

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT

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Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone (801) 538-3218, FAX (801) 538-1773. To view rules-related information, and on-line versions of these publications, visit the division's web site at: <http://www.rules.state.ut.us/>

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SPECIAL NOTICES

DEPARTMENT OF AGRICULTURE AND FOOD UTAH SOIL CONSERVATION COMMISSION

PUBLIC NOTICE AMENDED 1998 MEETING SCHEDULE

Public Notice is hereby given for the balance of the 1998 calendar year meeting schedule for the Utah Soil Conservation Commission, hereafter called "Commission", a public agency created pursuant to Title 4, Chapter 18, Utah Code. This Commission is a policy making body helping to bring about sensible development and wise conservation of Utah's soil and water resource on private lands by: assisting Utah's 38 local soil conservation districts to fulfill their purposes; administering the Agriculture Resource Development Loan program; and, by facilitating the coordination of state and federal conservation partnership government agencies and groups who may influence these programs.

The two remaining meetings for 1998 are planned as follows:

1. August 10 (Monday) at 1:00 - 4:00 p.m. in Richfield*
2. November 6 (Friday) at 2:00 - 5:00 p.m. in St. George* (Precedes 1998 UACD Annual Meeting)

* The place for meetings out of Salt Lake City will be determined by the Commission staff and a notice will be published two weeks prior.

Meetings are held either in the Main Conference Room of the Utah Department of Agriculture and Food (UDAF), 350 North Redwood Road, Salt Lake City, or at such other place as the Commission shall designate prior to any such meeting. Additionally, meetings for the briefing of members of the Commission may be held at such place and location as the Commission shall designate prior to any such meeting.

Commission contact: K. N. "Jake" Jacobson, Administrative Officer with the UDAF, 350 North Redwood Road, Salt Lake City, Utah 84116. Phone: (801) 538-7171.

In compliance with the Americans with Disabilities Act (ADA), individuals needing special accommodations (including auxiliary communicative aids and services) during any of these meetings should notify UDAF's ADA Coordinator, Renee Matsuura, at the above UDAF address, phone: (801) 538-7110 (TDD: (801) 538-7100) at least three working days prior to the meeting.

EXECUTIVE ORDER

Whereas, the danger from wildland fires is extremely high throughout the State of Utah; and

Whereas, numerous wildland fires are burning and continue to burn in various areas statewide and present a serious threat to public safety, property, natural resources and the environment; and

Whereas, some of the areas are extremely remote and inaccessible and the situation has the potential to greatly worsen if left unattended; and

Whereas, immediate action is required to suppress the fires to protect public safety, property, natural resources and the environment; and

Whereas, these conditions do create a disaster emergency within the intent of the Disaster Response and Recovery Act of 1981; and

Now, Therefore, I, Michael O. Leavitt, Governor of the State of Utah, by virtue of the power vested in me by the constitution and the laws of the State of Utah;

Do Hereby Order That: It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of July 1, 1998, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

In Testimony, Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah, this 1st day of July 1998.

(State Seal)

Michael O. Leavitt
Governor

Attest:

Olene S. Walker
Lieutenant Governor

EXECUTIVE ORDER

Whereas, beginning on or about June 3, 1998, San Juan County, Utah has suffered severe damage brought on by the search for fugitives associated with the homicide of a Cortez, Colorado, law enforcement officer and other attempted homicides on law enforcement officers and civilians in the states of Colorado and Utah; and

Whereas, San Juan County is a public entity in the State of Utah; and

Whereas, this manhunt has continued for over a month and immediate attention is necessary to assure life, safety, and welfare of the citizens of San Juan County, Utah; and

Whereas, these conditions do create a State of Emergency in San Juan County;

Now, Therefore, I, Michael O. Leavitt, Governor of the State of Utah, by virtue of the power vested in me by the Constitution and the laws of the State of Utah, do hereby order as follows:

It is found, determined, and declared, that a State of Emergency does exist, due to the existence of a threat to life, safety, and welfare of the citizens of San Juan County, requiring aid, assistance, and relief limited to the search and apprehension of the fugitives, law enforcement operations, and National Guard support pertinent to the provisions of state statutes and portions of the State Emergency Operations Plan, which is hereby activated.

In Testimony, Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah, this 2nd day of July 1998.

(State Seal)

Michael O. Leavitt
Governor

Attest:

Olene S. Walker
Lieutenant Governor

NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between June 15, 1998, 5:01 p.m., and July 1, 1998, 11:59 p.m., are included in this, the July 15, 1998, issue of the *Utah State Bulletin*.

In this publication, each PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text (•••••) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least August 14, 1998. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through November 12, 1998, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

The public, interest groups, and governmental agencies are invited to review and comment on PROPOSED RULES. *Comment may be directed to the contact person identified on the RULE ANALYSIS for each rule.*

PROPOSED RULES are governed by *Utah Code* Section 63-46a-4 (1996); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.

Agriculture and Food, Regulatory
Services

R70-530

Food Protection

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21231

FILED: 06/22/1998, 14:45

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes definitions, sets standards for management and personnel, food operations, equipment, and facilities, and provides for food establishment plan review, inspection, and employee restriction.

SUMMARY OF THE RULE OR CHANGE: Clarify the food establishment personnel permit renewal period; correct the temperature required to heat all parts of meat; correct the reference for the Utah State Plumbing Code; set standard for ventilation systems compliance; correct spelling errors.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-5-17

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Agriculture and Food
Regulatory Services
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Becky Shreeve at the above address, by phone at (801) 538-7149, by FAX at (801) 538-7126, or by Internet E-mail at agmain.bshreeve@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Cary G. Peterson, Commissioner

R70. Agriculture and Food, Regulatory Services.

R70-530. Food Protection.

R70-530-2. Definitions.

Definitions. Statement of Application and Listing of Terms.

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

(1) Additive.

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

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

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

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

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

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

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

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

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

(9) CIP.

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

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

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

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

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

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

- (11) Comminuted.
- (a) "Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing.
- (b) "Comminuted" includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and in a mixture of 2 or more types of meat that have been reduced in size and combined, such as sausages made from 2 or more meats.
- (12) "Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism and epidemiological analysis implicates the food as the source of the illness.
- (13) "Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.
- (14) "Corrosion-resistant materials" means a material that maintains acceptable cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.
- (15) Critical control point.
- (a) "Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.
- (b) "Critical control point" is an operation, practice, procedure, process, location, or step of an operation where a preventive or control measure can be exercised that will eliminate, prevent or minimize a hazard(s) that has occurred prior to this point.
- (16) "Critical item" means a provision of this rule that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard. Critical items are identified in the rule with an * (asterisk).
- (17) "Critical Limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.
- (18) Drinking Water.
- (a) "Drinking Water" means water that meets 40 CFR Part 141 National Primary Drinking Water Regulations.
- (b) "Drinking Water" is traditionally known as "potable water".
- (c) "Drinking Water" includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water", "mop water", "rainwater", "wastewater", and "nondrinking" water.
- (19) "Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.
- (20) Easily Cleanable.
- (a) "Easily cleanable" means a characteristic of a surface that:
- (i) Allows effective removal of soil by normal cleaning methods;
- (ii) Is dependent on the material, design, construction, and installation of the surface; and
- (iii) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.
- (b) "Easily cleanable" includes a tiered application of the criteria that qualify the surface as easily cleanable as specified in Subsection (a) of this definition to different situations in which varying degrees of cleanability are required such as:
- (i) The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables; or
- (ii) The need for a different degree of cleanability for a utilitarian attachment or accessory in the production area as opposed to a decorative attachment or accessory.
- (21) "Easily movable" means:
- (a) Weighing 14 kg (30 pounds) or less; mounted on casters, gliders, or rollers; or provided with a mechanical means requiring no more than 14 kg (30 pounds) of force to safely tilt a unit of equipment for cleaning; and
- (b) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.
- (22) "Employee" means the person in charge, person having supervisor or manager, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.
- (23) "EPA" means the U.S. Environmental Protection Agency.
- (24) Equipment.
- (a) "Equipment" means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.
- (b) "Equipment" does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.
- (25) Fish.
- (a) "Fish" means fresh or saltwater finfish, crustaceans and other forms of aquatic life, including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals, other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.
- (b) "Fish" includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.
- (26) "Food" means a raw, cooked, or processed edible substance, water, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
- (27) Foodborne Disease Outbreak.
- (a) "Foodborne disease outbreak" means an incident, except as specified in Subsection (b) of this definition, in which:
- (i) 2 or more persons experience a similar illness after ingestion of a common food; and
- (ii) Epidemiological analysis implicates the food as the source of the illness.
- (b) "Foodborne disease outbreak" includes a single case of illness such as 1 person ill from botulism or chemical poisoning.
- (28) "Food-contact surface" means:
- (a) A surface of equipment or a utensil with which food normally comes into contact; or

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

- (i) Into a food, or
- (ii) Onto a surface normally in contact with food.

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

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

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

(32) "Game animal" means an animal, the products of which are food, that is not classified as cattle, sheep, swine, or goat in 9 CFR Subchapter A - Mandatory Meat Inspection, part 301, as poultry in 9 CFR Subchapter C - Mandatory Poultry Products Inspection, part 381, as elk in Utah Code Annotated 4-32-4(3), or as fish.

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

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

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

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

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

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

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

(a) The number of potential injuries, and

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

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

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

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

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

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

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

(46) Packaged.

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

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

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

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

(49) Personal Care Items.

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

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

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

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

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

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

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

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

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

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

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

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

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

(55) Potentially Hazardous Food.

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

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

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

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

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

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

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

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

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

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

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

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

(56) Poultry.

(a) "Poultry" means:

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

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

(b) "Poultry" does not include ratites.

(57) "Premises" means:

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

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

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

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

(60) Ready-to-Eat Food.

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

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

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

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

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

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

(61) Reduced Oxygen Packaging.

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

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

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

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

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

(65) "Safe material" means:

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

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

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

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

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

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

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

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

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

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

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

(74) Single-Use Articles.

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

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

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

(76) "Smooth" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R70-530-3. Management and Personnel.

3-1. Supervision.

(1) Responsibility.

Assignment.*

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

(2) Knowledge.

(a) Demonstration of knowledge.*

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

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

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

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

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

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

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

(vii) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food;

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

(A) Cross contamination,

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

(C) Handwashing, and

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

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

(A) Sufficient in number and capacity, and

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

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

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

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

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

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

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

(A) Food employee,

(B) Person in charge, and

(C) Regulatory authority.

(b) Permits for food establishment personnel.

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

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

(ii) The permit must be available for inspection.

(3) Duties.

Person in Charge.

The person in charge shall ensure that:

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

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

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

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

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

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

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

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

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

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

(xi) Employees are properly trained in food safety.

3-2. Employee Health

Disease or Medical Condition.

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

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

information in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission if the employee or applicant:

- (i) Is diagnosed with an illness due to:
 - (A) *Salmonella typhi*,
 - (B) *Shigella* spp.,
 - (C) *Escherichia coli* O157:H7, or
 - (D) Hepatitis A virus infection;
- (ii) Has a symptom caused by illness, infection, or other source that is:

- (A) Associated with an acute gastrointestinal illness such as:
 - (I) Diarrhea,
 - (II) Fever,
 - (III) Vomiting,
 - (IV) Jaundice, or
 - (V) Sore throat with fever, or
- (B) A lesion containing pus, such as a boil or infected wound, that is open or draining and is:

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

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

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

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

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

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

- (I) Prepared food implicated in the outbreak,
 - (II) Consumed food implicated in the outbreak, or
 - (III) Consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a shedder of the infectious agent, or
- (B) Lives in the same household as a person who is diagnosed with a disease caused by *S. typhi*, *Shigella* spp., *E. coli* O157:H7, or hepatitis A virus infection,

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

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

(b) Exclusions and Restrictions.*

The person in charge shall:

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

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

and single-use articles, in a food establishment if the food employee is:

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

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

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

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

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

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

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

(iv) For a food employee who is jaundiced:

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

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

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

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

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

(c) Removal of Exclusions and Restrictions.

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

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

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

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

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

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

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

(III) Provides written medical documentation, from a physician licensed to practice medicine, stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Reporting by the Person In Charge.*

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

3-3. Personal Cleanliness.

(1) Hands and Arms.

(a) Clean Condition.*

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

(b) Handwash Procedure.*

Food employees shall clean their hands and exposed portions of their arms with a cleaning compound in a lavatory that is equipped to provide water at a temperature of at least 110 degrees

F (43 degrees C) through a mixing valve or combination faucet, by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clean water. Employees shall pay particular attention to the areas underneath the fingernails and between the fingers.

(c) When to Wash.*

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

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

(ii) After using the toilet room;

(iii) After caring for or handling support animals;

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

(v) After handling soiled equipment or utensils;

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

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

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

(d) Where to Wash.

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

(e) Hand Sanitizer.

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

(A) Have active antimicrobial ingredients that are:

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

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

(B) Have components that are:

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

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

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

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

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

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

(B) Limited to situations that involve no direct contact with food by the bare hands.

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

(2) Fingernails.
Maintenance.

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

(3) Jewelry.
Prohibition.

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

(4) Outer Clothing.
Clean Condition.

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

3-4. Hygienic Practices.

Food Contamination Prevention.

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

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

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

(A) The employee's hands;

(B) The container; and

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

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

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

(6) Hair Restraints.
Effectiveness.

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

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

(7) Animals.

Handling Prohibition.*

(i) Food employees may not care for or handle animals that may be present such as patrol dogs, support animals, or pets that are allowed under Subsections 7-5(1)(ii)(B)-(D), except as specified in (ii) of this section.

(ii) Food employees with support animals may handle or care for their support animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in a display tank if they wash their hands before working with exposed food;

clean equipment, utensils, and linens; or unwrapped single-service and single-use articles.

R70-530-4. Food.

4-1. Characteristics.

Safe, Unadulterated, and Honestly Presented.*

Food shall be safe, unadulterated, and honestly presented.

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

(1) Sources.

(a) Compliance with Food Law.*

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

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

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

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

(b) Food in a Hermetically Sealed Container.*

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

(c) Fluid Milk and Milk Products.*

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

(d) Fish.*

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

(e) Molluscan Shellfish.*

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

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

(f) Wild Mushrooms.*

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

(g) Game Animals.*

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

Commercially raised for food and:

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

(B) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved"

in accordance with 9 CFR 352 Voluntary Exotic Animal Program, or

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

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

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

(2) Specifications for Transporting and Receiving.

(a) Temperature.*

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

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

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

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

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

(b) Food Transportation.

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

(c) Food Protection.

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

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

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

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

(d) Additives.*

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

(e) Shell Eggs.*

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

(f) Egg and Milk Products, Pasteurized.*

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

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

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

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

(g) Package Integrity.*

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

(h) Ice.*

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

(i) Shucked Shellfish, Packaging and Identification.

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

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

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

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

(j) Shellstock Identification.*

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

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

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

(B) The date of harvesting,

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

(D) The type and quantity of shellfish, and

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

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

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

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

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

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

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

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

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

(k) Shellstock, Condition.

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

(3) Molluscan Shellfish, Original Containers and Records.

(a) Molluscan Shellfish, Original Container.

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

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

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

(B) The shellstock are protected from contamination.

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

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

(B) The shellfish are protected from contamination.

(b) Shellstock, Maintaining Identification.*

Except as specified under Subsection (ii)(B) of this section, shellstock tags shall remain attached to the container in which the

shellstock are received until the container is empty. The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date the container is emptied by:

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

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

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

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

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

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

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

4-3. Protection from Contamination after Receiving.

(1) Preventing Contamination by Employees.

(a) Preventing Contamination from Hands.*

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

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

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

(b) Preventing Contamination when Tasting.*

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

(2) Preventing Food and Ingredient Contamination.

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

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

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

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

(II) Cooked ready-to-eat food;

(B) Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:

(I) Using separate equipment for each type, or

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Shellstock.

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

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

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

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

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

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

(d) Protection from Unapproved Additives.*

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

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

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

(ii) A food employee may not:

(A) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B₁; or

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

(e) Washing Fruits and Vegetables.

(i) Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form except that whole, raw

fruits and vegetables that are intended for washing by the consumer before consumption need not be washed before they are sold.

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

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

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

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

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

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

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

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

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

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

(a) Food Contact with Equipment and Utensils.*

Food may not contact:

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

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

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

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

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

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

(iii) On a clean portion of the food preparation table or cooking equipment and shall be cleaned and sanitized at a frequency specified under Sections 5-6(2) and 5-7(2);

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

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

(c) Linens and Napkins, Use Limitation.

