Evidence.

Unless otherwise directed by the Presiding Officer at a hearing, the evidence shall be presented first by the party commencing the adjudicative proceeding. Each party may offer rebuttal evidence.

E. Rules of Evidence.

A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence may be excluded. The weight to be given to evidence shall be determined by the Presiding Officer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent men in the conduct of their affairs. Hearsay evidence may not be excluded solely because it is hearsay.

F. Documentary Evidence.

Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

G. Official Notice.

The Presiding Officer may take official notice of the following matters which shall be considered as facts presented at the hearing:

1. Rules, regulations, official and unofficial reports, surveys, maps, investigations, all Division files, decisions and orders of the State Engineer and any other regulatory agency, state or federal;

2. Official documents introduced into the record by proper reference; provided, however, documents shall be made available so that the parties to the hearing may examine the documents and present rebuttal testimony if they so desire;

3. Matters of common knowledge and generally recognized technical or scientific facts within the Division's

specialized knowledge, and any factual information which the Division may have gathered from a field inspection of the water sources or area involved in the proceeding.

H. Oral Argument and Memoranda.

Upon the conclusion of the taking of evidence, the Presiding Officer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the Presiding Officer.

**R655-6-15. Record of Hearing.**

A. A record of any hearing may be recorded at the Division's expense. When a record is made by the Division, it shall be done by means of an automatic recording device. Any party, at his own expense, may have a reporter approved by the Division prepare a transcript from the record of the hearing.

B. If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the Division free of charge. This transcript shall be available at the Division office to any party to the hearing.

**R655-6-16. Orders.**

A. After the Presiding Officer has reached a final decision upon any adjudicative proceeding, he shall make and enter a signed order in writing that states the decision, the reasons for the decision, a notice of the rights of the parties to request reconsideration or judicial review, as appropriate, and notice of the time limits for filing a request for reconsideration or a court appeal. The order shall be based on the facts appearing in any of the Division's files or records and on the facts presented in evidence at any hearings.

B. The signed order described in this section or an order issued in response to a timely-filed request for reconsideration shall constitute the final agency action.

C. A copy of the Presiding Officer's order shall be promptly mailed by regular mail to each of the parties.

**R655-6-17. Requests for Reconsideration.**

A. Who may file.

Any aggrieved party may file a Request for Reconsideration by following the procedures of Section 63-46b-13. A Request for Reconsideration is not a prerequisite for judicial review.

B. Action on the Request.

Upon the filing of a Request for Reconsideration, the Division shall review the Request and may within 20 days do any or all of the following:

1. issue any preliminary order;

2. summarily deny the Request in whole or in part;

3. summarily grant the relief requested in whole or in part; or

4. set a time for a re-hearing.

C. If the Division does not issue an order within 20 days, the Request shall be considered to be denied.

D. Re-Hearings Limited.

If an order is made granting a rehearing, it shall be limited to the matter specified in the order. Upon rehearing, the Presiding Officer may affirm his former decision or may abrogate it, or may change or modify the same in any particular. That decision shall have the same force and effect as the original decision, but shall not affect any right or the enforcement of any right arising out of or by virtue of the original decision unless so ordered by the Presiding Officer.

**R655-6-18. Judicial Review.**

A. Any party aggrieved by an order of the State Engineer may obtain judicial review by following the procedures and requirements of Sections 63-46b-14 and -15 and 73-3-14 and -15.

B. The Division may grant a stay of its order or other temporary remedy during the pendency of judicial review on its own motion, or upon petition of a party pursuant to the provisions of Section 63-46b-18.

**R655-6-19. Declaratory Orders.**

Any interested person may file a request for agency action requesting that the State Engineer issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the Division pursuant to Section 63-46b-21. A request for a declaratory order shall be filed in accordance with Subsection 63-46b-3(3) which request commences an informal adjudicative proceeding. A request shall set forth in detail the specific statute, rule, or order which is in question, the specific facts for which the order is requested, the manner in which the person making the request claims the statute, rule, or order may affect him, and the specific questions for which a declaratory order is requested. Persons may intervene in declaratory proceedings upon filing a timely petition to intervene in accordance with the provision of Section 63-46b-9.

The State Engineer may at his discretion decline to issue declaratory orders if the request concerns matters in issue before a pending adjudicative proceeding, or where he deems the facts presented to be conjectural, or where the public interest would best be served by not issuing an order.

**R655-6-20. Emergency Orders.**

Except as otherwise provided for by statute, the Division may issue an order on an emergency basis without complying with these rules under the circumstances and procedures set forth in Section 63-46b-20.

**KEY: administrative procedure, water rights**

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**R657. Natural Resources, Wildlife Resources.**
**R657-12. Authorization to Hunt from a Vehicle and Fishing License for the Disabled.**
**R657-12-1. Purpose and Authority.**

Under authority of Section 23-20-12 and Subsection 63-46a-3, this rule provides the standards and procedures for:

(1) obtaining a certificate of registration for taking wildlife from a vehicle; and

(2) obtaining a fishing license as authorized under Section 23-19-36(1).

**R657-12-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Blind" means the person:

(i) has no more than 20/200 visual acuity in the better eye when corrected; or

(ii) 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 the field of vision no greater than 20 degrees.

(b) "Crutch" means any mobility aid or assistive technology device, including a cane, crutch, walker, long or short braces, or other prosthetic or orthotic device which aids in mobility.

(c) "Lower extremity" means the loss of one or both legs or a part of either or both legs which materially impedes a person's mobility.

**R657-12-3. Providing Proof of Disability for Obtaining a Fishing License.**

(1) A person may receive a fishing license under Section 23-19-36(1) by providing proof the person is blind, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities.

(2) A person may purchase this license at any division office.

(3) The division shall accept the following as proof of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(a); or

(d) a signed statement by a licensed physician verifying the person is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

**R657-12-4. Obtaining Authorization to Hunt from a Vehicle.**

(1) A person may receive a certificate of registration to take wildlife from a vehicle who is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities.

(2)(a) Applicants for the certificate of registration must appear in person at a division office and provide proof of disability as provided in Subsections R657-12-3(3)(a), (b), or (d).

(b) Certificates of registration may be renewed annually.

(3) Wildlife may be taken from a vehicle under the following conditions:

(a) Only those persons with a certificate of registration in possession allowing them to hunt from a vehicle may discharge a firearm or bow from, within, or upon any motorized terrestrial vehicle;

(b) Shooting from a vehicle on or across any established roadway is prohibited;

(c)(i) Firearms must be carried in an unloaded condition, and a round may not be placed in the firearm until the act of firing begins, except as authorized in Title 53, Chapter 5, Part 7 of the Utah Code; and

(ii) Arrows must remain in the quiver until the act of shooting begins; and

(d) Certificate of registration holders must be accompanied by, and hunt with, a licensed hunter who is physically capable of assisting the certificate of registration holder in recovering wildlife.

(4) Certificate holders must comply with all other laws and rules pertaining to hunting wildlife.

**KEY: wildlife, wildlife law, disabled persons***
**March 5, 2002 23-20-12**
**Notice of Continuation September 20, 2002 63-46a-3**

**R657. Natural Resources, Wildlife Resources.**
**R657-13. Taking Fish and Crayfish.**
**R657-13-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

**R657-13-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate" means the combined total of two or more species of fish or two or more size classes of fish which are covered by a limit distinction.

(b) "Angling" means fishing with a rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, baits, or lures attached to it, and is held in the hands of, or within sight (not to exceed 100 feet) of, the person fishing.

(c)(i) "Artificial fly" means a fly made by the method known as fly tying.

(ii) "Artificial fly" does not mean a weighted jig, lure, spinner, attractor blade, or bait.

(c) "Artificial lure" means a device made of rubber, wood, metal, glass, fiber, feathers, hair, or plastic with a hook or hooks attached. Artificial lures, including artificial flies, do not include fish eggs or other chemically treated or processed natural baits or any natural or human-made food, or any lures that have been treated with a natural or artificial fish attractant or feeding stimulant.

(d) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(e) "Bait" means a digestible substance, including worms, cheese, salmon eggs, marshmallows, or manufactured baits including human-made items that are chemically treated with food stuffs, chemical fish attractants or feeding stimulants.

(f) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(g) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(h) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(i) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(j) "Game fish" means Bonneville cisco; bluegill; bullhead; channel catfish; crappie; green sunfish; largemouth bass; northern pike; Sacramento perch; smallmouth bass; striped bass, trout (rainbow, albino, cutthroat, brown, golden, brook, lake/mackinaw, kokanee salmon, and grayling or any hybrid of the foregoing); tiger muskellunge; walleye; white bass; whitefish; wiper; and yellow perch.

(k) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(l) "Immediately Released" means that the fish should be quickly unhooked and released back into the water where caught. Fish that must be immediately released cannot be held on a stringer, or in a live well or any other container or restraining device.

(m) "Lake" means the standing water level existing at any time within a lake basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the lake.

(n) "Length measurement" means the greatest length between the tip of the head or snout and the tip of the caudal (tail) fin when the fin rays are squeezed together. Measurement is taken in a straight line and not over the curve of the body.

(o) "Motor" means an electric or internal combustion engine.

(p) "Nongame fish" means species of fish not listed as game fish.

(q) "Possession limit" means, for purposes of this rule only, one bag limit, including fish at home, in a cooler, camper, tent, freezer, or any other place of storage.

(r) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(s) "Reservoir" means the standing water level existing at any time within a reservoir basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the reservoir.

(t) "Second pole" means fishing with one additional rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, bait, or lures attached to it and is held in the hands of, or within sight of the person fishing.

(u) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.

(v) "Single hook" means a hook or multiple hooks having a common shank.

(w) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.

(x) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.

(y)(i) "Trout" means species of the family Salmonidae, including rainbow, albino, cutthroat, brown, golden, brook, tiger, lake (mackinaw), splake, kokanee salmon, and grayling or any hybrid of the foregoing.

(ii) "Trout" does not include whitefish or Bonneville cisco.

(z) "Underwater Spearfishing" means, fishing by a person swimming or diving and using a mechanical device held in the hand which uses a rubberband, spring, or pneumatic power to propel a spear to take fish.

**R657-13-3. Free Fishing Day.**

A license is not required on free fishing day, the second Saturday of June, annually. All other laws and rules apply.

**R657-13-4. Fishing Contests.**

(1)(a) A certificate of registration from the division is required for fishing contests:

(i) with 50 or more contestants; or

(ii) any fishing contest offering $500 or more in prizes.

(b)(i) Application for certificates of registration are

available from division offices and must be submitted at least 60 days prior to the date of the fishing contest.

(ii) The division may take public comment before issuing a certificate of registration if, in the opinion of the division, the proposed fishing contest has potential impacts to the public or substantially impacts a public fishery.

(c) A certificate of registration may cover more than one fishing contest.

(d) The division may deny issuing a certificate of registration or impose stipulations or conditions on the issuance of the certificate of registration in order to achieve a management objective, to adequately protect a fishery or to offset impacts on a fishery or heavy uses of other public resources.

(e) A report must be filed with the division within 30 days after the fishing contest is held. The information required shall be listed on the certificate of registration.

(f)(i) Only one fishing contest may be held on a given water at any time. Each fishing contest is restricted to being held on only one water at a time.

(ii) Fishing contests may not be held on a holiday weekend, state or federal holiday, or free fishing day, except as provided in Subsection (g).

(g) A fishing contest may be held on free fishing day and a certificate of registration is not required if :

(i) contestants are limited to persons 13 years of age or younger; and

(ii) less than $500 are offered in prizes.

(2) Fishing contests conducted for cold water species of fish such as trout and salmon may not be conducted:

(a) if the fishing contest offers $500 or more in total prizes, except on Flaming Gorge Reservoir there is no limit to the amount that may be offered in prizes;

(b) those waters where the Wildlife Board has imposed special harvest rules as provided in the annual proclamation of the Wildlife Board for taking fish and crayfish.

(3) Contests for warm water species of fish shall be conducted as follows:

(a) all contests as provided in Subsection (1)(a) must be:

(i) authorized by the division through the issuance of a certificate of registration; and

(ii) carried out consistent with any requirements imposed by the division;

(b) Fish brought in to be weighed or measured may not be released within 1/2 mile of a marina, boat ramp, or other weigh-in site and must be released back into suitable habitat for that species; and

(c) If tournament rules allow larger or smaller fish to be entered in the contest than the size allowed for possession under the proclamation of the Wildlife Board for taking fish and crayfish, the fish must be weighed or measured immediately and released where they were caught.

**R657-13-5. Interstate Waters.**

(1) Lake Powell and Flaming Gorge Reservoir:

(a) The purchase of a reciprocal fishing stamp allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing stamps are offered for Lake Powell and Flaming Gorge Reservoir.

(c) Any person qualifying as an Arizona resident and having in their possession a valid Arizona resident fishing license and a Utah reciprocal fishing stamp for Lake Powell, is permitted to fish within the Utah boundaries of Lake Powell.

(d) Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing stamp for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

(e) Utah residents may obtain reciprocal fishing stamps by contacting the state of Arizona for Lake Powell, and the state of Wyoming for Flaming Gorge.

(f) Nonresidents may obtain reciprocal fishing stamps from division offices and selected license agents.

(g) The reciprocal fishing stamp must be:

(i) used in conjunction with a valid unexpired fishing or combination license from a reciprocating state;

(ii) signed across the face by the holder as the holder's name appears on the valid unexpired fishing or combination license from the reciprocating state; and

(iii) attached to the fishing or combination license from the reciprocating state.

(h) Reciprocal fishing stamps are valid on a calendar year basis.

(i) Anglers are subject to the laws and rules of the state in which they are fishing.

(j) Only one bag limit may be taken and held in possession even if licensed in both states.

(2) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within both the Utah and Idaho boundaries of Bear Lake.

(b) Only one bag limit may be taken and held in possession even if licensed in both states.

**R657-13-6. Angling.**

(1) While angling, the angler shall be within sight (not to exceed 100 feet) of the equipment being used at all times, except setlines.

(2) Angling with more than one line is unlawful, except while fishing for crayfish without the use of fish hooks and on selected waters with a valid second pole permit. A second pole permit is not required when fishing for crayfish with lines without hooks.

(3) No artificial lure may have more than three hooks.

(4) A person may not use or possess hooks, single or multipoint, larger than 9/16 inches at the shortest point, between the shank and the point on specific waters as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(5) No line may have attached to it more than two baited hooks, two artificial flies, or two artificial lures, except for a setline or while fishing at Flaming Gorge Reservoir.

(6) When angling through the ice, the hole may not exceed 12 inches across at the widest point, except at Bear Lake, Flaming Gorge Reservoir, and Fish Lake where specific limitations apply.

**R657-13-7. Fishing With a Second Pole.**

(1) A person may use a second pole to take fish only in the:

(a) Bear River from the Idaho state line downstream, including Cutler Reservoir and the outlet canals;

(b) Little Bear River below Valley View highway (SR-130);

(c) Malad River;

(d) Newton Reservoir;

(e) Hyrum Reservoir;

(f) Willard Bay Reservoir;

(g) Pine View Reservoir;

(h) Flaming Gorge Reservoir;

(i) Pelican Lake;

(j) Starvation Reservoir;

(k) Utah Lake;

(l) Yuba Reservoir;

(m) D.M.A.D.;

(n) Gunnison Bend;

(o) Lake Powell; and

(p) Gunlock Reservoir.

(2)(a) A second pole permit may be obtained at license agents and any division office.

(b) A second pole permit is required in addition to a valid Utah one day, seven day or season fishing license, or combination license.

(c) A second pole permit is an annual permit, but may only be used in conjunction with an unexpired Utah one day, seven day or season fishing or combination license.

(3) Anglers under 14 years of age must purchase a valid fishing or combination license and second pole permit in order to use a second pole.

(4) A second pole permit shall only be used by the person to whom the second pole permit was issued.

**R657-13-8. Setline Fishing.**

(1) A person may use a setline to take fish only in the Bear River proper downstream from the Idaho state line, including Cutler Reservoir and outlet canals; Little Bear River below Valley View Highway (SR-30); Malad River; and Utah Lake.

(2)(a) Angling with one pole is permitted while setline fishing, except as provided in Subsection (b).

(b) A person who obtains a second pole permit may fish with two poles while setline fishing.

(3) No more than one setline per angler may be used and it may not contain more than 15 hooks.

(4)(a) A setline permit may be obtained at any division office.

(b) A setline permit is required in addition to a valid Utah one day, seven day or season fishing or combination license.

(c) A setline permit is an annual permit, but may only be used in conjunction with an unexpired Utah one day, seven day or season fishing or combination license.

(5) When fishing with a setline, the angler shall be within 100 yards of the surface or bank of the water being fished.

(6) A setline shall have one end attached to a nonmoving object, not attached to a fishing pole, and shall have attached a legible tag with the name, address, and setline permit number of the angler.

(7) Anglers under 14 years of age must purchase a valid Utah one day, seven day or season fishing or combination license and setline permit in order to use a setline.

**R657-13-9. Underwater Spearfishing.**

(1) Underwater spearfishing is permitted from official sunrise to official sunset.

(2) Use of artificial light is unlawful while underwater spearfishing.

(3) Causey Reservoir, Deer Creek Reservoir, Fish Lake, Flaming Gorge Reservoir, Joe's Valley Reservoir, Ken's Lake, Lost Creek, Red Fleet Reservoir, Steinaker Reservoir, Starvation Reservoir, and Willard Bay Reservoir are open to taking game fish by means of underwater spearfishing from June 1 through September 30. These are the only waters open to underwater spearfishing for game fish.

(4) The bag and possession limit is two game fish. No more than one fish greater than 20 inches may be taken, except at Flaming Gorge Reservoir only one lake trout (mackinaw) greater than 28 inches may be taken.

(5) Nongame fish may be taken by underwater spearfishing only in the waters listed in Subsection (3) above and as provided in Section R657-13-14.

**R657-13-10. Dipnetting.**

(1) Hand-held dipnets may be used to take Bonneville cisco only at Bear Lake.

(2) The opening of the dipnet may not exceed 18 inches.

(3) When dipnetting through the ice, the size of the hole is unrestricted.

**R657-13-11. Restrictions on Taking Fish and Crayfish.**

(1) Artificial light is permitted, except when underwater spearfishing.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment, except as provided in Subsection R657-13-14(1)(c) to take fish or crayfish.

(3) A person may not take protected aquatic wildlife by snagging or gaffing; however, a gaff may be used to land fish caught by lawful means, except at Flaming Gorge Reservoir and Fish Lake.

(4) Chumming is prohibited, on all waters except Lake Powell where dead anchovies only may be used for taking striped bass.

(5) The use of a float tube or a boat, with or without a motor, for fishing is unlawful on some waters. Boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

**R657-13-12. Bait.**

(1)(a) Fishing is permitted with any bait, except corn, hominy, or live fish.

(b) Possession or use of corn or hominy while fishing is unlawful.

(2) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(3) Game fish or their parts may not be used, except for the following:

(a) Dead Bonneville cisco may be used as bait only in

Bear Lake.

(b) Dead yellow perch may be used as bait only in: Deer Creek, Echo, Fish Lake, Gunnison, Hyrum, Johnson, Jordanelle, Newton, Pineview, Rockport, Sevier Bridge (Yuba), Utah Lake and Willard Bay reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake.

(d) The eggs of any species of fish, except prohibited fish, may be used. However, eggs may not be taken or used from fish that are being released.

(4) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(5) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

**R657-13-13. Prohibited Fish.**

(1) The following species of fish are classified as prohibited and may not be taken or held in possession:

(a) Bonytail chub (Gila elegans);

(b) Bluehead sucker (Catostomus discobolus);

(c) Colorado pikeminnow (Ptychocheilus lucius);

(d) Flannelmouth sucker (Catostomus latipinnis);

(e) Gizzard shad (Dorosoma cepedianum);

(f) Grass carp (Ctenopharyngodon idella);

(g) Humpback chub (Gila cypha);

(h) June sucker (Chasmistes liorus);

(i) Least chub (Iotichthys phlegethontis);

(j) Leatherside chub (Gila copei);

(k) Razorback sucker (Xyrauchen texanus);

(l) Roundtail chub (Gila robusta);

(m) Virgin River chub (Gila robusta seminuda);

(n) Virgin spinedace (Lepidomeda mollispinis); and

(o) Woundfin (Plagopterus argentissimus).

(2) Any of these species taken while attempting to take other legal species shall be immediately released.

**R657-13-14. Taking Nongame Fish.**

(1)(a) Except as provided in Subsections (b) and (c), a person possessing a valid Utah fishing or combination license may take nongame fish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(b) A person may not take any species of fish designated as prohibited in Section R657-13-13.

(c) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, spear, or underwater spearfishing:

(i) San Juan River;

(ii) Colorado River;

(iii) Green River (from confluence with Colorado River upstream to Colorado state line in Dinosaur National Monument);

(iv) Green River (from Colorado state line in Brown's Park upstream to Flaming Gorge Dam, including Gorge Creek, a tributary entering the Green River at Little Hole);

(v) White River (Uintah County);

(vi) Duchesne River (from Myton to confluence with Green River);

(vii) Virgin River (Main stem, North, and East Forks).

(viii) Ash Creek;

(ix) Beaver Dam Wash;

(x) Fort Pierce Wash;

(xi) La Verkin Creek;

(xii) Santa Clara River (Pine Valley Reservoir downstream to the confluence with the Virgin River);

(xiii) Diamond Fork;

(xiv) Thistle Creek;

(xv) Main Canyon Creek (tributary to Wallsburg Creek);

(xvi) South Fork of Provo River (below Deer Creek Dam); and

(xvii) Snake Valley waters (west and north of US-6 and that part of US-6 and US-50 in Millard and Juab counties).

(2) Nongame fish, except those species listed in Section R657-13-13, may be taken by spear or underwater spearfishing in the waters specified in Subsection R657-13-9(3), angling, traps, bow and arrow, liftnets, or seine.

(3) Seines shall not exceed 10 feet in length or width.

(4) Lawfully taken nongame fish shall be either released or killed immediately upon removing them from the water, however, they may not be left or abandoned on the shoreline.

**R657-13-15. Taking Crayfish.**

(1) A person possessing a valid Utah fishing or combination license may take crayfish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(2) Crayfish may be taken by hand or with a trap, pole, liftnet, handline, or seine, provided that:

(a) game fish or their parts, or any substance unlawful for angling, is not used for bait;

(b) seines shall not exceed 10 feet in length or width;

(c) no more than five lines are used, and no more than one line may have hooks attached (bait is tied to the line so that the crayfish grasps the bait with its claw); and

(d) live crayfish are not transported from the body of water where taken.

**R657-13-16. Possession and Transportation of Dead Fish and Crayfish.**

(1) Fish held in possession in the field or in transit shall be kept in such a manner that:

(a) the species of fish can be readily identified;

(b) the number of fish can be readily counted;

(c) the size of the fish can be readily measured when the fish are taken from waters where size limits apply and the fish taken from those waters may not be filleted and the heads or tails may not be removed; and

(d) fillets shall have attached sufficient skin to include the conspicuous markings so species may be identified.

(2) A legal limit of game fish or crayfish may accompany the holder of a valid fishing or combination license within Utah or when leaving Utah.

(3) A person may possess or transport a legal limit of game fish or crayfish for another person when accompanied by a donation letter.

(4) A person may not take more than one bag limit in any one day or possess more than one bag limit of each species or

species aggregate regardless of the number of days spent fishing.

(5) A person may possess or transport dead fish on a receipt from a registered commercial fee fishing installation, a private pond owner, or a short-term fishing event. This receipt shall specify:

(a) the number and species of fish;

(b) date caught;

(c) the certificate of registration number of the installation, pond, or short-term fishing event; and

(d) the name, address, telephone number of the seller.

**R657-13-17. Possession of Live Fish and Crayfish.**

(1) A person may not possess or transport live protected aquatic wildlife except as provided by the Wildlife Code or the rules and proclamation of the Wildlife Board.

(2) For purposes of this rule, a person may not transport live fish or crayfish away from the water where taken.

(3) This does not preclude the use of live fish stringers, live wells, or hold type cages as part of normal angling procedures while on the same water in which the fish or crayfish are taken.

**R657-13-18. Release of Tagged or Marked Fish.**

Without prior authorization from the division, a person may not:

(1) tag, mark, or fin-clip fish for the purpose of offering a prize or reward as part of a contest;

(2) introduce a tagged, marked, or fin-clipped fish into the water; or

(3) tag, mark, or fin-clip a fish and return it to the water.

**R657-13-19. Season Dates and Bag and Possession Limits.**

(1) All waters of state fish rearing and spawning facilities are closed to fishing.

(2) State waterfowl management areas are closed to fishing except as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(3) The season for taking fish and crayfish is January 1 through December 31, 24 hours each day. Exceptions are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(4)(a) Bag and possession limits are specified in the proclamation of the Wildlife Board for taking fish and crayfish and apply statewide unless otherwise specified.

(b)(i) A person may not fish in waters that have a specific bag or size limit while possessing fish in violation of that limit.

(ii) Fish not meeting the size, bag, or species provisions on specified waters shall be returned to the water immediately.

(c)(i) Trout, salmon and grayling that are not immediately released and are held in possession, dead or alive, are included in the person's bag and possession limit.

(ii) Once a trout, salmon or grayling is held in or on a stringer, fish basket, livewell, or by any other device, a trout, salmon or grayling may not be released.

(5) A person may not take more than one bag limit in any one day or have in possession more than one bag limit of each species or species aggregate regardless of the number of days spent on fishing.

**R657-13-20. Variations to General Provisions.**

Variations to season dates, times, bag and possession limits, methods of take, use of a float tube or a boat for fishing, and exceptions to closed areas are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

**R657-13-21. Nonresident One-Day Fishing Stamp.**

(1)(a) A nonresident may purchase a one-day fishing stamp to extend a one-day or seven-day fishing license provided the nonresident person has obtained a valid Utah nonresident one-day or seven-day fishing license.

(b) A nonresident must present the one-day or seven-day fishing license to the Division or license agent upon purchasing a one-day fishing stamp.

(2) A one-day fishing stamp will extend the one-day or seven-day fishing license within the current year for one additional day.

(3) The effective date shall be indicated on the one-day fishing stamp.

**KEY: fish, fishing, wildlife, wildlife law**

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**R657. Natural Resources, Wildlife Resources.**

**R657-14. Commercial Harvesting of Protected Aquatic Wildlife.**

**R657-14-1. Purpose and Authority.**

(1)(a) 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:

(i) harvesting protected aquatic wildlife for use as fish bait; and

(ii) seining protected aquatic wildlife.

(b) The commercial harvesting of brine shrimp and brine shrimp eggs is regulated under Rule R657-52.

**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 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 aquatic wildlife takes place.

(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 for use as fish bait; and

(b) seining and selling protected aquatic wildlife for any purpose other than for use as fish bait.

(3) A certificate of registration is not required for the retail sale of dead protected aquatic wildlife imported into Utah, provided the product is clearly labeled as to its out-of-state origin.

(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.

**R657-14-4. Application for Certificate of Registration.**

(1) Applications for certificates of registration are available at division offices.

(2) Applications for commercial seining or harvesting protected aquatic wildlife for use as fish bait may be submitted any time during the year.

(3) 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.

(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.

**R657-14-5. Use of Helpers.**

(1)(a) Except as provided in Subsection (2), any person aiding the certificate of registration holder in seining protected aquatic wildlife 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.

(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) 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 the following nongame fish:

(i) Utah Chub (Gila atraria);

(ii) Carp (Cyprinus carpio);

(iii) Mountain sucker (Catostomus platyrhynchus);

(iv) Utah sucker (Catostomus ardens); or

(v) Redside shiner (Richardsonius batteatus).

(b) The division may authorize a person to harvest or sell overabundant nuisance game species, as determined by the division.

(c) 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 (Gila elegans);

(2) bluehead sucker (Catostomus discobolus);

(3) Colorado pikeminnow (Ptychocheilus lucius);

(4) flannelmouth sucker (Catostomus latipinnis);

(5) gizzard shad (Dorosoma cepedianum);

(6) grass carp (Ctenopharyngodon idella);

(7) humpback chub (Gila cypha);

(8) June sucker (Chasmistes liorus);

(9) least chub (Iotichthys phlegethontis);

(10) leatherside chub (Gila cypha);

(11) razorback sucker (Xyrauchen texanus);

(12) roundtail chub (Gila robusta);

(13) Virgin River chub (Gila robusta seminuda);
(14) Virgin spinedace (Lepidomeda mollispinis); and
(15) woundfin (Plagopterus argentissimus).

**R657-14-9. Harvest Hours.**

(1) Protected aquatic wildlife may be harvested from 5 a.m. to 10 p.m. year-round, unless otherwise specified on the certificate of registration.

(2) 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 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 harvest or sell designated species of protected aquatic wildlife for use as dead fishing bait, including cut baits.

(2)(a) The division may allow a person to harvest, possess, or sell the species of protected aquatic wildlife for use as dead fish bait as provided in Section R657-14-7.

(b) The division shall not allow a person to harvest, possess, or sell any other protected aquatic wildlife for use as dead fish bait except as provided in Section R657-14-7.

(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 listed under Section R657-14-7, 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 dead 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. 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, or any Wildlife Board Order may be grounds for revocation, suspension or denial of future certificates of registration as determined by a division hearing officer.

**KEY: game laws, bait dealers, commercialization of aquatic wildlife**

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| | **23-15-9** |
| | **23-14-3** |

**R657. Natural Resources, Wildlife Resources.**

**R657-16. Aquaculture and Fish Stocking.**

**R657-16-1. Purpose and Authority.**

(1) Under the authority of Sections 23-15-9 and 23-15-10 of the Utah Code, this rule provides the standards and procedures for:

(a) institutional aquaculture;

(b) private fish ponds;

(c) short-term fishing events;

(d) private fish stocking; and

(e) displaying aquaculture products in aquaria.

(2) This rule does not cover fee fishing and commercial aquaculture as provided in Title 4, Chapter 37, Parts 2 and 3; and the Department of Agriculture Rule R58-17.

(3) A person engaging in any activity provided in Subsection (1) must also comply with the provisions set forth in Rule R657-3 and the Department of Agriculture Rule R58-17.

(4) Any violation of, or failure to comply with, any provision of this rule or any specific requirement contained in a certificate of registration issued pursuant to this rule may be grounds for revocation or suspension of the certificate of registration or denial of future certificates of registration, as determined by a division hearing officer.

**R657-16-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.

(b) "Aquaculture facility" means any facility used for propagating, rearing, or producing aquatic wildlife or aquaculture products. Facilities that are separated by more than 1/2 mile, or facilities that drain to, or are modified to drain to, different drainages are considered to be separate aquaculture facilities, regardless of ownership.

(c)(i) "Aquaculture product" means privately purchased aquatic wildlife or their gametes.

(ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.

(d) "Aquarium" means any container located in an indoor facility that is used to hold fish from which no water is discharged, except during periodic cleaning, and which discharged water is passed through a filtering system capable of removing all fish and fish eggs and is disposed of only in a septic tank approved by the county or in a municipal wastewater treatment system approved by either the state or local health department.

(e) "Display" means to hold live aquaculture products in an aquarium for the purpose of viewing for commercial or noncommercial purposes.

(f) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program.

(g) "Ornamental fish" means fish that are raised or held for their beauty rather than use, or that arouse interest for their uncommon or exotic characteristics, including tropical fish, goldfish, and koi, but not including those species listed as prohibited or controlled in Rule R657-3-34.

(h) "Private fish pond" means a pond, reservoir, or other body of water, or any fish culture system which is contained on privately owned land and used for holding or rearing fish for a private, noncommercial purpose.

(i) "Private stocking" means noncommercial stocking of live aquaculture products in waters of the state not covered by a certificate of registration for a private fish pond or other private fish facility.

(j) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.

(k) "Short-term fishing event" means any event where privately acquired fish are held or confined for a period not to exceed seven days for the purpose of providing fishing or recreational opportunity and where no fee is charged as a requirement to fish.

**R657-16-3. Certificate of Registration Required.**

(1) A certificate of registration is required before any person may engage in any of the following activities:

(a) produce, propagate, rear, or culture any aquatic wildlife or aquaculture product;

(b) privately stock fish;

(c) acquire aquaculture products for a short-term fishing event; or

(d) display aquaculture products in an aquarium, except a certificate of registration is not required for ornamental fish held in an aquarium.

(2) Only species approved by the division on the certificate of registration may be used in conjunction with the activities covered by this rule. Only species listed on a certificate of registration may be possessed or transported within Utah.

(3) No aquaculture facility shall be developed on natural lakes or natural flowing streams, or reservoirs constructed on natural stream channels as provided in Section 23-15-10. Other waters, including canals, off-stream reservoirs or ponds, and excavated ponds or raceways, may be considered for an aquacultural use.

**R657-16-4. Application for Certificates of Registration.**

(1) An application for a certificate of registration must be submitted to the Wildlife Registration Office, Utah Division of Wildlife Resources, 1596 West North Temple, Salt Lake City, Utah 84116.

(2) The application requires up to 45 days for processing, except for a short-term fishing event, which requires up to 10 days.

(3) Application forms are available at all division offices.

(4) Applications that are incomplete, filled out incorrectly, or submitted without the appropriate fee may be returned to the applicant.

**R657-16-5. Renewal of Certificates of Registration.**

(1) Certificates of registration are valid for the dates identified on the certificate of registration.

(2) Certificates of registration are renewable on or before the expiration date as identified on the certificate of registration.

**R657-16-6. Failure to Renew Certificates of Registration Annually.**

(1) If an operator of an aquaculture facility, or private fish pond fails to renew the certificate of registration annually, or the hearing officer suspends the certificate of registration, all live aquatic wildlife or aquaculture products permitted under the certificate of registration shall be disposed of as follows:

(a) Unless the Wildlife Board orders otherwise, all aquatic wildlife or aquaculture products must be removed within 30 days of revocation or the expiration date of the certificate of registration, or within 30 days after ice-free conditions on the water; or

(b) At the discretion of the division, aquatic wildlife or aquaculture products may remain in the waters at the facility, but shall only be taken as prescribed within Rule R657-13 for Taking Fish and Crayfish.

(2) Aquatic wildlife or aquaculture products from a facility not health approved under Section 4-37-501 may not be moved alive.

(3) Aquatic wildlife or aquaculture products from an aquatic facility infected with any of the pathogens specified in the Department of Agriculture Rule R58-17 must be disposed of as directed by the division to prevent further spread of such diseases.

**R657-16-7. Importation.**

(1)(a) To import live aquatic wildlife or aquaculture products into Utah, a certificate of registration is required.

(b) Species of aquatic wildlife or aquaculture products that may be imported are provided in Rule R657-3-34.

(2)(a) To import live grass carp (Ctenopharyngodon idella), the fish must be verified as being triploid by the U.S. Fish and Wildlife Service.

(b) The form verifying triploidy must be obtained from the supplier and be on file with the Wildlife Registration Office of the division in Salt Lake City prior to importation.

(c) A copy of this form must also accompany the fish during transport.

(3) Applications to import aquatic wildlife or aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City. Applications may require up to 45 days for action.

**R657-16-8. Acquiring and Transferring Aquaculture Products.**

(1) Live aquatic wildlife or aquaculture products, other than ornamental fish, may be:

(a) purchased or acquired only from sources that have a valid certificate of registration from the Department of Agriculture to sell such products or from a person located outside Utah if both the species and the source are approved on a certificate of registration for importation; and

(b) acquired, purchased or transferred only from sources which have been health approved by the Department of Agriculture and assigned a fish health approval number as provided in Section 4-37-501. This also applies to separate facilities owned by the same individual, because each facility is treated separately, regardless of ownership.

(2)(a) Any person who has been issued a valid certificate of registration may transport live aquatic wildlife or aquaculture products as specified on the certificate of registration to the facility or approved stocking site.

(b) Except as provided in Subsection (3), all transfers or shipments of live aquatic wildlife or aquaculture products must be accompanied by documentation of the source and destination of the fish, including:

(i) name, address, certificate of registration number, and fish health approval number of the source;

(ii) number and weight being shipped, by species; and

(iii) name, address, and certificate of registration number of the destination.

(3)(a) Live aquatic wildlife or aquaculture products may be shipped through Utah without a certificate of registration provided that:

(i) the aquatic wildlife or aquaculture products are not sold or transferred;

(ii) the aquatic wildlife or aquaculture products remain in the original container;

(iii) the water is not exchanged or discharged; and

(iv) the shipment is in Utah no longer than 72 hours.

(b) Proof of legal ownership and destination must accompany the shipment.

**R657-16-9. Inspection of Records and Facilities.**

(1) The following records and information must be maintained for a period of two years and must be available for inspection by a division representative during reasonable hours:

(a) records of purchase, acquisition, distribution, and production histories of aquatic wildlife or aquaculture products;

(b) certificates of registration; and

(c) valid identification of stocks.

(2) Division representatives may conduct pathological, fish culture, or physical investigations at any facility, pond, or holding facility during reasonable hours.

**R657-16-10. Private Fish Ponds.**

(1) A certificate of registration is required to produce, propagate, rear, or possess any aquatic wildlife or aquaculture product in a private fish pond for private, noncommercial purposes. A separate certificate of registration is required for each private fish pond as defined under aquaculture facility.

(2) A private fish pond owner or operator may not sell, donate, or transfer live fish or live fish eggs, except approved species may be transferred to the private fish pond from an approved source.

(3) A fishing license is not required to take fish from a certificated private fish pond.

(4)(a) To transport dead fish without a license, a person must have a receipt which contains the following information:

(i) species and number of fish;

(ii) date caught;

(iii) certificate of registration number of the private fish pond; and

(iv) name, address, and telephone number of the owner of the private fish pond.

(b) Any person that has a valid fishing license may transport up to a legal limit of dead fish from a private fish pond without further documentation.

(5)(a) A certificate of registration for a private fish pond may be obtained by submitting an application and paying a fee in the amount established by the Wildlife Board.

(b) A certificate of registration may be issued after a division representative inspects the private fish pond, and confirms that the pond:

(i) meets all requirements stipulated in this rule and Title 23 of the Utah Code; and

(ii) poses no identifiable adverse threat to other wildlife species or their habitat.

(c) A certificate of registration may be renewed annually for six consecutive years by submitting an application each year, paying a fee in the amount established by the Wildlife Board and submitting the records described in Subsection (6). After a period of six years, or in the event the annual renewals are not maintained for any reason, the water shall again undergo original application, inspection, and payment of a fee in the amount established by the Wildlife Board.

(6)(a) Any person that possesses a certificate of registration for a private fish pond must submit to the division a report of all live fish purchased or acquired during the year. This report must contain the following information:

(i) name, address, and certificate of registration number of the seller or supplier;

(ii) number and weight, by species;

(iii) date of sale or transfer; and

(iv) name, address, and certificate of registration number of the receiver.

(b) A form for this information is provided by the division.

(c) This record must be sent to the division no later than January 30, and must be received before the certificate of registration may be renewed.

**R657-16-11. Short-Term Fishing Events.**

(1) A person sponsoring a short-term fishing event must obtain a certificate of registration prior to holding the event, except the division may conduct short-term fishing events for educational purposes without a certificate of registration.

(2)(a) A certificate of registration for a short-term fishing event may be obtained by applying to the Wildlife Registration Office at the division's Salt Lake City office a minimum of 10 days prior to the event.

(b) Application forms are available at all division offices.

(c) After review and confirmation by the division that the event poses no identifiable adverse threats to other fish or wildlife species, a certificate of registration may be issued.

(d) The certificate of registration may cover multiple events, which must be requested on the application form.

(3) A fishing license and bag limit is not required of participants in a short-term fishing event unless stated otherwise on the certificate of registration.

(4) For short-term fishing events where fishing licenses and bag limits under Rule R657-13 do not apply, a receipt must be given to participants transporting dead aquaculture products away from the event. Such receipt must include the following information:

(a) name of event sponsor;

(b) date caught;

(c) certificate of registration number; and

(d) species and number of dead aquaculture products being transported.

(5) Live fish remaining at the end of the event may not be transported alive, released, or stocked.

(6) A certificate of registration for a short-term fishing event may be obtained by submitting an application and paying a fee in the amount established by the Wildlife Board.

**R657-16-12. Private Stocking.**

(1) An individual wishing to stock fish for private, noncommercial purposes in a body of water not covered by a certificate of registration as a private fish pond must first obtain a certificate of registration for private stocking.

(2) Fish released in a state water which is not covered by a certificate of registration as a private fish pond are considered wild aquatic wildlife and may be taken only as provided in Rule R657-13 and the fishing proclamation.

(3) A water that does not qualify as a private fish pond may not be screened to contain fish stocked (pursuant to a certificate of registration for private stocking), except that a water stocked with grass carp to control aquatic weeds must be adequately screened to prevent the grass carp from escaping.

(4)(a) Private stocking is limited only to those species approved on the certificate of registration.

(b) Species approval will be based on the biological suitability of the requested species compared to the needs of the fish and other wildlife in the drainage.

(c) An amendment to the certificate of registration is required each time fish are stocked, except the division may allow a person to stock fish more than once if the request is made on the application, and is approved by the division.

(d) Fish may be acquired only from a source that has a valid fish health approval number assigned by the Department of Agriculture.

(5)(a) An application for a certificate of registration for private stocking to stock fish other than grass carp may be approved only if:

(i) on privately owned land;

(ii) the body of water is a reservoir, the reservoir is wholly contained on the land owned by the applicant; and

(iii) the body of water is not stocked or otherwise actively managed by the division.

(b) An application for a certificate of registration for private stocking of fish other than grass carp shall not be approved if:

(i) the fish to be stocked are for a commercial purpose; or

(ii) in the opinion of the division, stocking would cause harm to other species of fish or wildlife.

(6) An application for a certificate of registration for private stocking of triploid grass carp for control of aquatic weeds will be evaluated based upon:

(a) the severity of the weed problem;

(b) availability of other suitable means of weed control;

(c) adequacy of screening to contain the grass carp; and

(d) potential for conflict or detrimental interactions with other species of fish or wildlife.

(7) A certificate of registration for private stocking may be issued after review of the appropriateness of the requested species and inspection of the water to be stocked by a division

representative to ensure compliance with the stipulations of this rule and the absence of any threat to other fish or wildlife species.

(8) A certificate of registration for private stocking may be obtained by submitting an application and paying a fee in the amount established by the Wildlife Board.

**R657-16-13. Institutional Aquaculture.**

(1) A certificate of registration is required for any public agency, institution of higher learning, school, or educational program to engage in aquaculture.

(2) Aquatic wildlife or aquaculture products produced by institutional aquaculture may not be:

(a) sold;

(b) stocked; or

(c) transferred into waters of the state unless specifically authorized by the certificate of registration.

(3) The fish health approval requirements of Section 4-37-501 apply.

(4)(a) A certificate of registration for institutional aquaculture may be obtained by submitting an application to the division.

(b) A certificate of registration may be renewed on or before July 31 each year by submitting an application and the records described in Subsection (5).

(5)(a) A person possessing a valid certificate of registration for institutional aquaculture must submit to the division a report of each acquisition, distribution, transfer, or stocking of live aquatic wildlife or aquaculture products.

(b) This report must be sent to the division no later than June 30, and must be received before the certificate of registration may be renewed.

(c) Documentation of source, quantity, species, health approval status, and destination of all live aquatic wildlife or aquaculture products must accompany all shipments or transfers.

**R657-16-14. Display.**

(1)(a) A certificate of registration is required to hold live aquatic wildlife or aquaculture products in an aquarium for the purpose of viewing or displaying for commercial or noncommercial purposes. A certificate of registration is not required to display ornamental fish.

(b) Live aquaculture products that are displayed must meet the health approval standards described in Section 4-37-501.

(2) Aquatic wildlife taken from the wild may not be displayed or held in an aquarium.

(3) Live aquaculture products held in an aquarium for display may not be transferred, sold alive, released, or stocked. They may be sold as long as they are first killed and prepared for consumption.

(4)(a) A certificate of registration for display of live aquaculture products in an aquarium may be obtained by submitting an application and paying a fee in the amount established by the Wildlife Board.

(b) The certificate of registration is renewable every five years on or before the renewal date as specified on the certificate of registration by submitting an application, paying a fee in the amount established by the Wildlife Board, and submitting the records described in Subsection (5).

(5)(a) A person possessing a certificate of registration for display must submit to the division an annual report of each purchase or acquisition of live aquaculture products. This report must include the following information:

(i) name, address, certificate of registration number, and health approval number of the source; and

(ii) number and weight acquired, by species.

(b) This record must be submitted to the division no later than January 30 each year, and must be received before the certificate of registration can be renewed.

**KEY: wildlife, aquaculture, fish**
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**R657. Natural Resources, Wildlife Resources.**

**R657-52. Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs.**

**R657-52-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-3, 23-14-18, 23-14-19, Sections 23-15-7 through 23-15-9, and 23-19-1(2), this rule provides the procedures, standards, and requirements for commercially harvesting brine shrimp and brine shrimp eggs.

(2) 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.

**R657-52-2. 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 brine shrimp and brine shrimp eggs in the absence of the primary seiner.

(b) "Certificate of registration marker" means a floating or mounted marker conforming to the specifications set forth in Subsection R657-52-16(2) and (3), which must be displayed at a harvest location before harvest activity commences.

(c) "Harvest" means to gather or collect brine shrimp or brine shrimp eggs and reduce it to possession.

(d) "Harvest location" means the location where the gathering or harvesting of brine shrimp or brine shrimp eggs takes place. A harvest location is a 300 yard radius from the location of the Certificate of Registration marker as required under Subsection R657-52-16(8).

(e) "Helper" means a person aiding a certificate of registration holder in the harvesting, transporting, or selling of brine shrimp or brine shrimp eggs, including any employee, agent, family member, or volunteer.

(f) "Helper card" means a card authorizing a person to act as a helper.

(g) "Primary seiner" means the person in charge of and responsible for supervising a crew of helpers harvesting brine shrimp and brine shrimp eggs.

(h) "Purchase" means to buy, acquire, or obtain from sale, exchange, barter, or trade brine shrimp or brine shrimp eggs for pecuniary consideration or advantage.

(i) "Wildlife registration office" means the division office in Salt Lake responsible for processing applications and issuing certificates of registration.

**R657-52-3. Certificate of Registration Required.**

(1) A person may not harvest, possess, or transport brine shrimp or brine shrimp eggs without first obtaining a certificate of registration and a helper card for each individual assisting that person.

(2)(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 is required for each harvest location.

(c) The original copy of the certificate of registration must be present at the harvest location while harvesting brine shrimp or brine shrimp eggs.

(3) A certificate of registration under this rule is not required:

(a) to harvest 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;

(i) a certificate of registration is required, however, under Rule R657-3 for the activities described in Subsection (a);

(b) for the retail sale of brine shrimp or brine shrimp eggs imported into Utah, provided the product is clearly labeled as to its out-of-state origin;

(c) to process lawfully acquired brine shrimp or brine shrimp eggs; or

(d) 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 rule R657-3.

(4) Certificates of registration are not transferable, except as provided in Section R657-52-7.

(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) 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.

(7) All persons or entities applying for a certificate of registration to harvest brine shrimp and brine shrimp eggs made available for issuance through Subsection (6) shall satisfy the following requirements:

(a) submit a certificate of registration application to the wildlife registration office consistent with the requirements set forth in R657-52-5; and

(b) submit a cashiers check to the division in the established fee amount for each certificate of registration applied for.

(8)(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.

(9) 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.

(10) 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.

(11) 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.

**R657-52-4. Certificate of Registration Availability.**

(1) 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.

**R657-52-5. Application for Certificate of Registration.**

(1) Applications for certificates of registration to harvest brine shrimp and brine shrimp eggs are available at division offices and must be submitted to the division between 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.

(2)(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 shall provide 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.

(3)(a) Completed applications must be submitted to the wildlife registration office.

(b) The division may return any application that is incomplete or completed incorrectly.

(4) The application review process may require up to 45 days.

(5) The division may deny issuing a certificate of registration to any applicant for any of the following reasons:

(a) 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;

(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; or

(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.

(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, among other things:

(a) the name, address and phone number of the applicant;

(b) the name, address and phone number of the responsible person;

(c) the water and locations where brine shrimp and brine shrimp eggs may be harvested;

(d) the certificate of registration's expiration date; and

(e) any restriction imposed on the applicant in addition to the provisions of this rule.

(8) Certificates of registration for harvesting brine shrimp and brine shrimp eggs are valid only during the harvest season as provided in Sections R657-52-12 and R657-52-13.

**R657-52-6. Certificate of Registration Renewal.**

(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 R657-52-7, 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 the established fee amount 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 R657-52-5.

(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 R657-52-12 and R657-52-13.

**R657-52-7. 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.

**R657-52-8. Primary and Alternate Seiners.**

(1)(a) A primary seiner or an alternate seiner must be present at each harvest location and directly supervise the harvest activity.

(b) A primary or alternate seiner does not have to be present while transporting brine shrimp or brine shrimp eggs from the harvest location.

(c) 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.

(d) The primary or alternate seiner must have a primary or alternate seiner card in possession at the harvest location.

**R657-52-9. Use of Helpers.**

(1)(a) Except as hereafter provided in Subsection (2), any person aiding the certificate of registration holder, a primary seiner, or alternate seiner in harvesting brine shrimp and brine shrimp eggs shall be in possession of a helper card.

(b) Three individual helper cards are issued with the certificate of registration.

(c) 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) A helper card is not required of any person engaged only in the retail sale or transportation of brine shrimp or brine shrimp eggs.

(b) A person directing harvest operations from a plane for a certificate of registration holder does not have to have a helper card.

(c) 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.

(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 brine shrimp and brine shrimp eggs 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.

**R657-52-10. Records - Report of Activities.**

(1) Any person or business entity issued a certificate of registration to harvest brine shrimp and brine shrimp eggs shall keep accurate records of the weight harvested and to whom the product is 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) Certificate of registration holders shall submit the following reports to the Great Salt Lake Ecosystem Project office for each certificate of registration:

(a) A weekly harvest report documenting the total amount of brine shrimp and brine shrimp eggs, by raw weight, harvested each day of the reporting week. The reports must be prepared by a person working for the reporting company, and the reports must be received or postmarked by Monday of each week.

(b) A daily harvest report documenting the total amount of brine shrimp and brine shrimp eggs, by raw weight, harvested each day. The report shall be filed no later than 12 hours after the end of the previous calendar day. The report may be filed utilizing a voice mail system linked to a dedicated phone number provided or the report may be filed by fax to a dedicated phone number. The report must be prepared or given by a person working for the reporting company.

(c) A weekly report of all landing receipts prepared pursuant to Section R657-52-14 during the reporting week. The report must be prepared or given by a person working for the reporting company, and must be received by the division or postmarked by Monday of each week.

(4) Report forms may be obtained from the division.

**R657-52-11. Species of Protected Aquatic Wildlife That May Be Harvested.**

(1) A certificate of registration issued under this rule may authorize the holder to commercially harvest only brine shrimp and brine shrimp eggs.

(2) Any species of protected aquatic wildlife caught other than brine shrimp and brine shrimp eggs must be immediately returned alive and unharmed to the water from which it was harvested.

**R657-52-12. Harvest Season and Hours.**

(1)(a) Except as provided in Subsections R657-52-13(4) and (5), a 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.

(b) 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.

(c) 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.

(2) Brine shrimp and brine shrimp eggs may be harvested 24 hours a day during any open harvest season by those possessing a valid certificate of registration for such activities.

(3) When the harvest season is suspended or closed, all harvest activity shall cease at official sunset on the designated date of closure.

**R657-52-13. Areas of Harvest and Special 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 Section R657-52-12.

(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 the official opening date of the brine shrimp harvest season, as declared by rule or the division, for purposes 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) Any person possessing a valid certificate of registration to harvest brine shrimp and brine shrimp eggs may do so 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 or manipulated for the purpose of culturing or harvesting brine shrimp or brine shrimp eggs.

(c) Brine shrimp or brine shrimp eggs may not be introduced into the Great Salt Lake or any pond. Brine shrimp and brine shrimp eggs must enter into the pond during normal mineral extraction processes.

(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 or water and placed in a container after the season is closed. Containers filled prior to the close of the harvest season with brine shrimp or brine shrimp eggs may be transported from the lake or lakeshore after the close of the harvest season, provided transportation occurs no later than 21 days following the closure.

**R657-52-14. Transportation.**

(1) When brine shrimp and brine shrimp eggs are transported away from the lakeshore to a processing plant, a landing receipt form must be prepared and be in possession of the transport driver before leaving the loading site.

(a) The landing receipt shall include:

(i) the harvesters' certificate of registration numbers;

(ii) the certificate of registration holder's name;

(iii) the harvest dates;

(iv) the harvest areas;

(v) the landing dates;

(vi) the container numbers and weights as determined by certified scales for lake harvested brine shrimp and brine shrimp eggs;

(vii) the container numbers and weight estimates for shore harvested brine shrimp and brine shrimp eggs; and

(viii) the names of the individuals who landed and weighed the product.

(2) The driver of a truck transporting brine shrimp product away from the lakeshore is not required to possess a helper card while engaged in that activity.

(3) Any person loading brine shrimp product into a truck to transport from the lakeshore shall possess a helper card.

**R657-52-15. 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) Each continuous segment of boom that may be coupled together shall be marked to denote the company's name, initials, or certificate of registration number. The markings shall consist of letters or numbers at least three inches in height.

(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.

**R657-52-16. Certificate of Registration Markers.**

(1)(a) One certificate of registration marker corresponding

to each certificate of registration shall 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) No more than one certificate of registration marker shall be displayed at each harvest location.

(c) An original certificate of registration shall be present at the harvest location where the corresponding certificate of registration marker is displayed.

(2) A certificate of registration marker shall consist of a piece of equipment, furnished by the harvesters, constructed in accordance with the following specifications:

(a) A six foot long piece of tubing with a weight at one end.

(b) 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 the length of tubing. The fluorescent orange ball shall have the certificate of registration number, corresponding to the certificate of registration decal attached to the marker pursuant Subsection R657-52-16(2)(c), marked in two places with indelible black paint. The painted certificate of registration numbers shall be a minimum of twelve inches in height.

(c) Mounted above the orange ball towards the un-weighted end of the 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.

(d) Mounted on the tubing between the orange ball and the un-weighted end of the tubing, shall be an aluminum radar reflector that is a minimum of fifteen inches square.

(e) Mounted above the radar reflector shall be a three-inch wide band of silver reflective tape.

(f) 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.

(3) The certificate of registration marker must be displayed in a manner that is:

(a) visible in all directions at a distance of 500 yards; or

(b) displayed above the superstructure of any vessel that a certificate of registration is being used from.

(4) The amber light on a displayed marker device must be operating at all times between sunset and sunrise.

(5) 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 corresponding, original certificate of registration at the harvest location.

(6) 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 displayed as required in this section.

(7) The certificate of registration and corresponding certificate of registration marker shall not be transported to the harvest location by aircraft.

(a) "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.

(8) A person may not harvest any brine shrimp or brine shrimp eggs within a 300 yard radius of a certificate of registration marker displayed at a harvest location without permission from the company that first began harvesting in that location.

**R657-52-17. 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 R657-52-15(1)(d);

(ii) the boom is closed;

(iii) the boom is marked with a certificate of registration marker as described in Subsections R657-52-16(2) and (3); and

(iv) the certificate of registration marker is lighted as described in Subsections R657-52-16(2)(f)and (4).

(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 R657-52-16(8) without permission from the company that first began harvesting in that location.

(b) The certificate of registration marker must be deployed as provided in Section R657-52-16 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.

**R657-52-18. 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 or business entity possessing a valid certificate of registration may test the equipment to be used in harvesting brine shrimp from March 1 through the official opening date of the brine shrimp harvest season, as declared by rule or the division.

(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 to the water, if collected from the water, or returned to the beach, if collected from the beach, 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 shore, except as provided in Section R657-52-13(4).

**R657-52-19. Violations.**

(1) The penalty for any violation of this rule is a class C misdemeanor as provided in Section 23-13-11(2).

(2) Any violation of, or failure to comply with the provisions of this rule, any requirement contained in a certificate of registration issued pursuant to this rule, any Wildlife Board Order, or any statute related to the harvesting, possession or transfer of brine shrimp or brine shrimp eggs may be grounds for revocation, suspension or denial of future certificates of registration as determined by a division hearing officer.

**KEY: brine shrimp, commercialization**

**September 4, 2002**

**23-14-3**
**23-14-18**
**23-14-19**
**23-15-7**
**23-15-8**
**23-15-9**
**23-19-1(2)**

**R671. Pardons (Board of), Administration.**
**R671-101. Rules.**
**R671-101-1. Rules.**

Board of Pardons rules shall be processed according to state rulemaking procedures. The Board shall determine if the rule is to be submitted through the regular rulemaking or emergency rulemaking procedure. Rules shall then be distributed as necessary.

Any error, defect, irregularity or variance in the application of these rules which does not affect the substantial rights of a party may be disregarded. Rules are to be interpreted with the interests of public safety in mind so long as the rights of a party are not substantially affected.

**KEY: pardons**
**February 18, 1998 77-27-9**
**Notice of Continuation September 17, 2002 63-46a**

**R671. Pardons (Board of), Administration.**

**R671-102. Americans with Disabilities Act Complaint Procedure Rule.**

**R671-102-1. Purpose and Authority.**

A. This rule is promulgated pursuant to Section 63-46a-3 (2) of the State Administrative Rulemaking Act. The Board of Pardons Office adopts, defines, and publishes within this rule complaint procedures to provide for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act, pursuant to 29 CFR 35.107,1992 ed.

B. No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of this office, or be subjected to discrimination by this office.

**R671-102-2. Definitions.**

A. "The ADA Coordinator" means the Office of the Board of Pardons' coordinator or designee, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.

B. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(1) Office of Planning and Budget;

(2) Department of Human Resource Management;

(3) Division of Risk Management;

(4) Division of Facilities Construction Management; and

(5) Office of Attorney General.

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

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

E. "Individual with a disability" (hereafter individual) means a person who has a disability which limits one of his/her major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the Office of the Board of Pardons, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

F. "Board" means the Board of Pardons and Parole.

G. "Chairman" or "Chairman of the Board" means Chairman of the Board of Pardons and Parole.

**R671-102-3. Filing of Complaints.**

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

B. The Complaint shall be filed with the Board's ADA Coordinator in writing or in another accessible format suitable to the individual.

C. Each complaint shall:

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

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

(3) describe the office's alleged discriminatory action in sufficient detail to inform the office of the nature and date of the alleged violation;

(4) describe the action and accommodation desired; and

(5) be signed by the individual or by his/her legal representative.

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

**R671-102-4. Investigation of Complaint.**

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section 3 (C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the Board's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:

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

(2) facility modifications which require an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority; or

(3) reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

**R671-102-5. Issuance of Decision.**

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

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

**R671-102-6. Appeals.**

A. The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

B. The appeal shall be filed in writing with the Chairman of the Board or a designee other than the Board's ADA Coordinator.

C. The filing of an appeal shall be considered as authorization to the Board's Chairman or designee, by the individual, to allow review of all information, including information classified as private or controlled.

D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous,

is not supported by the evidence, or is otherwise improper.

E. The Chairman of the Board or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve the Chairman or designee to:

(1) an expenditure of funds which is not absorbable and would require appropriation authority;

(2) facility modifications which require an expenditure of funds which is not absorbable and would require appropriation authority; or

(3) reclassification or reallocation in grade; he/she shall also consult with the State ADA Coordinating Committee.

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

G. If the Chairman or designee is unable to reach a decision within the ten working day period, he/she shall notify the individual in writing or by another suitable format why the decision is being delayed and the additional time needed to reach a decision.

**R671-102-7. Classification of Records.**

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

**R671-102-8. Relationship to Other Laws.**

A. This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section (67-19-32); the Federal ADA Complaint Procedures (28 CFR Subpart F, beginning with Part 35.170, 1992 Edition); or any other Utah State of Federal law that provides equal or greater protection for the rights of individuals with disabilities.

**R671-102-9. Interpreters.**

The Board will provide interpreters for the hearing impaired.

**KEY: disabilities**
**February 18, 1998 67-19-32**
**Notice of Continuation September 18, 2002**

**R671. Pardons (Board of), Administration.**
**R671-202. Notification of Hearings.**
**R671-202-1. Notification.**

An offender will be notified at least seven calendar days in advance of any hearing where personal appearance is involved, except in extraordinary circumstances, and will be specifically advised as to the purpose of the hearing.

In extraordinary circumstances, the hearing may be conducted without the seven day notification, or the offender may waive this notice requirement.

A public notice of hearing will also be posted one week in advance at the Board.

Open public hearings are regularly scheduled by the Board at the various correctional facilities throughout the state.

**KEY: parole, inmate**

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| **Februay 18, 1998** | **77-27-7** |
| **Notice of Continuation September 18, 2002** | **77-27-9** |

**R671. Pardons (Board of), Administration.**
**R671-203. Victim Input and Notification.**
**R671-203-1. Victim Input and Notification.**

Pursuant to statute, the Department of Corrections will provide the Board of Pardons with all available information concerning the impact a crime may have had upon the victim or victim's family. Pursuant to statute, the prosecutor of the case will forward to the Board a victim impact statement referring to physical, mental or economic loss suffered by the victim or victim's family.

In accordance with statute victims shall be allowed to testify before the Board of Pardons at original parole grant hearings, rehearings and applicable parole violation and rescission hearings. Victims will be given timely notice, delivered to their last known address, of the date, place and time of the hearing.

A victim is defined as an individual, of any age, against whom an offender committed a felony or class A misdemeanor offense for which the hearing is being held. If a victim does not wish to give testimony or is unable to do so, a designee may be appointed to speak on their behalf. Family may testify if the victim is deceased as a result of the offense or if the victim is a child.

Oral testimony at hearings will be limited to five minutes in length per victim or designee. If family testifies, testimony should be limited to one family representative from the marital family (i.e. spouse or children) and/or one family representative from the nuclear/extended family (i.e. parent, sibling or grandparent). Under exceptional or extraordinary circumstances a victim may formally petition the Board to request additional testimony.

If requested by the victim, the victim may present testimony during the hearing outside the presence of the offender. The offender will be excused from the hearing room so that the victim can give testimony. The victim's testimony will be recorded. At the conclusion of the testimony, the offender will be returned to the hearing room and the Board will play the recorded testimony to allow the offender to respond to the victim's testimony.

Victims who want to testify are requested to notify the Board as far in advance of the hearing as possible so that appropriate arrangements can be made and time allocated for the presentations. Victims or designees should bring a written copy of their remarks to the hearing or send a copy to the Victim Coordinator for the Board file.

If multiple victims want to testify, the Board may reschedule the hearing to accommodate the extra time required to hear all the testimony. If Board business is not concluded by 5:00 p.m. on a hearing day, all remaining hearings may be rescheduled and visitors may have to return.

A victim or designee, who is appearing at a hearing where photographic equipment is being used by the media, will not be photographed without the approval of the victim and the individual presiding at the hearing.

Victims may contact the Board of Pardons, after any parole hearing, for information concerning the outcome of that hearing. Victims are advised that they may also contact the Utah State Prison Records Unit Supervisor for information on offender releases.

All persons attending hearings must comply with the security and clearance regulations of the facility where the hearing is held. These regulations include a picture identification, appropriate dress, and no contraband. Visitors should arrive at the facility 15 to 20 minutes prior to the scheduled hearing to allow adequate time for the security clearance.

**KEY: victims of crimes**

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| **February 18, 1998** | **77-27-9.5** |
| **Notice of Continuation September 18, 2002** | **77-27-13** |
| | **64-13-20** |

**R671. Pardons (Board of), Administration.**
**R671-205. Credit for Time Served.**
**R671-205-1. Policy.**

(1) Credit for time served will be granted against the expiration date on a crime of commitment when:

(a) a conviction is set aside and there is a subsequent commitment for the same criminal conduct;

(b) a commitment is made to the Utah State Hospital pursuant to a "guilty and mentally ill" conviction;

(c) time is spent in custody outside the State of Utah based solely on the Utah warrant;

(d) the Board deems such credit just under the circumstances; or

(e) credit is otherwise required by law.

(2) No credit will be given for time spent in custody at the Utah State Hospital or comparable non-prison, psychiatric facility while the offender is judicially-declared incompetent.

(3) If no record of official detention time is found in the Board file, the Board will presume that none was served. In cases where the offender desires credit, the burden is on the offender to request it and to provide copies of records supporting the claim of time spent in custody.

**KEY: capital punishment, prison release, parole, government hearings**

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| **December 9, 1998** | **77-27-7** |
| **Notice of Continuation September 25, 2002** | **77-27-9** |
| | **77-19-7** |

**R671. Pardons (Board of), Administration.**
**R671-206. Competency of Offenders.**
**R671-206-1. General.**

If a Board member or staff presiding at a hearing has reason to believe that an offender may be mentally incompetent, all proceedings will be stayed pursuant to 77-15-5 (6). The Board's Mental Health Advisor shall notify the Department of Corrections of the Board's concern.

The Prison Bureau of Medical Services will conduct a screening evaluation regarding the issue of competency. If there is reason to believe that the inmate or parolee may be incompetent, the Department of Corrections will request the Attorney General to file a petition with the district court for a competency hearing pursuant to UCA 77-15-3

If the Department determined incompetency requirements cannot be met, or if the district court determines the offender is mentally competent, the Board shall proceed with scheduled hearings/actions.

**KEY: criminal competency**

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| **February 18, 1998** | **77-15-3** |
| **Notice of Continuation September 25, 2002** | **77-15-5** |
| | **77-27-2** |
| | **77-27-7** |

**R671. Pardons (Board of), Administration.**
**R671-301. Personal Appearance.**
**R671-301-1. Personal Appearance.**

By statute, the Board or its designee is required to convene at least one public hearing for all offenders except those serving life without parole or death. In rehearings, the offender is afforded all the rights and considerations afforded in the initial hearing except as provided by other Board rules because the setting of a parole date is still at issue.