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

(d) Wiping Cloths, Used for One Purpose.

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

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

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

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

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

(e) Gloves, Use Limitation.

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

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

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

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

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

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

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

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

(g) Refilling Returnables.

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

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

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

(5) Preventing Contamination from the Premises.

(a) Food Storage.

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

(A) In a clean, dry location;

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

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

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

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

(b) Food Storage, Prohibited Areas.

Food may not be stored:

(i) In locker rooms;

(ii) In toilet rooms;

(iii) In dressing rooms;

(iv) In garbage rooms;

(v) In mechanical rooms;

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

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

(viii) Under open stairwells; or

(ix) Under other sources of contamination.

(c) Vended Potentially Hazardous Food, Original Container.

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

(d) Food Processing Areas.

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

(A) Limited to the processing of food.

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

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

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

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

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

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

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

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

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

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

(6) Preventing Contamination from Consumers

(a) Food Display.

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

(b) Bulk Foods.

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

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

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

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

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

(c) Dispensing utensils.

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

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

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

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

(C) Wrapping or sacking.

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

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

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

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

(d) Condiments, Protection.

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

(ii) Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at an approved location, such as the food establishment that provides food to the vending machine location, a food processing plant that

is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the vending machine location.

(e) Consumer Self-Service Operations.*

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

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

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

(f) Food sample demonstrations and food promotions.

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

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

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

(I) Hot and cold water running water; and

(II) Soap and sanitizer.

(B) A Handwashing lavatory; supplied with:

(I) Hot and cold running water,

(II) Soap and hand towels.

(C) Proper waste disposal; and

(D) A conveniently located restroom.

(iii) If the food demonstration is being conducted by a business other than the owner of the food establishment, written permission issued by the owner, manager, or person in charge, shall be on file at the office of the business conducting the food demonstration that indicates they may use the food establishment's processing area for equipment cleaning and handwashing.

(iv) The food demonstration employee shall have a:

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

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

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

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

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

(g) Returned Food, Reservice or Sale.*

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

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

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

(1) Cooking.

(a) Raw Animal Foods.*

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

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

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

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

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

TABLE 1

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

or

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

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

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

TABLE 2

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

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

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

TABLE 3

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

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

(1) Holding time may include postoven heat rise.

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

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

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

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

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

(III) Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

(b) Microwave Cooking.*

Raw animal foods cooked in a microwave oven shall be:

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

(ii) Covered to retain surface moisture;

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

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

(c) Plant Food Cooking for Hot Holding.

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

(2) Freezing.

(a) Parasite Destruction.*

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

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

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

(ii) If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern), the fish may be

served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified under Subsection (i) of this section.

(b) Records, Creation and Retention.

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

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

(3) Reheating.

(a) Reheating for Hot Holding.*

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

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

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

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

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

(b) Reheating for Immediate Service.

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

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

(1) Temperature and Time Control.

(a) Frozen Food.

Stored frozen foods shall be maintained frozen.

(b) Potentially Hazardous Food, Slacking.

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

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

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

(c) Thawing.

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

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

(ii) Completely submerged under running water:

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

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

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

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

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

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

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

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

(B) Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or

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

(d) Cooling.*

(i) Cooked potentially hazardous food shall be cooled:

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

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

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

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

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

(e) Cooling Methods.

(i) Cooling shall be accomplished in accordance with the time and temperature criteria specified under Section 4-5(1)(d) by using

one or more of the following methods based on the type of food being cooled:

- (A) Placing the food in shallow pans;
- (B) Separating the food into smaller or thinner portions;
- (C) Using rapid cooling equipment;
- (D) Stirring the food in a container placed in an ice water bath;
- (E) Using containers that facilitate heat transfer;
- (F) Adding ice as an ingredient; or
- (G) Other effective methods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Time as a Public Health Control.*

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

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

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

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

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

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

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

(2) Specialized Processing Methods.

(a) Variance Requirement.*

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

(b) Reduced Oxygen Packaging, Criteria.*

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

(A) Identifies the food to be packaged;

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

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

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

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

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

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

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

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

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

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

(F) Includes operational procedures that:

(I) Prohibit contacting food with bare hands,

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

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

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

(I) Concepts required for a safe operation,

(II) Equipment and facilities, and

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

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

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

(1) Accurate Representation.

(a) Standards of Identity.

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

(b) Honestly Presented.

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

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

(2) Labeling.

(a) Food Labels.

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

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

(ii) Label information shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Other Forms of Information.

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

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

(iii) Food not intended for human consumption in a storage warehouse shall be conspicuously labeled, "Inedible - Not For Human Consumption."

(d) Labeling Requirements of Refrigerated Foods.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Consumer Advisory.

Consumption of Raw or Undercooked Animal Foods.*

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

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

4-7. Contamination.

Disposition.

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

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

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

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

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

4-8. Additional Safeguards.

Pasteurized Foods, Prohibited Reservice, and Prohibited Food.*

In a food establishment that serves a highly susceptible population:

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

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

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

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

(iii) Food in an unopened original package may not be reserved; and

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

R70-530-6. Water, Plumbing and Waste.

6-1. Water.

(1) Source.

(a) Approved System.*

Drinking water shall be obtained from an approved source that is:

(i) A "community water systems" which is a public drinking water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents; or

(ii) A "non-transient, non-community water system" which is a public water system that is not a community water system and that regularly serves at least 25 of the same persons over a six months per year.

(iii) A "non-community water system" which is a public drinking water system that is not a community water system or a non-transient, non-community water system.

(iv) A private water system that is constructed, maintained, and operated according to R309 101-113, Rules for Public Drinking Water Systems.

(b) System Flushing and Disinfection.*

A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.

(c) Bottled Drinking Water.*

Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 21 CFR 129 - Processing and Bottling of Bottled Drinking Water.

(2) Quality.

(a) Standards.*

Except as specified under Section (b) of this part:

(i) Water from a public water system shall meet R309 101-113.

(ii) Water from a private water system shall meet Utah's drinking water quality standards as set forth in R309.

(b) Nondrinking Water.*

(i) The use of a nondrinking water supply shall be approved by the regulatory authority; and

(ii) Nondrinking water shall be used only for non-culinary purposes such as air conditioning, nonfood equipment cooling, fire protection, and irrigation.

(iii) A person shall not create a cross connection by connecting a pipe or conduit between the drinking water system and a non-drinking water system or a water system of unknown quality.

(c) Sampling.

Water from a non-community water system, a non-transient, non-community water system, or a private water system, shall be sampled as required by R309-103 Drinking Water: Water Quality Maximum Contamination Levels (MCLs) and R309-104 Drinking Water: Monitoring, Reporting, and Public Notification and local drinking water quality regulations.

(d) Sample Report.

The most recent sample report of the non-community water system, non-transient, non-community water system or private water system shall be retained on file in the food establishment or the report shall be maintained as specified by the Utah Department of Agriculture and Food (UDAF).

(3) Quantity and Availability.

(a) Capacity.*

The water source and system shall be of sufficient capacity to meet the water demands of the food establishment.

(b) Pressure.

Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water except that water supplied as specified under Subsections 6-1(2)(4)(b)(i) and (ii) to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure.

(c) Hot Water.

(i) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment, and

(ii) Hot and cold water shall be provided through tempered mixing faucets at all handwashing lavatories, food preparation sinks, warewashing sinks, service sinks, or curbed cleaning facilities.

(4) Distribution, Delivery, and Retention.

(a) System.

Water shall be received from the source through the use of:

(i) An approved public water main; or

(ii) One or more of the following that shall be constructed, maintained, and operated according to law:

(A) Nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances,

(B) Water transport vehicles, and

(C) Water containers.

(b) Alternative Water Supply.

Water from an approved source shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

(i) A supply of containers of commercially bottled drinking water;

(ii) One or more closed portable water containers;

(iii) An enclosed vehicular water tank;

(iv) An on-premises water storage tank; or

(v) Piping, tubing, or hoses connected to an adjacent approved source.

6-2. Plumbing System.

(1) Materials.

Approved.*

(i) A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to the ~~[Utah State Plumbing Code]~~International Plumbing Code as adopted by the State of Utah Building Codes Commission.

(ii) A water filter shall be made of safe materials.

(2) Design, Construction, and Installation.

(a) Approved System and Cleanable Fixtures.*

(i) A plumbing system shall be designed, constructed, installed, and operated according to the ~~[Utah State Plumbing Code]~~International Plumbing Code as adopted by the State of Utah Building Codes Commission.

(ii) A plumbing fixture such as a handwashing lavatory, toilet, or urinal shall be easily cleanable.

(b) Handwashing Lavatory, Water Temperature, and Flow.

(i) A handwashing lavatory shall be equipped to provide water at a temperature of at least 43 degrees C (110 degrees F) within 10 seconds, through a mixing valve or combination faucet.

(ii) A steam mixing valve may not be used at a handwashing lavatory.

(iii) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(c) Backflow Prevention, Air Gap.*

An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 mm (1 inch).

(d) Backflow Prevention Device, Design Standard.

A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineers (ASSE) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.

(e) Conditioning Device, Design.

A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

(3) Numbers and Capacity.

(a) Handwashing Lavatory.*

(i) Except as specified in Subsection (ii) and (iii) of this section, at least 1 handwashing lavatory, a number of handwashing lavatories necessary for their convenient use by employees in areas specified under Section 6-2(4)(a), and not fewer than the number of handwashing lavatories required by law shall be provided.

(ii) An adequate number of handwashing stations shall be provided for each temporary food establishment to include: a minimum of one handwashing station equipped with one enclosed container with a spigot, soap, paper towels, and a collection container for waste water.

(iii) If approved by the regulatory authority, when food exposure is limited and handwashing lavatories are not conveniently available, such as in some mobile or temporary food establishment or at some vending machine location, employees may use chemically treated towelettes for handwashing.

(b) Toilets and Urinals.*

At least 1 toilet and not fewer than the number of toilets required by law shall be provided. In accordance with law, urinals

may be substituted for toilets if more than the required minimum number of toilets are provided.

(c) Service Sink.

At least 1 service sink or 1 curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

(e) Backflow Prevention Device, When Required.*

A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bib if a hose is attached or on a hose bib if a hose is not attached and backflow prevention is required by law, by:

(i) Providing an air gap as required by the ~~[Utah State Plumbing Code]~~International Plumbing Code as adopted by the State of Utah Building Codes Commission; or

(ii) Installing an approved backflow prevention device as required by the ~~[Utah State Plumbing Code]~~International Plumbing Code as adopted by the State of Utah Building Codes Commission.

(iii) Water heater drains and clothes washers are exempt from the requirements of this section.

(j) Backflow Prevention Device, Carbonator.*

A double check valve shall be installed so that it is upstream from a carbonating device and downstream from any copper in the water supply line.

(4) Location and Placement.

(a) Handwashing Lavatory.*

A handwashing lavatory shall be located:

(i) In, or immediately adjacent to, toilet rooms and;

(ii) To allow convenient use by employees in food processing, food dispensing, and warewashing areas. Convenient means:

(A) In the food processing area where it shall be accessible to employees at all times; or,

(B) In large food manufacturing areas or lines, handwashing lavatories shall be located in traffic areas, such as hallways leading into the processing area, and throughout the facility where food is handled.

(b) Backflow Prevention Device, Location.

A backflow prevention device shall be located so that it may be serviced and maintained.

(c) Conditioning Device, Location.

A water filter, screen, and other water conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

(5) Operation and Maintenance.

(a) Using a Handwashing Lavatory.

(i) A handwashing lavatory shall be maintained so that it is accessible at all times for employee use.

(ii) A handwashing lavatory may not be used for purposes other than handwashing.

(b) Prohibiting a Cross Connection.*

(i) Except as allowed under 9 CFR 308.3(d) for firefighting, a person may not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.

(ii) The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.

(c) Scheduling Inspection and Service for a Water Treatment Device or Backflow Preventer.

(i) Water treatment devices shall be scheduled for inspection and service, in accordance with manufacturer's recommendations and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.

(ii) The premise owner or responsible person shall have the backflow prevention assembly tested by a certified backflow assembly tester at the time of installation, repair, or relocation and at least on an annual schedule or more often when required by the regulatory authority.

(d) Water Reservoir of Fogging Devices, Cleaning.*

(i) A reservoir that is used to supply water to a device such as a produce fogger shall be:

(A) Maintained in accordance with manufacturer's specifications; and

(B) Cleaned in accordance with manufacturer's specifications or according to the procedures specified under Subsection (ii) of this section, whichever is more stringent.

(ii) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

(A) Draining and complete disassembly of the water and aerosol contact parts;

(B) Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;

(C) Flushing the complete system with water to remove the detergent solution and particulate accumulation; and

(D) Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 ppm hypochlorite solution.

(e) System Maintained in Good Repair.*

A plumbing system shall be:

(i) Repaired according to law; and

(ii) Maintained in good repair.

6-3. Mobile Water Tank and Mobile Food Establishment Water Tank

(1) Materials.

Approved.

Materials that are used in the construction of a mobile water tank, mobile food establishment water tank, and appurtenances shall be:

(i) Safe;

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

(iii) Finished to have a smooth, easily cleanable surface.

(2) Design and Construction.

(a) Enclosed System, Sloped to Drain.

A mobile water tank shall be:

(i) Enclosed from the filling inlet to the discharge outlet; and

(ii) Sloped to an outlet that allows complete drainage of the tank.

(b) Inspection and Cleaning Port, Protected and Secured.

If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:

(i) Flanged upward at least 13 mm (1/2 inch); and

(ii) Equipped with a port cover assembly that is:

(A) Provided with a gasket and a device for securing the cover in place, and

(B) Flanged to overlap the opening and sloped to drain.

(c) "V" Type Threads, Use Limitation.

A fitting with "v" type threads on a water tank inlet or outlet may be allowed only when a hose is permanently attached.

(d) Tank Vent, Protected.

If provided, a water tank vent shall terminate in a downward direction and shall be covered with:

(i) 16 mesh to 25.4 mm (16 mesh to 1 inch) screen or equivalent when the vent is in a protected area; or

(ii) A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

(e) Inlet and Outlet, Sloped to Drain.

(i) A water tank and its inlet and outlet shall be sloped to drain.

(ii) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

(f) Hose, Construction and Identification.

A hose used for conveying drinking water from a water tank shall be:

(i) Safe;

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

(iii) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;

(iv) Finished with a smooth interior surface; and

(v) Clearly and durably identified as to its use if not permanently attached.

(3) Numbers and Capacity.

(a) Filter, Compressed Air.

A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system.

(b) Protective Equipment or Device.

A cap and keeper chain, closed cabinet, closed storage tube, or other approved protective equipment or device shall be provided for a water inlet, outlet, and hose.

(c) Mobile Food Establishment Tank Inlet.

A mobile food establishment's water tank inlet shall be:

(i) 19.1 mm (3/4 inch) in inner diameter or less; and

(ii) Provided with a hose connection of a size or type that will prevent its use for any other service.

(4) Operation and Maintenance.

(a) System Flushing and Disinfection.*

A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse.

(b) Using a Pump and Hoses.

(i) Unloading water or liquid food products shall be done through a hose port or in such a manner that the processing area is protected against contamination.

(ii) A person shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

(c) Protecting Inlet, Outlet, and Hose Fitting.

If not in use, a water tank and hose inlet and outlet fitting shall be protected.

(d) Tank, Pump, and Hoses, Dedication.

(i) A water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose, except as specified in Subsection (ii) of this section.

(ii) Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized after each use.

6-4. Sewage, Other Liquid Waste, and Rainwater

(1) Mobile Holding Tank

(a) Capacity and Drainage.

A waste water holding tank in a mobile food establishment shall be:

(i) Sized 15 percent larger in capacity than the water supply tank; and

(ii) Sloped to a drain that is 25 mm (1 inch) in inner diameter or greater, equipped with a shut-off valve.

(2) Retention, Drainage, and Delivery

(a) Establishment Drainage System.

Food establishment drainage systems, including grease traps, that convey sewage shall be sized and installed according to the [~~Utah State Plumbing Code~~] International Plumbing Code as adopted by the State of Utah Building Codes Commission.

(b) Backflow Prevention.*

(i) A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed, except as specified in Subsection (v) of this section.

(ii) If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 1.5 m (5 feet) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

(iii) Equipment which is used for the storage or holding of food or drink, shall not have a drain in direct connection to a sewage line.

(iv) Warewashing or culinary sinks in any food preparation room which is used for soaking, washing, or preparing food shall not have a drain in direct connection to a sewage line.