An offender has the right to be present at a parole grant, rehearing, or parole violation hearing if in the state (UCA 77-27-7). The offender may speak present documents, ask, and answer questions. In the event an offender waives this right, or refuses to personally attend the hearing the Board may proceed with the hearing and a decision making process.

If an offender is housed out of state the Board may elect one of the following procedures:

1. The offender may waive the right to be present.

2. Request the Warden to return the offender to the state for the hearing.

3. A courtesy hearing may be conducted by the appropriate paroling authority of the custodial state. A request along with a complete copy of Utah's record shall be forwarded for the hearing. All reports, a record of the hearing, and a recommendation shall be returned to the Utah Board for final action.

4. An individual Board member or designee may travel to the custodial facility and conduct the hearing, record the proceeding, and make a recommendation for the Board's final decision.

5. A hearing may be conducted by way of conference telephone call.

**KEY: inmate, parole**

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| **February 18, 1998** | **77-27-2** |
| **Notice of Continuation September 25, 2002** | **77-27-7** |
| | **77-27-9** |
| | **77-27-29** |

**R671. Pardons (Board of), Administration.**
**R671-302. News Media and Public Access to Hearings.**
**R671-302-1. Open Hearings.**

According to state law and subject to fairness and security requirements, Board hearings shall be open to the public, including representatives of the news media.

**R671-302-2. Limited Seating.**

When the number of people wishing to attend a hearing exceeds the seating capacity of the room where the hearing will be conducted, priority shall be given to:

1. Individuals involved in the hearing
2. Victim(s) of record.
3. Up to five people selected by the victim(s) of record.
4. Up to five people selected by the offender
5. Up to five members of the news media as allocated by the Board or its designee (see RESERVED MEDIA SEATING)
6. Members of the public and media on a first-come, first served basis.

**R671-302-3. Security and Conduct.**

All attendees are subject to prison security requirements and must conduct themselves in a manner which does not interfere with the orderly conduct of the hearing. Any individual causing a disturbance or engaging in behavior deemed by the Board to be disruptive of the proceeding may be ordered to leave and security personnel may be requested to escort the individual from the premises. All persons granted admission to a hearing must have a picture Identification and subject themselves to the security regulations of the custodial facility.

**R671-302-4. Executive Session.**

Executive sessions are closed sessions with no access. No filming, recording or transmitting of executive session portions of any hearing will be allowed.

**R671-302-5. News Media Equipment.**

Subject to prior approval by the Board or its designee (see APPROVING EQUIPMENT), the news agency representatives will be permitted to operate photographic, recording or transmitting equipment during the public portions of any hearing. When more than one news agency requests permission to use photographic, recording or transmitting equipment, a pooling arrangement may be required.

When it is determined by the Board or its designee, that any such equipment or operators of that equipment have the potential to cause a disturbance or interfere with the holding of a fair and impartial hearing, or are causing a disturbance or interfering with the holding of a fair and impartial hearing, restrictions may be imposed to eliminate those problems.

Photographing, recording and/or transmitting the image of a victim testifying before the Board will be prohibited unless approved by the victim and the individual presiding over the hearing.

**R671-302-6. Prior Approval.**

News media representatives wishing to use photographic, recording or transmitting equipment or to be considered for one of the five reserved media seats shall submit a request in writing to the Board or its designee. Such requests must be submitted in compliance with the policy and procedures of the Department of Corrections. If requesting the use of equipment, the request must specify by type, all the pieces of equipment to be used.

**R671-302-7. Approving Equipment.**

If the request is to use photographic, recording or transmitting equipment, at least 48 hours prior to a regularly scheduled hearing and 96 hours prior to a Commutation Hearing, it will be the responsibility of a representative of the news agency making the request to confer with the designated staff member of the Board to work out the details. If the designated staff member is unfamiliar with the equipment proposed to be used, he may require that a demonstration be performed to determine if it is likely to be intrusive, cause a disturbance or will inhibit the holding of a fair and impartial hearing in any way. Any equipment causing a disturbance or distraction will be removed from the premises.

Video tape or "on air" type cameras mounted on a tripod and still cameras encased in a soundproof box and mounted on a tripod shall be deemed to be approved equipment.

If the equipment is approved for use at a hearing, its location and mode of operation shall be approved in advance by the Board's designated staff member and it will remain in a stationary position during the entire hearing and will be operated as unobtrusively as possible.

There will be no artificial light used.

If there request for the same type of equipment, the news agencies will be required to make pool arrangements, as no more than one piece of the same type of equipment will be allowed. If no agreement can be reached on who the pool representative will be, the Board, or its designee, will draw a name at random. All those wishing to be a pool representative must make their request known in advance, identifying the specific hearing and agree to fully cooperate with all pool arrangements.

**R671-302-8. Reserved Media Seating.**

If there are five or fewer requests received prior to the deadline, the request will be approved. If more than five requests are made, the Board's designee will allocate the seating based on a pool arrangement. Each category will select its own representative(s). If no agreement can be reached on who the representative(s) will be, the Board's designee will draw names at random. All those wishing to be a pool representative must agree in advance to fully cooperate with all pool arrangements.

One seat will be allocated to each of the following categories:

1. Local daily newspapers with statewide circulation
2. Major wire services with local bureaus
3. Local television stations with regularly scheduled daily newscasts
4. Local radio stations with regularly scheduled daily newscasts
5. Daily, weekly or monthly publications (in that order) with priority given to the area where the offense occurred.
6. If the requests submitted do not fill all of the above categories, a seat will be allocated to a representative of a major

wire service with no local bureau or a national publication (in that order).

If seats remain unfilled, one additional seat will be allocated to the categories in the above order until all seats are filled. No news agency will have more than one individual assigned to reserved media seating unless all other requests have been satisfied.

**R671-302-9. Violations.**

Any news agency found to be in violation of this policy may have its representatives restricted in or banned from covering future Board hearings.

**KEY: news agencies**
**February 18, 1998 77-27-9**
**Notice of Continuation September 25, 2002**

**R671. Pardons (Board of), Administration.**
**R671-303. Offender Access to Information.**
**R671-303-1. Offender Access to Information.**

Absent a legitimate security or safety concern, an offender will be provided access to the information being considered by the Board and given an opportunity to respond whenever the Board fixes or extends the offender's parole or release date. If a security or safety concern is an issue, the offender will be provided a written summary of the material information being considered.

The Board, upon request or sua sponte, may continue a hearing to allow submission of additional documentation or information. The Board will consider any material facts obtained at the hearing or later submitted by the offender.

The Board will also provide an offender with a copy of the records contained in the offender's file at least three days prior to any personal appearance hearing in which parole or an early-release date may be fixed or extended by the Board. Any additional information obtained by the Board after this initial disclosure will be provided to the offender at the beginning of the hearing. In such event, the offender will be given an opportunity to review the supplemental information before proceeding. If no additional time is requested by the offender, the hearing will proceed as scheduled.

**KEY: inmates' rights, inmate, parole, records**
**February 18, 1998 63-2**
**Notice of Continuation September 25, 2002**

**R671. Pardons (Board of), Administration.**
**R671-304. Hearing Record.**
**R671-304-1. Hearing Record.**

The Board will cause a record to be made of all public hearings and dispositions.

**R671-304-2. Procedure.**

A record (verbatim transcript, tape recording or written summary) will be made of all hearings. The record will be retained by the Board for future reference or transcription upon request at cost. However, copies may be provided at no cost to the petitioner in accordance with UCA 77-27-8 (3).

**KEY: government hearings**

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| **February 18, 1998** | **77-27-8** |
| **Notice of Continuation September 25, 2002** | **77-27-9** |

**R671. Pardons (Board of), Administration.**
**R671-305. Notification of Board Decision.**
**R671-305-1. Notification of Board's Decision.**

The decision of the Board will be reached by a majority vote and reduced to writing, including a general statement of rationale for the decision. Copies of the written decision are given to the offender, the institution and Field Operations. The Board will publish written results of Board decisions.

The Board should be reasonably assured that the offender has been notified before the information has been released for the public dissemination.

**KEY: government hearings**
**February 18, 1998 77-27-9.7**
**Notice of Continuation September 25, 2002**

**R671. Pardons (Board of), Administration.**
**R671-308. Offender Hearing Assistance.**
**R671-308-1. Offender Hearing Assistance.**

The Board will allow an offender to have such assistance from other persons as may be required in preparation for a Board hearing.

Family, friends, professionals, interpreters, case workers, and minority representatives are allowed to be present at hearings and may assist the offender in preparing his case.

An attorney may be retained by the State to represent parolees on a case by case basis. However, an alleged parole violator may choose to have a private attorney represent the offender at his/her own expense.

Except as otherwise provided by law, no person other than the offender may address the Board at any hearing except for the offender's attorney at a Parole Revocation hearing, or such persons as the Board may find necessary to the orderly conducting of any hearing.

**KEY: parole, inmate**

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| **February 18, 1998** | **77-27-9** |
| **Notice of Continuation September 25, 2002** | **77-27-11** |
| | **77-27-29** |

**R671. Pardons (Board of), Administration.**
**R671-309. Impartial Hearings.**
**R671-309-1. Impartial Hearings.**

Offenders are entitled to an impartial hearing before the Board. The Board discourages any direct outside contact with individual Board Members regarding specific cases. This also applies to Hearing Officers designated to conduct the hearing. Any such contact should be made with the Board's designated staff member.

All contacts by offenders, victims of crime, their family members or any other person outside the staff of the Board regarding a specific case shall be referred, whenever possible, to the staff member designated by the Board who may not be directly involved in hearing the case. If circumstances dictate, the designated Board staff member shall prepare a memorandum for the file containing the substance of the contact. If the contact is by a victim wishing to make a statement for the Board's consideration, the Board's rule on Victim Input and Notification shall apply.

If a contact, or prior knowledge of a case or individuals involved, is such that it may affect the ability of a Board Member or designated Hearing Officer to make a fair and impartial decision in a case, the Board Member or designated Hearing Officer shall decide whether to participate in the hearing. If the decision is to participate, the offender shall be informed of the contact or prior knowledge and be given the opportunity to request that the Board Member or Hearing Officer not participate. Such a request is not binding in any way, but shall be weighed along with all other factors in making a final decision regarding participation in the hearing.

This rule shall not preclude contact regarding procedural matters so long as such contact is not for the purpose of influencing the decision of an individual Board Member on any particular case or hearing.

**KEY: parole, inmate**
**February 18, 1998 77-27-7**
**Notice of Continuation September 25, 2002 77-27-9**

**R671. Pardons (Board of), Administration.**
**R671-311. Special Attention Hearings and Reviews.**
**R671-311-1. General.**

This type of consideration is used to grant relief in special circumstances requiring action by the Board. This action is initiated by the receipt of a written request indicating that special circumstances exist for which a change in status may be warranted. These circumstances could include, but are not limited to, illness of the offender requiring extensive medical attention, exceptional performance or progress in the institution, exceptional opportunity for employment, exceptional family circumstances, and involves information that was not previously considered by the Board. For Special Attentions that have not originated from or been processed through the Department of Corrections, the Board will request the Department review and make recommendations before taking action.

Special Attention requests that are considered to be repetitive, frivolous or lacking in substantial merit may be placed in the offenders file without formal action or response.

**R671-311-2. Special Attention Hearing.**

A Special Attention Hearing will be convened or conducted when, in the opinion of the Board, a personal appearance is in the best interest to resolve the issue. Special Attention Hearings are open to the public, are hearings of record and the offender should receive 7 days notice of the purpose, place, date and time of the hearing.

**R671-311-3. Special Attention Review.**

A Special Attention Review will be processed administratively based on written reports supplied to the Board without the personal appearance of the offender.

**R671-311-4. Special Conditions Hearing.**

The Board will order special conditions as part of a parole agreement on an individual basis only if such conditions can be reasonably related to rehabilitation of the offender, the protection of society, or the compensation of victims. The offender will be given an opportunity to respond to proposed special conditions.

At any time, the Board may review an offender on its own initiative or upon recommendation by the Department of Corrections or others and add special conditions it deems appropriate. The offender may be afforded a personal appearance hearing before a Board Hearing Officer to discuss the proposed condition(s) unless that appearance is waived by the offender.

**KEY: parole, inmate**

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| **February 18, 1998** | **77-27-7** |
| **Notice of Continuation September 25, 2002** | **77-27-5** |
| | **77-27-6** |
| | **77-27-10** |
| | **77-27-11** |

**R708. Public Safety, Driver License.**

**R708-35. Adjudicative Proceedings For Driver License Offenses Not Involving Alcohol or Drug Actions.**

**R708-35-1. Purpose.**

The purpose of this rule is to establish procedures to be used by the Utah Driver License Division for non-alcohol/drug adjudicative proceedings.

**R708-35-2. Authority.**

This rule is authorized by Section 53-3-104 and Subsection 63-46b-5(1).

**R708-35-3. 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 a non-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 non-alcohol/drug adjudicative proceedings.

(6) "Recording" means documenting, by electronic or other means, the testimony or information presented at a non-alcohol/drug adjudicative proceeding.

(7) "Serious violation" means a single violation determined by the division to require immediate remedial action.

**R708-35-4. Designations.**

(1) In compliance with Section 63-46b-4, all division non-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.

**R708-35-5. Authority for Conducting Adjudicative Proceedings.**

Non-alcohol/drug adjudicative proceedings will be conducted in accordance with Sections 53-3-221, 63-46b-5, and this rule.

**R708-35-6. Commencement of Adjudicative Proceedings.**

(1) In accordance with Subsection 63-46b-3(1), non-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.

**R708-35-7. Non-Alcohol/Drug Adjudicative Proceedings.**

The non-alcohol/drug adjudicative proceedings deal with the following types of hearings:

(a) point system, Sections 53-3-209 and 53-3-221;

(b) financial responsibility, Sections 41-12a-303.2, 41-12a-503, 41-12a-511, and 53-3-221;

(c) contributing to a fatality, Section 53-3-221;

(d) serious violation, Section 53-3-221 and R708-14-3(8);

(e) unlawful use of a license, Section 53-3-229;

(f) fraudulent application, Section 53-3-229;

(g) failure to appear or comply, Section 53-3-221;

(h) review examination request, Subsection 53-3-221(9);

(i) driving during denial, suspension, revocation, or disqualification, Subsection 53-3-220(2);

(j) leaving the scene of an accident, Section 53-3-221 (serious violation); and

(k) limited license, Subsection 53-3-220 (4)(a).

**R708-35-8. Hearing Procedures.**

(1) Time and place. Non-alcohol/drug adjudicative proceedings will be held at a time and place 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 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; and

(e) take appropriate measures to preserve the integrity of the hearing.

**R708-35-9. 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 a form that is approved by the division. The completed form will be transmitted to the central office of the division 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.

**R708-35-10. 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**
**October 6, 1997 53-3-104**
**Notice of Continuation September 25, 2002 63-46b-5(1)**

**R728. Public Safety, Peace Officer Standards and Training.**
**R728-405. Drug Testing Requirement.**
**R728-405-1. Authority.**

This rule is authorized by Sections 53-6-105, 53-6-203, and 53-6-211.

**R728-405-2. Purpose.**

A. Peace Officer Standards and Training has a compelling interest in ensuring that every student attending a basic peace officer training course, who may become certified and sworn to uphold the law, be drug free.

B. When peace officers and potential peace officers participate in illegal drug use and drug activity, the integrity of the police profession is diminished and public confidence is destroyed.

C. In order to protect the citizens of the State of Utah, to preserve public trust and confidence in a fit and drug free peace officer profession, and to maintain the credibility of peace officer training academies, Peace Officer Standards and Training shall implement a drug testing program.

**R728-405-3. Procedure.**

A. Applicants accepted to a POST approved basic peace officer training program will be tested some time during the POST training curriculum.

B. Testing will be done by following the POST drug testing policy. The policy outlines the specimen collection procedures, drug testing methodology, and other information and requirements pertinent to such a policy.

**R728-405-4. Failure to Pass Drug Test.**

A. Students attending an academy will be dismissed if drug testing indicates a positive result considered by a medical review officer to be a result of intentional ingestion of an illegal drug.

B. Students who are dismissed may appeal the denial or dismissal by following the procedures outlined in the POST policy and procedure manual. Appeal procedures may be obtained in written form at POST.

**KEY: law enforcement officers, drug testing, drug testing programs**
**September 27, 2002** **53-6-105**
**53-6-203**

**R746. Public Service Commission, Administration.**
**R746-349. Competitive Entry and Reporting Requirements.**
**R746-349-1. Applicability.**

These rules shall be applicable to each telecommunications corporation applying to be a competitor in providing local exchange services or other public telecommunications services in all or part of the service territory of an incumbent telephone corporation.

**R746-349-2. Definitions.**

As used in these rules:

A. "CLEC" means competitive local exchange carrier.

B. "Division" means the Division of Public Utilities.

C. "GAAP" means generally accepted accounting principles.

**R746-349-3. Filing Requirements.**

A. In addition to any other requirements of the Commission or of 63-46b and pursuant to 54-8b-2.1, each applicant for a certificate shall file, in addition to its application:

1. testimony and exhibits in support of the company's technical, financial, and managerial abilities to provide the telecommunications services applied for and a showing that the granting of a certificate is in the public interest. Informational requirements made elsewhere in these rules can be included in testimony and exhibits;

2. proof of a bond in the amount of $100,000. This bond is to provide security for customer deposits or other liabilities to telecommunications customers of the telecommunications corporation. An applicant may request a waiver of this requirement from the Commission if it can show that adequate provisions exist to protect customer deposits or other customer liabilities;

3. a statement as to whether the telecommunications corporation intends to construct its own facilities or acquire use of facilities from other than the incumbent local exchange carrier, or whether it intends to resell an incumbent local exchange carrier's and other telecommunications corporation's services;

4. a statement regarding the services to be offered including:

a. which classes of customer the applicant intends to serve,

b. the locations where the applicant intends to provide service,

c. the types of services to be offered;

5. a statement explaining how the applicant will provide access to ordinary intralata and interlata message toll calling, operator services, directory assistance, directory listings and emergency services such as 911 and E911;

6. an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;

7. summaries of the professional experience and education of all managerial personnel who will have responsibilities for the applicant's proposed Utah operations;

8. an organization chart listing all the applicant's employees currently working or that plan to be working in or for Utah operations and their job titles;

9. a chart of accounts that includes account numbers, names and brief descriptions;

10. financial statements that at a minimum include:

a. the most recent balance sheet, income statement and cash flow statement and any accompanying notes, prepared according to GAAP,

b. a letter from management attesting to their accuracy, integrity and objectivity, and that the statements were prepared in accordance with GAAP,

c. if the applicant is a start-up company, a balance sheet following the above principles must be filed,

d. if the applicant is a subsidiary of another corporation, financial statements following the above principles must also be filed for the parent corporation;

11. financial statements to demonstrate sufficient financial ability on the part of the applicant. At a minimum, the applicant's statements must show:

a. positive net worth for the applicant CLEC,

b. sufficient projected and verifiable cash flow to meet cash needs as shown in a five-year projection of expected operations,

c. proof of bond as specified in R746-349-3(A)(2);

12. a five-year projection of expected operations including the following:

a. proforma income statements and proforma cash flow statements,

b. when applicable, a technical description of the types of technology to be deployed in Utah including types of switches and transmission facilities,

c. when applicable, detailed maps of proposed locations of facilities including a description of the specific facilities and services to be deployed at each location;

13. an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;

14. evidence of sufficient managerial and technical ability to provide the public telecommunications services contemplated by the application must be demonstrated by a showing of at least the following:

a. proof of certification in other jurisdictions; and that service is currently being offered in other jurisdictions by the applicant,

b. or the corporation has had at least two years of recent experience in providing telecommunications services related to the type of services the CLEC intends to provide;

15. a statement as to why entry by the applicant is in the public interest;

16. proof of authority to conduct business in Utah;

17. a statement regarding complaints or investigations of unauthorized switching, otherwise known as slamming, or other illegal activities of the applicant or any of its affiliates in any jurisdiction. This statement should include the following:

a. sanctions imposed against the applicant for any of these activities,

b. copies of any written documents related to these complaints, investigations, or sanctions, including: orders or other materials from the FCC or state commissions, any courts, or other government bodies, and any complaint letters or other

documents from any non-government entities or persons,

c. the applicant's responses to any of these issues;

18. statement about the applicant's written policies regarding the solicitation of new customers and a description of efforts made by the applicant's to prevent unauthorized switching of Utah local service by the applicant, its employees or its agents.

B. Additional questions relating to the technical, financial, and managerial capabilities of the applicant and public interest issues may be submitted by the Division or other parties in accordance with R746-100-8, Discovery.

**R746-349-4. Reporting Requirements.**

A. When a telecommunications corporation files a request for negotiation with another telecommunications corporation for interconnection, unbundling or resale, the requesting telecommunications corporation shall file a copy of the request with the Commission.

B. Each certificated telecommunications corporation shall file an updated chart of accounts by March 31, of each year.

C. Each certificated telecommunications corporation with facilities located in Utah shall maintain network route maps that include all areas where the corporation is providing or offering to provide service in Utah. These maps will, at a minimum, include central office locations, types of switches, hub locations, ring configurations, and facility routes, accompanied by detailed written explanations. These route maps will be provided to the Division or the Commission upon request.

D. Each certificated telecommunications corporation shall file a map with the Division that identifies the areas within the state where the corporation is offering service. The map should separately identify areas being served primarily through resale and by facilities owned by the carrier. This map shall be updated within 10 days after changes to the service territory occur. The map shall be made available for public inspection.

E. At least five days before offering any telecommunications service through pricing flexibility, a telecommunications corporation shall file with the Commission a price list or the prices, terms, and conditions of a competitive contract. Each filing shall:

1. describe the public telecommunications services being offered;

2. set forth the terms and conditions upon which the public telecommunications service is being offered;

3. list the prices to be charged for the telecommunications service or the basis on which the service will be priced; and

4. be made available to the public through the Division.

F. The certificated CLEC shall file an annual report with the Division on or before March 31 for the preceding year, unless the CLEC requests and obtains an extension from the Commission. The annual report shall contain the following information, unless specific forms are provided by the Division:

1. annual revenues from operations attributable to Utah by major service categories. That information would be provided on a "Total Utah" and "Utah Intrastate" basis. "Total Utah" will consist of the total of interstate and intrastate revenues. "Utah Intrastate" will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Utah Intrastate revenues shall be reported according to at least the following classes of service:

a. private line and special access,

b. business local exchange,

c. residential local exchange,

d. measured interexchange,

e. vertical services,

f. business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible;

2. annual expenses and estimated taxes attributed to operations in Utah;

3. year-end balances by account for property, plant, equipment, annual depreciation, and accumulated depreciation for telecommunications investment in Utah. The actual depreciation rates which were applied in developing the annual and accumulated depreciation figures shall also be shown;

4. financial statements prepared in accordance with GAAP. These financial statements shall, at a minimum, include an income statement, balance sheet and statement of cash flows and include a letter from management attesting to their accuracy, integrity and objectivity and that the statements follow GAAP;

5. list of services offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served;

6. number of access lines in service by geographic area, segregated between business and residential customers;

7. number of messages and minutes of services for measured services billed to end users;

8. list of officers and responsible contact personnel updated annually;

9. a report of gross revenue on a form supplied by the Division. This report shall be used in calculating the Public Utility Regulation Fee owed by the CLEC.

G. The annual report and the report of gross revenue filed by a CLEC shall be considered protected documents under the Government Records Access Management Act. The CLEC shall prominently mark in red each report with the word "Confidential."

**R746-349-5. Change of Service Provider.**

A. All requests for termination of local exchange or intrastate toll service from an existing telecommunications corporation and subsequent transfer to a new carrier must be in compliance with 47 CFR 64.1100 and 1150, 1996, incorporated by this reference.

B. A telecommunications provider will be held liable for both the unauthorized termination of a customer's service with an existing carrier and the subsequent unauthorized transfer to the providers's own service. Telecommunications providers are responsible for unauthorized service terminations and transfers resulting from the actions of their agents. A carrier that engages in the unauthorized activity shall restore the customer's service to the original carrier without charge to the customer. Customer charges during the unauthorized period shall be the lesser of the charges charged by the original provider or the unauthorized provider. Violators may be punished pursuant to 54-7-25 through 54-7-28. The telecommunications provider responsible

for the unauthorized transfer shall reimburse the customer or the original carrier for reestablishing service to the customer at the applicable tariff, price list or contract rate of the original carrier.

**R746-349-6. Price Floor.**

A. Incumbent local exchange carriers shall be prepared to demonstrate to the Commission compliance with 54-8b-3.3(3) for any telecommunications service or offering under the following conditions:

1. the incumbent local exchange carrier introduces a new service either by tariff or price list;

2. the incumbent local exchange carrier files tariffs or a price list that reduces rates;

3. upon petition by any person; or

4. if requested by the Commission or the Division.

B. Each incumbent local exchange carrier shall file a detailed description of the methods used to comply with 54-8b-3.3(3).

**R746-349-7. CLEC Exemptions.**

A. Unless otherwise ordered by the Commission either in the CLEC's certificate proceeding or in a proceeding instituted by the Commission or other party, a CLEC is exempt from the following statues and rules. All other rules of the Commission and all other duties of public utilities not specifically exempted by these rules apply to a new entrant. All powers of the Commission not specifically altered by these rules apply to a CLEC.

1. Exemptions from Title 54:

54-3-8, 54-3-19 -- Prohibitions of discrimination
54-7-12 -- Rate increases or decreases
54-4-21 -- Establishment of property values
54-4-24 -- Depreciation rates
54-4-26 -- Approval of expenditures

2. Exemptions from Commission rules:

R746-340-2 (D) -- Uniform System of Accounts (47 CFR 32)
R746-340-2 (E) (1) -- Tariff filings required
R746-340-2 (E) (2) -- Exchange Maps
R746-34l -- Lifeline
R746-344 -- Rate case filing requirements
R746-401 -- Reporting of construction, acquisition and disposition of assets
R746-405 -- Tariff formats
R746-600 -- Accounting for post-retirement benefits

3. The CLEC will be exempted from the Lifeline rule, R746-341, only until the Commission establishes Lifeline rules that may include the CLEC or until the CLEC begins to provide residential local exchange service.

**R746-349-8. CLEC's Obligations with Respect to Provision of Services.**

A. The CLEC agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

1. the CLEC's obligation to furnish service to customers is dependent on the availability of suitable facilities on its network at company-designated locations as identified in its annual network route map filing;

2. the CLEC will only be responsible for the installation, operation, and maintenance of services that it provides;

3. the CLEC will furnish service if it is able to obtain, retain and maintain suitable access rights and facilities, without unreasonable expense, and to provide for the installation of those facilities required incident to the furnishing and maintenance of that service;

4. at its option, the CLEC may require payment of construction or line-extension charges by the customer ordering telephone service. Those charges will be in addition to the normal rates and charges applicable to the service being provided;

5. when potential customers are so located that it is necessary or desirable to use private or government right-of-way to furnish service, those potential customers may be required, at the CLEC's option, to provide or pay the cost of providing the right-of-way in addition to any other charges;

6. all construction of facilities will be undertaken at the discretion of the CLEC, consistent with budgetary responsibilities and consideration for the impact on the CLEC's other customers and contractual responsibilities.

**KEY: essential facilities, imputation, public utilities, telecommunications**

**December 17, 1997 54-7-25 through 28**
**Notice of Continuation March 13, 2002 54-8b-2**
**54-8b-3.3**
**63-46b**

**R765. Regents (Board of), Administration.**

**R765-605. Utah Centennial Opportunity Program for Education.**

**R765-605-1. Purpose.**

To provide Board of Regents ("the Board") policy and procedures for implementing the Utah Centennial Opportunity Program for Education ("UCOPE," or "program"), UCA 53B-13a, enacted in H.B. 64 by the 1996 General Session of the Utah Legislature, as amended in 1997 and 1998.

**R765-605-2. References.**

2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 102.

2.2. Utah Code. Title 53B, Utah System of Higher Education, Chapter 13a.

2.3. State Board of Regents Policy R512, Determination of Resident Status.

**R765-605-3. Effective Date.**

These policies and procedures are effective July 2, 1998.

**R765-605-4. Policy.**

4.1. Program Description - UCOPE is a State supplement to increasingly inadequate grant and work assistance from Federal Government student financial aid programs. In UCA 53B-13a-103(1), the Legislature finds "that the general welfare and well-being of the state are directly related to the educational levels and skills of the citizens of the state, and that limited financial aid for students with demonstrated financial need to help finance costs of attendance at Utah postsecondary institutions is a necessary component for ensuring access to postsecondary education and training as the state enters its second century of statehood". Program funds may be used for either grants or work-study awards to students with demonstrated financial need, with no more than 3.0% of funds allocated to an eligible institution permitted to be used for administrative costs. These are the only purposes for which program funds may be used.

4.2. Award Year - The award year for UCOPE is the twelve-month period designated by an eligible institution, coinciding approximately with the state fiscal year beginning July 1 and ending June 30. An institution may choose to have its Summer enrollment period as either the first or the final enrollment period of the award year for UCOPE purposes.

4.3. Institutions Eligible to Participate - Eligible institutions include the nine institutions of the Utah System of Higher Education, the five Utah Applied Technology Centers, and a Utah private nonprofit postsecondary institution which is accredited by a regional accrediting organization recognized by the Board. These are the only institutions eligible to participate. For purposes of this section, the Board recognizes the Northwest Association of Schools and Colleges. Utah private nonprofit postsecondary institutions accredited by the Northwest Association of Schools and Colleges are Brigham Young University, Westminster College and LDS Business College.

4.4. Students Eligible to Participate - To be eligible for grant or work-study assistance from UCOPE funds, a student must:

4.4.1. Be a resident student of the State of Utah under UCA 53B-8-102 and Board Policy R512. For purposes of this section, in addition to the qualification methods set forth in Policy R512, an institution may recognize a student as a resident student of the State of Utah if the student graduated from a Utah high school within 12 months of enrolling in the institution.

4.4.2. Be unconditionally admitted and currently enrolled in an eligible institution on at least a half-time basis as defined in Federal regulations applicable to Title IV of the Higher Education Act, in a post-high school program of at least nine months duration, leading to an Associate or Bachelor's degree, or to a diploma or certificate in an applied technology or other occupational specialty. This does not include unmatriculated students or students enrolled in postbaccalaureate programs or in remedial or developmental programs to prepare for admittance to a degree, diploma, or occupational certificate program.

4.4.3. Be maintaining satisfactory progress, as defined by the institution, toward the degree, diploma, or certificate objective in which enrolled.

4.4.4. Meet all requirements of general eligibility for Federal Higher Education Act Part IV Student Financial Aid Programs, as defined in applicable U. S. Department of Education Regulations and the current edition of the Department of Education Student Aid Handbook.

4.4.5. Have a demonstrated need for financial assistance based on the defined Cost of Attendance for the applicable student category at the institution and the expected family contribution as determined by the Federal need analysis process for Higher Education Act Title IV student financial assistance programs.

4.5. Program Administrator - The program administrator for UCOPE is the Associate Commissioner for Student Financial Aid, or a person designated in a formal delegation of authority by the Associate Commissioner, under executive direction of the Commissioner of Higher Education.

4.6. Determination of Funds Available for The Program - Funds available for UCOPE allotments to institutions may come from specifically earmarked state appropriations, from the statewide student financial aid line item appropriation to the Board, or from other sources such as private contributions. Amounts available for allotment each year are determined as follows:

4.6.1. Consistent with the original purposes of the Statewide Student Financial Aid line item appropriation to the Board, funds appropriated in the line item are applied in the following priority order:

4.6.1.1. First priority is given to matching funds for Utah System of Higher Education institutional awards from the Federal Government for campus-based Federal Perkins Loan Program capital contributions, Federal Supplemental Educational Opportunities Grant Program funds, and partial matching for the Federal College Work Study Program.

4.6.1.2. Second priority is given to providing the required state match for allocations of State Student Incentive Grant Program funds to the State of Utah.

4.6.1.3. All remaining funds are used for UCOPE.

4.6.2. All funds appropriated by specific legislation, or in a specific line item for UCOPE, and any funds from other sources contributed for UCOPE, are added together with funds

available for UCOPE pursuant to subsection 4.6.1, to determine the total amount available for the program.

4.7. Allotment of Program Funds To Institutions.

4.7.1. The chief executive officer or chief student services officer of an eligible institution wishing to participate in UCOPE is required to submit to the program administrator a letter of intent to participate by the 15th of May preceding the beginning of the fiscal year (July 1 through June 30), and to include in the letter of intent a certification, subject to audit, of: (a) the total dollar amount of Federal Pell Grant funds awarded in the most recent completed award year to all students at the institution; and (b) the total dollar amount of Pell Grant funds awarded specifically to students at the institution who were resident students of the state of Utah under UCA 53B-8-102 and Board Policy R512.

4.7.2. Failure to submit its letter of intent with the required Pell Grant information by the specified date constitutes an automatic decision by an eligible institution not to participate in the program for the specific fiscal year.