(v) Three compartment sinks in dishwashing rooms, if not used for food preparation, may be directly connected to the sewer.

(c) Grease Trap.

If required, a grease trap shall be located to be easily accessible for cleaning.

(d) Conveying Sewage.*

Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law.

(e) Removing Mobile Food Establishment Wastes.

Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.

(f) Flushing a Waste Retention Tank.

A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.

(3) Disposal System.

(a) Approved Sewage Disposal System.*

Sewage shall be disposed through an approved facility that is:

(i) A public sewage treatment plant; or
 (ii) An individual sewage disposal system that is sized, constructed, maintained, and operated according to law.

(b) Other Liquid Wastes and Rainwater.

Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to law.

6-5. Refuse, Recyclables, and Returnables.

(1) Facilities on the Premises.

(a) Indoor Storage Area.

(i) If located within the food establishment, a storage area for refuse, recyclables, and returnables shall be non-absorbent, smooth and cleanable.

(ii) Studs, joist, and rafters may not be exposed in areas subject to moisture.

(b) Outdoor Storage Surface.

An outdoor storage surface for refuse, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.

(c) Outdoor Enclosure.

If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

(d) Receptacles.

(i) Equipment and receptacles for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent, except as specified in Subsection (ii) of this section.

(ii) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment or within closed outside receptacles.

(e) Receptacles in Vending Machines.

A refuse receptacle may not be located within a vending machine, except that a receptacle for beverage bottle crown closures may be located within a vending machine.

(f) Outside Receptacles.

(i) Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers.

(ii) Receptacles and waste handling units for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the equipment is not installed flush with the base pad, under the unit.

(g) Storage Areas, Rooms, and Receptacles, Capacity and Availability.

(i) An inside storage room and area and outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold refuse, recyclables, and returnables that accumulate.

(ii) A receptacle shall be provided in each area of the food establishment or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed.

(iii) If disposable towels are used at handwashing lavatories, a waste receptacle shall be located at each lavatory or group of adjacent lavatories.

(h) Toilet Room Receptacle, Covered.

A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

(i) Cleaning Equipment and Supplies.

(i) Suitable cleaning equipment and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of equipment and receptacles for refuse, recyclables, and returnables, except as specified in Subsection (ii) of this section.

(ii) If approved by the regulatory authority, off-premises-based cleaning services may be used if on-premises cleaning equipment and supplies are not provided.

(2) Location and Placement.

Storage Areas, Redeeming Machines, Equipment, and Receptacles, Location.

(i) An area designated for refuse, recyclables, returnables, and redeeming machines for recyclables or returnables shall be located so that it is separate from food, equipment, utensils, linens, and single-service and single-use articles and a public health nuisance is not created, except as specified in Subsection (ii) of this section.

(ii) A redeeming machine may be located in the packaged food storage area or consumer area of a food establishment if food, equipment, utensils, linens, and single-service and single-use articles are not subject to contamination from the machines and a public health nuisance is not created.

(iii) The location of equipment and receptacles for refuse, recyclables, and returnables may not create a public health nuisance or interfere with the cleaning of adjacent space.

(3) Operations and Maintenance.

(a) Storing Refuse, Recyclables, and Returnables.

Refuse, recyclables, and returnables shall be stored in equipment or refuse receptacles so that they are inaccessible to insects and rodents.

(b) Areas, Enclosures, and Receptacles, Good Repair.

Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

(c) Outside Storage Prohibitions.

(i) Refuse receptacles not meeting the requirements specified under Subsection 6-5(1)(d)(i) such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside, except as specified in Subsection (ii) of this section.

(ii) Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

(d) Covering Receptacles.

Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:

(i) Inside the food establishment if the equipment and receptacles:

(A) Contain food residue and are not in continuous use; or

(B) After they are filled; and

(ii) With tight-fitting lids or doors if kept outside the food establishment.

(e) Using Drain Plugs.

Drains in equipment and receptacles for refuse, recyclables, and returnables shall have drain plugs in place.

(f) Maintaining.

A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items and clean.

(g) Cleaning Receptacles.

(i) Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens, or single-service and single-use articles, and waste water shall be disposed of to an approved sewage disposal system.

(ii) Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

(4) Removal.

(a) Frequency.

Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

(b) Receptacles or Vehicles.

Refuse, recyclables, and returnables shall be removed from the premises by way of:

(i) Portable receptacles that are constructed and maintained according to law; or

(ii) A transport vehicle that is constructed, maintained, and operated according to law.

(5) Facilities for Disposal and Recycling.

Community or Individual Facility.

Solid waste not disposed of through the sewage system such as through grinders and pulpers shall be recycled or disposed of in an approved public or private community recycling or refuse facility; or solid waste shall be disposed of in an individual refuse facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to law.

R70-530-7. Physical Facilities.

7-1. Materials for Construction and Repair.

(1) Indoor Areas.

Surface Characteristics.

(i) Walls, Wall Coverings, and Ceilings.

Except as specified in Subsection (D) of this section, materials for indoor walls, wall coverings, and ceiling surfaces under conditions of normal use shall be designed, constructed, and installed so that they are:

(A) Smooth, light-colored, durable, and easily cleanable for areas where food establishment operations are conducted.

(B) Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.

(C) Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

(D) In a temporary food establishment:

(1) If graded to drain, a floor may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other suitable materials approved by the

regulatory authority that are effectively treated to control dust and mud; and

(II) Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.

(ii) Floors.

(A) Floors and floor coverings of all food preparation, food storage, and warewashing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, toilet rooms and vestibules, shall be constructed of smooth durable material such as sealed concrete, terrazzo, quarry tile, ceramic tile, durable grades of vinyl asbestos or plastic tile, or tight-fitting wood impregnated with plastic, and shall be maintained in good repair. Nothing in this section shall prohibit the use of anti-slip floor covering in areas where necessary for safety reasons.

(B) Floors which are water flushed or which receive discharges of water or other fluid wastes or are in areas where pressure spray methods for cleaning are used, shall be provided with properly installed trapped drains. Such floors shall be constructed only of sealed concrete, terrazzo, quarry tile, ceramic tile, or similar materials and shall be graded to drain. The floor and wall junctures shall be coved and sealed.

(C) In all establishments utilizing concrete, terrazzo, quarry tile, ceramic tile, or similar flooring materials, or where water flush cleaning methods are used, the junctures between walls and floors shall be coved and sealed. In all other cases, the juncture between walls and floors shall be coved so as not to present an open seam of more than 1/32 inch (1 mm).

(iii) Floor Carpeting, Restrictions and Installation.

(A) Carpeting may not be installed as a floor covering in food preparation areas, walk-in refrigerator, warewashing areas, food storage, and toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas subject to moisture.

(B) Carpeting may be installed as a floor covering if it is:

(I) Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and

(II) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

(iv) Prohibited floor covering.

Sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials shall not be used as floor coverings; however, these materials may be used in amounts necessary for immediate spot clean-up of spills or drippage on floors.

(v) Mats and duckboards.

Mats and duckboards shall be of nonabsorbent, grease resistant materials, and of such size, design, and construction to facilitate cleaning and shall be maintained clean and in good repair.

(2) Outdoor Areas.

Surface Characteristics.

(i) The outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.

(ii) Exterior surfaces of buildings and mobile food establishments shall be of weather-resistant materials and shall comply with law.

7-2. Design, Construction, and Installation.

(1) Cleanability.

(a) Floors, Walls, and Ceilings, Utility Lines.

(i) Utility service lines and pipes may not be unnecessarily exposed.

(ii) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

(iii) Exposed horizontal utility service lines and pipes may not be installed on the floor.

(b) Walls and Ceilings, Attachments.

(i) Except as specified in Subsection (ii) of this section, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.

(ii) In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.

(c) Walls and Ceilings, Studs, Joists, and Rafters.

Studs, joists, and rafters may not be exposed in areas subject to moisture. This requirement does not apply to temporary food establishments.

(2) Functionality.

(a) Light Bulbs, Protective Shielding.

(i) Except as specified in Subsection (ii) of this section, light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food; clean equipment, utensils, and linens; or unwrapped single-service and single-use articles.

(ii) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages, if:

(A) The integrity of the packages can not be affected by broken glass falling onto them; and

(B) The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

(iii) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

(b) Heating, Ventilation, Air Conditioning System Vents.

Heating, ventilation, and air conditioning systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food preparation surfaces, equipment, or utensils.

(c) Insect Control Devices, Design and Installation.

(i) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

(ii) Insect control devices shall be installed so that:

(A) The devices are not located over a food preparation area, and

(B) Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(d) Toilet Rooms, Enclosed.

(i) A toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door. This requirement does not apply to a toilet room that is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall.

(ii) Toilet rooms shall not open directly into a processing area. The requirements of this section can be met in the following manner:

(A) Placing two (2) self-closing doors between the processing area and the toilet room; or

(B) Having the toilet room open into another area, such as a hallway or storage area, with a distance of at least 15 feet between the door of the toilet room and the processing area.

(e) Outer Openings, Protected.

(i) Except in temporary food establishments, openings to a portion of a building that is not part of the food establishment or to the outdoors shall be protected against the entry of insects and rodents by:

(A) Filling or closing holes and other gaps along floors, walls, and ceilings,

(B) Closed, tight-fitting windows, and

(C) Solid self-closing, tight-fitting doors; or

(ii) Subsection (i) of this section does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

(iii) Except as specified in Subsections (ii) and (iv) of this section, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and solid doors, as specified under Subsection (i) of this section, the openings shall be protected against the entry of insects and rodents by:

(A) 16 mesh to 25.4 mm (16 mesh to 1 inch) screens,

(B) Properly designed and installed air curtains, or

(C) Other effective means.

(iv) Subsection (iii) of this section does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

(f) Exterior Walls and Roofs, Protective Barrier.

Perimeter walls and roofs of a food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

(g) Outdoor Food Vending Areas, Overhead Protection.

If located outside, a machine used to vend food shall be provided with overhead protection except that machines vending canned beverages need not meet this requirement.

(h) Outdoor Servicing Areas, Overhead Protection.

Servicing areas shall be provided with overhead protection except that areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.

(i) Outdoor Walking and Driving Surfaces, Graded to Drain.

Exterior walking and driving surfaces shall be graded to drain.

(j) Outdoor Refuse Areas, Curbed and Graded to Drain.

Outdoor refuse areas shall be constructed in accordance with law and shall be curbed and graded to drain to collect and dispose

of liquid waste that results from the refuse and from cleaning the area and waste receptacles.

(k) Living areas.

(i) No operation of a food establishment shall be conducted in any room used as living or sleeping quarters.

(ii) An establishment handling only packaged food products may be connected to living or sleeping quarters as long as they are separated by complete partitioning and solid, self-closing doors.

(iii) No establishment processing, preparing, packaging, or manufacturing food products shall have access to living or sleeping quarters through a door, window or other entrance.

7-3. Numbers and Capacities.

(1) Handwashing Provisions.

(a) Handwashing Cleanser Availability.

Each handwashing lavatory or group of 2 adjacent lavatories shall have available a supply of hand cleaning liquid, powder, or bar soap.

(b) Hand Drying Provision.

Each handwashing lavatory or group of adjacent lavatories shall be provided with:

(i) Individual, disposable towels;

(ii) A continuous towel system that supplies the user with a clean towel; or

(iii) A heated-air hand drying device.

(c) Handwashing Aids and Devices, Use Restrictions.

A sink used for food preparation or utensil washing, or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing lavatory.

(d) Disposable Towels, Waste Receptacle.

A handwashing lavatory or group of adjacent lavatories that is provided with disposable towels shall be provided with a waste receptacle.

(e) Minimum Number.

Handwashing lavatories shall be conveniently located and provided as specified under 6-2(3)(a).

(2) Toilet Provisions.

(a) Minimum Number.

Toilets and urinals shall be provided as specified under 6-2(3)(b).

(b) Toilet Tissue, Availability.

A supply of toilet tissue shall be available at each toilet.

(3) Lighting.

Intensity.

The light intensity shall be:

(i) At least 110 lux (10 foot candles) at a distance of 75 cm (30 inches) above the floor, in walk-in refrigeration units and dry food storage areas; and in other areas and rooms during periods of cleaning,

(ii) At least 220 lux (20 foot candles):

(A) At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged food are sold or offered for consumption;

(B) Inside equipment such as reach-in and under-counter refrigerators;

(C) At a distance of 75 cm (30 inches) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage; and in toilet rooms; and

(iii) At least 540 lux (50 foot candles) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

(4) Ventilation.

Mechanical.

If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided. Ventilation systems shall comply with the 1994 Uniform Mechanical Code Part II - Commercial Kitchens, Sections 507 and 508.

(5) Dressing Areas and Lockers.

Designation.

(i) Dressing rooms or dressing areas shall be designated if employees routinely change their clothes in the establishment.

(ii) Lockers or other suitable facilities shall be provided for the clean and orderly storage of employees' clothing and other possessions.

(6) Service Sinks

A service or curbed cleaning facility shall be provided.

7-4. Location and Placement

(1) Toilet Rooms.

Convenience and Accessibility.

Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.

(2) Employee Accommodations.

Designated Areas.

(i) Areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination.

(ii) Lockers or other suitable facilities shall be located in a designated room or area where contamination of food, equipment, utensils, linens, and single-service and single-use articles can not occur.

(3) Distressed Merchandise.

Segregation and Location.

Products that are held by the owner or manager for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

(4) Refuse, Recyclables, and Returnables.

Units, receptacles, and areas designated for storage or refuse and recyclables and returnable containers shall be located as specified under Section 6-5(2).

7-5. Operation and Maintenance.

Premises, Structures, Attachments, and Fixtures-Methods

(a) Repairing.

The physical facilities shall be maintained in good repair.

(b) Cleaning, Frequency and Restrictions.

(i) The physical facilities shall be cleaned as often as necessary to maintain cleanliness.

(ii) Cleaning shall be done during periods when the least amount of food is exposed such as after closing. This requirement does not apply to cleaning that is necessary due to a spill or other accident.

(c) Cleaning Floors, Dustless Methods.

(i) Except as specified in Subsection (ii) of this section, only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

(ii) Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:

(A) Without the use of dust-arresting compounds; and

(B) In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.

(d) Cleaning Ventilation Systems, Nuisance and Discharge Prohibition.

(i) Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

(ii) If vented to the outside, ventilation systems may not create a public health nuisance or unlawful discharge.

(e) Cleaning Maintenance Tools, Preventing Contamination.*

Food preparation sinks, handwashing lavatories, and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.

(f) Drying Mops.

After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.

(g) Maintaining and Using Handwashing Lavatories.

Handwashing lavatories shall be kept clean, and maintained and used as specified under Section 6-2(5)(a).

(h) Closing Toilet Room Doors.

Toilet room doors shall be kept closed except during cleaning and maintenance operations.

(i) Using Dressing Rooms and Lockers.

(i) Dressing rooms shall be used by employees if the employees regularly change their clothes in the establishment.

(ii) Lockers or other suitable facilities shall be used for the clean and orderly storage of employee clothing and other possessions.

(j) Controlling Pests.*

(i) The presence of insects, rodents, and other pests shall be controlled to minimize their presence on the premises by:

(A) Routinely inspecting incoming shipments of food and supplies;

(B) Routinely inspecting the premises for evidence of pests;

(C) Using methods, if pests are found, such as trapping devices or extermination by approved methods; and

(D) Eliminating harborage conditions.

(i) Removing Dead or Trapped Birds, Insects, Rodents, and Other Pests.

Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

(j) Storing Maintenance Equipment.

Maintenance tools such as brooms, mops, vacuum cleaners, and similar equipment shall be:

(i) Stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and

(ii) Stored in an orderly manner that facilitates cleaning of the maintenance equipment storage location.

(k) Maintaining Premises, Unnecessary Items and Litter.

The premises shall be free of:

(i) Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and

(ii) Litter.

(l) Prohibiting Animals.*

(i) Live animals may not be allowed on the premises of a food establishment, except as specified in Subsections (ii) and (iii) of this section.

(ii) Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles can not result:

(A) Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

(B) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(C) In areas that are not used for food preparation such as dining and sales areas, support animals such as guide dogs that are trained to assist an employee or other person who is handicapped, are controlled by the handicapped employee or person, and are not allowed to be on seats or tables; and

(D) Pets in the common dining areas of group residences at times other than during meals if:

(I) Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas,

(II) Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present, and

(III) Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service.

(iii) Live or dead fish bait shall be stored so that contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles can not result.

R70-530-10. Compliance and Enforcement.

10-1. Rule Applicability.