4.7.3. An eligible institution which submits a qualifying letter of intent by the specified date for a specific fiscal year is a participating institution for that fiscal year.

4.7.4. Allotment of program funds to participating institutions is in the same proportion as the amount of Federal Pell Grant funds received by each participating institution for resident undergraduate students bears to the total of such funds received for such students in the most recently completed award year by all participating institutions.

4.7.5. The program administrator sends official notification of its allotment, together with a program participation agreement, and blank copies of the format for institutional UCOPE reports to be submitted within 30 days of the end of the applicable fiscal year, to the chief executive officer of each participating institution, by the 20th of May preceding the fiscal year.

4.8. Annual Institutional Participation Agreements - To receive UCOPE funds for an award year, a participating institution is required to submit a participation agreement, signed by the chief executive officer, accepting the funds and agreeing to the following terms and conditions:

4.8.1. Use of Program Funds Received by the Institution.

4.8.1.1. The institution may at its discretion place up to, but in no case more than, 3.0% of the total amount of program funds allotted to it for the award year in a budget for student financial aid administrative expenses of the institution, and will expend all funds so budgeted before the end of the state fiscal year for which allotted.

4.8.1.2(a). For the 1996-97 award year and award years 2000-01 and 2001-02, if the institution's allotment for the fiscal year is $100,000 or more, the institution will place at least 30% of the total amount of program funds allotted to it for the award year in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under Federal Work-Study Program (FWSP) regulations or in jobs provided in accordance with UCOPE Work-Study Program (UWSP) policies (Section 4.9 herein). For award years 1997-98 through 1999-2000, if the institution's allotment for the fiscal year is $50,000 or more, the institution will place at least 50% of the total amount of program funds allotted to it in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under FWSP regulations or in jobs provided in accordance with Section 4.9.

4.8.1.2(b). For any award year, the institution may, at its option, place all or any portion of its allotted UCOPE funds in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under Federal Work-Study Program (FWSP) regulations or in jobs provided in accordance with UCOPE Work-Study Program (UWSP) policies (Section 4.0 herein).

4.8.1.2(c). Work-study payments from the institution's UCOPE work-study budget, for jobs under either FWSP regulations or UWSP policies, will be counted as UCOPE awards for purposes of subsection 4.8.2.3.

4.8.1.3. All work-study jobs provided using UCOPE funds from the budget pursuant to this subsection, including those established under FWSP regulations, will be identified to the recipient as UCOPE work-study awards. No portion of the institution's UCOPE allotment may be used as institutional match for Federal Work-Study Program allocations.

4.8.1.4. The institution will place the total remainder of program funds allotted to it for the award year, after amounts budgeted pursuant to subsections 4.8.1.1 and 4.8.1.2, in a budget to be used only for payment of UCOPE grants to eligible students during and for periods of enrollment within the award year. Grants awarded from this budget will be identified to the recipient as Utah Centennial Opportunity Program Grants.

4.8.1.5. The institution may carry forward or carry back from one fiscal year to another up to 10% of the amount of its UCOPE allocation for the fiscal year, or a larger percentage if approved in advance by the UCOPE program administrator, except for any portion budgeted for administrative expenses pursuant to Section 4.8.1.1.

4.8.2. Determination of Awards to Eligible Students.

4.8.2.1. Student Cost of Attendance budgets will be established by the institution, in accordance with Federal regulations applicable to student financial aid programs under Title IV of the Higher Education Act as amended, for specific student categories authorized in the Federal regulations, and providing for the total of costs payable to the institution plus other direct educational expenses, transportation and living expenses.

4.8.2.2. UCOPE work-study or grant amounts will be awarded based on financial aid information and cost of attendance budgets at the time the awards are determined, with first priority given to eligible students who qualify for Federal Pell Grant assistance.

4.8.2.3. The total amount of any UCOPE grant award to an eligible student in an award year will not exceed $5,000, and the minimum UCOPE grant and/or work-study award to an eligible student will be $300, except that:

4.8.2.3(a). the minimum amount may be the amount of funds remaining in the institution's allotment for the award year in the case of the last eligible student receiving a UCOPE grant award for the year; and

4.8.2.3(b). An eligible student whose period of enrollment is less than the normally-expected period of enrollment within the award year (such as two semesters, three quarters, nine

months, or 900 clock hours) will be awarded a minimum or maximum grant amount in proportion to the portion of the normally-expected period of enrollment represented by the quarter(s), semester(s) or other defined term for which the student is enrolled.

4.8.2.4. UCOPE Grants and work-study stipends will be awarded and packaged on an annual award year basis. Grants will be paid one quarter or semester at a time (or in thirds, if applicable to some other enrollment basis such as total months or total clock hours), contingent upon the student's maintaining satisfactory progress as defined by the institution in published policies or rules. Work-study wages will be paid regularly as earned, provided the student is continuing to make satisfactory progress.

4.8.2.5. All awards under the program will be made without regard to an applicant's race, creed, color, religion, ancestry, or age.

4.8.2.6. Students receiving financial aid under the program will be required to agree in writing to use the funds received for expenses covered in the student's cost of attendance budget.

4.8.2.6(a). The student's signature on the Free Application for Federal Student Aid satisfies this requirement.

4.8.2.6(b). If the institution determines, after opportunity for a hearing on appeal according to established institutional procedures, that a student used UCOPE grant or work-study funds for other purposes, the institution will disqualify the student from UCOPE eligibility beginning with the quarter, semester, or other defined enrollment period after the one in which the determination is made.

4.8.2.7. In no case will the institution initially award program grants or work-study stipends or both in amounts which, with Federal Stafford, Ford, and/or Perkins Loans and other financial aid from any source, both need and merit-based, and with expected family contributions, exceed the cost of attendance for the student at the institution for the award year.

4.8.2.8. If, after the student's aid has been packaged and awarded, the student later receives other financial assistance (for example, merit or program-based scholarship aid) or the student's cost of attendance budget changes, resulting in a later overaward of more than $500, the institution will appropriately reduce the amount of financial aid disbursed to the student so that the total does not exceed the cost of attendance.

4.8.3. Unit-Record Information - The institution agrees to cooperate with the program administrator and the Commissioner of Higher Education in development of a unit-record data base on student financial aid and related demographic information, to be used for: (a) research into the effects of student financial aid on students' access to and participation in postsecondary education and training; and (b) planning and modifying the design of the program.

4.8.4. Notification and Reports - The institution will inform the program administrator immediately if it determines it will not be able to utilize all program funds allotted to it for an award year, and will submit an annual report within 30 days after completion of the award year, providing information on individual awards and such other program-relevant information as the board may reasonably require.

4.8.5. Records Retention and Cooperation in Program Reviews - The institution will cooperate with the program administrator in providing records and information requested for any scheduled audits or program reviews, and will maintain records substantiating its compliance with all terms of the participation agreement for three years after the end of the award year, or until a program review has been completed and any exceptions raised in the review have been resolved, whichever occurs first. If at the end of the three year retention period, an audit or program review exception is pending resolution, the institution will retain records for the award year involved until the exception has been resolved.

4.8.6. Dissemination of Employment Opportunity Information - The institution will cooperate with the program administrator in disseminating to its students periodic information provided by the board, regarding employment opportunities determined from marketplace surveys.

4.9. UCOPE Work-Study Program Guidelines - If an institution elects to utilize its UCOPE Work-Study funds for the Utah Work-Study Program (UWSP) instead of in accordance with Federal Work-Study (FWSP) regulations, the following guidelines apply.

4.9.1. The institution may establish designated UWSP institutional jobs on campus or in other institutional operating sites, and administer such jobs in accordance with the following conditions.

4.9.1.1. The job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time institutional employee in the three months immediately prior to establishment of the UWSP institutional job.

4.9.1.2. The hourly wage for the UWSP institutional job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the institution in equivalent positions in the institution's personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.1.3. The institution may pay up to one hundred percent of the hourly wage for the institutional job from its UCOPE work-study budget established pursuant to subsection 4.9.1, provided the total wages paid to a student for the job from UCOPE and any other institutional funds do not exceed the amount of the award to the student for the award year.

4.9.2. The institution may establish designated UWSP school assistant jobs for volunteer tutors, mentors, or teacher assistants, to work with educationally disadvantaged and high risk school pupils, by contract with individual schools or school districts, and administer such jobs in accordance with the following conditions.

4.9.2.1. The hourly wage for the UWSP school assistant job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the school or school district in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.2.2. The institution may pay up to one hundred percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.2 , provided the total wages paid to a student for the job from any source do not exceed the amount of the award to the student for the award year.

4.9.3. The institution may establish designated UWSP community service jobs with volunteer community service organizations certified by the program administrator on advice of the Utah Commission on Volunteers, and administer such jobs in accordance with the following conditions.

4.9.3.1. The hourly wage for the UWSP community service job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.3.2. The institution may pay up to one hundred percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.3, provided the total wages paid to a student for the position from any source do not exceed the amount of the award to the student for the award year.

4.9.4. The institution may establish designated UWSP matching jobs by contract with government agencies, private businesses, or non-profit corporations, and administer such jobs in accordance with the following conditions.

4.9.4.1. The matching job may not involve any religious or partisan political activities, or be with an organization whose primary purpose is religious or political.

4.9.4.2. The matching job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time employee in the government agency, private business, or non-profit corporation in the three months immediately prior to establishment of the UWSP matching job.

4.9.4.3. The hourly wage for the UWSP matching job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.4.4. The institution may pay up to fifty percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.4, provided the total wages (including the employer-paid portion) paid to the student do not exceed the amount of the award to the student for the award year.

4.9.5. Institutions are strongly encouraged to place students, when possible, in UWSP jobs which have a relationship to the student's field of study or training.

4.9.6. If an institution employs students in work-study jobs or other institutional jobs cumulatively over time to a point at which the institution is required to pay employee benefits other than the direct job wages for a UCOPE-funded work-study job, the institution is required to pay the costs of any such required employee benefits from institutional funds other than UCOPE-allotted funds.

**KEY: financial aid, higher education**
**August 15, 2002** **53B-8-102**
**53B-13a**

**R765. Regents (Board of), Administration.**

**R765-608. Utah Engineering and Computer Science Loan Forgiveness Program.**

**R765-608-1. Purpose.**

To provide Utah Higher Education Assistance Authority ("UHEAA") policy and procedures for implementing the Utah Engineering and Computer Science Loan Forgiveness Program ("UECLP" or "program"), UCA 53B-6, Section 105.7, enacted in S.B. 61 by the 2001 General Session of the Utah Legislature.

**R765-608-2. References.**

2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 6, Section 105.7.

2.2. State Board of Regents Policy R610, Board of Directors of the Utah Higher Education Assistance Authority.

**R765-608-3. Effective Date.**

These policies and procedures are effective September 1, 2001.

**R765-608-4. Policy.**

4.1. Program Description - UECLP is a student loan forgiveness program authorized as part of the higher education Engineering and Computer Science Initiative established with an effective date of July 1, 2001. UCA 53B-6-105.7 provides for establishment of the program "to recruit and train engineering, computer science, and related technology students to assist in providing for and advancing the intellectual and economic welfare of the state," and authorizes the State Board of Regents to provide by rule for the overall administration of the program, consistent with the general student loan provisions in Title 53B and policy guidelines contained in the Section.

4.2. Program Administration - The Board of Regents has delegated to the UHEAA Board of Directors the authority to govern UECLP on behalf of the Board of Regents. The program is administered by the Associate Commissioner for Student Financial Aid as Executive Director of UHEAA, reporting to the Commissioner of Higher Education.

4.3. Program Design - The program utilizes UHEAA-guaranteed Federal Family Education Loan Program (FFELP) Stafford Student Loans and Federal Perkins Student Loans as the vehicle for providing UECLP loan forgiveness. A students enrolled at a Qualifying Institution in a Qualifying Program applies to UHEAA, with an endorsement from the dean of the school or college in which enrolled, for a Certificate for Student Loan Forgiveness which guarantees that upon completion of the requirements for loan forgiveness the Recipient will receive a direct credit for reduction of the outstanding principal balance(s) of the Recipient's outstanding Stafford or Perkins Student Loan(s). The student applies for and receives the Stafford and/or Perkins Student Loans through regular application and award procedures. Upon completion of the Qualifying Program, and Qualifying Employment, the Recipient submits an Application for Student Loan Forgiveness to UHEAA, UHEAA verifies the Recipient's qualification and the loan forgiveness amount for which the Recipient qualifies, and promptly processes the payment of outstanding principal on the Recipient's student loan(s). If the remaining principal balance on the Recipient's student loans is less than the forgiveness amount for which the Recipient qualifies, UHEAA will pay any amount above the outstanding balance directly to the Recipient, up to the amount of Stafford or Perkins Student Loan principal actually borrowed by the Recipient while enrolled in the Qualifying Program. The loan forgiveness amount for which the Recipient qualifies will include the amount of Tuition and Fees, as defined in section 4.4.9, which is applicable to the academic year for which the Application for Student Loan Forgiveness is submitted, plus the portion of the Recipient's loan interest accrued or paid which is applicable to the principal amount to be paid on the Recipient's behalf.

4.4. Definitions -

4.4.1. Qualifying Institution - A college or university of the Utah System of Higher Education (USHE) which offers one or more Qualifying Programs.

4.4.2. Qualifying Program - An accredited engineering, computer science, or related technology baccalaureate degree program.

4.4.2.1. Related technology baccalaureate degree programs shall be limited to those certified by the Commissioner of Higher Education, in accordance with such criteria as may be established pursuant to UCA 53B-6-105.7.

4.4.3. Eligible Student - A student who is enrolled on at least a half-time basis in a Qualifying Institution in a Qualifying Program, in good standing, and maintaining satisfactory academic progress as defined by the institution.

4.4.4. Recipient - A person who applies for and receives a UECLP Certificate for Student Loan Forgiveness from UHEAA.

4.4.5. Certificate for Student Loan Forgiveness - A certificate issued by UHEAA to an Eligible Student, which guarantees forgiveness of student loan principal plus related loan interest paid by the Recipient, up to the amount of Tuition and Fees paid for a specified number of years of enrollment in a Qualifying Program for up to a specified number of years of Qualifying Employment.

4.4.6. Stafford Student Loan - A FFELP Stafford student loan, either subsidized or unsubsidized, guaranteed by UHEAA.

4.4.6.1. A subsidized Stafford Student Loan is certified by the student's institution on the basis of financial need, and qualifies for payment of interest by the U.S. Secretary of Education on the student's behalf while the student is enrolled at least half-time and during a six-month grace period after the student graduates or ceases to be enrolled at least half-time.

4.4.6.2. An unsubsidized Stafford Student Loan is certified by the student's institution either as needed in addition to the full subsidized loan amount, or for a student who does not qualify on the basis of financial need. The recipient of an unsubsidized Stafford Student Loan is responsible for payment of interest accruing from the date of disbursement of the loan, but may choose to have the interest deferred until the loan enters repayment (at the end of the grace period), at which time the interest is capitalized and added to the outstanding principal. The interest on an unsubsidized Stafford Student Loan is at the same favorable rates as determined annually according to statute for a subsidized Stafford Student Loan.

4.4.6.3. A student is required to file a Free Application for Federal Student Aid (FAFSA) to establish eligibility for either a subsidized or an unsubsidized Stafford Student Loan, but is

entitled without limitation to receive the loan, up to statutorily-specified loan amounts, if eligible.

4.4.7. Perkins Student Loan - A Federal Perkins student loan awarded by the student's institution. Availability of Perkins Student Loans is limited, based on available funds, but a Perkins Student Loan may carry a more favorable interest rate than a Stafford Student Loan. Interest is not charged on a Perkins Student Loan while the borrower is enrolled at least half time and during the applicable grace period thereafter. A student is required to file a FAFSA to establish eligibility for a Perkins Student Loan, but might not receive the loan even if eligible, due to limited availability.

4.4.8. Year of Qualifying Employment - Full-time employment within Utah, for a full 12-month period, in a position requiring the baccalaureate degree, in engineering or in the field of computer science or in a related technology field. Provided, however, that, if a Recipient's Qualifying Employment is as a public school teacher or USHE faculty member, the annual school year or academic year contract length shall qualify as a Year of Qualifying Employment.

4.4.8.1. For purposes of this definition, employment in the fields of engineering or computer science or in a related technology field must reasonably be demonstrated to utilize skills and knowledge required for an applicable Qualifying Program.

4.4.9. Tuition and Fees - Tuition and general fees applicable to the Qualifying Program, for the institution in which the recipient is enrolled, for a full-time-equivalent (FTE) student, as defined in annual tuition and fee schedules approved by the State Board of Regents.

4.5. Application for a Certificate for Student Loan Forgiveness - An Eligible Student may apply for a Certificate for Student Loan Forgiveness at any time during an academic year in which enrolled in a Qualifying Program. The application may be for the year in which currently enrolled and subsequent years, except that it may not include years prior to the academic year during which the application is submitted and the total number of years covered by the application may not exceed five.

4.5.1 The application shall include a declaration of intent to complete the Qualified Program in which enrolled, or an equivalent Qualifying Program, and to work within Utah in Qualifying Employment for a period of four years after graduation.

4.6. Application for Student Loan Forgiveness - A Recipient may apply for forgiveness of the amount of one year of Tuition and Fees paid, as a reduction in outstanding loan principal or as a direct payment as provided for in 4.3, after each completed Year of Qualifying Employment covered by the Certificate for Loan Forgiveness, subject to the following limitation:

4.6.1. The Certificate for Student Loan Forgiveness shall provide that its guarantee, and the Recipient's eligibility to submit an Application for Student Loan Forgiveness, shall expire at the end of the 72nd month ( six years) after the Recipient's date of graduation with the baccalaureate degree. Provided, however, that a period of full-time enrollment in a graduate degree program related to the Recipient's Qualifying Program shall not be counted as part of the 72 months following the Recipient's graduation with the baccalaureate degree.

4.7. Eligibility for UHEAA Borrower Benefits - Regardless of whether or not the Recipient qualifies for and receives forgiveness of any part of the principal on a Stafford Student Loan, the Recipient will remain eligible for all forbearances, deferments, and other statutory privileges under the FFELP, and also shall remain eligible for all applicable principal reductions and interest rate reductions under UHEAA's borrower benefit programs. A Recipient who does qualify for and receive forgiveness of principal on a Stafford Student Loan under UECLP also shall remain eligible for all applicable principal reductions and interest rate reductions under UHEAA's borrower benefit programs.

4.8 Limited Availability and Allocation Principles - Funding for UECLP is dependent on annual legislative appropriations, and the ability to underwrite Certificates for Student Loan Forgiveness is limited. The Program Administrator shall establish an application and award calendar annually after the amount available for new awards is determined. Selection criteria established as part of the annual calendar shall include an initial tentative allocation by Qualifying Institutions proportionate to the number of engineering and computer science baccalaureate degrees awarded by each institution in the most recent academic year for which information is available, except that a minimum amount of $10,000 or five percent of the amount available, whichever is the lesser, shall be established for each Qualifying Institution. The President of each Qualifying Institution electing to participate in the program shall designate an individual to administer the program for the institution, and an alternate to administer the program in the absence of the designated administrator. Each institution shall establish criteria for the selection of nominees each academic year, in priority order from persons submitting an Application for Certificate for Student Loan forgiveness, and provision for an independent internal appeal of adverse decisions by the institution's program administrator. The institution's program administrator shall submit a copy of its selection criteria and appeal procedure for acceptance by UHEAA. Selection of Recipients from applicants certified by a Qualifying Institution shall take into account the priority order of nominations from the institution, the institution's allocation for awards from available funds, and reasonable actuarial projections regarding the percentage of recipients of certificates who will qualify for and receive the payments of principal and interest guaranteed by certificates awarded.

**KEY: higher education, student loans**
**August 15, 2002** **53B-6**

**R865. Tax Commission, Auditing.**
**R865-20T. Tobacco Tax.**
**R865-20T-1. Assessment of Cigarette and Tobacco Products Tax Pursuant to Utah Code Ann. Sections 59-14-204 and 59-14-302.**

A. The cigarette tax is a tax on the first purchase, use, storage, or consumption of cigarettes by a manufacturer, jobber, wholesaler, distributor, retailer, user, or consumer within the state.

B. If cigarettes are purchased outside the state for use, storage, or consumption within the state, the tax must be paid by the user, storer, or consumer.

C. The tobacco products tax is a tax on the first purchase, use, storage, or consumption of tobacco products by a manufacturer, wholesaler, jobber, distributor, retailer, user, storer, or consumer within the state.

D. No tax is due from nonresidents or tourists who import cigarettes or tobacco products for their own use while in the state.

**R865-20T-2. Methods of Paying Taxes on Cigarettes and Tobacco Products Pursuant to Utah Code Ann. Sections 59-14-205 and 59-14-303.**

A. If the tax is due as a result of use, storage, or consumption of imported cigarettes, the tax may be paid by affixing stamps or by filing a return prescribed by the Tax Commission.

1. This return must be filed and the tax must be paid within 15 days from the date of use, storage, or consumption unless application is made to the Tax Commission for permission to file returns and pay the tax on a monthly basis.

2. Monthly returns are due, together with the payment of the tax, on or before the 15th day of the month following the calendar month during which the cigarettes were imported.

3. Monthly returns must be filed even though no tax is due.

B. Quarterly returns required under Section 59-14-303 shall include all purchases of tobacco products during the preceding quarter, with no adjustment for inventories on hand at the end of the quarter.

**R865-20T-3. Licensing of Cigarette and Tobacco-Products Dealers Pursuant to Utah Code Ann. Sections 59-14-202 and 59-14-301.**

A. Each cigarette vending machine shall be licensed as a separate place of business, provided that only one machine needs to be licensed at any place of business where the licensee has more than one machine in operation.

1. The license shall be posted in a conspicuous place on the vending machine.

2. If a licensee operates more than one place of business, the application shall contain the required information about each place of business.

3. The application must be accompanied by the required fee for each place of business.

B. If a licensee's place of business changes, the licensee shall forward the license to the Tax Commission with a request for notation of the change in location.

C. A license under which business has been transacted has no redeemable value when the licensee ceases to transact business.

**R865-20T-5. Bonding Requirements For Tobacco-Products Dealers Pursuant to Utah Code Ann. Section 59-14-301.**

A. Dealers selling tobacco products upon which the taxes imposed by this act have been paid by a previous seller are not required to post a bond.

**R865-20T-6. Purchase of Cigarette Stamps Pursuant to Utah Code Ann. Section 59-14-206.**

A. Cigarette revenue stamps are sold only to licensed and bonded dealers, except in cases where confiscated merchandise is sold to a person who does not intend to resell the merchandise but purchases it for consumption or use.

B. Stamps may be delivered to a licensee on consignment, provided that the following two conditions are met:

1. A written request is made naming the person to whom the stamps are to be delivered, and identifying that person by means of signature, and including the address to which the stamps should be delivered.

2. Only a responsible person of mature age is designated as the agent to whom the stamps are delivered.

C. In addition to satisfying the conditions of Section (B), the licensee shall also comply with Subsection (1), (2), or (3), whichever is appropriate.

a) In the case of individual ownership, the request for stamps shall be signed by the licensee in the same manner that the signature appears on the licensee's bond.

b) In the case of a partnership, the request shall be signed by a partner whose signature appears on the bond.

c) In the case of a corporation, the request shall be signed by a duly authorized officer of the corporation.

**R865-20T-7. Export Sales of Cigarette and Tobacco Products Pursuant to Utah Code Ann. Sections 59-14-205 and 59-14-401.**

A. Sales of cigarettes and tobacco products to jobbers dealers outside the state are not subject to the taxes imposed by this act provided that physical delivery of the goods is made outside the state.

B. All export sales for which an exemption or refund is claimed must be supported by invoices and delivery tickets or bills of lading showing all of the following:

1. date of sale;
2. name and address of customer;
3. address to which delivered;
4. quantity and type of product sold.

**R865-20T-8. Records Pertaining To Cigarette and Tobacco-Product Sales Pursuant to Utah Code Ann. Section 59-14-404.**

A. It is the duty of manufacturers, jobbers, distributors, wholesalers, retailers, users, or consumers of cigarettes or tobacco products to keep records necessary to determine the amount of tax due on the sale, purchase, or consumption of those products.

B. All pertinent records must be preserved for a period of three years.

C. The records shall be available for inspection by the Tax Commission or its authorized agents at all times during normal business hours or at other times determined by mutual agreement.

**R865-20T-9. Cigarette-Manufacturer Inventory Requirements Pursuant to Utah Code Ann. Section 59-14-205.**

A. Inventories of cigarettes held by manufacturers in warehouses located in Utah may be delivered to wholesalers or jobbers without being stamped. A record of those deliveries must be kept by the manufacturer at its place of business in this state or at the warehouse. The record shall contain all of the following:

1. date of delivery;
2. the person to whom the cigarettes were delivered;
3. place of delivery;
4. quantity delivered.

B. The record must be available for inspection by the Tax Commission or its agents at any reasonable time.

C. If the merchandise is sold to retailers, consumers or persons other than wholesalers or jobbers, the manufacturer must qualify as a licensed dealer.

**R865-20T-10. Procedures for the Revocation, Renewal, and Reinstatement of Licenses Issued Pursuant to Utah Code Ann. Sections 59-14-202, 59-14-203.5, and 59-14-301.5.**

A. In order to renew a license issued under Sections 59-14-202 and 59-14-301, a licensee shall file form TC-38B, Cigarette and Tobacco Products License Renewal Application, with the Tax Commission on or before the last day of the month prior to the month in which the license expires.

1. The form shall be accompanied by the statutory renewal fee.

B. A license revoked pursuant to Section 26-42-103 shall be revoked for a period of one year commencing on the date the commission receives notification to revoke by the enforcing agency.

C. In order to reinstate a license revoked or suspended, or allowed to expire, a licensee shall file form TC-69, Utah State Business and Tax Registration, with the Tax Commission.

1. The form shall be accompanied by the statutory reinstatement fee.

D. A revoked or suspended license may not be reinstated prior to the expiration of the revocation or suspension period.

**R865-20T-11. Reporting of Imported Cigarettes Pursuant to Utah Code Ann. Section 59-14-212.**

A. A manufacturer, distributor, wholesaler, or retail dealer required by Section 59-14-212 to provide the Tax Commission, on a quarterly basis, a copy of the importer's federal import permit and the customs form showing the tax information required by federal law:

1. is not required to enclose that information with the quarterly report;

2. shall retain that information in its records; and

3. at the request of the Tax Commission, provide copies of that information to the Tax Commission.

**KEY: taxation, tobacco products**

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|---|---|
| **September 4, 2002** | **59-14-202** |
| **Notice of Continuation April 17, 2002** | **59-14-203.5** |
| | **59-14-204** |
| | **through** |
| | **59-14-206** |
| | **59-14-212** |
| | **59-14-301** |
| | **through** |
| | **59-14-303** |
| | **59-14-401** |
| | **59-14-404** |

**R884. Tax Commission, Property Tax.**
**R884-24P. Property Tax.**
**R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).**

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

**R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.**

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;

b) transportation costs;

c) installation charges and construction costs; and

d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that

is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;

(b) actual sales of like mineral by other taxpayers; or

(c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

**R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.**

A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.

B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.

2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.

3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.

5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.

**R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.**

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue,

calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

**R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.**

A. The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

B. After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor and the Tax Commission a notice of the preservation easement containing the following information:

1. the property owner's name;

2. the address of the property; and

3. the serial number of the property.

C. The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

**R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-25.**

A. Definitions:

1. "Utah fair market value" means the fair market value of

that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

2. "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-25.

3. "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

4. "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 2. of the Constitution of Utah from the payment of ad valorem property tax.

5. "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

6. "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

7. "Sold," for the purpose of interpreting D, means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

8. "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

9. All definitions contained in the Interlocal Cooperation Act, Section 11-13-3, as in effect on December 31, 1989, apply to this rule.

B. The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

1. The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

2. The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

3. In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to B.2., a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

a) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

b) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

C. If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

D. Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

E. For purposes of calculating the amount of the fee payable under Section 11-13-25(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

F. In computing its tax rate pursuant to the formula specified in Section 59-2-913(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-25(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-913.

G. B.1. and B.2. are retroactive to the lien date of January 1, 1984. B.3. is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

**R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-**

**302, and 59-2-704.**

A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county.

1. Conduct a preliminary survey and plan.

a) Compile a list of properties to be appraised by property class.

b) Assemble a complete current set of ownership plats.

c) Estimate personnel and resource requirements.

d) Construct a control chart to outline the process.

2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.

3. Obtain a copy of all probable transactions from the recorder's office for the three-year period ending on the effective date of reappraisal.

4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.

a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.

b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per parcel basis.

c) Enter land class information and the calculated agricultural land use value on the appraisal form.

5. Develop a land valuation guideline.

6. Perform an appraisal on improved sold properties considering the three approaches to value.

7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price of sold properties.

8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.

9. Collect data on all nonsold properties.

10. Develop capitalization rates and gross rent multipliers.

11. Estimate the value of income-producing properties using the appropriate capitalization method.

12. Input the data into the automated system and generate preliminary values.

13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.

14. Develop an outlier analysis program to identify and correct clerical or judgment errors.

15. Perform an assessment/sales ratio study. Include any new sale information.

16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.

17. Calculate the final values and place them on the assessment role.

18. Develop and publish a sold properties catalog.

19. Establish the local Board of Equalization procedure.

20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.

B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.

**R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.**

A. "State Licensed Appraiser", "State Certified General Appraiser," and "State Certified Residential Appraiser" are as defined in Section 61-2b-2.

B. The ad valorem training and designation program consists of several courses and practica.

1. Certain courses must be sanctioned by either the International Association of Assessing Officers (IAAO) or the Western States Association of Tax Administrators (WSATA).

2. Most courses are one week in duration, with an examination held on the final day. The courses comprising the basic designation program are:

a) Course A - Assessment Practice in Utah;

b) Course B - Fundamentals of Real Property Appraisal (IAAO 101);

c) Course C - Mass Appraisal of Land;

d) Course D - Building Analysis and Valuation;

e) Course E - Income Approach to Valuation (IAAO 102);

f) Course G - Development and Use of Personal Property Schedules;

g) Course H - Appraisal of Public Utilities and Railroads (WSATA); and

h) Course J - Uniform Standards of Professional Appraisal Practice (USPAP).

3. The Tax Commission may allow equivalent appraisal education to be submitted in lieu of Course B, Course E, and Course J.

C. Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

D. There are four recognized ad valorem designations: Ad Valorem Residential Appraiser, Ad Valorem General Real Property Appraiser, Ad Valorem Personal Property Auditor/Appraiser, and Ad Valorem Centrally Assessed Valuation Analyst.

1. These designations are granted only to individuals working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

2. An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

E. Ad Valorem Residential Appraiser.

1. To qualify for this designation, an individual must:

a) successfully complete Courses A, B, C, D, and J;

b) successfully complete a comprehensive residential field practicum; and

c) attain and maintain state licensed or state certified appraiser status.

2. Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

F. Ad Valorem General Real Property Appraiser.

1. In order to qualify for this designation, an individual must:

a) successfully complete Courses A, B, C, D, E, and J;

b) successfully complete a comprehensive field practicum including residential and commercial properties; and

c) attain and maintain state licensed or state certified

appraiser status.

2. Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

G. Ad Valorem Personal Property Auditor/Appraiser.

1. To qualify for this designation, an individual must successfully complete:

a) Courses A, B, G, and J; and

b) a comprehensive auditing practicum.

2. Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

H. Ad Valorem Centrally Assessed Valuation Analyst.

1. In order to qualify for this designation, an individual must:

a) successfully complete Courses A, B, E, H, and J;

b) successfully complete a comprehensive valuation practicum; and

c) attain and maintain state licensed or state certified appraiser status.

2. Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

I. If a candidate fails to receive a passing grade on a final examination, one re-examination is allowed. If the re-examination is not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

J. A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

1. Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

2. The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

K. An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

1. has completed all Tax Commission appraiser education and practicum requirements for designation under E., F., and H.; and

2. has not completed the requirements for licensure or certification under Title 71, Chapter 2b, Real Estate Appraiser Licensing and Certification.

L. An individual holding a specified designation can qualify for other designations by meeting the additional requirements outlined above.

M. Maintaining designated status requires completion of 28 hours of Tax Commission approved classroom work every two years.

N. Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

1. Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

2. If more than four years elapse between termination and rehire, and

a) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

b) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

O. All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

P. If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met.

1. The private sector appraisers contracting the work must hold the State Certified Residential Appraiser or State Certified General Appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only State Certified General Appraisers may appraise nonresidential properties.

2. All appraisal work shall meet the standards set forth in Section 61-2b-27.

Q. The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

1. There are no specific licensure, certification, or educational requirements related to this function.

2. An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

**R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.**

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally

complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July

1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

**R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.**

A. The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

1. If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

a) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax changes.

b) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

2. The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

B. The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

1. New property is created by a new legal description; or

2. The status of the improvements on the property has changed.

3. In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

4. If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in A.

C. Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

D. All completion dates specified for the disclosure of property tax information must be strictly observed.

1. Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in A.