(1) Public Health Protection.

Use for Intended Purpose.

(i) The regulatory authority shall apply this rule to promote its underlying purpose of safeguarding public health and assuring that food is safe, unadulterated, and honestly presented when offered to the consumer.

(ii) In enforcing the provisions of this rule, the regulatory authority shall assess existing facilities or equipment that were in use before the effective date of this rule based on the following considerations:

(A) Whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;

(B) Whether food-contact surfaces comply with Section 5-1(1);

(C) Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with Section 5-3(1)(a); and

(D) The existence of a documented agreement of the owner that the facilities or equipment will be replaced as specified under Subsection 10-3(3)(e)(vi) or upgraded or replaced as specified under Subsection 10-3(3)(e)(vii).

(2) Additional Requirements.

Preventing Health Hazards, Provision for Conditions Not Addressed.

(i) If necessary to protect against public health hazards, the regulatory authority may impose specific requirements in addition to the requirements contained in this rule that are authorized by law.

(ii) The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the owner, or person in charge and a copy shall be maintained in the regulatory authority's file for the food establishment.

(3) Variances.

(a) Modifications and Waivers.

The regulatory authority may grant a variance by modifying or waiving the requirements of this rule if in the opinion of the regulatory authority a health hazard will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under Section 10-1(3)(b) in its records for the food establishment.

(b) Documentation of Proposed Variance and Justification.

Before a variance from a requirement of this rule is approved by the regulatory authority, the information that shall be provided by the person requesting the variance and retained in the regulatory authority's file on the food establishment includes:

(i) A statement of the proposed variance of the rule requirement citing relevant rule section numbers;

(ii) An analysis of the rationale how the potential public health hazards addressed by the relevant rule sections will be alternatively addressed by the proposal; and

(iii) A HACCP plan if required as specified under Section 10-2(c)(i) that includes the information specified under Section 10-2(d) as it is relevant to the variance requested.

(c) Conformance with Approved Procedures.*

If the regulatory authority grants a variance as specified under Section 10-1(3)(a), or a HACCP plan is otherwise required as specified under Section 10-2(c)(i), the owner shall:

(i) Comply with the HACCP plans and procedures that are submitted and approved as specified under Section 10-2(d) as a basis for the modification or waiver; and

(ii) Maintain and provide to the regulatory authority, upon request, records specified under Subsection 10-2(iv) and (v) that demonstrate that the following are routinely employed:

(A) Procedures for monitoring critical control points,

(B) Monitoring of the critical control points,

(C) Verification of the effectiveness of an operation or process, and

(D) Necessary corrective actions if there is failure at a critical control point.

10-2. Plans Submission and Approval.

(1) Facility and Operating Plans

(a) When Plans Are Required.

An owner shall submit to the regulatory authority properly prepared plans and specifications for review and approval before:

(i) The construction of a food establishment;

(ii) The conversion of an existing structure for use as a food establishment; or

(iii) The remodeling of a food establishment or a change in the type of food operation if the regulatory authority determines that

plans and specifications are necessary to ensure compliance with this rule.

(b) Contents of the Plans and Specifications.

The plans and specifications for a food establishment, including a food establishment specified under Section 10-2(c)(i), shall include, as required by the regulatory authority based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with rule provisions:

(i) Intended food to be packaged, processed, prepared, stored, or sold;

(ii) Anticipated volume of food to be prepared, stored, or sold;

(iii) Proposed layout, mechanical schematics, construction materials, and finish schedules;

(iv) Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;

(v) Written standard operating procedures that reflect the knowledge specified under Section 3-2(a) and implement the requirements of this rule, including indication of how practices ensure that:

(A) The transmission of foodborne disease is prevented by managing job applicants and food employees as specified under Section 3-2,

(B) Food is received from approved sources as specified under Section 4-2(1)(a),

(C) Food is managed so that the safety and integrity of the food from the time of delivery to the establishment throughout its storage, preparation, and transportation to the point of sale or service to the consumer is protected,

(D) Potentially hazardous food is maintained, including freezing, cold holding, cooking, hot holding, cooling, reheating, and serving in conformance with the temperature and time requirements specified under Sections 4-4 and 4-5,

(E) Warewashing is effective, including assurance that the chemical solutions and exposure times necessary for cleaning and sanitizing utensils and food-contact surfaces of equipment are provided as specified under Sections 5-6 and 5-7, and

(F) Records that are specified under Sections 6-2(5)(c), 4-2(3)(a) and (b) are retained for inspection;

(vi) Proposed program of training for the persons in charge and food employees pertaining to protecting public health and the safety and integrity of food; and

(vii) Other information that may be required by the regulatory authority for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.

(c) When a HACCP Plan Is Required.

(i) Before engaging in an activity that requires a HACCP plan, a person in charge or an owner shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under Section 10-2(1)(d) and the relevant provisions of this rule if:

(A) Submission of a HACCP plan is required according to law;

(B) A variance is required as specified under Section 4-5(2)(a), Subsection 5-2(4)(j), or Subsections 4-4(1)(a)(iii)(B), or 4-4(4-2(3)(b)(ii)(B); or

(C) The regulatory authority determines that a food preparation or processing method requires a variance based on a

plan submittal specified under Section 10-2(1)(b), an inspectional finding, or a variance request.

(ii) The owner or responsible party shall have a properly prepared HACCP plan as specified under Section 4-5(2)(b).

(d) Contents of a HACCP Plan.

For a food establishment that is required under Section 10-2(1)(c) to have a HACCP plan, the plan and specifications shall indicate:

(i) A categorization of the types of potentially hazardous foods that will be manufactured or processed, such as soups and sauces; salads; bulk solid foods, such as meat roasts; or of other foods that are specified by the regulatory authority;

(ii) A flow diagram by specific food or category type identifying critical control points and providing information on the following:

(A) Ingredients, materials, and equipment used in the preparation of that food, and

(B) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;

(iii) Food employee and supervisory training plan specified under Subsection 10-2(1)(vi) that addresses the food safety issues of concern;

(iv) A statement of standard operating procedures for the plan under consideration including clearly identifying:

(A) Each critical control point,

(B) The critical limits for each critical control point,

(C) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge,

(D) The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points,

(E) Action to be taken by the person in charge if the critical limits for each critical control point are not met, and

(F) Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and

(v) Additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal.

(2) Trade Secrets.

The regulatory authority shall treat as confidential in accordance with law, information that meets the criteria under law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under Sections 10-2(1)(b) and 10-2(1)(d).

(3) Preoperational Inspections.

The regulatory authority shall conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans and is in compliance with law and this rule.

10-3. Permission to Operate.

(1) Prerequisite for Operation.

A person may not operate a food establishment without being under inspection by the UDAF.

(2) Notification Procedure.

(a) Notification 30 Calendar Days Before Proposed Opening.

An applicant shall notify the UDAF of its intent to operate a food establishment at least 30 calendar days before the date planned for opening a food establishment.

(b) Qualifications and Responsibilities of Applicants.

To qualify to operate a food establishment, an applicant shall:

(i) Be an owner of the establishment or an officer of the legal ownership;

(ii) Comply with the requirements of this rule;

(iii) As specified under Section 10-4(2)(a), agree to permit access to the food establishment and to provide required information.

(c) Information Required.

The information shall include:

(i) The name, mailing address, telephone number, of the owner of the food establishment and the name, mailing address, and location of the food establishment;

(ii) Information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;

(iii) A statement specifying whether the food establishment:

(A) Is mobile or stationary and temporary or permanent, and

(B) Is an operation that includes one or more of the following:

(I) Prepares, offers for sale, or serves potentially hazardous food, or

(II) Prepares potentially hazardous food in advance using a food preparation method that involves two or more steps which may include combining potentially hazardous ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing,

(III) Prepares food as specified under Subsection (iii)(B)(II) of this section for delivery to and consumption at a location off the premises of the food establishment where it is prepared,

(IV) Prepares food as specified under Subsection (iii)(B)(II) of this section for service to a highly susceptible population,

(V) Will be using time as a public health control for specific food,

(VI) Prepares only food that is not potentially hazardous, or

(VI) Does not prepare, but offers for sale only prepackaged food that is not potentially hazardous;

(iii) The names, title, address, and telephone number of the person directly responsible for the food establishment:

(iv) The names, titles, and addresses of:

(A) The persons comprising the legal ownership as specified under Subsection (ii) of this section including the owners and officers, and

(B) The local resident agent if one is required based on the type of legal ownership;

(iv) A statement signed by the owner or responsible party that:

(A) Attests to the accuracy of the information provided, and

(B) Affirms that the applicant will:

(I) Comply with this rule, and

(II) Allow the regulatory authority access to the establishment as specified under Section 10-4(2)(a) and to the records specified under Sections 4-2(3)(b) and 6-2(5)(c) and Subsection 10-2(1)(d)(iv); and

(v) Other information required by the regulatory authority.

(3) New, Converted, or Remodeled Establishments.

(a) Permission to operate.

For food establishments that are required to submit plans as specified under Section 10-2(1)(a) the regulatory authority shall give them permission to operate a food establishment after:

- (i) The information is obtained;
- (ii) The required plans, specifications, and information are reviewed and approved; and
- (iii) A preoperational inspection shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this rule.

(b) Existing Establishments and Change of Ownership.

- (i) The regulatory authority shall be notified of a change of ownership in an existing food establishment.
- (ii) The information required under 10-3(2)(c) shall be obtained.
- (iii) An inspection shall show that the establishment is in compliance with this rule.

(c) Denial of Approval to Operate a Food Establishment, Written Notification.

If an application for a business license or permission to operate a food establishment is denied, the regulatory authority shall provide the owner with a notice that includes:

- (i) The specific reasons and rule citations for the denial;
- (ii) The actions, if any, that the applicant must take to qualify; and
- (iii) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided under law.

(d) Responsibilities of the Regulatory Authority.

- (i) Upon request, the regulatory authority shall provide a copy of the Utah Food Protection Rule at its cost.
- (ii) Failure to provide the information specified under Subsection (i) of this section does not prevent the regulatory authority from taking authorized action or seeking remedies if the owner fails to comply with this rule or an order, warning, or directive of the regulatory authority.

(e) Responsibilities of the Owner or Responsible Party.

The owner or responsible party shall:

- (i) Comply with the provisions of this rule including the conditions of a granted variance as specified under Section 10-1(3)(c), and approved plans as specified under Section 10-2(1)(b);
- (ii) If a food establishment is required under Section 10-2(1)(c) to operate under a HACCP plan, comply with the plan as specified under Section 10-1(3)(c);
- (iii) Immediately contact the regulatory authority to report an illness of an applicant or employee as specified under Section 3-2(e);
- (iv) Immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist as specified under Section 10-4(2)(j);
- (v) Allow representatives of the regulatory authority access to the food establishment as specified under Section 10-4(2)(a);
- (vi) Except as specified under (vii) of this section, replace existing facilities and equipment specified under Section 10-1(1) with facilities and equipment that comply with this rule if:
 - (A) The regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or no longer comply with the criteria upon which the facilities and equipment were accepted,

(B) The regulatory authority directs the replacement of the facilities and equipment because of a change of ownership, or

(C) The facilities and equipment are replaced in the normal course of operation.

(vii) Upgrade or replace refrigeration equipment as specified under Subsection 4-5(1)(f)(iii), if the circumstances specified under Subsections (v)(A)-(C) of this section do not occur first, and 5 years pass after the regulatory authority adopts this rule;

(viii) Comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the owner's food establishment or in response to community emergencies;

(ix) Accept notices issued and served by the regulatory authority according to law; and

(x) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this rule or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

10-4. Inspections and Correction of Violations.

(1) Performance- and Risk-Based.

The regulatory authority shall prioritize, and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with this rule and the establishment's potential as a vector of foodborne illness by evaluating:

- (i) Past performance, for nonconformance with rule or HACCP plan requirements that are critical;
- (ii) Past performance, for numerous or repeat violations of rule or HACCP plan requirements that are noncritical;
- (iii) Past performance, for complaints investigated and found to be valid;
- (iv) The hazards associated with the particular foods that are prepared, stored, or served;
- (v) The type of operation including the methods and extent of food storage, preparation, and service.

(2) Access.

(a) Allowed at Reasonable Times after Due Notice.

After the regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the food establishment is in compliance with this rule by permitting access to the establishment within 15 minutes, allowing inspection, and providing information and records specified in this rule and to which the regulatory authority is entitled according to law, during the food establishment's hours of operation and other reasonable times.

(b) Refusal, Notification of Right to Access, and Final Request for Access.

If a person denies access to the regulatory authority, the regulatory authority shall:

- (i) Inform the person that:
 - (A) The owner or responsible party is required by law to allow access to the regulatory authority; and
 - (B) If access is denied, an order may issued by the appropriate authority requesting access or a search warrant obtained to allow access; and

(ii) Make a final request for access.

(c) Refusal, Reporting.

If after the regulatory authority presents credentials and provides notice as specified under Section 10-4(2)(a), explains the authority upon which access is requested, and makes a final request for access as specified under Section 10-4(2)(b), the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

(d) Order to Gain Access.

If denied access to a food establishment for an authorized purpose and after complying with 10-4(2)(c) of this rule may issue a Violation and Order for Corrective Action or obtain a search warrant to gain access as provided under law.

(e) Documenting Information and Observations.

The regulatory authority shall document on an inspection report form:

(i) Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under Subsection 10-3(2)(c)(iii), inspection date, and other information such as type of water supply and sewage disposal; and

(ii) Specific factual observations of violative conditions or other deviations from this rule that require correction by including:

(A) Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this rule specified under Section 3-1(2)(a),

(B) Failure of food employees and the person in charge to demonstrate their knowledge of their responsibility to report a disease or medical condition as specified under Sections 3-2(d) and (e),

(C) Nonconformance with critical items of this rule,

(D) Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under Subsection 10-1(3)(c),

(E) Failure of the person in charge to provide records required by the regulatory authority for determining conformance with a HACCP plan as specified under Subsection 10-2(1)(d)(iv), and

(F) Nonconformance with critical limits of a HACCP plan.

(f) Specifying Time Frame for Corrections.

The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified under Sections 10-4(2)(f),(l),and (n).

(g) Issuing Report and Obtaining Acknowledgment of Receipt.

At the conclusion of the inspection and according to law, the regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations to the owner or to the person in charge, and request a signed acknowledgment of receipt.

(h) Refusal to Sign Acknowledgment.

The regulatory authority shall:

(i) Inform a person who declines to sign an acknowledgment of receipt of inspection findings as specified under Section 10-4(2)(a):

(A) An acknowledgment of receipt is not an agreement with findings,

(B) Refusal to sign an acknowledgment of receipt will not affect the person in charge's obligation to correct the violations noted in the inspection report within the time frames specified, and

(C) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the regulatory authority's historical record for the food establishment; and

(ii) Make a final request that the person in charge sign an acknowledgment of receipt of inspection findings.

(i) Public Information.

Except as specified under Section 10-2(2), the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it under law.

(j) Ceasing Operations and Reporting.

(i) A person in charge shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewagebackup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health, except as specified in Subsection (ii) of this section;

(ii) A person in charge need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

(k) Resumption of Operations.

If operations are discontinued as specified under Section 10-4(2)(f) or otherwise according to law, the owner or person in charge shall obtain approval from the regulatory authority before resuming operations.

(l) Timely Correction.

(i) A person in charge shall at the time of inspection correct a critical violation of this rule and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit, except as specified in Subsection (ii) of this section.

(ii) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the person in charge to correct critical rule violations or HACCP plan deviations.

(m) Verification and Documentation of Correction.

(i) After observing at the time of inspection a correction of a critical violation or deviation, the regulatory authority shall enter the violation and information about the corrective action on the inspection report.

(ii) As specified under Subsection 10-4(2)(l)(ii), after receiving notification that the person in charge has corrected a critical violation or HACCP plan deviation, or at the end of the specified period of time, the regulatory authority shall verify correction of the violation, document the information on an inspection report, and enter the report in the regulatory authority's records.

(n) Time Frame for Correction.

(i) The owner or person in charge shall correct noncritical violations by the next regular inspection, a date and time agreed to, or as specified by the regulatory authority, except as specified under Subsection (ii) of this section.

(ii) The regulatory authority may approve a compliance schedule that extends beyond the time limits specified under

Subsection (i) of this section if a written schedule of compliance is submitted by owner or person in charge and no health hazard exists or will result from allowing an extended schedule for compliance.

10-5. Prevention of Foodborne Disease Transmission by Employees.