E. If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

F. If the cost of public notice required under Sections 59-2-918 and 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

G. Calculation of the amount and percentage increase in property tax revenues required by Sections 59-2-918 and 59-2-919, shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

H. If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

I. The value of property subject to the uniform fee under Section 59-2-405 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

J. The value and taxes of property subject to the uniform fee under Section 59-2-405, as well as tax increment distributions and related taxable values of redevelopment agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

K. The following formulas and definitions shall be used in determining new growth:

1. Actual new growth shall be computed as follows:

a) the taxable value for the current year adjusted for redevelopment minus year-end taxable value for the previous year adjusted for redevelopment; then

b) plus or minus changes in value as a result of factoring; then

c) plus or minus changes in value as a result of reappraisal; then

d) plus or minus any change in value resulting from a legislative mandate or court order.

2. Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

3. New growth is equal to zero for an entity with:

a) an actual new growth value less than zero; and

b) a net annexation value greater than or equal to zero.

4. New growth is equal to actual new growth for:

a) an entity with an actual new growth value greater than or equal to zero; or

b) an entity with:

i) an actual new growth value less than zero; and

ii) the actual new growth value is greater than or equal to the net annexation value.

5. New growth is equal to the net annexation value for an entity with:

a) a net annexation value less than zero; and

b) the actual new growth value is less than the net annexation value.

6. Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

L. The following definitions and formulas shall be used in determining the certified tax rate:

1. Current year adjusted taxable value equals the taxable value for the current year adjusted for redevelopment; then

a) adjusted for estimated value losses due to appeals, using an average percentage loss for the past three years; then

b) adjusted for estimated collection losses.

2. The certified tax rate shall be computed as follows:

a) Last year's taxes collected, excluding redemptions, penalties, interest, roll-back taxes, and other miscellaneous collections.

b) Divided by the sum of the current year adjusted taxable value less adjusted new growth.

3. Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

a) the valuation bases for the funds are contained within identical geographic boundaries; and

b) the funds are under the levy and budget setting authority of the same governmental entity.

4. Exceptions to L.3. are the county assessing and collecting levy, as described in Section 59-2-906.1(3), and the additional levies for property valuation and reappraisal, as described in Section 59-2-906.3.

a) These levies may not be included as part of a county's aggregate certified rate. Instead, they must be segregated into a separate aggregate certified rate.

b) The separate aggregate certified rate representing these levies is subject to the proposed tax increase requirements of Sections 59-2-918 and 59-2-919.

M. For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

N. No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

**R884-24P-26. Requirements of the Farmland Assessment Act of 1969 Pursuant to Utah Code Ann. Sections 59-2-501 through 59-2-515.**

A. A parcel of land less than five acres in size may qualify for assessment under the provisions of the Farmland Assessment Act (FAA) if it:

1. has ownership identical to and is used in conjunction with a qualifying parcel of five or more acres;

2. is in close proximity to the primary farm;

3. has a direct relationship to the total agricultural enterprise;

4. makes a significant contribution to the enterprise's total production; and

5. meets all other requirements set forth in Section 59-2-503.

B. FAA application forms shall provide for reporting of the current serial number, legal description, ownership, and all other pertinent information of the subject properties.

1. The assessor shall maintain all FAA records in the assessor's office. These records shall include the original year of application and clearly indicate the number of years these properties have been assessed and taxed under the FAA.

2. All parcels assessed and taxed under the provisions of the FAA shall be so designated on the assessment roll.

3. All FAA applications, including those resulting from changes in ownership, legal description, additions, or deletions, must be recorded.

C. For FAA purposes, a property may be considered contiguous even though it is severed by a public highway, unimproved road, fence, canal, or waterway.

D. Upon withdrawal or change in use of a parcel assessed under the provisions of the FAA, the assessor shall immediately calculate the amount of the roll-back tax due and the county shall bill the roll-back tax due.

1. The amount of the lien shall be shown on the recorded roll-back statement.

2. If the roll-back tax is not paid to the county treasurer within 30 days after billing, the county treasurer shall proceed to collect the amount due.

3. If, after a period of being exempt, the property is used for a purpose that does not qualify for assessment under the FAA, the roll-back provisions of FAA shall apply to the time the property was under the provisions of the FAA, up to a maximum of five years, less the number of years that the property was exempt.

E. Land that becomes ineligible for farmland assessment solely as a result of amendments to Sections 59-2-501 through 59-2-515 is not subject to the roll-back tax if the owner of that land notifies the county assessor of the land's ineligibility for farmland assessment on or before January 1, 1994.

F. Applications for assessment and taxation under the FAA may be made only by the owner of farm property. A lessee or purchaser of any parcel may arrange with the owner to farm such land, but the lessee or purchaser may not make application for farmland assessment in the lessee's or purchaser's name.

G. A leased parcel may be assessed under the FAA if it meets all of the eligibility requirements set forth in Section 59-2-503.

H. All applications for assessment under the provisions of the FAA shall be accompanied by documentation verifying the agricultural production of the property for the two years immediately preceding the year of application. The county assessor or the commission may request any additional information needed to determine eligibility under Section 59-2-503.

**R884-24P-27. Standards for Assessment Level and**

**Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.**

A. Definitions.

1. "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

2. "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

3. "Division" means the Property Tax Division of the State Tax Commission.

4. "Nonparametric" means data samples that are not normally distributed.

5. "Parametric" means data samples that are normally distributed.

6. "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

B. The Tax Commission adopts the following standards of assessment performance.

1. For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures.

a) The measure of central tendency shall be within 10 percent of the legal level of assessment.

b) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

2. For uniformity of the property being appraised under the cyclical appraisal plan for the current year, the measure of dispersion shall be within the following limits.

a) In urban counties:

(1) a COD of 15 percent or less for primary residential and commercial property, and 20 percent or less for vacant land and secondary residential property; and

(2) a COV of 19 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property.

b) In rural counties:

(1) a COD of 20 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property; and

(2) a COV of 25 percent or less for primary residential and commercial property, and 31 percent or less for vacant land and secondary residential property.

3. Statistical measures.

a) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

b) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

c) To achieve statistical accuracy in determining assessment level under B.1. and uniformity under B.2. for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

C. Each year the Division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in B.

1. To meet the minimum sample size, the study period may be extended.

2. A smaller sample size may be used if:

a) that sample size is at least 10 percent of the class or subclass population; or

b) both the Division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

3. If the Division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

a) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

b) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

c) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

d) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

4. All input to the sample used to measure performance shall be completed by March 31 of each study year.

5. The Division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

6. The Division shall complete the final study immediately following the closing of the tax roll on May 22.

D. The Division shall order corrective action if the results of the final study do not meet the standards set forth in B.

1. Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

a) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in B.2.; or

b) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in B.2.

2. Uniformity adjustments, or reappraisal orders, shall only apply to the property being appraised under the cyclical appraisal plan for the current year. A reappraisal order shall be issued if the property fails to meet the standards outlined in B.2. Prior to implementation of reappraisal orders, counties shall submit a preliminary report to the Division that includes the following:

a) an evaluation of why the standards of uniformity outlined in B.2. were not met; and

b) a plan for completion of the reappraisal that is approved by the Division.

3. A corrective action order may contain language requiring a county to create, modify, or follow its cyclical appraisal plan.

4. All corrective action orders shall be issued by June 10 of the study year.

E. The Tax Commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

1. Prior to the filing of an appeal, the Division shall retain

authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without Tax Commission approval. Any stipulation by the Division subsequent to an appeal is subject to Tax Commission approval.

2. A county receiving a corrective action order resulting from this rule may file and appeal with the Tax Commission pursuant to Tax Commission rule R861-1A-11.

3. A corrective action order will become the final Tax Commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

4. The Division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

a) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

b) Other corrective action, including reappraisal orders, shall be implemented prior to May 22 of the year following the study year. The preliminary report referred to in D.2. shall be completed by November 30 of the current study year.

5. The Division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in E.4. as practical. The Division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the Tax Commission for any necessary action.

6. The county shall be informed of any adjustment required as a result of the compliance audit.

**R884-24P-28. Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-2-306.**

A. The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

1. On forms or diskette provided by the Tax Commission, the owner of leased or rented heavy equipment shall file semi-annual reports with the Tax Commission for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

a) a description of the leased or rented equipment;

b) the year of manufacture and acquistion cost;

c) a listing, by month, of the counties where the equipment has situs; and

d) any other information required.

2. For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

3. The completed report shall be submitted to the Property Tax Division of the Tax Commission within thirty days after each reporting period.

a) Noncompliance will require accelerated reporting.

**R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.**

A. Household furnishings, furniture, and equipment are subject to property taxation if:

1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

2. the abode is held out as available for the rent, lease, or use by others.

**R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.**

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

**R884-24P-33. 2002 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.**

A. Definitions.

1. "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.

a) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

b) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

2. "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

a) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

3. "Cost new" means the actual cost of the property when purchased new.

a) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(1) documented actual cost of the new or used vehicle; or

(2) recognized publications that provide a method for approximating cost new for new or used vehicles.

b) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(1) class 6 heavy and medium duty trucks;

(2) class 9 off-highway vehicles;

(3) class 11 street motorcycles;

(4) class 13 heavy equipment;

(5) class 14 motor homes;

(6) class 17 boats;
(7) class 18 travel trailers/truck campers;
(8) class 21 commercial and utility trailers;
(9) class 23 aircraft subject to the aircraft uniform fee and not listed in the aircraft bluebook price digest; and
(10) class 26 personal watercraft.

4. "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

a) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

b) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as NADA.

B. Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

1. Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

2. A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

3. County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

C. Other taxable personal property that is not included in the listed classes includes:

1. Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

2. Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

3. Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

D. Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

E. All taxable personal property is classified by expected economic life as follows:

1. Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

a) Examples of property in the class include:
(1) barricades/warning signs;
(2) library materials;
(3) patterns, jigs and dies;
(4) pots, pans, and utensils;
(5) canned computer software;
(6) hotel linen;
(7) wood and pallets;
(8) video tapes, compact discs, and DVDs; and
(9) uniforms.

b) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:
(1) retail price of the canned computer software;
(2) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or
(3) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

d) Video tapes, compact discs, and DVDs are valued at $15.00 per tape or disc for the first year and $3.00 per tape or disc thereafter.

TABLE 1

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 01 | 70% |
| 00 | 40% |
| 99 and prior | 10% |

2. Class 2 - Computer Integrated Machinery.

a) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:
(1) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.
(2) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.
(3) The machine can perform multiple functions and is controlled by a programmable central processing unit.
(4) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.
(5) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 01 | 87% |
| 00 | 72% |
| 99 | 60% |
| 98 | 51% |
| 97 | 44% |
| 96 | 35% |
| 95 | 26% |
| 94 and prior | 17% |

3. Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

a) Examples of property in this class include:

(1) office machines;
(2) alarm systems;
(3) shopping carts;
(4) ATM machines;
(5) small equipment rentals;
(6) rent-to-own merchandise;
(7) telephone equipment and systems;
(8) music systems;
(9) vending machines;
(10) video game machines; and
(11) cash registers and point of sale equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 01 | 83% |
| 00 | 67% |
| 99 | 51% |
| 98 | 34% |
| 97 and prior | 17% |

4. Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

a) Examples of property in this class include:

(1) furniture;
(2) bars and sinks:
(3) booths, tables and chairs;
(4) beauty and barber shop fixtures;
(5) cabinets and shelves;
(6) displays, cases and racks;
(7) office furniture;
(8) theater seats;
(9) water slides; and
(10) signs, mechanical and electrical.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 01 | 90% |
| 00 | 81% |
| 99 | 72% |
| 98 | 62% |
| 97 | 52% |
| 96 | 42% |
| 95 | 33% |
| 94 | 22% |
| 93 and prior | 12% |

5. Class 6 - Heavy and Medium Duty Trucks.

a) Examples of property in this class include:

(1) heavy duty trucks; and
(2) medium duty trucks.

b) Taxable value is calculated by applying the percent good factor against the cost new.

c) Cost new of vehicles in this class is defined as follows:

(1) the documented actual cost of the vehicle for new vehicles; or
(2) 75 percent of the manufacturer's suggested retail price.

d) For state assessed vehicles, cost new shall include the value of attached equipment.

e) The 2002 percent good applies to 2002 models purchased in 2001.

f) Trucks weighing two tons or more have a residual taxable value of $1,750.

TABLE 6

| Model Year | Percent Good of Cost New |
|---|---|
| 02 | 90% |
| 01 | 68% |
| 00 | 63% |
| 99 | 58% |
| 98 | 53% |
| 97 | 48% |
| 96 | 44% |
| 95 | 39% |
| 94 | 34% |
| 93 | 29% |
| 92 | 24% |
| 91 | 19% |
| 90 | 14% |
| 89 and prior | 10% |

6. Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

a) Examples of property in this class include:

(1) medical and dental equipment and instruments;
(2) exam tables and chairs;
(3) high-tech hospital equipment;
(4) microscopes; and
(5) optical equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 01 | 91% |
| 00 | 84% |
| 99 | 77% |
| 98 | 68% |
| 97 | 61% |
| 96 | 53% |
| 95 | 45% |
| 94 | 37% |
| 93 | 29% |
| 92 | 19% |
| 91 and prior | 10% |

7. Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically

advanced and more efficient equipment becomes available.

a) Examples of property in this class include:

(1) manufacturing machinery;

(2) amusement rides;

(3) bakery equipment;

(4) distillery equipment;

(5) refrigeration equipment;

(6) laundry and dry cleaning equipment;

(7) machine shop equipment;

(8) processing equipment;

(9) auto service and repair equipment;

(10) mining equipment;

(11) ski lift machinery;

(12) printing equipment;

(13) bottling or cannery equipment; and

(14) packaging equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 8

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 01 | 91% |
| 00 | 84% |
| 99 | 77% |
| 98 | 68% |
| 97 | 61% |
| 96 | 53% |
| 95 | 45% |
| 94 | 37% |
| 93 | 29% |
| 92 | 19% |
| 91 and prior | 10% |

8. Class 9 - Off-Highway Vehicles.

a) Examples of property in this class include:

(1) dirt and trail motorcycles;

(2) all terrain vehicles;

(3) golf carts; and

(4) snowmobiles.

b) Taxable value is calculated by applying the percent good factor against the cost new.

c) The 2002 percent good applies to 2002 models purchased in 2001.

d) Off-Highway Vehicles have a residual taxable value of $500.

TABLE 9

| Model Year | Percent Good of Cost New |
|---|---|
| 02 | 90% |
| 01 | 59% |
| 00 | 56% |
| 99 | 53% |
| 98 | 49% |
| 97 | 46% |
| 96 | 42% |
| 95 | 39% |
| 94 | 36% |
| 93 | 32% |
| 92 | 29% |
| 91 | 25% |
| 90 | 22% |
| 89 and prior | 19% |

9. Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

a) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 01 | 93% |
| 00 | 88% |
| 99 | 82% |
| 98 | 75% |
| 97 | 69% |
| 96 | 63% |
| 95 | 58% |
| 94 | 52% |
| 93 | 46% |
| 92 | 39% |
| 91 | 31% |
| 90 | 24% |
| 89 | 16% |
| 88 and prior | 9% |

10. Class 11 - Street Motorcycles.

a) Examples of property in this class include:

(1) street motorcycles;

(2) scooters; and

(3) mopeds.

b) Taxable value is calculated by applying the percent good factor against the cost new.

c) The 2002 percent good applies to 2002 models purchased in 2001.

d) Street motorcycles have a residual taxable value of $500.

TABLE 11

| Model Year | Percent Good of Cost New |
|---|---|
| 02 | 90% |
| 01 | 63% |
| 00 | 61% |
| 99 | 59% |
| 98 | 57% |
| 97 | 54% |
| 96 | 52% |
| 95 | 50% |
| 94 | 48% |
| 93 | 46% |
| 92 | 44% |
| 91 | 42% |
| 90 | 40% |
| 89 | 37% |
| 88 | 35% |
| 87 | 33% |
| 86 | 31% |
| 85 and prior | 29% |

11. Class 12 - Computer Hardware.

a) Examples of property in this class include:
(1) data processing equipment;
(2) personal computers;
(3) main frame computers;
(4) computer equipment peripherals; and
(5) cad/cam systems.
b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 01 | 85% |
| 00 | 58% |
| 99 | 37% |
| 98 | 24% |
| 97 | 15% |
| 96 and prior | 9% |

12. Class 13 - Heavy Equipment.
a) Examples of property in this class include:
(1) construction equipment;
(2) excavation equipment;
(3) loaders;
(4) batch plants;
(5) snow cats; and
(6) pavement sweepers.
b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.
c) 2002 model equipment purchased in 2001 is valued at 100 percent of acquisition cost.

TABLE 13

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 01 | 64% |
| 00 | 61% |
| 99 | 57% |
| 98 | 54% |
| 97 | 50% |
| 96 | 47% |
| 95 | 43% |
| 94 | 40% |
| 93 | 36% |
| 92 | 33% |
| 91 | 30% |
| 90 | 26% |
| 89 | 23% |
| 88 and prior | 19% |

13. Class 14 - Motor Homes.
a) Taxable value is calculated by applying the percent good against the cost new.
b) The 2002 percent good applies to 2002 models purchased in 2001.
c) Motor homes have a residual taxable value of $1,000.

TABLE 14

| Model Year | Percent Good of Cost New |
|---|---|
| 02 | 90% |
| 01 | 67% |
| 00 | 64% |
| 99 | 61% |
| 98 | 58% |
| 97 | 55% |
| 96 | 52% |
| 95 | 49% |
| 94 | 46% |
| 93 | 43% |
| 92 | 40% |
| 91 | 37% |
| 90 | 34% |
| 89 | 31% |
| 88 | 27% |
| 87 | 24% |
| 86 and prior | 21% |

14. Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products.
a) Examples of property in this class include:
(1) crystal growing equipment;
(2) die assembly equipment;
(3) wire bonding equipment;
(4) encapsulation equipment;
(5) semiconductor test equipment;
(6) clean room equipment;
(7) chemical and gas systems related to semiconductor manufacturing;
(8) deionized water systems;
(9) electrical systems; and
(10) photo mask and wafer manufacturing dedicated to semiconductor production.
b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 01 | 74% |
| 00 | 54% |
| 99 | 38% |
| 98 | 24% |
| 97 and prior | 10% |

15. Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.
a) Examples of property in this class include:
(1) billboards;
(2) sign towers;
(3) radio towers;
(4) ski lift and tram towers;
(5) non-farm grain elevators; and
(6) bulk storage tanks.
b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 01 | 95% |
| 00 | 91% |

| | |
|---|---|
| 99 | 87% |
| 98 | 82% |
| 97 | 78% |
| 96 | 74% |
| 95 | 70% |
| 94 | 67% |
| 93 | 63% |
| 92 | 58% |
| 91 | 53% |
| 90 | 48% |
| 89 | 43% |
| 88 | 39% |
| 87 | 34% |
| 86 | 27% |
| 85 | 21% |
| 84 | 14% |
| 83 and prior | 7% |

16. Class 17 - Boats.

a) Examples of property in this class include:

(1) boats; and

(2) boat motors.

b) Taxable value is calculated by applying the percent good factor against the cost new of the property.

c) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

(1) the following publications or valuation methods:

(a) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(b) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(c) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

i) the manufacturer's suggested retail price for comparable property; or

ii) the cost new established for that property by a documented valuation source; or

(2) the documented actual cost of new or used property in this class.

d) The 2002 percent good applies to 2002 models purchased in 2001.

e) Boats have a residual taxable value of $500.

TABLE 17

| Model Year | Percent Good of Cost New |
|---|---|
| 02 | 90% |
| 01 | 69% |
| 00 | 67% |
| 99 | 65% |
| 98 | 63% |
| 97 | 60% |
| 96 | 58% |
| 95 | 56% |
| 94 | 54% |
| 93 | 51% |
| 92 | 49% |
| 91 | 47% |
| 90 | 45% |
| 89 | 42% |
| 88 | 40% |
| 87 | 38% |
| 86 | 36% |
| 85 | 33% |
| 84 | 31% |
| 83 | 29% |
| 82 and prior | 27% |

17. Class 18 - Travel Trailers/Truck Campers.

a) Examples of property in this class include:

(1) travel trailers;

(2) truck campers; and

(3) tent trailers.

b) Taxable value is calculated by applying the percent good factor against the cost new.

c) The 2002 percent good applies to 2002 models purchased in 2001.

d) Trailers and truck campers have a residual taxable value of $500.

TABLE 18

| Model Year | Percent Good of Cost New |
|---|---|
| 02 | 90% |
| 01 | 66% |
| 00 | 63% |
| 99 | 60% |
| 98 | 57% |
| 97 | 54% |
| 96 | 51% |
| 95 | 48% |
| 94 | 46% |
| 93 | 43% |
| 92 | 40% |
| 91 | 37% |
| 90 | 34% |
| 89 | 31% |
| 88 | 28% |
| 87 | 25% |
| 86 and prior | 22% |

18. Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

a) Examples of property in this class include:

(1) oil and gas exploration equipment;

(2) distillation equipment;

(3) wellhead assemblies;

(4) holding and storage facilities;

(5) drill rigs;

(6) reinjection equipment;

(7) metering devices;

(8) cracking equipment;

(9) well-site generators, transformers, and power lines;

(10) equipment sheds;

(11) pumps;

(12) radio telemetry units; and

(13) support and control equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

| Year of | Percent Good |
|---|---|

| Acquisition | of Acquisition Cost |
|---|---|
| 01 | 92% |
| 00 | 87% |
| 99 | 80% |
| 98 | 73% |
| 97 | 67% |
| 96 | 61% |
| 95 | 55% |
| 94 | 48% |
| 93 | 41% |
| 92 | 33% |
| 91 | 25% |
| 90 | 17% |
| 89 and prior | 9% |

19. Class 21 - Commercial and Utility Trailers.

a) Examples of property in this class include:

(1) commercial trailers;

(2) utility trailers;

(3) cargo utility trailers;

(4) boat trailers;

(5) converter gears;

(6) horse and stock trailers; and

(7) all trailers not included in Class 18.

b) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

c) The 2002 percent good applies to 2002 models purchased in 2001.

d) Commercial and utility trailers have a residual taxable value of $500.

TABLE 21

| Model Year | Percent Good of Cost New |
|---|---|
| 02 | 95% |
| 01 | 53% |
| 00 | 51% |
| 99 | 49% |
| 98 | 46% |
| 97 | 44% |
| 96 | 42% |
| 95 | 39% |
| 94 | 37% |
| 93 | 35% |
| 92 | 33% |
| 91 | 30% |
| 90 | 28% |
| 89 | 26% |
| 88 | 23% |
| 87 | 21% |
| 86 and prior | 19% |

20. Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

a) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

b) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary for this class.

21. Class 23 - Aircraft Subject to the Aircraft Uniform Fee and Not Listed in the Aircraft Bluebook Price Digest.

a) Examples of property in this class include:

(1) kit-built aircraft;

(2) experimental aircraft;

(3) gliders;

(4) hot air balloons; and

(5) any other aircraft requiring FAA registration.

b) Aircraft subject to the aircraft uniform fee, but not listed in the Aircraft Bluebook Price Digest, are valued by applying the percent good factor against the acquisition cost of the aircraft.

c) Aircraft requiring Federal Aviation Agency registration and kept in Utah must be registered with the Motor Vehicle Division of the Tax Commission.

TABLE 23

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 01 | 75% |
| 00 | 71% |
| 99 | 67% |
| 98 | 63% |
| 97 | 59% |
| 96 | 55% |
| 95 | 51% |
| 94 | 47% |
| 93 | 43% |
| 92 | 39% |
| 91 | 35% |
| 90 and prior | 31% |

22. Class 24 - Leasehold Improvements.

a) This class includes leasehold improvements to real property installed by a tenant. The Class 24 schedule is to be used only with leasehold improvements that are assessed to the lessee of the real property pursuant to Tax Commission rule R884-24P-32. Leasehold improvements include:

(1) walls and partitions;

(2) plumbing and roughed-in fixtures;

(3) floor coverings other than carpet;

(4) store fronts;

(5) decoration;

(6) wiring;

(7) suspended or acoustical ceilings;

(8) heating and cooling systems; and

(9) iron or millwork trim.

b) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

c) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

| Year of Installation | Percent of Installation Cost |
|---|---|
| 01 | 94% |
| 00 | 88% |
| 99 | 82% |
| 98 | 77% |
| 97 | 71% |
| 96 | 65% |
| 95 | 59% |

| | |
|---|---|
| 94 | 54% |
| 93 | 48% |
| 92 | 42% |
| 91 | 36% |
| 90 and prior | 30% |

23. Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

a) Examples of property in this class include:

(1) aircraft parts manufacturing jigs and dies;

(2) aircraft parts manufacturing molds;

(3) aircraft parts manufacturing patterns;

(4) aircraft parts manufacturing taps and gauges;

(5) aircraft parts manufacturing test equipment; and

(6) aircraft parts manufacturing fixtures.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 01 | 83% |
| 00 | 68% |
| 99 | 52% |
| 98 | 35% |
| 97 | 19% |
| 96 and prior | 4% |

24. Class 26 - Personal Watercraft.

a) Examples of property in this class include:

(1) motorized personal watercraft; and

(2) jet skis.

b) Taxable value is calculated by applying the percent good factor against the cost new.

c) The 2002 percent good applies to 2002 models purchased in 2001.

d) Personal watercraft have a residual taxable value of $500.

TABLE 26

| Model Year | Percent Good of Cost New |
|---|---|
| 02 | 90% |
| 01 | 63% |
| 00 | 59% |
| 99 | 55% |
| 98 | 51% |
| 97 | 48% |
| 96 | 44% |
| 95 | 40% |
| 94 | 36% |
| 93 | 32% |
| 92 | 28% |
| 91 | 24% |
| 90 | 20% |
| 89 and prior | 17% |

25. Class 27 - Electrical Power Generating Equipment and Fixtures

a) Examples of property in this class include:

(1) electrical power generators; and

(2) control equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 01 | 97% |
| 00 | 95% |
| 99 | 92% |
| 98 | 90% |
| 97 | 87% |
| 96 | 84% |
| 95 | 82% |
| 94 | 79% |
| 93 | 77% |
| 92 | 74% |
| 91 | 71% |
| 90 | 69% |
| 89 | 66% |
| 88 | 64% |
| 87 | 61% |
| 86 | 58% |
| 85 | 56% |
| 84 | 53% |
| 83 | 51% |
| 82 | 48% |
| 81 | 45% |
| 80 | 43% |
| 79 | 40% |
| 78 | 38% |
| 77 | 35% |
| 76 | 32% |
| 75 | 30% |
| 74 | 27% |
| 73 | 25% |
| 72 | 22% |
| 71 | 19% |
| 70 | 17% |
| 69 | 14% |
| 68 | 12% |
| 67 and prior | 9% |

F. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2002.

**R884-24P-34. Use of Sales or Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704.**

A. Market data gathered for purposes of an assessment/sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program whereby all similar properties are given equitable and uniform treatment.

B. Sales or appraisal data gathered in conjunction with a ratio study shall not be used for an isolated reappraisal of the sold or appraised properties.

C. Information derived from ratio studies regarding the values assigned to real property and personal property shall not be used to establish the apportionment between real and personal property in future assessments.

**R884-24P-35. Annual Affidavit of Exempt Use Pursuant to**

**Utah Code Ann. Section 59-2-1101.**

A. The owner of property receiving a full or partial exemption from property tax based on exclusive use for religious, charitable or educational purposes, is required to file the annual affidavit prescribed in Utah Code Ann. Section 59-2-1101.

**R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.**

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

**R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.**

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;

2. property identification number;

3. description and location of the property; and

4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

**R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201(4).**

A. Definitions.

1. "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

a. RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

b. RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

B. Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method which has been determined to be nonoperating, and which is not necessary to the conduct of the business, shall be assessed separately by the local county assessor. For purposes of this rule:

C. Assessment procedures.

1. Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

2. RR-ROW is considered as operating and as necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered as railroad operating revenues.

3. Real property outside of the RR-ROW which is necessary to the conduct of the railroad operation is considered as part of the unitary value. Some examples are: company homes occupied by superintendents and other employees on 24-hour call, storage facilities for railroad operations, communication facilities, and spur tracks outside of RR-ROW.

4. Abandoned RR-ROW is considered as nonoperating and shall be reported as such by the railroad companies.

5. Real property outside of the RR-ROW which is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are: land leased to service station operations, grocery stores, apartments, residences, and agricultural uses.

6. RR-ROW obtained by government grant or act of Congress is deemed operating property.

D. Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so the property may be placed on the roll for local assessment.

E. Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Utah Code Ann. Title 63, Chapter 46b.

**R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.**

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such

person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

**R884-24P-41. Adjustment or Deferral of Property Taxes Pursuant to Utah Code Ann. Section 59-2-1347.**

A. Requested adjustments to taxes for past years may not be made under Utah Code Ann. Section 59-2-1347 if the requested adjustment is based only on property valuation.

B. Utah Code Ann. Section 59-2-1347 applies only to taxes levied but unpaid and may not serve as the basis for refunding taxes already paid.

C. Utah Code Ann. Section 59-2-1347 may only be applied to taxes levied for the five most recent tax years except where taxes levied remain unpaid as a result of administrative action or litigation.

**R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508(2), and Section 59-2-705.**

A. The Tax Commission is responsible for auditing the administration of the Farmland Assessment Act to verify proper listing and classification of all properties assessed under the act. The Tax Commission also conducts routine audits of personal property accounts.

1. If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

2. A revised assessment notice or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

3. The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

B. Assessors shall not alter results of an audit without first submitting the changes to the Tax commission for review and approval.

C. The Tax Commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

**R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.**

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

**R884-24P-47. Uniform Tax on Aircraft Pursuant to Utah Code Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303.**

A. Registration of aircraft requires payment of a uniform tax in lieu of ad valorem personal property tax. This tax shall be collected by the county assessor at the time of registration at the rate prescribed in Section 59-2-404.

B. The average wholesale market value of the aircraft is the arithmetic mean of the average low wholesale book value and the average high wholesale book value. This average price will be used as the basis for the initial assessment. These amounts are obtained from the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of registration for all aircraft listed in that publication.

1. The average wholesale market value of aircraft subject to registration but not shown in the Aircraft Bluebook Price Digest will be assessed according to the annual depreciation schedule for aircraft valuation set forth in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules."

2. Instructions for interpretation of codes are found inside the Aircraft Bluebook Price Digest.

a) Average low wholesale values are found under the heading "Average equipped per base avg change/invtry."

b) Average high wholesale values are found under the heading "change mktbl."

c) Aircraft values not in accordance with "average" may be adjusted by the assessor following the instructions in the Bluebook. Factors that have the greatest impact on value include: high engine time, air worthiness directives not complied with, status of annual inspection, crash damage, paint condition, and interior condition.

C. The uniform tax is due each year the aircraft is registered in Utah. If the aircraft is sold within the same registration period, no additional uniform tax shall be due. However, the purchaser shall pay any delinquent tax as a

condition precedent to registration.

D. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the uniform tax shall be prorated based on the number of months remaining in the registration period.

1. Any portion of a month shall be counted as a full month. For example, if registration is required during July, 50 percent of the uniform tax shall be paid as a condition of registration.

2. If the aircraft is moved to Utah during the year, and property tax was paid to another state prior to moving the aircraft into Utah, any property tax paid shall be allowed as a credit against the prorated uniform tax due in Utah.

a) This credit may not be refunded if the other state property tax exceeds the uniform tax due in Utah for the comparable year.

b) Proof of payment shall be submitted before credit is allowed.

E. The uniform tax collected by county assessors shall be distributed to the taxing districts of the county in which the aircraft is located as shown on the registration application. If the aircraft is registered in a county other than the county of the aircraft location, the tax collected shall be forwarded to the appropriate county within five working days.

F. The Tax Commission shall supply registration forms and numbered decals to the county assessors. Forms to assess the uniform tax shall be prepared by the counties each year. The Tax Commission shall maintain an owners' data base and supply the counties with a list of registrations by county after the first year and shall also supply registration renewal forms preprinted with the prior year's registration information.

G. The aircraft owner or person or entity in possession thereof shall immediately provide access to any aircraft hangar or other storage area or facility upon request by the assessor or the assessor's designee in order to permit the determination of the status of registration of the aircraft, and the performance of any other act in furtherance of the assessor's duties.

H. The provisions applicable to securing or collecting personal property taxes set forth in Sections 59-2-1302 and 59-2-1303 shall apply to the collection of delinquent uniform taxes.

I. If the aircraft owner and the county assessor cannot reach agreement concerning the aircraft valuation, the valuation may be appealed to the county board of equalization under Section 59-2-1005.

**R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.**

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;

(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

**R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.**

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

**R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-103.**

A. "Household" is as defined in Section 59-2-1202.

B. "Primary residence" means the location where domicile has been established.

C. Except as provided in D. and F.3., the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.

D. An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;

2. the length of any continuous residency in the location claimed as domicile;

3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

4. the presence of family members in a given location;

5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

6. the physical location of the individual's place of business or sources of income;

7. the use of local bank facilities or foreign bank institutions;

8. the location of registration of vehicles, boats, and RVs;

9. membership in clubs, churches, and other social organizations;

10. the addresses used by the individual on such things as:

a) telephone listings;

b) mail;

c) state and federal tax returns;

d) listings in official government publications or other correspondence;

e) driver's license;

f) voter registration; and

g) tax rolls;

11. location of public schools attended by the individual or the individual's dependents;

12. the nature and payment of taxes in other states;

13. declarations of the individual:

a) communicated to third parties;

b) contained in deeds;

c) contained in insurance policies;

d) contained in wills;

e) contained in letters;

f) contained in registers;

g) contained in mortgages; and

h) contained in leases.

14. the exercise of civil or political rights in a given location;

15. any failure to obtain permits and licenses normally required of a resident;

16. the purchase of a burial plot in a particular location;

17. the acquisition of a new residence in a different location.

F. Administration of the Residential Exemption.

1. Except as provided in F.2. and F.4., the first one acre of land per residential unit shall receive the residential exemption.

2. If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

4. A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

**R884-24P-53. 2002 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.**

A. Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

1. The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

2. Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

3. County assessors may not deviate from the schedules.

4. Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

B. All property defined as farmland pursuant to Section 59-2- 501 shall be assessed on a per acre basis as follows:

1. Irrigated farmland shall be assessed under the following classifications.

a) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

| | | |
|---|---|---|
| 1) | Box Elder | 750 |
| 2) | Cache | 600 |
| 3) | Carbon | 525 |
| 4) | Davis | 750 |
| 5) | Emery | 500 |
| 6) | Iron | 750 |
| 7) | Kane | 450 |
| 8) | Millard | 750 |
| 9) | Salt Lake | 625 |
| 10) | Utah | 675 |
| 11) | Washington | 625 |
| 12) | Weber | 700 |

b) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

| | | |
|---|---|---|
| 1) | Box Elder | 650 |
| 2) | Cache | 500 |
| 3) | Carbon | 425 |
| 4) | Davis | 650 |
| 5) | Duchesne | 500 |
| 6) | Emery | 400 |
| 7) | Grand | 375 |
| 8) | Iron | 650 |
| 9) | Juab | 425 |
| 10) | Kane | 350 |
| 11) | Millard | 650 |
| 12) | Salt Lake | 525 |
| 13) | Sanpete | 550 |
| 14) | Sevier | 600 |
| 15) | Summit | 475 |
| 16) | Tooele | 425 |
| 17) | Utah | 575 |
| 18) | Wasatch | 475 |
| 19) | Washington | 525 |
| 20) | Weber | 600 |

c) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

| | | |
|---|---|---|
| 1) | Beaver | 525 |
| 2) | Box Elder | 500 |
| 3) | Cache | 350 |
| 4) | Carbon | 275 |
| 5) | Davis | 500 |
| 6) | Duchesne | 350 |
| 7) | Emery | 250 |
| 8) | Garfield | 190 |
| 9) | Grand | 225 |
| 10) | Iron | 500 |
| 11) | Juab | 275 |
| 12) | Kane | 200 |
| 13) | Millard | 500 |
| 14) | Morgan | 350 |
| 15) | Piute | 350 |
| 16) | Rich | 250 |
| 17) | Salt Lake | 375 |
| 18) | San Juan | 190 |
| 19) | Sanpete | 400 |
| 20) | Sevier | 450 |
| 21) | Summit | 325 |
| 22) | Tooele | 275 |
| 23) | Uintah | 350 |
| 24) | Utah | 425 |
| 25) | Wasatch | 325 |
| 26) | Washington | 375 |
| 27) | Wayne | 350 |
| 28) | Weber | 450 |

d) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

| | | |
|---|---|---|
| 1) | Beaver | 425 |
| 2) | Box Elder | 400 |
| 3) | Cache | 250 |
| 4) | Carbon | 175 |
| 5) | Daggett | 250 |
| 6) | Davis | 400 |
| 7) | Duchesne | 250 |
| 8) | Emery | 150 |
| 9) | Garfield | 90 |
| 10) | Grand | 125 |
| 11) | Iron | 400 |
| 12) | Juab | 175 |
| 13) | Kane | 100 |
| 14) | Millard | 400 |
| 15) | Morgan | 250 |
| 16) | Piute | 250 |
| 17) | Rich | 150 |
| 18) | Salt Lake | 275 |
| 19) | San Juan | 90 |
| 20) | Sanpete | 300 |
| 21) | Sevier | 350 |
| 22) | Summit | 225 |
| 23) | Tooele | 175 |
| 24) | Uintah | 250 |
| 25) | Utah | 325 |
| 26) | Wasatch | 225 |
| 27) | Washington | 275 |
| 28) | Wayne | 250 |
| 29) | Weber | 350 |

2. Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

| | | |
|---|---|---|
| a) | Box Elder | 610 |
| b) | Davis | 610 |
| c) | Utah | 570 |
| d) | Washington | 750 |
| e) | Weber | 610 |
| f) | All other counties | 580 |

3. Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

| | | |
|---|---|---|
| 1) | Beaver | 200 |
| 2) | Box Elder | 190 |
| 3) | Cache | 215 |
| 4) | Carbon | 125 |

| | | |
|---|---|---|
| 5) | Daggett | 165 |
| 6) | Davis | 235 |
| 7) | Duchesne | 150 |
| 8) | Emery | 105 |
| 9) | Garfield | 100 |
| 10) | Grand | 105 |
| 11) | Iron | 190 |
| 12) | Juab | 130 |
| 13) | Kane | 90 |
| 14) | Millard | 165 |
| 15) | Morgan | 160 |
| 16) | Piute | 155 |
| 17) | Rich | 125 |
| 18) | Salt Lake | 180 |
| 19) | Sanpete | 180 |
| 20) | Sevier | 190 |
| 21) | Summit | 185 |
| 22) | Tooele | 170 |
| 23) | Uintah | 170 |
| 24) | Utah | 195 |
| 25) | Wasatch | 185 |
| 26) | Washington | 195 |
| 27) | Wayne | 150 |
| 28) | Weber | 240 |

4. Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

a) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

| | | |
|---|---|---|
| 1) | Beaver | 45 |
| 2) | Box Elder | 65 |
| 3) | Cache | 70 |
| 4) | Carbon | 45 |
| 5) | Davis | 60 |
| 6) | Duchesne | 45 |
| 7) | Garfield | 45 |
| 8) | Grand | 45 |
| 9) | Iron | 45 |
| 10) | Juab | 55 |
| 11) | Kane | 45 |
| 12) | Millard | 65 |
| 13) | Morgan | 65 |
| 14) | Rich | 50 |
| 15) | Salt Lake | 45 |
| 16) | San Juan | 40 |
| 17) | Sanpete | 45 |
| 18) | Summit | 45 |
| 19) | Tooele | 45 |
| 20) | Uintah | 40 |
| 21) | Utah | 40 |
| 22) | Washington | 45 |
| 23) | Weber | 60 |

b) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

| | | |
|---|---|---|
| 1) | Beaver | 10 |
| 2) | Box Elder | 30 |
| 3) | Cache | 35 |
| 4) | Carbon | 10 |
| 5) | Davis | 25 |
| 6) | Duchesne | 10 |
| 7) | Garfield | 10 |
| 8) | Grand | 10 |
| 9) | Iron | 10 |
| 10) | Juab | 20 |
| 11) | Kane | 10 |
| 12) | Millard | 30 |
| 13) | Morgan | 30 |
| 14) | Rich | 15 |
| 15) | Salt Lake | 10 |
| 16) | San Juan | 5 |
| 17) | Sanpete | 10 |
| 18) | Summit | 10 |
| 19) | Tooele | 10 |
| 20) | Uintah | 5 |
| 21) | Utah | 5 |
| 22) | Washington | 10 |
| 23) | Weber | 25 |

5. Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

TABLE 9
Grazing Land

| | | |
|---|---|---|
| a) | Graze I | |
| | 1) All Counties | 55 |
| b) | Graze II | |
| | 2) All Counties | 15 |
| c) | Graze III | |
| | 3) All Counties | 10 |
| d) | Graze IV | |
| | 4) All Counties | 5 |

6. Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 10
Nonproductive Land

| | | |
|---|---|---|
| a) | Nonproductive Land | |
| | 1) All Counties | 5 |

**R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.**

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;

12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and

13. disclaimers by the county with respect to sale procedures and actions.

**R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.**

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

**R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.**

A. Definitions.

1. "Issued" means the date on which the judgment is signed.

2. "One percent of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

B. A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

C. The judgment levy public hearing required by Section 59- 2-918.5 shall be held as follows:

1. For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

2. For taxing entities operating under a January 1 through December 31 fiscal year:

a) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

b) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

3. If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by C.1. and C.2.b) shall be held at the same time as the hearing required under Section 59-2-919.

D. If the Section 59-2-918.5 advertisement is combined with the Section 59-2-918 or 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

E. In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

F. All taxing entities imposing a judgment levy shall file with the Tax Commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

1. The signed statement shall contain the following information for each judgment included in the judgment levy:

a) the name of the taxpayer awarded the judgment;

b) the appeal number of the judgment; and

c) the taxing entity's pro rata share of the judgment.

2. Along with the signed statement, the taxing entity must provide the Tax Commission the following:

a) a copy of all judgment levy newspaper advertisements required;

b) the dates all required judgment levy advertisements were published in the newspaper;

c) a copy of the final resolution imposing the judgment levy;

d) a copy of the Notice of Property Valuation and Tax Changes, if required; and

e) any other information required by the Tax Commission.

G. The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

**R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.**

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

**R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.**

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

**R884-24P-60. Age-Based Uniform Fee on Tangible Personal**

**Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.**

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the current calendar year.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

**R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.**

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2- 405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2- 217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2- 104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

**R884-24P-62. Valuation of State Assessed Utility and Transportation Properties Pursuant to Utah Code Ann. Section 59-2-201.**

A. Definitions:

1. "Attributes" of property include all defining characteristics inseparable from real property and tangible personal property, such as size, location and other attributes

inherent in the property itself.

2. "Cost regulated utility" means any public utility assessable by the Commission pursuant to Section 59-2-201, whose allowed rates are determined by a state or federal regulatory commission by reference to a rate of return applied to rate base where the rate of return and rate base are set by the regulatory body.

3. "Depreciation" is the loss in value from any cause. There are two distinct types of depreciation encountered in the appraisal of properties subject to this rule: accounting depreciation and appraisal depreciation. Accounting depreciation is often called "book depreciation" and is generally calculated in accordance with generally accepted accounting principles or regulatory guidelines. Appraisal depreciation is the total loss in property value from any cause. There are three recognized types of appraisal depreciation: physical deterioration, functional obsolescence and external obsolescence. Physical deterioration is the physical wearing out of the property evidenced by wear and tear, decay and structural defects. Physical deterioration includes the loss in value due to normal aging. Functional obsolescence includes the loss in value due to functional deficiencies or inadequacies within the property depicted as the inability of the property to perform adequately the functions for which it was originally designed. External (economic) obsolescence is the loss in value from causes outside the boundaries of the property and is generally incurable. Appraisal depreciation is often called "accrued depreciation."

4. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

5. "Property which operates as a unit" or "unitary property" means property that is functionally or physically integrated in operation or construction and functions as an economic unit or "one thing."

6. "Rate Base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

7. "State Assessed Utility and Transportation Properties" include all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state; all operating property of an airline, air charter service, and air contract service; and all property of public utilities as defined in Utah Code Ann. Section 59-2-102(21). For property tax valuation purposes, these properties may generally be classified as telecommunication properties, energy properties, and transportation properties, some of which may be cost regulated utilities.

a. "Telecommunication properties" means all telephone properties, including local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar type properties that operate as a unit across county lines and are assessable by the Commission pursuant to Section 59-2-201.

b. "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar type entities and are assessable by the Commission pursuant to Section 59-2-201.

c. "Transportation properties" means all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar type properties that operate as a unit across county lines and are assessable by the Commission pursuant to Section 59-2-201.

8. "Taxable Property" means property that is subject to assessment and taxation according to its value but does not include intangible property. Intangible property is property that is capable of private ownership separate from tangible property and includes moneys, credits, bonds, stocks, representative property, franchises, licenses, trade names, copyrights, and patents.

B. General Valuation Principles. State assessed utility and transportation properties shall be assessed at fair market value for property tax purposes based on generally accepted appraisal theory and the provisions of this rule.

1. Taxable Property and Unit Methodologies. All taxable property, as defined in this rule, is subject to assessment, and if the property operates together as a unit, the assemblage or enhanced value attributable to the taxable property operating together should be included in the assessed value. The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the correlation process.

a. The preferred methods to determine the fair market value for all state assessed utility and transportation property are a cost indicator and a yield capitalization income indicator.

b. Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary in order to more accurately estimate the fair market value, which includes assemblage or enhanced value, of properties that operate together as a unit.

c. The direct capitalization income method and the stock and debt market method may tend to capture the value of intangible property, as defined in this rule, at higher levels than other methods. To the extent such intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the correlation process, as set forth in Section B.5.

d. No final estimate of value will be imposed or considered unless the weighting percentages of the various value indicators used to correlate the final estimate of value are disclosed in writing. Disclosure of the weighting percentages also includes a written explanation describing why a party weighted the particular indicators of value by the percentages so indicated.

e. A party may challenge a final estimate of value by proposing changes to the application of a methodology, by proposing a different valuation methodology or weighting formula, or by presenting any other evidence or argument that establishes a more accurate final estimate of value. A challenge to a final estimate of value will be considered effective only if the proposed valuation methodology or weighting formula

demonstrates, by a preponderance of the evidence, that it establishes a more accurate estimate of fair market value.

2. Cost Indicator. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. Generally a cost indicator may be developed under one or more of the following approaches; replacement cost new less depreciation ("RCNLD"), reproduction cost less depreciation ("Reproduction Cost"), and historic cost less depreciation ("HCLD").

a. RCNLD. Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout.

b. Reproduction Cost. Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying all the deficiencies, superadequacies, and obsolescence of the subject property. Reproduction cost shall be adjusted for appropriate depreciation.

c. HCLD. The HCLD approach is the historic cost less depreciation. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the industry may be used as a trending adjustment to HCLD.

d. In the mass appraisal environment for state assessed utility and transportation property, RCNLD is impractical to implement. The preferred cost indicator of value is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value. A challenge to the use of HCLD as the cost indicator of value will be considered effective only if the proposed cost indicator of value demonstrates, by a preponderance of the evidence, that it establishes a more accurate cost estimate of value.

3. Income Indicator. An income indicator recognizes that value is created by the expectation of future benefits to be derived from the property.

a. Yield Capitalization Approach. This income indicator shall be determined by converting future cash flows to present value as of the lien date by capitalizing future estimated cash flows at an appropriate discount rate. The yield capitalization formula is CF/(k-g), where "CF" is cash flow, "k" is the nominal, risk adjusted discount rate, and "g" is the expected future growth of the cash flow in the numerator. Each of these terms is defined below. A discounted cash flow method in which (i) individual years' cash flow are projected, (ii) the formula CF/(k-g) is used to compute terminal value, and (iii) the projected cash flows and terminal value are discounted back to present value; may be used as a substitute income valuation approach for the above yield capitalization approach when the use of a single representative annual cash flow is clearly inappropriate.

(1) Cash Flow ("CF"). Cash flow is restricted to cash flows provided by the operating property in existence on the lien date, together with any replacements intended to maintain, and not expand or modify, the existing capacity or function thereof. Cash flow is calculated as net operating income (NOI) plus noncash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to net working capital necessary to achieve the expected growth "g". The cash flows should reflect the cash flows available to pay sources of financing for the assets in existence on the lien date or an equivalent pool of assets. The capital expenditures should include only those expenditures necessary to replace or maintain existing plant and should not include any expenditures intended for expansion or productivity and capacity enhancements. If a taxpayer is unable to separate replacement capital expenditures with reasonable accuracy from expansion capital expenditures, the taxpayer must provide the Property Tax Division sufficient data to adjust the "g" in the yield capitalization formula appropriately. If the taxpayer is unable to provide data to adjust the "g", the Property Tax Division will estimate an adjustment to cash flows or "g" based on the best information available, including industry specific cost indicies. Information necessary for the Property Tax Division to calculate the appropriate cash flow shall be summarized and submitted to the Property Tax Division by March 1 on a form provided by the Property Tax Division. The calculation of Cash Flow may be illustrated by the following formula: CF = NOI + Noncash Charges - Replacement Capital Expenditures - Additions to Net Working Capital

(a) Cash flow is the projected cash flow for the next year and may be estimated by reviewing the last five years' cash flows, forecasting future cash flows, or a combination of both.

(b) If cash flows for a subsidiary company are not available or are not allocated between subsidiary companies on the parent company's cash flow statements, then a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. Whichever criterion is chosen, the subsidiary's total is divided by the parent's total to produce a percentage that is applied to the parent's total cash flow to estimate the subsidiary's cash flow.

(c) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, Property Tax Division may estimate cash flow using the best information available.

(2) Discount Rate ("k"). The discount rate shall be based upon a weighted average cost of capital considering current market debt rates and equity yields determined by recognized market measurements such as capital asset pricing model ("CAPM"), Risk Premium, Dividend Growth models, or other recognized models. The weighting of debt and equity should reflect the market value weightings of comparable companies in the industry.

(a) Cost of Debt. The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(b) Cost of Equity. In the discount rate, the CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(c) CAPM. The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

(i) Risk Free Rate ("R(f)"). The risk free rate shall be the

current market rate on 20 year Treasury bonds.

(ii) Beta. The beta should reflect an average or value-weighted average of comparable companies. The beta of the comparable companies should be drawn from Value Line or a comparable source. Once a source is chosen, beta should be drawn consistently from this source. However, the beta of the specific assessed property should also be considered.

(iii) Risk Premium. The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson study that summarizes information for the calendar year immediately preceding the lien date.

(3) Growth Rate ("g"). The growth rate "g" is the expected future growth of the cash flow in the numerator of the formula given in CF/(k-g). If insufficient information is available to the Property Tax Division, either from public sources or from the taxpayer, to determine an appropriate "g", then "g" will be the expected inflationary rate as given by the Gross Domestic Product Price Deflator obtained in Value Line. The inflationary rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

b. Direct Capitalization Approach. This is an income approach that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by an appropriate income capitalization rate or by multiplying the normalized income estimate by an appropriate factor.

4. Market Indicator. The market value of property is directly related to the prices of comparable, competitive properties; or the sale of the specific assessed property when such information is available. The market or sales comparison approach is estimated by comparing the subject property to similar properties that have recently sold. Because sales of state assessed utility and transportation properties are infrequent, the stock and debt approach may be used as a surrogate to the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

5. Correlation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, and quality or reliability of data and the strength and weaknesses of each value indicator. The percentage weight assigned to each indicator in the correlation process shall be established, disclosed and explained as set forth in Section B.1.

6. Non-operating property. Property that is not necessary to the operation of the state assessed utility or transportation properties and is assessed by the local county assessor, and property separately assessed by the Property Tax Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

7. Leased property. All tangible operating property owned, leased, or used by state assessed utilities and transportation companies is subject to assessment.

8. Property Specific Considerations. The Commission recognizes that because of unique differences between certain types of properties and industries, modifications or alternatives to these general cost and yield income indicators, as set forth in Sections C., D., and E., may be required for the following industries: (a) cost regulated utilities, (b) telecommunications properties, and (c) transportation properties.

C. Cost regulated utilities:

1. Cost Indicator. The HCLD approach is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. The HCLD approach is calculated by taking the historic cost less deprecation as reflected in the state assessed utility's net plant accounts, and by then (1) subtracting intangible property, (2) subtracting any items not included in the state assessed utility's rate base (e.g., deferred federal income taxes ("DFIT") and, if appropriate, acquisition adjustments), and (3) adding any taxable items not included in the state assessed utility's net plant account or in rate base.

a. Deferred Federal Income Taxes. DFIT is an accounting entry that reflects a timing difference for reporting income and expenses. Accumulated DFIT reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude DFIT from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by DFIT for rate base regulated companies, DFIT may be removed from HCLD as one type of economic obsolescence.

b. DFIT can be one type of economic obsolescence. If a study is prepared that authenticates actual economic obsolescence and is approved by the Commission, the amount of the actual economic obsolescence will be subtracted from HCLD to develop the cost indicator of value.

2. Income indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

D. Telecommunications Properties:

1. Cost Indicator. The HCLD approach, which may, if appropriate, be trended as set forth in Section B.2., is the preferred method to derive the cost indicator of value.

2. Income Indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

E. Transportation Properties.

1. Railroads.

a. Cost Indicator. The Railroad industry is not rate base regulated and does not typically have a majority of its investment in property of recent vintage. Accordingly, for Railroads, the cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value. Cost valuation should be based on trended historical costs less depreciation. Additions should be made for material and supplies and operating leased equipment. Deductions should be made for all capitalized intangible property such as customized computer software. All forms of depreciation should be measured and appropriately deducted.

b. Income Indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

2. Commercial airlines.

a. Cost Indicator. The HCLD approach, appropriately

trended as set forth in Section B.2., is the preferred method to derive the cost indicator of value.

b. Income Indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

F. The provisions of this rule are retrospective to January 1, 2001.

**R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.**

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

**R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Disabled Veterans and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.**

A. For purposes of Sections 59-2-1104 and 59-2-1106, taxable value of vehicles subject to the Section 59-2-405.1 uniform fee shall be calculated by dividing the Section 59-2-405.1 uniform fee the vehicle is subject to by .015.

**R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.**

A. "Transitory personal property"means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

**R884-24P-66. Appeal to County Board of Equalization Pursuant to Utah Code Ann. Section 59-2-1004.**

A.1. "Factual error" means an error that is:

a) objectively verifiable without the exercise of discretion, opinion, or judgment, and

b) demonstrated by clear and convincing evidence.

2. Factual error includes:

a) a mistake in the description of the size, use, or ownership of a property;

b) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

c) an error in the classification of a property that is eligible for a property tax exemption under:

(1) Section 59-2-103; or

(2) Title 59, Chapter 2, Part 11;

d) valuation of a property that is not in existence on the lien date; and

e) a valuation of a property assessed more than once, or by the wrong assessing authority.

B. Except as provided in D., a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

1. During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

2. During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

3. The county did not comply with the notification requirements of Section 59-2-919(4).

4. A factual error is discovered in the county records pertaining to the subject property.

5. The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

C. Appeals accepted under B.4. shall be limited to correction of the factual error and any resulting changes to the property's valuation.

D. The provisions of B. apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

E. The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

**KEY: taxation, personal property, property tax, appraisals**
**December 11, 2001** **Art. XIII, Sec 2**
**Notice of Continuation April 5, 2002** **9-2-201**
**11-13-25**
**41-1a-202**
**41-1a-301**
**59-1-210**
**59-2-102**
**59-2-103**
**59-2-104**
**59-2-201**
**59-2-210**
**59-2-211**
**59-2-301**
**59-2-302**
**59-2-303**
**59-2-305**
**59-2-306**
**59-2-401**
**59-2-402**
**59-2-404**
**59-2-405**
**59-2-405.1**
**59-2-406**
**59-2-501 through 59-2-515**
**59-2-701**
**59-2-702**
**59-2-703**
**59-2-704**
**59-2-704.5**
**59-2-705**
**59-2-801**
**59-2-918 through 59-2-924**
**59-2-1002**
**59-2-1004**
**59-2-1005**
**59-2-1006**
**59-2-1101**
**59-2-1104**
**59-2-1106**
**59-2-1107 through 59-2-1109**
**59-2-1113**
**59-2-1202**
**59-2-1202(5)**
**59-2-1302**
**59-2-1303**
**59-2-1317**
**59-2-1328**
**59-2-1330**
**59-2-1347**
**59-2-1351**
**59-2-1365**

**R912. Transportation, Motor Carrier, Ports of Entry.**
**R912-76. Single Tire Configuration.**
**R912-76-1. Purpose.**

The use of single tires on heavy vehicles has been indicated to be one of the factors damaging to pavements, in the form of increased fatigue and rutting. Rutting has been shown to have increased dramatically in recent years. Significant pavement rutting can result in an unsafe condition to the traveling public, and is very costly to correct, the Transportation Commission finds it in the best interest of the safety and convenience of the traveling public to limit and discourage the use of single tires in Utah.

**R912-76-2. Authority.**

Sections 72-1-102, 72-7-404, 72-7-406, 72-1-201.

**R912-76-3. Provisions.**

1. Tire loading on vehicles requiring an overweight or oversize permit shall not exceed 500 pounds per inch of tire width for tires eleven inches wide and greater, and 450 pounds per inch of tire width for tires less than eleven inches wide, as designated by the tire manufacturer on the side wall of the tire. Single axle loading shall not exceed 20,000 pounds, and tandem axle loading shall not exceed 34,000 pounds.

2. The use of single tires on any combination vehicle requiring an overweight or oversize permit shall not be allowed on single axles. A single axle is defined as one having more than eight feet between it and the nearest axle or group of axles on the vehicle.

3. Tire loading on permitted vehicles shall not exceed 600 pounds per inch of tire width as designated by the tire manufacturer on the sidewall.

D. Non-divisible loads may be exempt from these restrictions upon written approval from the Department.

E. No wheel on steering or castering axles shall exceed 600 pounds per inch of tire width.

F. In no case shall any tire loading exceed the tire manufacturer maximum load rating (existing Federal requirement).

G. Studies presently underway on the safety and pavement damage done by single tires may lead to modifications to this rule in the near future. This may lead to the total elimination or expanded use of single tires on other than steering or castering axles.

**KEY: tires**

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|---|---|
| **1993** | **72-1-102** |
| **Notice of Continuation September 28, 2002** | **72-7-404** |
| | **72-7-406** |
| | **72-1-201** |

**R986. Workforce Services, Employment Development.**
**R986-200. Family Employment Program.**
**R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.**

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA. Utah is required to file a "State Plan" to obtain the funding. A copy of the State Plan is available at Department administrative offices. The regulations contained in 45 CFR 260 through 45 CFR 265 (1999) are also applicable and incorporated herein by reference.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

**R986-200-202. Family Employment Program (FEP).**

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with only one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least $500 per month.

(3) If a household has two parents, and at least one parent is incapacitated, the parent claiming incapacity must verify that incapacity in one of the following ways:

(a) receipt of disability benefits from SSA;

(b) 100 percent disabled by VA; or

(c) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a doctor of osteopathy; or

(iii) a licensed/certified psychologist.

(4) Incapacity means not capable of earning $500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or client must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the client requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

(8) If a household unit is eligible under both FEP and FEPTP, payment will be made under FEP.

**R986-200-203. Citizenship and Alienage Requirements.**

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

(a) who is paroled into the United States under section 212(d)(5) of the INA for at least one year; or

(b) who is admitted as a refugee under section 207 of the INA; or

(c) who is granted asylum under section 208 of the INA; or

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401; or

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461; or

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA; or

(g) who is lawfully admitted for permanent residence under the INA, or

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA; or

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c).

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the INS, of immigration status.

**R986-200-204. Eligibility Requirements.**

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements in R986-100 and of income, assets, and participation.

(3) Persons who are fleeing to avoid prosecution of a

felony are ineligible for financial assistance.

**R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.**

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents and stepparents, unless expressly excluded below, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged. If the parents have a solemnized marriage at the time of birth, relationship is established;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included;

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household. If assistance is requested for the former stepchildren, the rules for specified relative apply;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(4) In situations where there are children in the home for which there is court ordered joint custody, the Department will determine if the children should be included in the household assistance unit based on the actual circumstances and not on the order. If financial assistance is allowed, the joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

**R986-200-206. Participation Requirements.**

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and

(c) assisting ORS in good faith to:

(i) establish the paternity of all minor children; and

(ii) establish and enforce child support obligations.

(d) obtaining any and all other sources of income. If any household member is or appears to be eligible for UI or SSA benefits, Workers Compensation, VA benefits or any other benefits or forms of assistance, the Department will refer the client to the appropriate agency and the individual must apply

for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. If the client is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined.

(2) Parents who have been determined to be ineligible to be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

**R986-200-207. Participation in Child Support Enforcement.**

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and step children even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

(a) reaches age 18; or

(b) is 18 years old and enrolled in high school during the normal and expected year of graduation; or

(c) is emancipated by marriage or court order; or

(d) is a member of the armed forces of the United States; or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(a) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(b) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(8) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(9) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(10) Upon notification from ORS that the client is not cooperating, the Department will commence conciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the conciliation process, financial assistance will be terminated.

(11) Termination of financial assistance for non cooperation is immediate, without a two month reduction period outlined in conciliation, if:

(a) the client is a specified relative who is not included in the household assistance unit; or

(b) the client is a parent receiving SSI benefits; or

(c) the client is participating in FEPTP.

(12) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(13) A specified relative, illegal alien, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

**R986-200-208. Good Cause for Not Cooperating With ORS.**

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a written request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

(i) birth certificates;

(ii) medical records;

(iii) Department records;

(iv) records from another state or federal agency;

(v) court records;

(vi) law enforcement records; or

(vii) if no other evidence is available, through sworn statements from people who have personal knowledge of the circumstances. The statements must substantiate and support the client's account and credibility.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency;

(D) law enforcement records; or

(E) if no other evidence is available, through sworn statements from people who have personal knowledge of the circumstances. The statements must substantiate and support the client's account and credibility.

(5) When the claim of good cause for not cooperating, is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

(a) the client's present emotional health and history;

(b) the intensity and probable duration of the resulting impairment;

(c) the degree of cooperation required; and

(d) the extent of involvement of the child in the action to be taken by ORS.

(6) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(7) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(8) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(9) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(10) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(11) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(12) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

**R986-200-209. Participation in Obtaining an Assessment.**

(1) Within 20 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

**R986-200-210. Requirements of an Employment Plan.**

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

(a) an expected outcome;

(b) an anticipated completion date;

(c) the number of participation hours agreed upon per

week; and

(d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

(i) promptly register for work and commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the Department on:

(A) how much time was spent in job search activities;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of each activity in the employment plan in order to stay eligible for financial assistance.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

**R986-200-211. Education and Training As Part of an Employment Plan.**

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36 month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension; and

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24 month limit is prudent because other employment, education, or training options do not enable the family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate in full time work activities. Full time work activities is defined as at least part time education or training and 80 hours or more of work per month with a combined minimum of 30 hours work, education, training, and/or job search of 30 hours per week.

(5) Graduate work can never be approved or supported as part of an employment plan.

**R986-200-212. Conciliation and Termination of Financial Assistance for Failure to Comply.**

If a client who is required to participate in an employment plan consistently fails to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts conciliation through the following three-step process:

(1) In step one, the employment counselor will attempt to

discuss compliance with the client and explore solutions. If compliance is not resolved the counselor will move to the second step.

(2) In step two, the employment counselor will request a meeting with the client, the employment counselor, the counselor's supervisor and any other Department or allied entity representatives, if appropriate, who might assist in encouraging participation. If a resolution cannot be reached, the household assistance unit's financial assistance payment will be reduced by $100 per month. If the client does not attend the meeting, the meeting will be held in the client's absence. As soon as the client makes a good faith effort to comply, the $100 reduction will cease.

(3) In step three, the employment counselor will continue to attempt a face to face meeting between the client and appropriate Department and allied entity representatives, if appropriate, to prevent the termination of financial assistance. If after two months the client continues to show a failure to make a good faith effort to participate, financial assistance will terminate.

(a) The two month reduction in assistance must be consecutive. If a client's assistance is reduced for one month and then the client agrees and demonstrates a willingness to participate to the maximum extent possible, assistance is restored at the full amount. If the client later stops participating to the maximum extent possible, the client's assistance must be reduced for two additional consecutive months before a termination can occur.

(b) The two month reduction must immediately precede the termination. If the client's assistance was reduced during months other than the two months immediately prior to the termination, those months do not satisfy the requirements of this rule.

(c) If a client's assistance has been reduced for failure to participate, and the client then agrees to participate within the same month, the Department may restore the $100. Any month in which the $100 was restored will not count toward the two month reduction period necessary to terminate assistance.

(d) If a client has demonstrated a pattern and practice of having assistance reduced, agreeing to participate and having the reduction restored, but failing to follow through so that another period of reduction results, the Department may continue the reduction even if the client agrees to participate until such time as the client demonstrates a genuine willingness to participate.

(4) Termination of assistance for non-participation is immediate without a two month reduction of assistance for:

(a) a dependent child age 16 or older if that child is not attending school; or

(b) a parent on FEPTP.

(5) If financial assistance has been terminated for failure to participate and the client reapplies for financial assistance, the client must successfully complete a trial participation period of no longer than two weeks before the client is eligible for financial assistance. The trial participation period may be waived only if the client has cured all previous participation issues prior to re-application.