(a) Obtaining Information: Personal History of Illness, Medical Examination, and Specimen Analysis.

The regulatory authority shall act when it has reasonable cause to believe that a food employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

(i) Securing a confidential medical history of the employee suspected of transmitting disease or making other investigations as deemed appropriate; and

(ii) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees, and

(iii) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703.

(b) Restriction or Exclusion of Food Employee.

Based on the findings of an investigation related to an employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected employee or owner or person in charge instituting one or more of the following control measures:

(i) Restricting the employee's services to specific areas and tasks in a food establishment that present no risk of transmitting the disease;

(ii) Excluding the employee from a food establishment.

(c) Restriction or Exclusion Order: Warning or Hearing Not Required, Information Required in Order.

Based on the findings of the investigation as specified under Section 10-5(a) and to control disease transmission, the regulatory authority may issue an order of restriction or exclusion to a suspected employee or the owner without prior warning, notice of a hearing, or a hearing if the order:

(i) States the reasons for the restriction or exclusion that is ordered;

(ii) States the evidence that the employee or owner shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;

(iii) States that the suspected employee or the owner holder may request an appeal hearing by submitting a timely request as provided under law; and

(iv) Provides the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

(d) Release of Employee from Restriction or Exclusion.

The regulatory authority shall release an employee from restriction or exclusion according to law and the following conditions:

(i) An employee who was infected with Salmonella typhi if the employee's stools are negative for S. typhi based on testing of at least 3 consecutive stool specimen cultures that are taken:

(A) Not earlier than 1 month after onset,

(B) At least 48 hours after discontinuance of antibiotics, and

(C) At least 24 hours apart; and

(ii) If one of the cultures taken as specified under Subsection (i) of this section is positive, repeat cultures are taken at intervals of 1 month until at least 3 consecutive negative stool specimen cultures are obtained.

(iii) An employee who was infected with Shigella spp. or Escherichia coli O157:H7 if the employee's stools are negative for Shigella spp. or E. coli O157:H7 based on testing of 2 consecutive stool specimen cultures that are taken:

(A) Not earlier than 48 hours after discontinuance of antibiotics; and

(B) At least 24 hours apart.

(iv) An employee who was infected with hepatitis A virus if:

(A) Symptoms cease; or

(B) At least 2 blood tests show falling liver enzymes.

10-6. Embargo and Destruction of Adulterated Food Products Authorized.

(1) The embargo of adulterated food products is authorized under 4-5.

(a) The regulatory authority may place a hold order on food found to be adulterated and unfit for human consumption.

(b) The regulatory authority may issue a hold order to the person in charge or to a person who owns or controls the food, without prior warning, notice of a hearing, or a hearing on the hold order.

(2) If a hold order is sustained upon appeal or if a timely request for an appeal hearing is not filed, the regulatory authority may order the person in charge or the owner or other person who owns or has custody of the food to bring the food into compliance with this rule or to destroy or denature the food under the regulatory authority's supervision.

Continuing Violations.

Each day on which a violation occurs, is a separate violation under this rule.

KEY: inspections

~~May 16, 1998~~

4-5-17

Notice of Continuation October 16, 1997



Commerce, Occupational and Professional Licensing
R156-31b
Nurse Practice Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21234

FILED: 06/22/1998, 16:27

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: After a public hearing was held, further Division review, and the Division's receipt of ordered incorporated by reference documents, changes need to be made.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-31b-102(3), corrected name of document that is incorporated by reference. In Subsection R156-31b-102(20), corrected a statute citation. In Section R156-31b-302c, added an additional national certification examination that could be taken by an advanced practice registered nurse (APRN) in preparation for licensure: The Oncology Nursing Certification Corporation. In Section R156-31b-601, corrected title and edition of documents that are incorporated by reference regarding nursing education program standards.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-31b-101, and Subsections 58-1-106(1) and 58-1-202(1)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Deletes the following: Criteria and Guidelines for the Evaluation of Practical Nursing Programs, 1996; Criteria and Guidelines for the Evaluation of Associate Degree Programs in Nursing, 1996; Criteria and Guidelines for the Evaluation of Baccalaureate and Higher Degree Programs in Nursing, 1996. Adds the following: Interpretive Guidelines for Standards and Criteria, Practical Nursing Program, 1997 Revised; Interpretive Guidelines for Standards and Criteria, Associate Degree Programs in Nursing, 1997 Revised; Interpretive Guidelines for Standards and Criteria, Baccalaureate and Higher Degree Programs in Nursing, 1997 Revised. NOTE: Titles and current edition of documents changed

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Division has determined that there are no costs or savings associated with these changes. Nursing education programs will be required to obtain copies of the "Interpretive Guidelines for Standards and Criteria" for their respective programs from National League of Nursing Accrediting Commission (NLNAC); however, there is no charge for these documents.

❖LOCAL GOVERNMENTS: The Division has determined that there are no costs or savings associated with these changes.

❖OTHER PERSONS: The Division has determined that there are no costs or savings associated with these changes. Nursing education programs will be required to obtain copies of the "Interpretive Guidelines for Standards and Criteria" for their respective programs from National League of Nursing Accrediting Commission (NLNAC); however, there is no charge for these documents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division has determined that there are no costs or savings associated with these changes. Nursing education programs will be required to obtain copies of the "Interpretive Guidelines for Standards and Criteria" for their respective programs from National League of Nursing Accrediting Commission (NLNAC); however, there is no charge for these documents.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment is for the purpose of correcting a clerical error in the rules as well as to add an additional examination which a nurse may take to become certified as an advanced practice registered nurse (APRN). There will be no savings occasioned by this

amendment and the only costs will be the expense of the examination to the APRN should he or she choose to take the examination.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Laura Poe at the above address, by phone at (801) 530-6789, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.poe@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.

R156-31b. Nurse Practice Act Rules.

R156-31b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in these rules:

- (1) "APRN" means an advanced practice registered nurse.
- (2) "Approved continuing education" in Subsection R156-31b-303(3) means:
 - (a) continuing education that has been approved by a professional nationally recognized approver of health related continuing education; and
 - (b) nursing education courses taken from an approved education program as defined in Section R156-31b-601.
- (3) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to include any nursing education program published in the documents entitled "State-Approved Schools of Nursing RN", 1997, and "State-Approved Schools of Nursing [PN/LPN/LVN]", 1997, published by the National League for Nursing Accrediting Commission, which are hereby adopted and incorporated by reference as a part of these rules.
- (4) "CCNE" means the Commission on Collegiate Nursing Education.
- (5) "Contact hour" means 50 minutes.
- (6) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.
- (7) "CRNA" means a certified registered nurse anesthetist.
- (8) "Delegation" means transferring to an individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability for the delegation.
- (9) "Direct supervision" is the supervision required in Subsection 58-31b-306(1)(a)(iii) and means:

(a) the person providing supervision shall be available on the premises at which the supervisee is engaged in practice; or

(b) if the supervisee is specializing in psychiatric mental health nursing, the supervisor may be remote from the supervisee if there is personal direct voice communication between the two prior to administering or prescribing a prescription drug.

(10) "Generally recognized scope and standards of advanced practice registered nursing" means the scope and standards of practice set forth in the "Scope and Standards of Advanced Practice Registered Nursing", 1996, published by the American Nurses Association, which is hereby adopted and incorporated by reference, or as established by the professional community.

(11) "Generally recognized scope of practice of licensed practical nurses" means the scope of practice set forth in the "Model Nursing Administrative Rules", 1994, published by the National Council of State Boards of Nursing, which is hereby adopted and incorporated by reference, or as established by the professional community.

(12) "Generally recognized scope of practice of registered nurses" means the scope of practice set forth in the "Standards of Clinical Nursing Practice", 1991, published by the American Nurses Association, which is hereby adopted and incorporated by reference, or as established by the professional community.

(13) "Licensure by equivalency" as used in these rules means licensure as a licensed practical nurse after successful completion of course work in a registered nurse program which meets the criteria established in Section R156-31b-601.

(14) "LPN" means a licensed practical nurse.

(15) "NLNAC" means the National League for Nursing Accrediting Commission.

(16) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(17) "Non-approved education program" means any foreign nurse education program.

(18) "Other specified health care professionals", as used in Subsection 58-31b-102(12), who may direct the licensed practical nurse means:

- (a) advanced practice registered nurse;
- (b) certified nurse midwife;
- (c) chiropractic physician;
- (d) dentist;
- (e) osteopathic physician;
- (f) physician assistant;
- (g) podiatric physician; and
- (h) optometrist.

(19) "RN" means a registered nurse.

(20) "Supervision" in Section R156-31b-701 means the provision of guidance or direction, evaluation and follow up by the licensed nurse for accomplishment of a task delegated to unlicensed assistive personnel or other licensed individuals.

(21) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

R156-31b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Section 58-31b-302, the examination requirements for graduates of approved nursing programs are as follows.

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination.

(i) Candidates who fail to pass the NCLEX licensing examination within two years following completion of their educational program shall be required to submit a plan of action for approval by the division in collaboration with the board before being allowed to sit for additional examinations.

(b) An applicant for licensure as an APRN shall pass one of the following national certification examinations consistent with his educational specialty:

(i) one of the following examinations administered by the American Nurses Credentialing Center Certification:

- (A) Adult Nurse Practitioner;
- (B) Family Nurse Practitioner;
- (C) School Nurse Practitioner;
- (D) Pediatric Nurse Practitioner;
- (E) Gerontological Nurse Practitioner;
- (F) Acute Care Nurse Practitioner;
- (G) Clinical Specialist in Medical-Surgical Nursing;
- (H) Clinical Specialist in Gerontological Nursing;
- (I) Clinical Specialist in Community Health Nursing;
- (J) Clinical Specialist in Adult Psychiatric and Mental Health Nursing;

(K) Clinical Specialist in Child and Adolescent Psychiatric and Mental Health Nursing;

(ii) National Certification Board of Pediatric Nurse Practitioners and Nurses;

(iii) American Academy of Nurse Practitioners; ~~and~~

(iv) The National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties;

(v) The Oncology Nursing Certification Corporation.

(c) An applicant for licensure as a CRNA shall pass the examination of the Council on Certification of the American Association of Nurse Anesthetists.

(2) In accordance with Section 58-31b-303, the examination requirements for graduates of nonapproved nursing programs are as follows.

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination.

(i) Candidates who fail to pass the NCLEX licensing examination within two years following initial application for licensure shall be required to submit, for approval by the division in collaboration with the board, a plan of action detailing steps to be taken by the applicant to prepare to retake the examination, before being allowed to sit for additional examinations.

(b) If an applicant for licensure as an RN cannot document satisfactory practice for 4,000 hours in an approved jurisdiction, the applicant shall also pass the CGFNS examination.

R156-31b-601. Nursing Education Program Standards.

In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program must meet to qualify graduates for licensure under this chapter, which are hereby adopted and incorporated by reference, are respectively:

(1) the "[~~Criteria and Guidelines for the Evaluation of Practical Nursing Programs~~]-1996][Interpretive Guidelines for Standards and Criteria, Practical Nursing Programs]-1997 Revised, published by the NLNAC.

(2) the "[Criteria and Guidelines for the Evaluation of Associate Degree Programs in Nursing", 1996] Interpretive Guidelines for Standards and Criteria, Associate Degree Programs in Nursing, 1997 Revised, published by the NLNAC.

(3) the "[Criteria and Guidelines for the Evaluation of Baccalaureate and Higher Degree Programs in Nursing", 1996] Interpretive Guidelines for Standards and Criteria, Baccalaureate and Higher Degree Programs in Nursing, 1997 Revised, published by the NLNAC, or the "Standards of Accreditation of Baccalaureate and Graduate Nursing Education Programs", February 1998, published by the CCNE.

KEY: licensing, nurses
[July 1,]1998

58-31b-101
58-1-106(1)
58-1-202(1)



Commerce, Occupational and Professional Licensing
R156-60b-302a
Qualifications for Licensure - Education Requirements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 21229
FILED: 06/18/1998, 15:05
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Division needed to update the edition of a book entitled "Accredited Institutions of Postsecondary Education."

SUMMARY OF THE RULE OR CHANGE: Changed from 1996-97 edition to the 1997-98 edition of "Accredited Institutions of Postsecondary Education." This book contains information on institutions of higher education that have been accredited by a regional institutional accrediting body.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-60-301, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Division has determined that there are no costs or savings imposed by updating the edition of the book. There would be a cost involved if a state agency wanted to voluntarily purchase the book. The approximate cost of the book is \$60. However, the Division is not aware of the need for any other state agency other than itself to purchase this book.

❖LOCAL GOVERNMENTS: The Division has determined that there are no costs or savings imposed by updating the edition of the book.

❖OTHER PERSONS: The Division has determined that there are no costs or savings imposed by updating the edition of the book.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division has determined that there are no costs or savings imposed by updating the edition of the book. If an individual wanted to voluntarily purchase the book, it would cost approximately \$60.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The only effect of this rule change is to update the edition of the Accredited Institutions of Postsecondary Education publication to be utilized in determining an institution's accreditation status. There will be no additional costs or savings occasioned by this change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Laura Poe at the above address, by phone at (801) 530-6789, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.poe@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-60b. Marriage and Family Therapist Licensing Act Rules.
R156-60b-302a. Qualifications for Licensure - Education Requirements.

(1) An institution or program of higher education qualifying an applicant for licensure as a marriage and family therapist, to be recognized or approved by the division in collaboration with the board under Subsections 58-60-305(4)(a) and (c), shall be a marriage and family therapy education program accredited by or in candidacy status by the COAMFTE at the time the applicant received the required earned degree.

(2) An earned doctorate or master's degree in a field of education emphasizing human behavioral studies and skill in therapy or counseling qualifying an applicant for licensure as a marriage and family therapist under Subsections 58-60-305(4)(b) and (d), shall:

(a) be accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", [~~1996-97~~]1997-98 edition, published for the

Commission of Recognition of Postsecondary Accreditation of the American Council on Education; and

(b) include successful completion of the following graduate level course work and a clinical practicum:

(a) six semester hours/nine quarter hours of course work in theoretical foundations of marital and family therapy;

(b) nine semester hours/12 quarter hours of course work in assessment and treatment in marriage and family therapy;

(c) six semester hours/nine quarter hours of course work in human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(d) three semester hours/three quarter hours in professional ethics;

(e) three semester hours/three quarter hours in research methodology and data analysis;

(f) three semester hours/three quarter hours in electives in marriage and family therapy; and

(g) a clinical practicum of not less than 500 hours of face to face supervised clinical practice of which not less than 250 hours shall be with couples or families who are physically present in the therapy room.

(3) An earned doctorate or master's degree in a field of religious study with a documented emphasis in marriage and family therapy qualifying an applicant for licensure as a marriage and family therapist under Subsection 58-60-305(4)(e), shall meet the requirements set forth under Subsections (2)(a) through (g).

KEY: licensing, therapists, marriage and family therapist*

[June 16, 1998]

58-1-106(1)

58-1-202(1)

58-60-301



Commerce, Occupational and Professional Licensing

R156-60c-302a

Qualifications for Licensure - Education Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21230

FILED: 06/18/1998, 16:01

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Division needed to update the edition of a book entitled "Accredited Institutions of Postsecondary Education."

SUMMARY OF THE RULE OR CHANGE: Changed from 1996-97 edition to the 1997-98 edition of "Accredited Institutions of Postsecondary Education." This book contains information on institutions of higher education that have been accredited by a regional institutional accrediting body.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-60-401, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Division has determined that there are no costs or savings imposed by updating the edition of the book. There would be a cost involved if a state agency wanted to voluntarily purchase the book. The approximate cost of the book is \$60. However, the Division is not aware of the need for any other state agency other than itself to purchase this book.

❖LOCAL GOVERNMENTS: The Division has determined that there are no costs or savings imposed by updating the edition of the book.

❖OTHER PERSONS: The Division has determined that there are no costs or savings imposed by updating the edition of the book.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division has determined that there are no costs or savings imposed by updating the edition of the book. If an individual wanted to voluntarily purchase the book, it would cost approximately \$60.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The only effect of this rule change is to update the edition of the Accredited Institutions of Postsecondary Education publication to be utilized in determining an institution's accreditation status. There will be no additional costs or savings occasioned by this change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Laura Poe at the above address, by phone at (801) 530-6789, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.lpoe@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-60c. Professional Counselor Licensing Act Rules.
R156-60c-302a. Qualifications for Licensure - Education Requirements.**

(1) The recognized accredited institution of higher education in Subsection 58-60-405(4) is one which is accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", [1996-97]1997-98 edition, published for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education.