**R986-200-213. Financial Assistance for a Minor Parent.**

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known; or

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home; or

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

**R986-200-214. Assistance for Specified Relatives.**

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepparents;

(d) stepbrothers and stepsisters;

(e) aunts and uncles;

(f) first cousins;

(g) first cousins once removed;

(h) nephews and nieces;

(i) people of prior generations as designated by the prefix grand, great, great-great, or great-great-great;

(j) a natural parent whose parental rights were terminated by court order;

(k) brothers and sisters by legal adoption;

(l) the spouse of any person listed above;

(m) the former spouse of any person listed above;

(n) persons who meet any of the above relationships by means of a step relationship even if the marriage has been terminated; and

(o) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated.

(2) The Department shall require compliance with Section 30-1-4.5

(3) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

(a) Both parents must be absent from the home where the child lives; and

(b) The child must be currently living with, and not just visiting, the specified relative; and

(c) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(d) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(4) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(5) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(6) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(7) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(8) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

**R986-200-215. Family Employment Program Two Parent Household (FEPTP).**

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) One parent must participate 40 hours per week, as defined in the employment plan. That parent is referred to as the primary parent. The primary parent does not need to be the primary wage earner of the household. The primary parent must spend:

(a) 32 hours a week in paid employment and/or work experience and training. At least 16 hours of those 32 hours must be spent at a community work site or in paid employment. If the primary parent is under age 25 and has not completed high school or an equivalent course of education, time spent in educational activities to obtain a high school degree or its equivalent can count toward the minimum 16-hour work requirement. Training is limited to short term skills training, job search training, or adult education; and

(b) eight hours a week participating in job search activities. The Department may reduce the number of hours spent in job search activities if it is determined the parent has explored all local employment options. This would not reduce the total requirement of 40 hours of participation.

(4) The other parent is required to participate 20 hours per week as defined in the employment plan, unless there is good cause for not participating. Participation consists of a combination of paid employment, community work, job search, adult education, and skills training.

(5) Participation requirements for refugee parents can include English language instruction (English for Speakers of Other Languages (ESOL aka ESL) or refugee social adjustment services or targeted assistance activities or all three. English language instruction must be provided concurrently with, and not sequential to employment or employment related services.

(6) Participation may be excused only for the following reasons:

(a) Illness. Verification of illness will be required for an illness of more than three days, and may be required for periods of three days or less; or

(b) good cause as determined by the Department. Good cause may include such things as death or grave illness in the immediate family, unusual child care problems, or transportation problems.

(7) The parents cannot share the participation requirements, but the Department may agree to change the assignments at the end of a participation period.

(8) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by the primary parent. The base amount of assistance is equal to the FEP payment for the household size. The base FEP payment is then prorated based on the number of hours which the primary parent participated up to a maximum of 40 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(9) If it is determinated by the employment counselor that one of the parents has failed to participate to the maximum extent possible:

(a) if it is the primary parent, assistance for the entire household unit will terminate immediately. There is no two month period of reduction of assistance; or

(b) if it is the other parent, that parent will be disqualified from the assistance unit. The disqualified parent's income and assets will still be counted for eligibility, but that parent will not

be counted for determining the financial assistance payment.

(10) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP. However, if the client requests a hearing within 10 days of the termination, payment of financial assistance based on participation can continue during the hearing process as provided in R986-100-134.

(11) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for other assistance or benefits to which they might be entitled.

**R986-200-216. Diversion.**

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

(a) the applicant's employment history;

(b) the likelihood that the applicant will obtain immediate full-time employment;

(c) the applicant's housing stability; and

(d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment may not exceed three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating the appropriate diversion payment amount.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made and the client later decides to reapply for financial assistance within three months of the date of the original application, the initial application date will be used and the amount of the diversion payment previously issued will be prorated over the three months and subtracted from the payment(s) to which the household unit is eligible.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

**R986-200-217. Time Limits.**

(1) Except as provided in R986-212-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when the family received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed; or

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits.

(e) the first diversion period in any 12 month period of time is not counted toward the 36 month time limit. A second diversion period within 12 months will count as one month toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance.

**R986-200-218. Exceptions to the Time Limit.**

Exceptions to the time limit may be allowed on a month by month basis for up to 20 percent of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA; or

(ii) receipt of VA Disability benefits based on the parent being 100 percent disabled; or

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Worker's Compensation benefits; or

(v) a medical statement completed by a medical doctor, or doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least $500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least $500 a month. Substance abuse is considered the same as mental health condition; or

(b) is under age 19 through the month of their nineteenth birthday; or

(c) is currently engaged in an approved full-time job preparation, educational or training activity which the parent was expected to complete but completion within the 36 months was not possible through no fault of the parent. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved; or

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay; or

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an extension under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An extension under this section can never be for longer than the delay in services; or

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment; or

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Proof, consisting of a medical statement from a medical doctor, doctor of osteopathy, licensed clinical social worker or licensed psychologist, is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the client will be required in the home to care for the dependent, and

(iv) whether the client is required to be in the home full-time or part-time.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) being forced as the specified relative of a dependent child to engage in nonconsensual sexual acts or activities;

(e) threats of, or attempts at, physical or sexual abuse;

(f) mental abuse which includes stalking and harassment; or

(g) neglect or deprivation of medical care.

(3) An exception to the time limit can be granted for a maximum of an additional 24 months if:

(a) during the previous month, the parent client was employed for no less than 80 hours; and

(b) during at least six of the previous 24 months, the parent client was employed for no less than 80 hours a month.

(c) If, at the end of the 24-month extension, the parent client qualifies for an extension under Sections (1) or (2) of this rule, an additional extension can be granted under the provisions of those sections.

(4) All clients receiving an extension must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection of establishment and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions listed above. Both parents need not meet the same exception.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons in Subsections (1)(c),(d),(e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including Food Stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

**R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.**

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test.

Gross income which is available to the client must be equal to or less than 185 percent of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis; and

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis; and

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities; and

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of $300 for rent on April 1 and requests an additional EA payment of $200 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed $300 per family for one month's rent payment or $500 per family for one month's mortgage payment, and $200 for one month's utilities payment.

**R986-200-220. Mentors.**

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

(a) develop life skills;

(b) implement an employment plan; or

(c) obtain services and support from:

(i) the volunteer mentor;

(ii) the Department; or

(iii) civic organizations.

**R986-200-230. Assets Counted in Determining Eligibility.**

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, and trailer homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

(a) Reasonable action would not be successful in making the asset available; or

(b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed $2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

**R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.**

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home and its contents, unless any single item of personal property has a value over $1,000, then only that item is counted toward the $2,000 limit;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) Water rights attached to the home property are exempt;

(4) a maximum of $8,000 equity value of one vehicle. The entire equity value of one vehicle equipped to transport a disabled individual is exempt from the asset limit even if the vehicle has a value in excess of $8,000;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) For refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of $1,500 per

member of the household;

(a) The value of any irrevocable burial trust is subtracted from the $1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at $1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of $1,500. Any amount over $1,500 is considered an asset;

(15) Any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

**R986-200-232. Considerations in Evaluating Real Property.**

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

**R986-200-233. Considerations in Evaluating Household Assets.**

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in accordance with R986-200-243.

**R986-200-234. Income Counted in Determining Eligibility.**

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed below.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

**R986-200-235. Unearned Income.**

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment Insurance;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions or gifts over $30 per quarter from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income; or

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed $30 per quarter for each person in the household assistance unit.

The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Income to tribal members derived from privately owned land is not exempt;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of $30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

**R986-200-236. Earned Income.**

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, including payments from Job Corps and Americorps living allowances, except Americorp/Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) severance pay, including the cash out of vacation, holiday, and sick pay;

(h) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(i) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry;

(j) training incentive payments and work allowances; and

(k) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

**R986-200-237. Lump Sum Payments.**

(1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, and gifts. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.

(2) The following lump sum payments are not counted as income or assets:

(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and

(b) insurance settlements for destroyed exempt property

when used to replace that property.

(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.

(4) The net lump sum is the portion of the lump sum that is remaining after deducting:

(a) legal fees expended in the effort to make the lump sum available;

(b) payments for past medical bills if the lump sum was intended to cover those expenses; and

(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.

(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

**R986-200-238. How to Calculate Income.**

(1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.

(2) The methods used for estimating income are:

(a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and

(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.

(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.

(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

**R986-200-239. How to Determine the Amount of the Financial Assistance Payment.**

(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185 percent of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185 percent of the SNB, the following deductions are allowed:

(a) a work expense allowance of $100 for each person in the household unit who is employed;

(b) a dependent care deduction as described in (3) below;

(c) child support paid by a household member if legally owed to someone not included in the household; and

(d) fifty percent of the remaining earned income, after the deductions in (a), (b) and (c) above, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100 percent of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100 percent of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household was not eligible for the 50 percent deduction under paragraph (2)(d) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the State Legislature and available at all Department offices.

**R986-200-240. Additional Payments Available Under Certain Circumstances.**

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive $40 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) public and private internships of at least 24 hours a week;

(b) full-time attendance in an education or employment training program;

(c) employment of 20 hours or more a week in addition to attending school or training; or

(d) employment with gross earnings of at least $500 per month.

(2) An additional payment of $15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of $300, to pay for burial costs not paid for by the county.

**R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.**

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100 percent of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100 percent of the SNB, the total household income is divided by the household size calculated under paragraph (2) above. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

**R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.**

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100 percent of the SNB for a group with the following members:

(i) the parents or stepparents living in the home;

(ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

**R986-200-243. Counting the Income of Sponsors of Eligible Aliens.**

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) The income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20 percent from the total earned income of the sponsor and the sponsor's spouse up to a maximum of $175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100 percent of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

**R986-200-244. TANF Needy Family (TNF).**

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 200% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

**R986-200-245. TANF Non-FEP Training (TNT).**

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to obtain suitable employment without training.

(3) Eligible families must have a dependent child under the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

**KEY: family employment program**
**July 1, 2002 35A-3-301 et seq.**

**R986. Workforce Services, Employment Development.**
**R986-600. Workforce Investment Act.**
**R986-600-601. Authority for Workforce Investment Act (WIA) and Other Applicable Rules.**

(1) The Department provides services to eligible clients under the authority granted in the Workforce Investment Act, (WIA) 29 USC 2801 et seq. Funding is provided by the federal government through the WIA. Utah is required to file a State Plan to obtain the funding. A copy of the State Plan is available at Department administrative offices and on the Internet. The regulations contained in 20 CFR 652, 20 CFR 660 through 20 CFR 671 and 29 CFR 37 (2000) are also applicable and incorporated herein by reference.

(2) The provisions of Rule R986-100 apply to WIA unless expressly noted otherwise in these rules even though R986-100 refers to public assistance and WIA funding does not meet the technical definition of public assistance. The residency requirements of R986-100-106 do not apply to WIA.

**R986-600-602. Workforce Investment Act (WIA).**

(1) The goal of WIA is to increase a customer's occupational skills, employment, retention and earnings; to decrease welfare dependency; and to improve the quality of the workforce and national productivity.

(2) WIA is for individuals who need assistance finding suitable employment.

(3) Services are available for the following groups: adult, dislocated workers, and youth services.

**R986-600-603. Youth Services.**

(1) The goals of WIA youth services are to provide options for improving educational and skill competencies; to provide effective connections to employers; to ensure access to mentoring, training opportunities and support services; to provide incentives for achievement; and to provide opportunities for leadership, citizenship and community service.

(2) WIA youth services are available to low-income youth who are between the ages of 14 and 21 years old and who have barriers which interfere with the ability to complete an educational program or to secure and hold employment.

(a) Services to youths include eligibility determination, assessment, employment planning and referral to community resources delivering youth services. The Department may provide some youth services.

(b) Youth may be referred to appropriate community resources based on need. Services include educational achievement services, employment services, summer employment opportunities, supportive services, leadership development, and follow-up services.

(c) A bonus/incentive may be paid to provide recognition of achievement to eligible youth.

**R986-606-604. Adults and Dislocated Workers.**

The Department offers three levels of service for adults and dislocated workers:

(1) core services,

(2) intensive services,

(3) training services

**R986-600-605. Core Services.**

(1) There are no eligibility requirements for core services offered by the Department.

(2) Core services include:

(a) providing the following informational resources:

(i) orientation to and information about available services;

(ii) local, regional and national labor market information including job vacancy listings and occupations in demand and the skills necessary to obtain those jobs and occupations.

(iii) the performance of and program costs for all eligible providers of training education and rehabilitation services.

(iv) performance measures with respect to the one-stop delivery system;

(b) initial assessment of skill levels, aptitudes, abilities, and supportive service needs;

(c) job search and placement assistance, and where appropriate, career counseling;

(d) followup services, including counseling regarding the workplace, for participants in workforce investment activities who are placed in unsubsidized employment, for a period of not less than 12 months after the first day of the employment and,

(e) determining if a client is eligible for and assistance in applying for: WIA funded programs, unemployment insurance benefits, welfare-to-work activities, financial aid assistance available for training and educational programs not funded under WIA, other supportive services such as child care and transportation.

**R986-600-606. Intensive Services.**

(1) If the client establishes appropriateness, intensive services are available to adults and dislocated workers:

(a) who are unemployed and are unable to obtain 'suitable employment' through core services and who have been determined by a Department employment counselor to be in need of more intensive services in order to obtain employment; or

(b) who are employed, but who are determined by the Department to be in need of intensive services in order to obtain or retain suitable employment.

(2) The employment counselor determines what is suitable employment based on the customer's individual circumstances. Suitable employment is employment that allows for self-sufficiency. Self-sufficiency for WIA is generally determined to be 200% of the Office of Management and Budget poverty level.

(3) intensive services consist of:

(a) an assessment as provided in R986-600-620,

(b) development of an employment plan as provided in R986-600-621. If the client is not receiving other forms of public assistance some modifications to the plan may be made to reflect the client's circumstances,

(c) Short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training, and

(d) case management, counseling and career planning.

**R986-600-607. Training Services.**

(1) If the client establishes appropriateness, training services are available to adults and dislocated workers:

(a) who are unemployed and are unable to obtain 'suitable employment' through intensive services and who have been determined by a Department employment counselor to be in need of training services in order to obtain suitable employment; or

(b) who are employed, but who are determined by the Department to be in need of training services in order to obtain or retain suitable employment as defined in R986-600-606(2).

(2) The employment counselor determines what is suitable employment based on the customer's individual circumstances.

(3) Training services include employment related education and work site learning.

**R986-600-608. Eligibility Requirements.**

(1) Core services are available to all customers.

(2) There are different eligibility criteria for low-income youth services (ages 14-21), and adult and dislocated workers (18 and over). Eligibility requirements for intensive and training services must be determined before an adult or dislocated worker can receive those services. If a client is eligible for services in more than one category, the Department will determine the most appropriate program placement for the client. The Department may choose to contract out these services for youth.

**R986-600-609. Citizenship, Alienage and Residency Requirements.**

An individual seeking intensive or training services must be a citizen of the United States or be employment eligible in the United States. Employment eligible is defined by the WIA Act, section 188 (a)(5) as citizens and nationals of the US, lawfully admitted permanent resident aliens, refugees, asylees and parolees and other immigrants authorized by the U.S. Attorney General to work in the US. Any youth seeking WIA services must also meet these requirements.

**R986-600-610. Selective Service Registration Requirements.**

Male applicants must be in compliance with Selective Service registration requirements to receive intensive or training services, or youth services.

**R986-600-611. Income Eligibility Requirements.**

(1) Applicants for all youth programs must meet the income eligibility requirements in this rule.

(2) Dislocated workers do not need to meet income eligibility requirements however appropriate training is only available if the dislocated worker is unable to obtain

(a) employment at 80% or more of his or her lay off wage, or

(b) suitable employment as defined in this rule.

(3) Adult workers must meet the income eligibility requirements of this rule.

**R986-600-612. Prioritization Factors Used for Determining Eligibility for Adult and Dislocated Workers.**

(1) For adult workers, in addition to income eligibility, the Department will prioritize clients' eligibility based on prioritization factors developed by the Department. Current prioritization factors are available at the Department. When a client is approved for intensive or training services, the Department will estimate the anticipated cost to the Department associated with that services and "obligate" and reserve that amount for accounting purposes. The total amount of money obligated and reserved will determine which prioritization factors are operational at any given time.

(2) A dislocated worker can only get funding if he or she cannot find a job paying 80% of the lay off wage or suitable employment as defined in this rule and they meet the Department's current prioritization factors.

(3) Because the funding is separate and distinct for each program, the prioritization factors operate independently for each of the two affected programs.

**R986-600-613. Income Eligibility.**

(1) A client is deemed to have met the income eligibility requirements for youth services, and adult services, if the client is receiving or is a member of a household that has been determined to be eligible for food stamps within the last six months or is currently receiving financial assistance from the Department or is homeless.

(2) In addition, a client is deemed to have met the income eligibility requirements for youth services if the youth is a runaway or a foster child.

(3) If a client is not eligible under paragraphs (1) and (2) above, the client must meet the low income eligibility guidelines in this rule.

**R986-600-614. How to Determine Who Is Included in the Family.**

Family size must be determined to establish income eligibility for youth services and adults.

(1) A 'family' is two or more persons related by blood, marriage, or decree of court, living in a single residence, and included in one or more of the following categories:

(a) A husband and wife and dependent children age 21 and under

(b) A parent or legal guardian and dependent children age 21 and under

(c) A husband and wife.

(2) A single person or an adult child (age 22 or older) applying on their own behalf and living with parent(s) is considered a family of one. Dependent adult children are not included in determining family size if another household member is applying for services.

(3) "Living in a single residence" includes family members residing elsewhere on a voluntary, temporary basis, such as attending school or visiting relatives. It does not include involuntary temporary residence elsewhere, such as incarceration, or court-ordered placement outside the home.

(4) Two people living in a single residence but who are not married are not members of the same 'family'. If they have children together, for WIA reporting purposes, each is considered a single parent and the children are considered part of each persons family.

(5) Family size will be determined by counting the maximum number of family members in the residence during

the last 6 months.

(6) Family size must be verified only if using family income to determine low-income status for WIA adult or youth services.

(7) A family can only include two generations.

(8) A client with a disability that is a barrier to employment may be determined a family of one for determining family income.

**R986-600-615. Assets.**

Assets are not counted when determining eligibility for WIA services.

**R986-600-616. Countable Income.**

(1) Countable income is total annual cash receipts before taxes are deducted, from all sources with the exceptions listed below under "Excludable Income". If income is not specifically excluded, it is counted. Countable income, for WIA purposes includes:

(a) money, wages, and salaries before any deductions,

(b) net receipts from self-employment, including farming,

(c) Job Corps payments to participants,

(d) railroad retirement,

(e) strike benefits from union funds,

(f) workers' compensation benefits,

(g) veterans' payments, except disability payments,

(h) training stipends,

(i) alimony,

(j) military family allotments or other regular support from an absent family member or someone not living in the household,

(k) private pensions or government employee pensions, including military retirement pay, except Social Security payments are excluded,

(l) regular insurance or annuity payments, including regular disability payments, Only veterans' disability payments are excluded. SSDI is included.

(m) college or university scholarships, grants, fellowships, and assistantship (excluding Pell Grants),

(n) dividends,

(o) interest,

(p) net rental income,

(q) net royalties, including tribal payments from casino royalties,

(r) periodic receipts from estates or trusts, and

(s) net gambling or lottery winnings.

(2) Excludable Income, income that is not counted, is:

(a) cash welfare payments under a Federal, state or local welfare program, including public assistance under FEP, FEPTP, GA, WTE, SSI, Emergency Assistance,

(b) child support,

(c) unemployment compensation,

(d) capital gains and assets drawn down as withdrawals from a bank, the sale of property, a house or car,

(e) 100% of Social Security and Old Age Survivors' Insurance benefit payments under Title II of the Social Security Act,

(f) educational financial assistance received under title IV of the Higher Education Act as amended by section 479(B) 1992 and other needs-based scholarship assistance and Pell grants. This includes some Work-Study programs,

(g) foster child care payments,

(h) tax refunds,

(i) gifts,

(j) loans,

(k) lump-sum inheritances,

(l) one-time insurance payments or compensation for injury,

(m) Earned Income Credit from the IRS,

(n) income received by a veteran while on active military duty in the Armed Forces if the veteran applies for WIA services within six months of discharge,

(o) benefit payments to veterans under 38 U.S.C 4212, part 3,

(p) non-cash benefits such as employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the value of rent from owner-occupied non farm or farm housing, federal noncash benefits programs such as Medicare, Medicaid, food stamps, school lunches and housing assistance, and

(q) other amounts specifically excluded by Federal statute.

**R986-600-617. How to Calculate Income.**

(1) To determine if a client meets the income eligibility standards, all income from all sources of all family members during the previous six months is counted. That amount is multiplied by two to arrive at an annual income and compared to the income guidelines, which are updated annually.

(2) Income averaging can be used if complete income records are not available for the six month period.

(3) Allowable business expenses are deducted from self-employment but no other deductions from income are allowed.

(4) The client family is income eligible if the annual income meets the higher of:

(a) the poverty line as determined by the Department of Human Services, or

(b) 70% of the LLSIL (lower living standard income level) as determined by Department of Labor and available at the Department of Workforce Services.

**R986-600-618. Dislocated Worker.**

(1) A dislocated worker is an individual who meets one of the following criteria:

(a)(i) has been terminated or laid off, or has received a notice of termination or layoff from employment, and

(ii)(1) is eligible for or has exhausted unemployment compensation entitlement, or

(ii)(2) has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under unemployment compensation law, and

(iii) is unlikely to return to the individual's previous industry or occupation. 'Unlikely to return' means that labor market information shows a lack of jobs in either that industry OR occupation, or the customer declares that they will not return to that industry or occupation.

(b)(i) Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise, or

(ii) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(iii) for purposes of eligibility to receive rapid response services, is employed at a facility at which the employer has made a general announcement that such facility will close. Rapid response services are defined by WIA.

(c) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

(d) Is a displaced homemaker. A WIA displaced homemaker is an individual who has been providing unpaid services to family members in the home and who:

(i) has been dependent on the income of another family member but is no longer supported by that income; and

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(2) The dislocation must have occurred within the prior two years.

(3) There are no income or asset guidelines for dislocated worker eligibility. Training appropriateness must still be determined before training services can be provided.

(4) The following documentation is acceptable to confirm dislocated worker status:

a. Unemployment Insurance records;

b. An individual layoff letter;

c. Rapid Response Unit analysis or review;

d. Public announcements of layoff;

e. If no other means of verification are available, the employer can provide verification; or

f. Worker self certification, although this is a last resort and requires documentation that other attempts to verify were unsuccessful.

(5) If the Department is providing services under a National Reserve Discretionary Grant, additional documentation may be needed.

**R986-600-619. Participation Requirements.**

Payment of any and all financial assistance, intensive and/or training services is contingent upon the client participating, to the maximum extent possible, in assessment and evaluation, and the completion of a negotiated employment plan.

**R986-600-620. Participation in Obtaining an Assessment.**

(1) When the Department determines that a client has a need for intensive services an employment counselor will be assigned to assess the needs of the client.

(2) The assessment evaluation is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

**R986-600-621. Requirements of an Employment Plan.**

(1) A client is required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan. The client will be provided with a copy of the employment plan.

(2) The goal of the employment plan is obtaining marketable skills and suitable employment and the plan must contain the soonest possible target date for entry into employment consistent with the needs of the client.

(3) An employment plan consists of activities designed to help an individual become employed.

(4) Each activity must be directed toward the goal of suitable employment.

(5) The employment plan may require that the client:

(a) search for suitable, immediate employment.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(g) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of each activity in the employment plan in order to stay eligible for intensive or training services.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which may include providing ongoing information and or documentation relative to their progress and providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available and appropriate, supportive services may be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

**R986-600-622. Requirements of an Employment Plan for Youth.**

(1) The focus of services for youth are separated by age into two categories; Younger Youth, 14-18 years old; and 19-21 years old.

(2) Employment plans for all youth must reflect intentions to assist with preparing for post-secondary education and/or employment; finding effective connections to the job market and employers, and understanding the links between academic and occupational learning.

(3) The primary goal of the employment plan for Younger Youth is setting and achieving goals. Secondary goals may include graduating from high school, and/or being placed in post-secondary education, other advanced training, or employment.

(4) The goal of the employment plan for older youth is the same as in R986-600-621.

**R986-600-623. Education and Training and Support Services as Part of an Employment Plan.**

(1) A client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited per exposure to the lesser of:

(a) 24 months which need not be continuous and which can be waived by a Department supervisor based on individual circumstances, or

(b) the completion of the education and training goals of the employment plan.

(2) Education and training will only be supported where:

(a) the client is unable to find suitable employment due to a lack of marketable skills;

(b) the education or training will substantially increase the income level the client would be able to attain without the education or training;

(c) the plan must show that the client has the ability to be successful in the education or training and in the market thereafter;

(d) the education or training is required for the occupation;

(e) the client is willing to complete the education or training as quickly as is reasonable;

(f) the mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed; and

(g) the specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(3) The following additional payments and/or services are allowable under certain circumstances based on individual need:

(a) any costs or services associated with education or training provided they are necessary to enable the client to participate in activities authorized under this title (WIA).

**R986-600-624. The Right to Appeal a Denial of Services.**

If an applicant or a client who is currently receiving services is denied services the individual can request a hearing as provided in Rules R986-100-123 through R986-100-135. If the client is currently receiving services under WIA and requests a hearing within 10 days of the denial, services will continue pending the hearing as provided in Rule R986-100-134.

**R986-600-651. Definitions.**

(1) "State Council" means the State Council on Workforce Services.

(2) "Eligible Provider" means a occupational skills training provider eligible to receive funds for training adults and dislocated workers authorized under WIA and approved by the State Council.

(3) "Regional Council" means any of the Regional Councils on Workforce Services.

**R986-600-652. Determining Initial Eligibility for Training Providers.**

(1) Training providers are automatically eligible if they if they complete an application and are either:

(a) a postsecondary educational institution that:

(i) is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), and

(ii) provides a program that leads to an associate degree, baccalaureate degree, or certificate; or

(b) an entity that provides programs under the "National Apprenticeship Act", 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.

(2) All other training providers must submit the following information:

(a) the name, mailing address, physical address, telephone number, and email address (if available) of the training facility;

(b) documentation of financial stability of the applicant, which may include audits or financial statements or evidence of compliance with the Utah Board of Regents' bonding requirements;

(c) the name of each program for which approval is requested;

(d) the percentage of all participants who complete each program;

(e) the percentage of all participants in each program who obtained unsubsidized employment;

(f) average placement wage of all participants in each program;

(g) if applicable, the rate of Utah state-recognized or industry-recognized licensure, certification, degrees, or equivalent attained by all program graduates. For example, CDL, Certified Nurse Aid, Licensed Practical Nurse, Novell Network Engineer;

(h) program costs including tuition and fees;

(i) a description of the methodology used to collect and verify performance information;

(j) a copy of the provider's student grievance procedure;

(k) the self-administered Department training provider accessibility checklist; and

(l) the number of years in business using the current name, and a list of other names under which the provider operated.

(3) Applications from providers in paragraph 2 above will be sent to the Regional Council staff in the region in which the provider does business or wishes to apply. Regional Councils recommend approval or disapproval for each provider and these results are sent to the State Council for final action.

(4) Performance information must meet standards established by the Department or the state council may grant an exception.

(5) All schools must be in business for a minimum of one year before approval will be granted.

(6) The Department will notify a provider in writing when a decision has been made concerning the provider's eligibility.

(7) A list of Initially Eligible providers including program performance and cost information will be published on the Internet.

**R986-600-653. Distance Learning Providers.**

(1) Distance learning is training that is made possible due to advances in computer technology. Using an online computer connection, distance learning can establish a setting for students and instructors where lessons are assigned, completed, and returned, and discussions can be held online.

(2) Distance learning can only be approved when it is a part of a curriculum that:

(a) leads to the completion of a training program;

(b) requires students to interact with instructors;

(c) requires students to take periodic tests; and

(d) requires students to come onto campus or other approved facility, for tests and meetings with instructors.

**R986-600-654. Determining Subsequent Eligibility for Training Providers.**

(1) Eligible providers shall apply annually to continue to receive WIA funds.

(2) Eligible providers shall submit student and program information as required, and in a format determined by the Department.

(3) The Department shall establish annual minimum performance requirements for continuing eligibility, and will consider the following as it establishes those requirements:

(a) the economic, geographic, and demographic factors in the state; and

(b) the characteristics of the populations served by providers, including the difficulties in serving such populations, where applicable.

(4) The Department shall establish annual minimum requirements for the following performance measures:

(a) program completion rates for all participants;

(b) the percentage of all participants who obtain employment;

(c) the average quarterly earnings of participants;

(5) Providers shall give the Department an annual list of social security numbers of all participants, by program; each participant's exit date from the program and a list of the completion rate and cost for each program for which approval is sought. The time and format for submitting this information will be determined by the Department.

(6) The Department may require providers to submit additional information to the Department.

(7) Training provider program employment and earnings performance information will be computed by the Department using the Social Security numbers provided by the training providers.

(8) The Department will notify a provider in writing when a decision has been made concerning the provider's subsequent eligibility.

(9) Providers must retain participant program records for three years from the date the participant completes the program.

(10) The Department may remove a provider from the list if the provider does not meet the performance levels established by the Department.

(11) The Department will remove a provider from the list if the provider has committed fraud or violated applicable state or federal law.

(12) The Department will remove a provider from the list for at least two years if the provider intentionally supplies inaccurate student or program performance information.

(13) The Department shall publish the program, performance, and cost information of each subsequently eligible provider on the list.

(14) Only providers on the list are eligible to receive funding or reimbursements from WIA funding.

**R986-600-655. The Right to a Hearing and How to Request a Hearing.**

(1) A provider may request a hearing to appeal a decision to deny eligibility or to remove the provider from the eligible provider list.

(2) Hearing requests will be made in writing to the Council, which will conduct the hearing at the next regularly scheduled meeting. The Council's decision on the provider's eligibility will be final.

**R986-600-656. Monitoring for Compliance of Equal Opportunity and Nondiscrimination.**

(1) The Department monitors service providers for compliance with the equal opportunity and nondiscrimination requirements of WIA. This includes compliance with all applicable laws, regulations, contract provisions, corrective actions, and remedial actions.

(2) Each service provider's compliance will be reviewed annually. The review can be either an on-site review or a data review.

**R986-600-657. Noncompliance.**

(1) In the event the Department identifies specific instances of noncompliance with federal discrimination laws, the Department will;

(a) notify the service provider in writing of the finding(s) of noncompliance and the corrective action required to ensure compliance;

(b) establish a corrective action plan;

(c) notify the provider of the time lines for the completion of the plan; and

(d) ensure compliance with the corrective action plan.

(2) For training providers, the corrective action plan will provide that the training provider agree to stop all prohibited practices in order to remain eligible for WIA funding.

**R986-600-658. Sanctions for Noncompliance and Right to Appeal.**

(1) The Department may impose sanctions against a provider for failure to comply with federal nondiscrimination

laws or required corrective actions.

(2) If the Department finds that a provider has not taken the required corrective action in the specified time limits the Department will issue a notice of final action informing the service provider of the Department's intent to;

(a) discontinue referral of participants to the provider,

(b) cancel the contract with the provider,

(c) make other changes deemed necessary to secure compliance, and/or

(d) refer the matter to another governmental entity.

(3) The service provider may appeal the decision of the Department by filing an appeal in writing within 30 days of the date of the notice of final action to: The Director, Civil Rights Center, US Department of Labor, 200 Constitution Ave NW, Room N4123, Washington DC, 20210.

**KEY: Workforce Investment Act**
**July 1, 2002 35A-5**

**R986. Workforce Services, Employment Development.**
**R986-700. Child Care Assistance.**
**R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.**

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule.

**R986-700-702. General Provisions.**

(1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children age 13 to 18 years if the child is:

(i) physically or mentally incapable of self-care as determined by a medical doctor, doctor of osteopathy or licensed or certified psychologist; and/or

(ii) under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" means a child identified by the Department of Human Services, Division of Services to People with Disabilities or other entity as determined by the Department, as having a physical or mental disability requiring special child care services.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) Neither the Department nor the state of Utah are liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(10) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC.

(11) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the re-certification forms are signed and returned to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

**R986-700-703. Client Rights and Responsibilities.**

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) In addition to the requirements for reporting other material changes that might affect eligibility, outlined in R986-100-113, a client is responsible for reporting a change in the client's need for child care, a change in the client's child care provider, and a change in the amount a provider charges for child care, to the Department within 10 days of the change.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days the decrease will be made effective beginning the next month and sums received in the month in which the change was reported will not be treated as an overpayment. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) Any client receiving any type of CC who is not receiving full court ordered child support must cooperate with ORS in obtaining child support from the absent parent. Child support payments received by the client count as unearned income. If a client's case was closed for failure to cooperate with ORS it cannot be reopened until ORS notifies the Department that the client is cooperating.

(9) All clients receiving CC must cooperate in good faith with the Department in establishing paternity unless there is good cause for not cooperating.

(10) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform the provider that further information is needed before payment can be determined.

(11) The Department may also release general information to a provider regarding the status of or a delay in the payment of CC.