(2) The core curriculum in Subsection 58-60-405(4)(a) shall consist of the following courses:

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

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

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

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

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

- (i) physical, social and psychosocial development;
- (ii) personality development;
- (iii) learning theory and cognitive development;
- (iv) emotional development;
- (v) life-span development;
- (vi) enhancing wellness;
- (vii) human sexuality; and
- (viii) career development;

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

- (i) human diversity;
- (ii) multicultural issues and trends;
- (iii) gender issues;
- (iv) exceptionality;
- (v) disabilities;
- (vi) aging; and
- (vii) discrimination;

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

- (i) building, maintaining and terminating relationships;
- (ii) solution-focused and brief therapy;
- (iii) crisis intervention;
- (iv) prevention of mental illness;
- (v) treatment of specific syndromes;
- (vi) case conceptualization;
- (vii) referral, supportive and follow-up services; and
- (viii) lab not to exceed four semester or six quarter hours;

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

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

- (i) addictions;
- (ii) substance abuse;
- (iii) cognitive dysfunction;
- (iv) sexual dysfunction; and
- (v) abuse and violence;
- (j) a minimum of two semester or three quarter hours shall be in a foundation course in test and measurement theory;
- (k) a minimum of two semester or three quarter hours shall be in an advanced course in assessment of mental status;

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

- (i) statistics;
- (ii) research methods, qualitative and quantitative;
- (iii) use and interpretation of research data;
- (iv) evaluation of client change; and
- (v) program evaluation;
- (m) a minimum of three semester or five quarter hours of practicum as defined in Subsection R156-60c-102(2);

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

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

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

(4) Professional counseling course work required in the core curriculum may be completed post degree.

KEY: licensing, counselors, mental health, professional counselors*

[June 16,]1998 **58-60-401**
58-1-106(1)
58-1-202(1)



Education, Administration
R277-451
The State School Building Program

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 21259
FILED: 06/30/1998, 15:56
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Legislature repealed the provision in the law that requires this rule.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None - This rule repeals an opportunity school districts had to receive loans for critical building needs. These school district needs are now addressed differently.

❖LOCAL GOVERNMENTS: None - This rule repeals an opportunity school districts had to receive loans for critical building needs. These school district needs are now addressed differently.

❖OTHER PERSONS: None - This rule repeals an opportunity school districts had to receive loans for critical building needs. These school district needs are now addressed differently.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs due to the repeal of this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. (Scott W. Bean)

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or by Internet E-mail at clear@usoe.k12.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: Carol B. Lear, School Law Specialist

R277. Education, Administration.

[R277-451. The State School Building Program:

R277-451-1. Definitions:

- A. "Board" means the Utah State Board of Education.
- B. "ADM" means Average Daily Membership of students.
- C. "Capital Outlay Foundation Program" means a program that provides a minimum dollar generation guarantee, per ADM, for every district willing to levy a tax of .0024 per dollar of taxable value on real property.
- D. "Emergency school building needs distribution" means a program that utilizes twenty percent of the money made available

through the Public Education Capital Outlay Act pursuant to Sections 53A-21-101 through 53A-21-105:

— E. "Students in alternative housing" means additional students other than those who can be appropriately accommodated in existing buildings and programs, who have been accommodated through year-round scheduling, extended day scheduling, double session scheduling, portable buildings, contracting out for additional space, busing to other districts, or other housing strategies.

— F. "Assessed valuation" means the assessed value of real property certified by the State Tax Commission to the Board each year.

— G. "Derived assessed valuation" means current collections of tax levy (no prior year penalties or redemptions) divided by the same year tax rates.

— H. "Need" means growth and the number of students in alternative housing.

— I. "Growth" means:

— (1) a district's percent increase of students annually from October 1 to October 1, in the past three years as compared to the total student increase of the state; and

— (2) a district's percent increase of students compared to its own number of students.

— J. "Effort" means:

— (1) the prior three year average of total district tax levy, and

— (2) the total funds used by a district to meet bond and interest payments as a percentage of the money raised during the prior three years from the .0024 tax rate levied for capital outlay and debt service.

— K. "Foundation level" means a base amount per ADM guaranteed to school districts by the Board.

— L. "Ability" means a school district's prior three year average derived assessed valuation per ADM.

— M. "Loan" means a transaction which takes money from a Board account and places it in a school district account with the full legal intention by a school district that it be repaid to the account from which it was taken.

— N. "Accounts receivable" means any amount due the Board from a school district for which payment has not been received by the Board.

— O. "Fiscal year (FY)" means the twelve month period from July 1 through June 30 during which state funds are distributed.

— P. "Superintendent" means the State Superintendent of Public Instruction.

— Q. "USOE" means the Utah State Office of Education.

R277-451-2. 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, Sections 53A-19-101 through 105 which direct local school boards to develop budgets, provide for appropriate plans to be filed with the Superintendent and maintain reserves consistent with the law; Sections 53A-21-102 and 53A-21-104 which direct the Board to provide financial assistance to school districts to meet critical school building and debt service needs and provide standards toward that end; 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 the eligibility requirements and the procedures for distributing funds appropriated for the capital outlay foundation program, the emergency school building needs program and for providing short-term loans to districts for capital outlay projects in school building construction and renovation.

R277-451-3. Capital Outlay Foundation Program.

A. A district may receive state school building funds under the capital outlay foundation program established in Section 53A-21-102(1) if the amount raised by levying a tax rate of .0024 does not generate revenues above the foundation level established per ADM when the legislative appropriation is entered into the formula.

B. To qualify for state funds under the capital outlay foundation program, a district must levy a tax rate of .0024 per dollar of taxable value for capital outlay and debt service.

C. The USOE shall support the foundation program to assist the qualifying district in reaching the foundation level.

D. Eighty percent of the funds appropriated by the Legislature under Section 53A-21-105 shall be used in calculating the foundation level through fiscal year 2001.

E. In fiscal year 2002, 100 percent of the funds appropriated by the Legislature under Section 53A-21-105 shall be used in calculating the foundation level.

R277-451-4. Emergency School Building Needs Program.

A. A district may receive state school building funds under the emergency school building needs program under Section 53A-21-103(4)(a) by meeting the qualifying criteria of need, effort and ability.

B. Calculation to determine a district's eligibility and the distribution amount for the emergency building needs program shall be made based on a statistical formula provided by the USOE Director of Finance or his designee.

C. Through fiscal year 2001, twenty percent of the funds appropriated by the Legislature in Section 53A-21-105 shall be used in calculating the emergency school building needs program funds.

D. On June 30, 2001, this program shall cease to exist and all funds appropriated by the Legislature in Section 53A-21-105 shall be used in the capital outlay foundation program.

R277-451-5. Capital Outlay Loan Program.

A. A district may receive capital outlay loan program funds under Section 53A-21-102 which establishes a capital outlay loan program to provide short-term help to districts, for a period not to exceed five years, for school building construction and renovation.

B. To be a priority qualifier for the capital outlay loan program, a district shall meet all of the following requirements:

(1) demonstrate an ability and commitment as demonstrated by a local board vote to set the levy at the rate needed to repay the loan within the time period prescribed by the loan agreement;

(2) levy a tax rate for capital outlay and debt service above the state average. If a district does not meet this criterion and the needs of the priority qualifiers are met, the loan application of districts not meeting this criterion may be considered, if the district commits to levying at or above the state average for the next tax year. In the case of a natural disaster or other emergency, this requirement may be waived by the Superintendent.

(3) demonstrate a district need that is better met through the loan fund than through more traditional means for providing school building construction or renovation or both.

C. A district applying for a short term loan under this rule shall make a formal application which includes:

(1) the emergency condition or the condition that exists that would be better met through the loan fund rather than through more traditional means for providing school building construction or renovation or both;

(2) the amount of loan sought;

(3) the proposed repayment schedule, not to exceed five years;

(4) the history of the last five years of loans or special supplementary funds received by the district from the USOE;

(5) minutes of the local board meeting recording the affirmative vote to levy the needed tax; and

(6) a signed agreement that if the district should default on a loan payment, the Superintendent may deduct the loan payment and added interest from the calculated per district state distribution after 90 days.

D. The loan request and repayment conditions shall be approved by the Superintendent or his designee.

KEY: educational facilities, education finance

~~July 16, 1996~~ ~~Art X Sec 3~~
~~Notice of Continuation September 12, 1997~~ ~~53A-19-101~~
~~through 105~~
~~53A-21-102~~
~~53A-21-104~~
~~53A-1-401(3)]~~



Education, Administration
R277-458
70% Utilization of School Buildings

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 21260

FILED: 06/30/1998, 15:56

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule was amended to provide for a five-year review of district plans by the Utah State Office of Education and revise room capacity formula.

SUMMARY OF THE RULE OR CHANGE: This rule now provides for a five-year plan for districts in reviewing enrollment, and changes the numbers of students used in formula to determine capacity. This rule is now consistent with other class size rules.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None - The changes in this rule require only additional long-term planning by districts; there are no changes in how money is spent under this rule.

❖LOCAL GOVERNMENTS: None - The changes in this rule require only additional long-term planning by districts; there are no changes in how money is spent under this rule.

❖OTHER PERSONS: None - The changes in this rule require only additional long-term planning by districts; there are no changes in how money is spent under this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs due to the amendments to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. (Scott W. Bean)

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or by Internet E-mail at clear@usoe.k12.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: Carol B. Lear, School Law Specialist

R277. Education, Administration.

R277-458. 70% Utilization of School Buildings.

R277-458-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Instructional station" means a classroom, laboratory, shop, study hall, or physical education facility designed for student instruction. For example, if a gymnasium were designed to accommodate two P.E. classes, the gymnasium would represent two instructional stations.

C. "Intolerable classroom" means a space too small for intended use, a space with undesirable environmental conditions that cannot be corrected, approved rent space, makeshift space, a library or stage used as a classroom, and any space declared unsuitable by the State Fire Marshal.

D. "Five-year plan" means the comprehensive capital outlay plan required under R277-452.

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R277-458-3. School Building Utilization.

A. ~~As part of its five-year plan, [A] a~~ local school district shall certify to the Board ~~[by November 1 of each school year,]~~ based upon October 1 of the current year or the previous year peak student enrollments:

(1) that the district is in compliance with Section 53A-17a-142 and Board standards regulating school building utilization. A district may demonstrate compliance with Section 53A-17a-142 by using eighty percent capacity if computed with the student instruction stations option (see Sections 3(C)(2) and (3)); and

(2) the calculated capacity of each school in the district.

B. A school need not meet either student capacity standard of Section 3(A)(1) if it qualifies under any of the following:

(1) the nearest elementary school for transfer purposes is more than a three-mile radius in distance from other elementary schools;

(2) the nearest middle or junior high school for transfer purposes is more than a five-mile radius in distance from other middle or junior high schools;

(3) the nearest high school for transfer purposes is more than a ten-mile radius in distance from other high schools;

(4) the school operating at less than the student capacity standard could not be closed and the students moved to eligible transfer schools without the transfer schools exceeding 100% of capacity as determined by R277-458-3C(1);

(5) there is only one elementary school, one junior high or middle school, and one high school in the district.

C. Student capacity is determined as follows:

(1) computing building capacity according to one of the following three options:

(a) 70% Standard: computing the capacity based on Utah State Office of Education square feet per student criteria;

(b) Student Instructional Space Standard: computing capacity as determined by student instruction stations as defined under R277-458-3C(2) and (3);

(c) 70% Average Capacity Standard: computing the average of capacity based on Utah State Office of Education square feet per student criteria, and capacity as determined by student instruction stations as defined under R277-458-3C(2) and (3).

(2) identifying by room number or description each instructional station within a school. Intolerable classrooms and auxiliary spaces are not counted in calculating student capacity. Instructional spaces of less than 500 square feet in area, except for spaces for special education, are not counted in calculating student capacity. Rented instructional space may be excluded in computing building capacity providing rental fees cover district overhead costs for maintenance and operation. If option (b) is used and intolerable classrooms and spaces are excluded from the capacity calculation, schools must operate at 80% of capacity;

(3) determining the number of student instructional stations or the student capacity of each room or instruction station identified:

(a) in computing capacity of regular classrooms, the following standards apply:

(i) kindergarten: ~~[48]20~~ students per classroom, per day--two one-half day sessions;

(ii) grades one through three: ~~[25]15~~ students per classroom;

(iii) grades four through six: ~~[30]20~~ students per classroom;

(iv) junior high and middle school: ~~[27]~~20 students per classroom;

(v) junior high/senior high combinations: ~~[25]~~20 and one-half students per classroom;

(vi) senior high: ~~[24]~~20 students per classroom.

(b) student capacity for laboratories, physical education facilities, shops, study halls, self-contained special education classrooms, facilities jointly financed by school districts and another community agency for joint use, and similar rooms must be calculated individually. Capacity for self-contained special education classrooms shall be based upon students per class as defined by Board special education standards. Sufficient documentation must be filed to be available for audits.

(c) capacities of relocatable classrooms are included if in use;

(d) auditoriums; multi-purpose rooms; not more than one elementary school computer laboratory per elementary school; library media centers; rooms for federal Headstart programs; other rooms used for required state or federal programs; auxiliary spaces, such as stages; laboratories which are part of vocational or science programs; and pull-out rooms within team-teaching spaces are not included in calculating student instruction stations.

(e) a district which adopts a voted leeway specifically to reduce classroom size may use student capacity goals stipulated in its leeway election literature or its board minutes to establish a lesser instruction station capacity. Instruction station capacity may be reduced by the same percentage as the district decrease in teacher-pupil ratios as a result of the leeway.

(4) adjusting, at the option of the district, with Utah State Office of Education approval, for building capacity which is based on square foot data for the following:

(a) self-contained classrooms for handicapped students. The square footage for the classroom may be reduced proportionally according to the ratio of the regular student capacity of the room less the recommended students per class as defined by the Board special education standards, divided by the regular student capacity of the room;

(b) approved rental instructional areas;

(c) facilities jointly financed and used by a school district and another community agency. Reductions are made proportionally to the community share for capital costs;

(d) a voted leeway adopted specifically to reduce class size. The square footage for a building may be reduced by the same percentage as the decrease in teacher-pupil ratios resulting from the voted leeway.

D. If undue hardship or inequities are created through exact application of the standards adopted under this section, a school district may request the Board to make exceptions in individual cases.

E. Schools which do not meet the seventy per cent utilization or the student instructional space standard may be granted exception if:

(1) the school district demonstrates to the satisfaction of the Board that the school is in a projected high student growth area, including inter and intra district student transfers, in which the school is projected to reach seventy per cent utilization within three years' time;

(2) the school is being closed by action of the local board with closure to be accomplished by the end of the following school year; or

(3) the school district demonstrates to the satisfaction of the Board that costs incurred in complying with the standards exceed the costs of continued operation of a facility.

F. District school building plans approved by the Board may not exceed the Utah State Office of Education per student space criteria unless the district has only one elementary school, one junior high or middle school, and one high school.

.....

KEY: education finance, educational facilities
~~[July 27,]~~199[5]8
Notice of Continuation April 15, 1997

Art X Sec 3
53A-1-401(3)
53A-17a-142



Education, Administration **R277-502** Teacher Certification Procedures

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 21261
FILED: 06/30/1998, 15:56
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule was revised to update old terminology and make provisions consistent with practice.

SUMMARY OF THE RULE OR CHANGE: The term "improvement unit" was dropped. Terminology and time periods were updated and revised.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None - This rule has no cost/savings impact because only terminology has been changed and the explanation of the certification requirements simplified.

❖LOCAL GOVERNMENTS: None - This rule has no cost/savings impact because only terminology has been changed and the explanation of the certification requirements simplified.

❖OTHER PERSONS: None - This rule has no cost/savings impact because only terminology has been changed and the explanation of the certification requirements simplified.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs as a result of the amendments to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. (Scott W. Bean)

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Education Administration 250 East 500 South Salt Lake City, UT 84111, or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or by Internet E-mail at clear@usoe.k12.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: Carol B. Lear, School Law Specialist

R277. Education, Administration. R277-502. Teacher Certification Procedures. R277-502-1. Definitions.

- A. "Board" means the Utah State Board of Education. B. "Certificate" means a license issued by the Board which attests to the fact that the holder has satisfied the requirements for employment in the public school system. C. "Endorsement" means a qualification in a specialty [field]course or area which is given by the Board. D. "Renewal" means a reissuance of a certificate. [E. "Improvement unit" means a unit of recertification credit based on an approved education activity. —F]E. "Appropriate employment" means full-time experience, in the field for which the certificate is issued, in a public or accredited private or parochial school. [G]E. "Special assignment teacher" means a teacher assigned to:

- (1) alternative school settings with self-contained classrooms in which the teacher must teach several subjects; (2) teach homebound students with the expectation that several subjects [will]may be covered by the same teacher; or (3) necessarily existent small or rural schools with limited faculty and enrollment in which teachers [must]may teach more than three core subjects.

[H]G. "Revalidation" means reaffirmation of certificate validity on the basis of experience verification as provided by law.

.....

R277-502-3. Overview.

A. The Board uses the approved program approach to teacher education and certification. This involves:

- (1) the development of teacher education programs by an institution in accordance with established [standards]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) certification by the Board of an applicant for certification upon completion of an approved program;

(4) the issuance, by the Board, of a[n-initial]basic certificate to beginning teachers. That certificate may be converted to a [second]standard certificate upon demonstration of competence during employment.

B. The Board, or its designee, shall establish[es] deadlines and uniform forms and procedures for all aspects of certification.

R277-502-4. The Certification Process; Basic and Standard Certificates.

A. An initial certificate, the Basic Certificate, is issued to an individual who is recommended by a Board-approved teacher education program. The recommendation indicates that the individual has satisfactorily completed the programs of study required for the preparation of educators and met certification standards in the certification category for which the individual is recommended.

B(1) The Basic Certificate is issued for [two]four years. It may be extended for [an]one additional year, upon the employing school district's recommendation, if the Basic Certificate holder requires additional professional growth and assistance[are needed] before a judgment about recommending a Standard Certificate can be made.

(2) Employing school districts and teacher preparation institutions shall cooperate in making special assistance available for teachers holding Basic Certificates. The resources of both may be used to assist those teachers experiencing significant problems in teaching. 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 teacher graduated.

C. A Standard Certificate may be issued by the Board to the holder of a Basic Certificate upon the recommendation of the employing school district with input from a teacher preparation institution. The recommendation [is]shall be made [upon]following the completion of two years of successful, professional growth and teaching experience and before the Basic Certificate expires.

D. The Standard Certificate [is]shall be issued for five years and [is]shall be valid until revoked for cause by the Board. The Standard Certificate [is]shall be revalidated for successive five year periods if the holder verifies at least one-half time appropriate employment in education for at least three years during each five year interval. Otherwise, the certificate [must]may only be renewed in accordance with [Section 8]R277-502-8.

E. Basic and Standard Certificates expire on June 30 of the year shown on the face of the certificate and may be renewed any time after January of that year.[A six-month grace period after the expiration date, from June 30 through December 31, is allowed to revalidate or renew if the individual is not teaching.] Responsibility for securing revalidation or renewal of the certificate rests upon the holder.[A teacher holding a valid certificate first issued before February 17, 1978 may continue to renew or revalidate it using the requirements in effect at the time the certificate was originally issued. However, any individual whose certificate has lapsed for a period of six months or more must meet the current requirements to receive a new certificate.]

R277-502-5. Certificate Categories and Endorsements; Certificate Required for Employment.

A(1) Unless excepted ~~[by]~~under rules of the Board, to be employed in the public schools in a capacity covered by the following certificates, a person ~~[must]~~shall hold a valid certificate issued by the Board in the respective category:

- (a) Early Childhood Education;
- (b) Elementary Teaching;
- ~~[(c) Middle Education Teaching;]~~
- ~~[(d)]~~ Secondary Teaching;
- ~~[(e)]~~ Administrative/Supervisory;
- ~~[(f)]~~ Special Education;
- ~~[(g)]~~ Communication Disorders;
- ~~[(h)]~~ School Counselor, School Psychologist, and School Social Worker;
- ~~[(i)]~~ Library Media; and
- ~~[(j)]~~ ~~[Vocational]~~Applied Technology Education

Student teachers and interns ~~[must]~~shall also hold valid certificates issued by the Board.

(2) If a secondary or middle education teacher is assigned in a subject area for which that teacher is not endorsed, the employing school district ~~[must]~~shall request a Letter of Authorization from the Board to continue the teacher's assignment.

(3) Special assignment teachers or teachers in other similar circumstances ~~[must]~~shall hold a Basic or Standard Certificate with endorsement(s) in one or more core curriculum subjects plus have completed not fewer than nine quarter hours of state-approved college or in-service course work in each of the subject areas in which they are assigned.

(4)~~[(a)]~~ A teacher may make application for ~~[a one-time]~~an exemption ~~[from the requirement of having]~~of a specific subject endorsement ~~[in the area in which he or she teaches if:]~~consistent with 53A-6-101(5):

~~[(i) the teacher has been assigned by the employing district to a subject outside the teacher's area of endorsement and is currently assigned to that subject area;~~

~~[(ii) the teacher has teaching experience in the subject area outside of his or her area of endorsement for more than three consecutive years. At least three years and one semester of consecutive teaching is needed to meet the time requirement of this subsection; and~~

~~[(iii) the teacher has received at least a satisfactory evaluation for the three previous years of teaching from evaluators employed by the school district.]~~

(a) Under 53A-6-101(5)(c), ~~[(F)]~~the evaluation ~~[must]~~shall reflect the ability of the teacher to teach the subject matter, including the required level of ~~[(the)]~~ subject matter ~~[knowledge]~~mastery ~~[(the teacher possesses)].~~

(b) ~~[(Teachers applying to the Board for this exemption must do so before September 1, 1988.)]~~ Exemptions granted are only for the specific class assigned; they do not allow the teacher exemption in the general subject area ~~[of the class].~~

(c) Special education resource teachers assigned to teach academic subjects may apply for both a special education exemption and an academic subject exemption if the criteria are met in both areas.

(d) The exemption is valid ~~[as long as the teacher retains]~~for the duration of the specific class assignment. ~~[(Transfers to other~~

~~schools or districts do not affect the exemption if the teaching assignment remains the same in the new school or district.)]~~

B. ~~[Persons]~~Individuals applying for a certificate in any category ~~[must]~~shall meet the specific requirements for the specific certificate.

C. Certificates may be endorsed to indicate qualification in a specialty ~~[field]~~course or area in any category of certification. Endorsements that are required in a certification category are specified in the requirements for that certification category. An endorsement without a current certificate is not valid for employment purposes.

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R277-502-7. Renewal of Basic Certificate.

The Basic Certificate ~~[is]~~shall be issued for ~~[two]~~four years. After ~~[two]~~four years a teacher ~~[must]~~shall either be recommended for a Standard Certificate or qualify for renewal under one of the following:

A. A one-year extension under ~~[Section]~~R277-502-4(B)(1).

B. A teacher who is not recommended for the Standard Certificate may apply for employment in another school district. If that school district is willing to employ the individual as a teacher, the Basic Certificate may be renewed for an additional two year period. There shall be no extensions of the Basic Certificate period beyond a total of five years.

C. ~~[A teacher who holds a Basic Certificate but who does not teach immediately or has an interruption in employment after the first year is entitled to one renewal without having to complete improvement units.]~~ If more than five years elapse before the Basic Certificate holder has completed a minimum of two years active teaching, renewal credit may be required.

R277-502-8. Renewal of Standard Certificates.

A. The Standard Certificate may be revalidated under the requirements of ~~[Section]~~R277-502-4(D).

B. Certificates which have expired may be renewed by successfully completing, within the five year period prior to renewal, nine quarter hours/six semester hours of approved upper division or graduate credit ~~[(or 90 improvement units)].~~ Renewal work ~~[can]~~may be ~~[(improvement unit work,)]~~ college work, credit given for years of experience, or a combination thereof. Renewal activities ~~[must]~~shall be beneficial as determined by the Utah State Office of Education Certification Section and related to the education assignment or area of professional preparation.

(1) College credit: Credit for lower division courses may be awarded with the prior approval of the Board or of its designee. ~~[(One quarter hour equals 10 improvement units. Three quarter)]~~Two semester hours of credit are given for each school year of ~~[(full)]~~a minimum of half-time, contract teaching experience. Official transcripts and grade reports verifying completion of college course work become a permanent part of the file maintained on each certificated individual.

~~[(2) Improvement units: The Board, or its designee, establishes methods for defining, submitting, and awarding improvement units. Improvement units may be earned through experience in the following:~~

- ~~[(a) college course credit;~~

- ~~— (b) participating in in-service programs;~~
- ~~— (c) supervising professional clinical experiences;~~
- ~~— (d) attending lectures pertaining to the education assignment;~~
- ~~— (e) school observation and evaluation visits;~~
- ~~— (f) participating in specialized community or professional organizations and programs;~~
- ~~— (g) developing or conducting demonstrations, curriculum innovations, or in-service programs;~~
- ~~— (h) professional writing;~~
- ~~— (i) creative productions;~~
- ~~— (j) travel relevant to the education assignment;~~
- ~~— (k) educator exchange programs; and~~
- ~~— (l) work experience.]~~

C. ~~[Improvement units and e]~~Credit hours for renewal of a certificate may not be held over from one renewal period to the next unless they are earned during the year that a certificate expires and are not needed for the current renewal. Such ~~[units or]~~hours may be carried over to the next renewal period.

R277-502-9. Certification Fees.

A. The Board, or its designee, shall establish~~[es]~~ a fee schedule for the issuance, revalidation, and renewal of certificates and endorsements. All endorsements to which the applicant is entitled may be issued, revalidated, or renewed with the same expiration date for one certification fee. The renewal or validation of endorsements at different times may require~~[s]~~ the payments of a renewal fee for each certificate.

B. If insufficient credit is presented for a full five-year certificate, the full fee ~~[with]~~shall, nevertheless, be charged. An additional fee ~~[with]~~shall be charged if credit is later presented to extend the certificate to a full five-year period.

C. An endorsement may be added at any time, ~~[but]~~and unless the teaching certificate is reprinted, there ~~[is]~~shall be no charge. If a new certificate is issued, a fee ~~[is]~~shall be charged.

KEY: professional competency, teacher certification
 199~~[3]8~~ 53A-6-101
 Notice of Continuation September 12, 1997 53A-1-401(3)
 53A-17a-107(2)



Environmental Quality, Water Quality
R317-100
 Utah State Project Priority System and
 List for the Utah Wastewater Project
 Assistance Programs

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 21247
 FILED: 06/26/1998, 11:06
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The priority system and list are used to rank wastewater projects for possible State and Federal funding assistance. The priority list is updated annually through rulemaking and incorporated by reference into Section R317-100-1. The proposed rulemaking action is required in order for the State to be eligible for federal funds.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment changes the date in the incorporation by reference statement to reflect the current Fiscal Year 1999 Wastewater Project Priority List.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-104
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 35.915 and 40 CFR 35.2015

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Fiscal Year 1999 Utah State Project Priority List

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: None.
 - ❖LOCAL GOVERNMENTS: Loans issued under the program will substantially reduce the cost of wastewater facilities to local governments.
 - ❖OTHER PERSONS: None.
- COMPLIANCE COSTS FOR AFFECTED PERSONS:** Loans issued under the program will substantially reduce the cost of wastewater services to individuals.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impacts to businesses will occur as a result of the proposed amendments.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 Environmental Quality
 Water Quality
 Cannon Health Building
 288 North 1460 West
 PO Box 144870
 Salt Lake City, UT 84114-4870, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 David Wham at the above address, by phone at (801) 538-6146, by FAX at (801) 538-6016, or by Internet E-mail at dwham@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/1998

AUTHORIZED BY: Dianne R. Nielson, Director

R317. Environmental Quality, Water Quality.
R317-100. Utah State Project Priority System and List for the Utah Wastewater Project Assistance Program[s].
R317-100-1. Incorporation by Reference.

The Fiscal Year [1998]1999 Utah State Project Priority List, dated June [30], [1997]1998 adopted by the Utah Water Quality Board pursuant to Section 19-5-104 and pursuant to 40 CFR 35.915, is hereby incorporated by reference and made a part of these regulations. This rule is necessary to meet requirements of Federal Water Quality Act. Copies of the Fiscal Year [1998]1999 Utah State Project Priority List are available at the Utah Department of Environmental Quality, Division of Water Quality.

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KEY: grants, state assisted loans, wastewater
[October 24, 1997]1998 **19-5**
Notice of Continuation December 12, 1997 **19-5-104**
40 CFR 35.915
and 40 CFR 35.2015



**Health, Family Health Services,
Children with Special Health Care
Needs**
R398-2
Newborn Hearing Screening

NOTICE OF PROPOSED RULE
(New)
DAR FILE NO.: 21225
FILED: 06/15/1998, 20:33
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is necessary due to the implementation of the Newborn Hearing Screening statute, S.B. 40, 1998 session.

SUMMARY OF THE RULE OR CHANGE: This rule implements S.B. 40, the Newborn Hearing Screening statute. It describes hearing screening procedures and specifies the timing of screening, audiological test battery, and habilitative referrals and indicates who will be responsible for each of these protocols. It outlines procedures for the Utah Department of Health (UDOH) to develop a central database and tracking system and create a schedule for data transfer to UDOH.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-10-6

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Provisions of this rule replace other currently budgeted services. Per diem costs to UDOH are less than \$2,000 for Newborn Hearing Screening Committee.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: Based on current charges for this service, there will be a potential charge of \$25 - \$65 per live birth. Prior to the statute, approximately 28,000 of the 43,000 annual newborns were screened for hearing. The implementation of the statute and this rule will require the remaining 15,000 births annually to be screened. This is a total increase of between \$375,000 and \$975,000 to be borne by insurance companies, hospitals, employers who pay insurance premiums, Medicaid, and parents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The implementation of the statute by this rule will require each newborn to be screened at a charge of between \$25 and \$65 per live birth.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT

THE RULE MAY HAVE ON BUSINESSES: The potential costs to insurance companies, hospitals, employers and parents for newborn hearing screening were evaluated when S.B. 40 was passed in the 1998 Legislative session. Public policy does and should support this relatively minor cost. By identifying a newborn with a hearing loss at birth, that newborn's opportunity for maximum development of his/her abilities is significantly increased. This rule will make uniform the process for testing and with the input of the Newborn Hearing Screening Advisory Committee, the costs to insurance companies and others will be carefully evaluated and minimized. In the event that public comment identifies additional costs, the rule will be carefully evaluated before it becomes effective.

(DAR Note: S.B. 40 is found at 1998 Utah Laws 162, and was effective July 1, 1998.)

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Health
Family Health Services,
Children with Special Health Care Needs
Room 223
44 North Medical Drive
Box 144620
Salt Lake City, UT 84114-4620, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Thomas M. Mahoney, Ph.D. at the above address, by phone at (801) 584-8215, by FAX at (801) 584-8492, or by Internet E-mail at tmahoney@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: A. Richard Melton, Acting Executive Director

R398. Health, Family Health Services, Children with Special Health Care Needs.

R398-2. Newborn Hearing Screening.

R398-2-1. Purpose and Authority.

(1) The purpose of this rule is to facilitate early detection, prompt referral, and early habilitation of infants with significant, permanent hearing loss.

(2) Authority for the Newborn Hearing Screening program and promulgation of rules to implement the program are found in Section 26-10-6.

R398-2-2. Definitions.

(1) "Hearing loss" means a dysfunction of the auditory system of any type or degree that is sufficient to interfere with the acquisition and development of speech and language skills.

(2) "Screening" means the completion of an objective, physiological test or battery of tests administered to determine the infant's hearing status and the need for further diagnostic testing by an audiologist or physician with the Department approved instrumentation, protocols and pass/refer criteria.

(3) "Auditory brainstem response" means an objective electrophysiologic measurement of the brainstem's response to acoustic stimulation of the ear.

(4) "Automated auditory brainstem response" means objective electrophysiologic measurement of the brainstem's response to acoustic stimulation of the ear, obtained with equipment which automatically provides a pass/refer outcome.

(5) "Evoked otoacoustic emissions" means a specific test method which elicits a physiologic response from the cochlea, and may include Transient Evoked Otoacoustic Emissions and Distortion Products Otoacoustic Emissions test procedures.

(6) "Diagnostic procedures" means audiometric and medical procedures required to diagnose hearing loss.

(7) "Department" means the Utah Department of Health.

(8) "Audiologist" means a person who is licensed by the state where services are provided.

(9) "Follow-up" means appropriate services and procedures relating to the confirmation of hearing loss and appropriate referrals for newborn children with abnormal or inconclusive screening results.

(10) "Referral" means to direct a newborn to a health care professional for appropriate diagnostic procedures to diagnose and determine the existence and extent of a hearing loss; and for appropriate habilitation of a hearing loss.