(12) If child care funds are issued on the Horizon Card (electronic benefit transfer) unused child care funds will be removed from the Horizon Card 60 days after the last child care transaction/transfer occurred ("aged off") and will no longer be available to the client. The Department cannot replace child care payments which have been aged off the horizon card.

**R986-700-704. Establishment of Paternity.**

(1) If ORS notifies the Department that a client is not cooperating with the establishment of paternity, the client may appeal to a Department ALJ by following the procedures for hearings set forth in R986-100.

(2) The ALJ will make a determination on the question of whether or not the client is making a good faith effort to cooperate based on the same criteria ORS uses in FEP cases.

(3) The procedure and rules for establishing good cause for not cooperating in the establishment of paternity are the same as in R986-200. If the client appeals both a good faith determination and alleges good cause for not cooperating, the ALJ will join the two issues together and make a decision on the questions of good faith and good cause at the same hearing.

**R986-700-705. Eligible Providers and Provider Settings.**

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

(a) licensed and accredited providers:

(i) licensed homes;

(ii) licensed family group homes; and

(iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers; or

(ii) related to the client and/or the child. Related in this paragraph is as defined in R986-700-706(3).

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) All clients who were receiving child care prior to January 1, 2001, will be granted a grace period in which to find an eligible provider. The length of the grace period will be determined by the Department but in no event will it extend later than June 30, 2001.

(3) If a new client has a provider who is providing child care at the time the client applies for child care assistance or has provided child care in the past and has an established relationship with the child(ren), but the provider is not currently eligible, the client may receive child care assistance for a period not to exceed three months if the provider is willing to become an eligible provider and actively pursues eligibility.

(4) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides; or

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care; or

(d) if the provider lives in an area where the Department of Health lacks jurisdiction, which includes tribal lands, to provide licensing or certification; or

(5) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(6) If an exception is granted under paragraph (4) or (5) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(7) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and physically and mentally capable of providing care to children;

(b) the provider's home is equipped with hot and cold running water, toilet facilities, and is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors and fire extinguishers on all floors of the house where children are provided care;

(d) there are no individuals residing in the home who have felony criminal convictions, or misdemeanor convictions which are offenses against a person, or have been subject to a substantiated finding of child abuse or neglect by the Utah Department of Human Services, Division of Child and Family Services or a court;

(e) there is a telephone in operating condition with a list of emergency numbers located next to the phone which includes the phone numbers for poison control and for the parents of each child in care;

(f) food will be provided to the child in care of sufficient amount and nutritional value to provide the average daily nutrient intake required. Food supplies will be maintained to prevent spoilage or contamination. Any allergies will be noted and care given to ensure that the child in care is protected from exposure to those items; and

(g) the child in care will be immunized as required by the Utah Immunization Act and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(8) The following providers are not eligible for receipt of a CC payment:

(a) a member of household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state; and

(h) a provider who has committed fraud as a provider, as determined by ORS or by a court.

**R986-700-706. Provider Rights and Responsibilities.**

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the State of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) The Department will pay related providers at the exempt rate regardless of whether or not the provider has a certificate or license. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, uncles, or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand, great, great-great, or great-great-great.

(4) The provider is entitled to know the date on which payment for CC was made to the parent and the amount of the payment.

(5) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received. Provider case records will be maintained according to Office of Licensing standards.

**R986-700-707. Subsidy Deduction.**

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent must pay the amount of the subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

**R986-700-708. FEP, and Diversion CC.**

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

(3) Diversion CC is available for clients who have received a diversion payment from FEP. There is no subsidy deduction for the months covered by the FEP diversion payment. If the client is working a minimum of 15 hours per week in the two months immediately following the period covered by the diversion payment, the client is not subject to a subsidy deduction until the third month after the period covered by the diversion payment.

**R986-700-709. Employment Support (EC) CC.**

(1) Parents who are not eligible for FEP CC or Diversion CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC.

(a) If the household has only one parent, the parent must be employed a minimum of 15 hours per week.

(b) If the family has two parents, CC can be provided if:

(i) one parent is employed a minimum of 35 hours per week and the other parent is employed a minimum of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(ii) one parent is employed and the other parent cannot work or provide child care because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The individual claiming incapacity must provide proof, by way of a report signed by a medical doctor, doctor of osteopath or licensed/certified psychologist, which states that:

(A) the parent cannot work; and

(B) the incapacity prevents the parent from caring for a child; and

(C) the incapacity is expected to last at least 30 days.

(2) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. If the prevailing community standard is below minimum wage, the employed parent client must make at least the prevailing community standard.

(3) If a parent was receiving FEP or FEPTP, and their financial assistance was terminated due to increased income, and the parent is otherwise eligible for ES CC, the subsidy deduction will not be taken for the two months immediately following the termination of FEP or FEPTP, provided the client works a minimum of 15 hours per week. The third month following termination of FEP or FEPTP CC is subject to the subsidy deduction.

**R986-700-710. Income and Asset Limits for ES CC.**

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income and assets must be counted to establish eligibility, except a specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income and assets of the specified relatives in the household must be counted;

(b) what is counted as income and assets except one automobile is exempt for each household member participating in work and/or training if it is needed for employment, used for

transportation to and from that work and/or training or if the client is living in the automobile. The asset limit for ES CC is $8,000 after allowable deductions; and

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, 56 percent of the state median income.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

**R986-700-711. ES CC to Support Education and Training Activities.**

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24 month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24 month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24 month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree in a marketable occupation.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate.

(9) In a two-parent family receiving CC for education or training activities, the monthly CC subsidy cannot exceed the established monthly local market rates.

**R986-700-712. CC for Certain Homeless Families.**

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship, income, and asset eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

(5) When a homeless family presents a referral from a recognized agency, the Department will, if possible, schedule the application interview within three working days of the date of the application.

**R986-700-713. Amount of CC Payment.**

(1) CC will be paid at the lower of the following levels:

(a) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(b) the rate established by the provider for services; or

(c) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

(2) An enhanced CC payment is available to clients who are participating more than 172 hours per month. The enhanced subsidy cannot exceed $100 more than the maximum monthly local market rate for the type of provider used by the client and in no event can an enhanced subsidy payment exceed the accredited center rate for infant care. A two-parent family receiving CC for education or training activities is not eligible for the enhanced CC subsidy.

**R986-700-714. CC Payment Method.**

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name, except as noted in paragraph (2) below. The check is mailed to the client. In the event of an emergency, a payment up to a maximum of $125 can be made on the Horizon

card. Emergency payments can only be made where a parent is in danger of not being able to obtain necessary child care if the parent is required to wait until the two party check can be issued.

(2) CC payments will be made by electronic benefit transfer (EBT) either through a point of sale (POS) machine or interactive voice recording (IVR) system to authorized provider types as determined by the Department. The provider may elect which option of EBT to use. The provider must sign an agreement with the Department's contractor in order to be eligible to receive CC payments. If the provider elects to use the POS method of payment, the provider must lease a POS machine at the provider's own expense.

(3) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice to the client if:

(a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

**R986-700-715. Overpayments.**

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected. If the eligibility criteria is cooperation with ORS and the client is not in compliance, through no fault of her own, even if the client refuses to cooperate at the time the mistake is discovered, payments made prior to the discovery of the mistake are not considered to have been an overpayment.

(2) If the Department has reason to believe that a CC overpayment has occurred, a referral for collection will be made to ORS.

(3) If ORS determines that the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be disqualified from further receipt of CC:

(a) for a period of one year for the first occurrence of fraud;

(b) for a period of two years for the second occurrence of fraud; and

(c) for life for the third occurrence of fraud.

(4) If a client receives an overpayment but was not at fault in creating the overpayment, the client will be responsible for repayment but there is no disqualification or ineligibility period even if the client is considered by ORS to be not cooperating in repayment.

(5) If ORS determines that the client was at fault in the creation of an overpayment for any reason other than fraud in paragraph (3) above, the client will be given an opportunity to repay the overpayment without a disqualification or ineligibility period for the first occurrence. If there is a second fault overpayment for reasons other than fraud in (3) above and the first overpayment has not been paid off, the client will be ineligible for CC until both overpayments have been satisfied. If the second overpayment occurred after the first overpayment was repaid in full, the second overpayment will not result in disqualification or ineligibility.

(6) If the client does not cooperate with ORS in its investigation or collection efforts, the Department will terminate CC upon notification from ORS that the client is not cooperating.

(7) These disqualification and ineligibility periods are in lieu of, and not in addition to, the disqualification periods found in R986-100-117.

(8) If the Department has reason to believe an overpayment has occurred, a referral to ORS has been made, and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined by ORS.

**R986-700-716. CC in Unusual Circumstances.**

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled. For example: A client enrolled for 10 hours of classes each week may not receive more than 10 hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day. If no other child care options are available,

child care services may be authorized for the graveyard shift or during the day, but not for both.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

(6) On a case-by-case basis, the Department may fund child care for children with disabilities at a higher rate if the needs of the child and provider necessitate. To qualify for the higher rate DSPD or another Department approved entity must first determine that the child care provider has additional ongoing costs in caring for the child. The Department may set different income eligibility criteria for clients with children determined to need consideration under this paragraph. The income eligibility rate is available at all Employment Centers.

**KEY: child care**
**September 1, 2002 35A-3-310**

**R994. Workforce Services, Workforce Information and Payment Services.**

**R994-406. Appeal Procedures.**

**R994-406-201. Continuing Jurisdiction - General Definition.**

Subsection 35A-4-406(2) specifies the conditions under which the Workforce Information and Payment Services Division, as the agent of the Department, has the authority to reconsider decisions made with regard to claims for benefits after they have become final. A decision is not final until the time permitted for the filing of an appeal has elapsed. There are no limitations on the review of decisions during the appeal period. Subsection 35A-4-406(2) establishes the guidelines for the Department's exercise of discretion in reviewing decisions.

**R994-406-202. Limited Jurisdiction.**

(1) The Department has no jurisdiction to review or reconsider final decisions with regard to benefits beyond one year from the date of the decision unless the claimant was at fault in creation of an overpayment. Jurisdiction may be taken for up to one year after the original determination was made provided there was either a change in conditions or a mistake as to facts. When a decision is made on an issue, the date shown by the Department Representative on the notice provided to the parties or the date the decision is recorded in the Department's records is the date of the decision. If a decision was not made, the date the Department was on notice of an issue but failed to act is the date of the decision.

(a) Change of Conditions.

A change of conditions may include a change in the law which would make a reconsideration necessary in fairness to the parties who were adversely affected by a law change. A change in conditions may also include personal circumstances of the claimant or employer which would have made it reasonable not to file an appeal, provided those circumstances have subsequently and unforeseeably changed.

(b) Mistake as to Facts.

A mistake as to facts is limited to material information which was the basis for the decision. A mistake as to facts may include information which is misunderstood or misinterpreted, but does not include an error in the application of the Act or the Rules provided the decision is made under the correct section of the Act. A "mistake" is inadvertent rather than wrong information intentionally provided by the party subsequently alleging the mistake.

**R994-406-203. Unlimited Jurisdiction.**

There is no time limitation on exercising jurisdiction if there was fraud or an overpayment as the result of fault by the claimant. There must be an overpayment which is charged to the claimant in accordance with provisions of Subsection 35A-4-406(4) before jurisdiction can be taken beyond one year after the original determination.

**R994-406-204. Discretion.**

Section 35A-4-406 does not require the Department to take jurisdiction in all cases where there is a change in conditions or a mistake as to facts; the statute merely permits the Department to take jurisdiction. The claimant and employer may request a reconsideration of a decision, but they cannot compel the Department to exercise continuing jurisdiction. The Department will exercise continuing jurisdiction if it is necessary in fairness to an interested party who did not have access to material information or could not reasonably have filed an appeal provided there was a mistake as to facts or a change in conditions. However, jurisdiction may not be taken if the redetermination would have little or no effect. The Department will weigh the administrative burden of making a redetermination against the requirements of fairness and the opportunities of the parties affected to file an appeal. Jurisdiction will be taken in all cases where the Department is aware of a claimant fault overpayment which is large enough to be "set up" as provided by R994-406-404.

**R994-406-205. Obligation of Department Employees.**

Employees of the Department are obligated, regardless of when the information is discovered, to bring to the attention of the proper Department representatives any information that may affect an individual's eligibility for unemployment insurance benefits or information affecting the employer's contributions.

**R994-406-206. Notice.**

Any time a decision is reconsidered all interested parties will be notified of the new information and provided an opportunity to attend hearings held in conjunction with the review. All interested parties will receive notification of the redetermination and given the right to appeal.

**R994-406-301. Provisions for Filing an Appeal - General Definition.**

Subsection 35A-4-406(3) provides the opportunity for any parties affected by decisions made by the Department to file an appeal. The time limitations for filing appeals, which includes protests, requests for hearings, petitions and other requests or applications, and the exceptions to those time limitations are explained in Section R994-406-301 through R994-406-314. Subsection 35A-4-406(3) also provides provisions for withdrawing appeals, explains the opportunities which must be provided to parties to assure a fair hearing; identifies the commission as a party to the hearing; specifies the requirements of notification of the referee's decisions; and explains the further rights of appeal.

**R994-406-302. Issuance of Determinations.**

A notice of determination is not considered to have been issued unless it is sent through the U. S. mail or served in person.

**R994-406-303. Appeal Time Limitation for Decisions that are Not Mailed.**

If a decision issued by the Department is personally given to a party rather than sent through the mail, the amount of time permitted for an appeal is ten calendar days unless otherwise specified on the decision or by the Act.

**R994-406-304. Appeal Time Limitation for Decisions Which are Mailed.**

If a decision issued by the Department is mailed, five days are added to the time prescribed by the Act for filing the appeal.

Therefore, the amount of time permitted for filing an appeal from any decision that is mailed by the Department is fifteen calendar days unless otherwise specified on the decision or by the Act.

**R994-406-305. Computation of Time Limitations.**

In computing the period of time allowed by the Act for filing appeals under Subsection 35A-4-406(3), the day the decision is mailed or handed to a party is not to be included. The last day of the appeal period that follows is to be included in the computation unless it is a Saturday, Sunday or legal holiday when the offices of the Department are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when the offices of the Department are open.

**R994-406-306. Date of Receipt.**

Any appeal which has been sent through the U.S. Mail, is considered filed and received by the Department on the date shown by the post office cancellation mark. When the post mark date cannot be established because it is illegible, erroneous or omitted, the appeal will be considered filed on the date it was mailed if the sender establishes that date by competent evidence and can show that it was mailed prior to the date of actual receipt. If the date of mailing cannot be established by competent evidence, the document will be considered filed on the date it is actually received by the Department as shown by the Department's date stamp on the document or other credible evidence such as a written notation of the date of receipt.

**R994-406-307. Limitation of Jurisdiction.**

When it appears that an appeal may not have been filed within the time allowed by the Act or these Rules, the appellant will be notified and given an opportunity to show that the appeal was timely or was delayed for good cause. If it is found that the appeal was not filed within the applicable time limit and the delay was without good cause, the Administrative Law Judge will not have jurisdiction to consider the merits unless jurisdiction is established in accordance with provisions of Subsection 35A-4-406(2). Any decision with regard to jurisdictional issues will be issued in writing and given or mailed to all interested parties with a clear statement of the right of further appeal or judicial review.

**R994-406-308. Good Cause for Not Filing Within Time Limitations.**

(1) A late appeal may be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause is limited to circumstances where it is shown that:

(a) the appeal was filed within 10 days of actual receipt of the decision if such receipt was beyond the original appeal period and not the result of willful neglect; or

(b) the delay in filing the appeal was due to circumstances beyond the control of the appellant; or

(c) the appellant delayed filing the appeal for circumstances which were compelling and reasonable.

**R994-406-309. Procedure for Filing an Appeal.**

An appeal must be filed in writing by mailing a signed letter to the mailing address of the Appeals Tribunal as shown on the notice of decision, or submitting a written statement at an employment center. The appeal must be signed by an interested party who has a right to notice of a determination unless it can be shown that the interested party has conveyed in writing the authority to another person to act in his behalf, or he is physically or mentally incapable of acting in his own behalf. The statement of appeal should give the date and issue of the decision being appealed, the social security number of any claimant involved, the employer number or case number of the decision, a statement of the intent of the appeal and the facts or reasons which support the request. However, the failure of an appellant to include such information will not preclude the acceptance of an appeal. The scope of review will not be limited to the issues or contentions stated in the appeal. If the Department has begun payment of benefits to a claimant, such payments will not be discontinued pending the outcome of an appeal even if the claimant is willing to waive his right to payment. However, if benefits are denied as a result of the appeal an overpayment may be established in accordance with provisions of either Subsection 35A-4-406(4) or 35A-4-406(5).

**R994-406-310. Reasonable Opportunity for Fair Hearing.**

(1) Notice.

(a) All interested parties will be notified by mail at least seven days prior to the hearing of:

(i) the time and place, or conditions of the hearing,

(ii) the legal issues,

(iii) the consequences of not appearing, and

(iv) the procedures and limitations for requesting rescheduling.

(b) When a new issue arises during the hearing or under other unusual circumstances, advance written notice may be waived by the parties after a full verbal explanation of the issues and potential results.

(c) It is the responsibility of the parties to a hearing to notify any representatives or witnesses of the time and place of the hearing and to make necessary arrangements for their participation.

(d) If a party has designated a person or professional organization as his agent, notice of hearings will be sent to that agent and when such notice is sent, it will be considered that the party has been given notice.

(e) If an interpreter is needed by any parties or their witnesses, the party should arrange for an interpreter who is an adult with fluent ability to understand and speak English and the language of the person testifying, or notify the Appeals Office at the time the appeal is filed (or when notification is given that an appeal has been filed) that assistance is required in arranging for an interpreter.

(2) Hearing of Appeal.

(a) All hearings will be conducted informally and in such manner as to protect the rights of the parties. All issues relevant to the appeal will be considered and passed upon. The decision of the Appeals Referee hereafter referred to as Administrative Law Judge, will be based solely on the testimony and evidence presented at the hearing.

(b) All testimony of witnesses will be given under oath.

Any party to an appeal will be given an adequate opportunity to be heard and present any pertinent evidence of probative value and to know and rebut by cross-examination or otherwise any other evidence submitted. The Administrative Law Judge will direct the order of testimony and rule on the admissibility of evidence. Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence, may be accepted and will be given its proper weight. However, no finding of fact will be based solely on contested hearsay. Any official records of the Department, including reports submitted in connection with the administration of the Employment Security Act may be included in the record. The Administrative Law Judge may take such additional evidence as is deemed necessary.

(c) The parties to an appeal, with consent of the Administrative Law Judge, may stipulate to the facts involved. The Administrative Law Judge may decide the appeal on the basis of such facts, or in his discretion, may set the appeal for hearing and take such further evidence as deemed necessary to determine the appeal.

(d) The Administrative Law Judge may require portions of the evidence to be transcribed as necessary for rendering a decision.

**R994-406-311. Reschedule and Adjournment of Hearings.**

(1) The Administrative Law Judge may, at his discretion, adjourn, continue or reopen a hearing on his own motion. The ALJ may also reschedule on his own motion if it appears necessary to take continuing jurisdiction based on a mistake as to facts or if the denial of a hearing would be an affront to fairness.

(2) Prior to the Hearing.

(a) A hearing before an Administrative Law Judge may be rescheduled or postponed for reasonable cause if the request is made to the Administrative Law Judge orally or in writing before the hearing is concluded. Such a request may be made by any interested party, however, more than one continuance will not normally be granted if it adversely impacts on the other party's rights to benefits or potential liability for benefit costs.

(b) When a hearing has been canceled at the request of one of the parties a decision will be issued.

(3) If one of the parties fails to appear at the hearing, the Administrative Law Judge will, unless there is cause for continuance, issue a decision based on the available evidence.

(4) After the Hearing.

(a) Any party who fails to participate personally or by authorized representative at a hearing before an Administrative Law Judge may, within seven days after the scheduled date of the hearing, make a written request for reopening of the hearing. Such petition will be granted if good cause is shown for failing to participate. A request for reopening made after the scheduled hearing must be in writing; it must state the reason(s) believed to constitute good cause for failing to participate at the hearing; and it must be delivered or mailed within a seven-day period to the Appeals office or to a Job Service office in any state. If the request for reopening is not filed within seven days, reopening will not be granted unless the party can show good cause for failing to make the request within the seven-day time limitation. If a request for reopening is not allowed, a copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. If a request for reopening is made, a hearing will be scheduled and notice will be given or mailed to each party to the appeal, to determine if there is good cause for reopening the hearing.

(b) Failure to report as instructed at the time and place of the scheduled hearing is the equivalent of failing to participate even if the party reports at another time or place. In such circumstances, the party must make a written request for rescheduling and show good cause in accordance with these rules before the matter will be rescheduled.

(c) Good cause for failing to participate in an appeal hearing may not include such things as:

(i) failure to read and follow instructions on the notice of hearing,

(ii) failure to arrange personal circumstances such as transportation or child care,

(iii) failure to arrange for receipt or distribution of mail,

(iv) failure to delegate responsibility for participation in the hearing, or

(v) forgetfulness.

(d) In the event that an appeal has been taken or an application for review has been made to the Workforce Appeals Board before the request for reopening is filed, such request will be referred to the Workforce Appeals Board.

**R994-406-312. Withdrawal of Appeal.**

Any party who has filed an appeal from a decision of the Department may request withdrawal of the appeal by making a request to an Administrative Law Judge, explaining the reasons for the withdrawal. The Administrative Law Judge may deny such a request if the withdrawal of the appeal could result in a disservice to any of the parties, including the Department.

**R994-406-313. Division a Party to Proceedings.**

The Division is the authorized agent of the Department. The Act requires that the Department be given notice of the pendency of an appeal and that the Department will be a party to the proceedings. Unless the Department designates a representative who is authorized to represent the Department in appeals, notification of appeals will be sent to the Division of Workforce Information and Payment Services which rendered the initial determination. As a party to the hearing the Department or its representatives have all rights and responsibilities of other interested parties to present evidence, bring witnesses, cross-examine witnesses, give rebuttal evidence, and appeal decisions of the Administrative Law Judge. Where the burden of proof is with the Department, the failure of the Department to meet that burden may result in an unfavorable ruling for the Department. The Administrative Law Judge cannot act as the agent for the Department and therefore is limited to including in the record only that evidence which is in the Department files or submitted by Department representatives. Witnesses for the Department may be called on the motion of the Administrative Law Judge when the need for such testimony is necessary to clarify rather than impeach the testimony or evidence presented by the other parties, or the need for such witnesses or evidence could not have been anticipated by the Department prior to the hearing.

**R994-406-314. Prompt Notification of Decision.**

All decisions by Administrative Law Judges which affect the rights of any party with regard to benefits, tax liability, or jurisdictional issues will be mailed to the last known address of the parties or delivered in person. Each decision issued will be in writing with a complete statement of the findings of fact, reasoning and conclusions of law and will include or be accompanied by a notice specifying the further appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken.

**R994-406-315. Finality of Decision.**

Decisions of the Administrative Law Judge are binding on all parties and are the final decision of the Department as provided by Subsection 35A-4-508(7) unless appealed within ten days of mailing or delivery of the decision.

**R994-406-401. Fault Overpayments - General Definition.**

Subsection 35A-4-406(4) identifies the repayment requirements of individuals who have been overpaid due to fraud, or due to claimant fault not constituting fraud.

**R994-406-402. Fraud.**

(1) When the Department has evidence of an overpayment resulting from the claimant's failure to properly report material information, the claimant will be notified of the issue, given an opportunity to provide information concerning the issue, and told that payments are being held pending a decision. In such circumstances, payment of benefits for claims currently in process may be held for up to two weeks pending the issuance of a fraud or overpayment decision. Benefit payments which have not been paid for eligible weeks prior to the disqualification period under Subsection 35A-4-405(5), shall be used to reduce such an overpayment. 100% of the benefit check to which he is entitled will be used to reduce the overpayment.

(2) The overpayment and penalties for fraud are established only when benefits have been denied under Subsection 35A-4-405(5). The repayment amount is determined by Subsection 35A-4-405(5) and, following a decision, repayment must be made in cash before the claimant will be eligible to establish a waiting week credit or receive future benefit payments. Therefore, the overpayment and penalties cannot be offset.

**R994-406-403. Claimant Fault.**

(1) Elements of Fault.

Fault is established if all three of the following elements are present. If one or more element cannot be established, the overpayment does not fall under the provisions of Subsection 35A-4-405(5).

(a) Materiality.

Benefits were paid to which the claimant was not entitled.

(b) Control.

Benefits were paid based on incorrect information or an absence of information which the claimant reasonably could have provided.

(c) Knowledge.

The claimant had sufficient notice that the information might be reportable.

(2) Claimant Responsibility.

The claimant is responsible for providing all of the information requested of him in written documents regarding his Unemployment Insurance claim, as well as any verbal instructions given by a Department representative. Before certifying that he is eligible for benefits, he is under obligation to make proper inquiry if he has any questions to determine definitely what is required. Therefore, when a claimant has knowledge that certain information may affect his claim, but makes his own determination that the information is not material or if he ignores it, he is at fault.

(3) Receipt of Settlement or Back-Pay.

(a) A claimant is "at fault" for an overpayment created if he fails to advise the Department that grievance procedures are being pursued which may result in payment of wages for weeks he claims benefits.

(b) When the claimant advises the Department prior to receiving a settlement that he has filed a grievance with his employer, and he makes an assignment directing the employer to pay to the Department that portion of the settlement equivalent to the amount of unemployment compensation he receives, he will not be "at fault" if an overpayment is created due to payment of wages attributable to weeks for which he receives benefits. If the grievance is resolved in favor of the claimant and the employer was properly notified of the wage assignment, the employer is liable to immediately reimburse the Unemployment Insurance Fund upon settlement of the grievance. If reimbursement is not made to the Department consistent with the provisions of the Assignment, collection procedures will be initiated against the employer.

(c) If the claimant refuses to make an assignment of the wages he is claiming in a grievance proceeding, benefits will be withheld on the basis that he is not unemployed because he anticipates receipt of wages. In this case, the claimant should file weekly claims and if he does not receive back wages when the grievance is resolved, benefits will be paid for weeks properly claimed provided he is otherwise eligible.

**R994-406-404. Method of Repayment of Fault Overpayments.**

(1) When the claimant has been determined to be "at fault" in the creation of an overpayment, the overpayment must be repaid. If payment is made by personal check, no benefit checks will be released until the personal check has been honored by the bank. If the claimant is otherwise eligible and files for additional benefits during the same or any subsequent benefit year, 50% of the benefit check to which he is entitled will be used to reduce the overpayment.

(2) Discretion for Repayment.

(a) Full restitution is required of all overpayments established under Subsection 35A-4-405(5). At the discretion of the Department, however, the claimant may not be required to make payments and legal collection proceedings may be held in abeyance. The overpayment will be deducted from future benefits payable during the current or subsequent benefit years. Discretion may be exercised:

(i) if the Department or the employer share fault in the creation of the overpayment, or

(ii) if installment payments would impose unreasonable hardship such as in the case of an individual with an income which does not provide for additional money beyond minimum living requirements.

(b) The Department cannot exercise repayment discretion for fraud overpayments and these amounts are subject to all collection procedures.

(3) Installment Payments.

(a) If repayment in full has not been made within 90 days of the first billing the Department shall enter into an agreement with the claimant whereby repayment of the money owed is collectible by monthly installments. The Department shall notify the claimant in writing of the minimum installment payment which the claimant is required to make. If the claimant is unable to make the minimum installment payments, he may request a review within ten days of the date written notice is mailed or delivered.

(b) Installment agreements shall be established as follows:

Overpayments Equaling Minimum Monthly Payment

$3,000 or less 50% of claimant's weekly benefit entitlement

3,001 to 5,000 100% of claimant's weekly benefit entitlement

5,001 to 10,000 125% of claimant's weekly benefit entitlement

10,001 or more 150% of claimant's weekly benefit entitlement

(c) Installment agreements will not be approved in amounts less than those established above except in cases of extreme hardship. An ability to make a minimal payment is presumed if the claimant has a household income which is in excess of the poverty level guidelines as established by the federal government and used to grant waivers of overpayments under Subsection 35A-4-406(5). The installment agreement will be reviewed periodically and adjustments made based upon changes in the claimant's income or circumstance. A due date will be established for each installment agreement which is mutually agreed upon by the claimant and the Department.

(4) Collection Procedures.

(a) Billings are sent to claimants with overpayments on a monthly basis. After 30 days, if payment is not made, the account is considered delinquent. If no payment has been received in 90 days the individual is notified that a warrant will be filed unless a payment is received within 10 days. However, there may be other circumstances under which a warrant may be filed on any outstanding overpayment. A warrant attaches a lien to any personal or real property and establishes a judgment that is collectible under Utah Rules of Civil Procedure.

(b) All outstanding overpayments are reported to the State Auditor for collection whereby any refunds due to the individual from State income tax or any such rebates, refunds, or other amounts owed by the state and subject to legal attachment may be applied against the overpayment.

(5) Offset In Time.

Offset in time occurs when the claimant files valid weekly claims to replace weeks of benefits which were overpaid. When an overpayment is established after the claimant has exhausted all benefits, the claimant may file claims for additional weeks during the same benefit year provided he is otherwise eligible. Offset in time will be allowed on claims that have expired if a written request is made within 30 days of the notification of the overpayment. No offset in time will be allowed on overpayments established under Subsection 35A-4-405(5). One hundred percent (100%) of the weekly benefit amount for the weeks claimed will be credited against the established overpayment up to the amount of the balance owed to the Department. No penalty for late filing will be assessed when a claimant is otherwise eligible to file claims to offset in time.

**R994-406-501. Non-Fault Overpayments - General Definition.**

Subsection 35A-4-406(5) identifies the repayment requirements of individuals who have received an overpayment of benefits through no fault of their own. Such overpayments are referred to as "accounts not receivable" (ANR).

**R994-406-502. Responsibility.**

(1) The claimant is responsible for providing all of the information requested in written documents as well as any verbal request from a Department representative. If the claimant has provided such information, and then receives benefits to which he is not entitled through an error of the Department or an employer, he is not at fault for the overpayment.

(2) "Through no fault of his own" does not mean the claimant can shift responsibility for providing correct information to another person such as a spouse, parent, or friend. The claimant is responsible for all information required on his claim.

**R994-406-503. Method of Repayment.**

Even though the claimant is without fault in the creation of the overpayment, 50 percent of the claimant's weekly benefit amount will be deducted from any future benefits payable to him until the overpayment is repaid. No billings will be made and no collection procedures will be initiated.

**R994-406-504. Waiver of Recovery of Overpayment.**

(1) If waiver of recovery of overpayment is granted under Subsection 35A-4-406(5), the amount of the overpayment owing at the time the request is granted is withdrawn, forgiven or forgotten and the claimant has no further repayment obligation. Granting of a waiver will not be retroactive for any of the overpayment which has already been offset except if the offset was made pending a decision on a timely waiver request.

(a) Time Limitation for Requesting Waiver.

A waiver must be requested within 10 days of the notification of opportunity to request a waiver or within 10 days of the first offset of benefits following a reopening or upon a showing of a significant change of the claimant's financial circumstances. Good cause will be considered if the claimant can show the failure to request a waiver within these time limitations was due to circumstances which were reasonable or beyond his control.

(b) Basic Needs of Survival.

The claimant may be granted a waiver of the overpayment if recovery by 50 percent offset would create an inability to pay for the basic needs of survival for the immediate family, dependents and other household members. In making this waiver determination, the Department shall take into

consideration all the potential resources of the claimant, the claimant's family, dependents and other household members. The claimant will be required to provide documentation of claimed resources. The claimant must also provide social security numbers of family members, dependents and household members. "Economically disadvantaged" for federal programs is defined as 70 percent of the Lower Living Standard Income Level (LLSIL). "Inability to meet the basic needs of survival" is defined consistent with "economically disadvantaged." Therefore, if the claimant's total family resources in relation to family size are not in excess of 70 percent of the LLSIL, the waiver will be granted provided the economic circumstances are not expected to change within an indefinite period of time. Individual expenses will not be considered.

(c) Indefinite Period.

An indefinite period of time is defined as the current month and at least the next two months. Therefore, the duration of the financial hardship must be expected to last at least three months. If the claimant or household members expect to return to work within the three months the anticipated income will be included in determining if he lacks basic needs of survival for an indefinite period of time. Available resources will be averaged for the three months.

**R994-406-505. Overpayments Not Set Up (NSU).**

The minimum overpayment amount which will be established is determined by multiplying the state maximum weekly benefit amount by 15% and rounding the result to the next highest $5. Overpayments of ($10 or less) less than this amount do not justify the expense of collection and will not be (established) set up (NSU). Accumulations of overpaid benefits, accruing (from) for more than one week, which equal more than ($10) the minimum overpayment amount will be established.

**KEY: appellate procedures, jurisdiction, overpayments, unemployment compensation**

**September 12, 2002** **35A-4-406(2)**
**Notice of Continuation May 23, 2002** **35A-4-406(3)**
**35A-4-406(4)**
**35A-4-406(5)**