(11) "Tracking" means the use of information about the infant's newborn hearing screening status to ensure that the infant receives timely and appropriate services to complete the screening and referral process.

(12) "Lost to follow-up" means those newborns who cannot be identified through tracking, and who have not completed the screening and referral process.

(13) "Institution" means a facility licensed by the State of Utah for birthing babies.

(14) "Primary care provider" means the newborn or infant's primary medical caregiver.

(15) "Parent" means a natural biological parent, a step-parent, adoptive parent, legal guardian, or other legal custodian of a child.

R398-2-3. Implementation.

Each newborn in the state of Utah shall submit to the Newborn Hearing Screening testing, except as provided in Section 26-10-6(1).

R398-2-4. Responsibility for Screening.

(1) Each institution shall designate a person to be responsible for the newborn hearing screening program in that institution.

(2) An audiologist who is licensed by the State of Utah shall oversee each newborn hearing screening program. This audiologist may be full or part time, on or off site, an employee of the institution, or under contract or other arrangement that allows him/her to oversee the newborn hearing screening program. This audiologist shall advise the institution about all aspects of the newborn hearing screening program, including screening, tracking, follow-up, and referral for diagnosis.

(3) Beginning July 1, 1998, if the newborn is born in an institution with 100 or more births annually, and beginning July 1, 1999, if the newborn is born in an institution with less than 100 births annually, the institution must provide hearing screening services as required by this rule prior to discharge, unless the infant is transferred to another institution before screening is completed.

(4) Beginning July 1, 1998, if the newborn is transferred to another institution before screening is completed, the receiving institution must provide hearing screening services as required by this rule prior to discharge.

(5) Beginning July 1, 1999, if the newborn is born outside of an institution, the person in attendance at the birth must arrange for the infant's hearing screening as required by this rule.

(6) Beginning July 1, 1999, if there is no person in attendance at the birth, a parent must have the infant's hearing screened, according to Department protocols, by the time the infant is three months of age.

(7) Newborn hearing screening shall be performed by a person who is appropriately trained and supervised, according to rules as may be established by the Newborn Hearing Screening Committee.

R398-2-5. Information to Parents and Primary Care Providers.

(1) Institutions or persons primarily responsible for births shall provide information about newborn hearing screening to parents and primary care providers of newborns. This shall include:

(a) information, which shall be available to parents at the time of birth, about the purpose of newborn hearing screening, the procedures used for screening, the benefits of newborn hearing screening, and the consequences of hearing loss;

(b) whether each live birth was screened prior to discharge from the institution.

(c) the results of the completed newborn hearing screening procedure;

(d) what follow-up screening procedures, if any, are recommended and where those procedures can be obtained.

(2) For babies who require additional procedures to complete the screening after being discharged from the birthing institution, the institution shall provide parents and the primary care providers with written notice about the availability and importance of the additional screening procedures. For babies who do not complete additional hearing screening procedures, the institution shall send a second written notice to the parents and the primary care provider.

(3) For babies who do not pass the complete newborn hearing screening procedure, the institution or the provider who completes the screening procedure shall provide the parents and the primary care provider with written notice about the results of the screening, recommended diagnostic procedures, where those procedures can be obtained, and resources available for infants and toddlers with hearing loss.

(4) For babies who need additional procedures to complete the screening due to a missed test, inconclusive results, or a failure to pass, and who do not return for the needed screening procedures within 15 days, or for babies who are "lost to follow-up," the institution shall make reasonable efforts within 30 days to locate the parents and inform them of the need for a test. To be considered a reasonable effort, the institution must have documentation of at least two attempts to contact the infant's parents by mail or phone, and at least one attempt to contact the infant's primary care provider. If necessary, the institution must use information available from its own records, adoption agencies, and the newborn's primary care provider. Contact with the parent may be made by mail, telephone, primary care provider, or public health worker.

R398-2-6. Reporting to Utah Department of Health.

(1) All institutions or persons in attendance at births shall submit information to the Department about the newborn hearing screening procedures being used, the results of the screening, and other information necessary to ensure timely referral where necessary. This information shall be provided to the Department at least monthly. This information shall include:

(a) for each live birth, identifying information for the baby and the hearing screening status, e.g., passed, referred, refused, missed, transferred;

(b) for babies who did not pass the newborn hearing screening or who were not screened, the mother's name, address, telephone number if known, and primary care provider;

(c) any information the institution or practitioner has about the results of follow-up screening or diagnostic procedures, including whether the infant has been "lost to follow-up."

(2) All institutions or persons in attendance at births shall submit information to the Department a summary of the procedures used by the institution or screening program to do newborn hearing screening, including the name of the program director, equipment, screening protocols, referral criteria, and parent education materials. This information shall be provided to the Utah Department of Health bi-annually and within 30 days of any changes to the existing procedures.

(3) Persons who conduct any procedure necessary to complete an infant's hearing screening as a result of a referral from an institution or primary care provider, shall report the results of these procedures to the institution where the infant was born.

(4) The Utah Department of Health shall have access to infant's medical records to obtain information necessary to ensure the provision of timely and appropriate follow-up diagnostic and intervention services.

R398-2-7. Penalty for Violation of Rule.

Any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of \$5,000 or be punished for violation of a class B misdemeanor for the first violation and for

any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: newborn screening
1998

26-10-6



**Health, Health Systems Improvement,
Child Care Licensing
R430-4
General Certificate Provisions**

NOTICE OF PROPOSED RULE

(New)

DAR FILE No.: 21235

FILED: 06/22/1998, 17:13

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: With the passage of S.B. 26 the Utah Department of Health is responsible for establishing rules to enact the provisions of the law creating a residential certificate child care provider. (DAR Note: S.B. 26 is found at 1998 Utah Laws 158, and was effective May 4, 1998.)

SUMMARY OF THE RULE OR CHANGE: This rule establishes the general provisions for a residential child care provider to apply for a certificate, identifies the information to be submitted with the application, and establishes the inspection and enforcement for identifying non-compliance with the standards established for residential certificate child care programs.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: \$28,000 deposited in the General Fund. Justification - The certificate fee is \$35 and although the Bureau has not been able to identify if a licensed child care provider will request a change to become a certificate provider, it is our estimate that approximately 800 child care providers may elect to be a residential certificate provider.

❖LOCAL GOVERNMENTS: Unknown. Justification - If a previously unlicensed child care provider decides to become a residential certificate provider local jurisdictions charge a business license fee. These fees range from \$50 to \$250 determined by local ordinance.

❖OTHER PERSONS: \$76,000. Justification - Total costs if the residential certificate provider has not been licensed in the past: \$28,000 - 800 providers paying an annual certificate fee of \$35; \$28,000 - 800 providers paying for CPR/First Aid Certification at \$35 every 3 years; \$20,000 - 800 providers paying for 5 hours department approved training at \$5 per hour.

COMPLIANCE COSTS FOR AFFECTED PERSONS: \$75 per person. Justification - Certificate fee of \$35; CPR/First Aid Certification every 3 years at \$35; 5 hours of Department approved training at \$20 (at initial certificate application).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The \$35 fee will help to defray the cost of an annual inspection of each provider. The CPR/First Aid cost is every three years and the training cost is a one-time expense. These costs are necessary and reasonable under the circumstances. In the event that public comment identifies additional costs, these will be carefully reviewed before the rule becomes final.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Health
Health Systems Improvement,
Child Care Licensing
288 North 1460 West
PO Box 142003
Salt Lake City, UT 84114-2003, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or by Internet E-mail at dwynkoop@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/98

AUTHORIZED BY: Rod Betit, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-4. General Certificate Provisions.

R430-4-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-4-2. Purpose.

This rule defines the standards that a residential in-home child care provider must follow to obtain a certificate.

R430-4-3. Initial Application.

(1) An applicant for a certificate shall file a Request for Agency Action - Certificate Application with the Utah Department of Health on a form furnished by the Department.

(2) Each applicant shall comply with all zoning, fire, sanitation, building and licensing laws, regulations and ordinances, and codes of the city, county, municipality in which the home is located.

(3) The applicant shall obtain the following documents to submit with the application:

- (a) Five hours of department-approved training in child care;
- (b) CPR and First Aid certificates; and

(c) Background clearance documents as required in R430-6.

R430-4-4. Certificate Fee.

The residential provider shall submit a certificate fee established in accordance with 26-1-6 and 26-39-105.5(1)(b)(i)(B) with the completed application form.

R430-4-5. Initial Certificate Issuance or Denial.

(1) The Department shall render a decision on an initial certificate application within 60 days of receipt of a completed application packet or the Department shall deny an application not completed within six months of the submission date of the first component of an application packet.

(2) Upon verification of compliance with certificate requirements the Department shall issue a Notice of Agency Action - Letter of Certificate for a period not to exceed one year.

(3) If the Department denies a Request for Agency Action - Certificate Application, the Department shall issue a written Notice of Agency Decision. An applicant who was denied a certificate may reapply for a certificate as a new applicant and must initiate a new request for agency action.

R430-4-6. Letter of Certificate Provisions.

The Letter of Certificate is not assignable or transferable and the residential provider shall make the letter available to the public upon request.

R430-4-7. Expiration and Renewal of Certificate.

(1) Each Letter of Certificate shall expire at midnight, on the last day of the month, 12 months from the anniversary date of the prior Letter of Certificate, unless previously revoked by the Department.

(2) The Residential child care provider shall file a Request for Agency Action - Certificate Application form, applicable fees, and clearances to the Department 30 days prior to the current certificate expiration.

(3) The Department shall renew the Letter of Certificate upon verification that the provider is in compliance with all applicable rules.

(4) The Department shall not renew a Letter of Certificate for a residential child care facility who is no longer providing child care.

R430-4-8. Notice of Intent to Inspect.

When the Department issues the initial Letter of Certificate or the renewal Letter of Certificate the residential provider will be informed of the requirement for initial inspection and that the owner will receive a notice prior to the actual inspection.

R430-4-9. Inspections and Enforcement.

(1) Each residential certificate child care provider shall receive at least one annual on-site inspection.

(2) If a serious sanitation, fire or health hazards has been found during an inspection, the Department may, at the option of the residential certificate provider:

(a) Require a corrective action plan for the serious hazards found and make an unannounced follow up inspection to determine compliance; or

(b) Inform the parent's of each child in the care of the provider of the results of the Department's inspection and the failure of the provider to take corrective action.

R430-4-10. Sanction Action on Certificate.

The Department may revoke a certificate if the provider exhibits evidence of aiding, abetting, or permitting the commission of any illegal act, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the children in care.

KEY: child care facilities
August 1998

26-39



**Health, Health Systems Improvement,
Child Care Licensing
R430-6
Background Screening**

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 21245
FILED: 06/26/1998, 09:47
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Passage of S.B. 168, "Child Abuse Database Amendments" and S.B. 26, "Utah Child Care Licensing Amendments" in the FY 98 Legislative Session requires amendments to the current rule for child care programs.

(DAR Note: S.B. 168 is found at 1998 Utah Laws 196, and was effective May 4, 1998.)

SUMMARY OF THE RULE OR CHANGE: This rule clarifies the information that the Bureau of Child Care Licensing may access when screening a covered individual for substantiated findings of abuse and limits the scope of the review of the management information system. This rule also adds the background screening for "residential child care providers" who are certified but not licensed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: Fees for fingerprints will be collected and passed through to the Utah Department of Public Safety if the covered individual has convictions or has not resided in the state for the past two years.
- ❖LOCAL GOVERNMENTS: None.
- ❖OTHER PERSONS: In 1997, the number of providers who were investigated for not being licensed was 300. Since the passage of S.B. 26, we anticipate some of these providers will request to be licensed and an additional 600 exempt providers who are enrolled in the federal food program may

request to be licensed or become residential care providers. If 600 request a certificate, it is our experience that 5% of the covered individuals are required to submit fingerprints to the Department for identification, the aggregate cost may be \$300 passed through to the Utah Department of Public Safety.

(DAR Note: S.B. 26 is found at 1998 Utah Laws 158, and was effective May 4, 1998.)

COMPLIANCE COSTS FOR AFFECTED PERSONS: The background screening without fingerprints will be assessed as part of the certification fee of \$35 per residential child care provider. If the covered individual requires fingerprints, a \$10 fee is assessed to the individual and submitted to the Utah Department of Public Safety.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I concur with the cost estimates prepared by Department staff. In the event that public comment discloses different or additional costs, the rule will be evaluated based on the comments.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Health
Health Systems Improvement,
Child Care Licensing
Cannon Health Building
288 North 1460 West
PO Box 142003
Salt Lake City, UT 84114-2003, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or by Internet E-mail at dwynkoop@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: Rod L. Betit, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-6. Background Screening.

R430-6-1. Authority.

(1) The Utah Code, Section 26-39-107, requires that a Bureau of Criminal Identification screening, referred to as BCI, screening be conducted on each person requesting to be licensed or residential certificate or to renew a license or certificate for existing, new, and proposed owners, directors, members of the governing body, employees, providers of care and volunteers, except parents of children enrolled in the child care program.

(2) The Utah Code, Section 26-39-104, requires the Department to make and enforce rules to protect children's common needs for a safe and healthy environment and provide for competent

care givers. The Department shall review the [~~Unified Social Service Delivery System (USSDS) child and adult abuse data base~~]management information system for licensing and certification purposes pursuant to 62A-4a-116 to screen for individuals who may have [~~committed acts of abuse, neglect or exploitation~~]a substantiated finding of abuse or neglect since January 1, 1988, unless removed pursuant to Subsection 62A-4a-116.5.

R430-6-2. Purpose.

The purpose of the screening process using the BCI criminal background and child and adult [~~abuse data base~~]management information system is to protect children receiving services in a child day care program. The BCI screening process determines whether [~~an~~]a covered individual has been convicted of any crime. In addition, the Department screens all individuals using the [~~child abuse data base to determine if a covered individual has committed acts of abuse, neglect or exploitation.~~]management information system which is limited to:

1. Substantiated findings of abuse or neglect since January 1, 1988, unless removed pursuant to Subsection 62A-4a-116.5(6);
2. An adjudication of child abuse or neglect by a court of competent jurisdiction; and
3. Any criminal conviction or guilty plea related to neglect, physical abuse, or sexual abuse of any person.

R430-6-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 39. In addition:

(1) "Covered Individual" means all proposed employees of a child care facility, including owners, volunteers (excluding parents), existing employees, members of governing bodies, and, for family care settings, all individuals residing in the home where a child care program is to be licensed, who are 18 years old and over.

(2) "Department" means the Utah Department of Health.

(3) "Substantiated" means a finding by the Department of Human Services, at the completion of an investigation by the Department of Human Services, that there is a reasonable basis to conclude that one or more of the following types of abuse or neglect has occurred:

- (a) physical abuse;
- (b) sexual abuse;
- (c) sexual exploitation;
- (d) abandonment;
- (e) medical neglect resulting in death, disability, or serious illness; or
- (f) chronic or severe neglect.

R430-6-4. Bureau of Criminal Identification.

(1) The Utah Code, Section 26-39-107, requires that a BCI [~~screening~~]be conducted on covered individuals requesting to be licensed, to renew a license, to be a residential certificate provider, or to renew a certificate or to be employed or volunteer in a licensed or residential certificate child care setting.

(a) Immediately upon or prior to employing or licensing or certifying a covered individual, the child care facility shall submit applicant information, fees and releases to the Department to allow the Department to perform a criminal background screening and child abuse screening.

(b) If a covered individual applicant has lived in Utah less than two years, or has unexplained gaps in work or residence record, the covered individual shall request a criminal background screening from the state or country of former residence. The covered individual shall submit the out-of-state criminal background screening within 90-days after application for review by the Department.

(c) If a covered individual has been serving a full-time religious mission out-of-state or has been in military service out-of-state for the immediate past two years, the covered individual shall submit to the Department a letter from their clergy or commanding officer documenting that the covered individual was not convicted of any felony or serious misdemeanor crimes during the time period of the religious or military service.

(2) If the BCI screening indicates that the covered individual has a criminal record that indicates there is a conviction for a felony or misdemeanor, the covered individual shall submit a fingerprint card, waiver and fee upon request by the Department. The Department shall submit them to the Criminal Investigations and Technical Services Division[~~Department of Public Safety, Bureau of Criminal Investigations~~] for additional screening.

(a) The fingerprint card that the covered individual submits shall be prepared either by the local law enforcement agency or an agency approved by local law enforcement.

(b) The Criminal Investigations and Technical Services Division[~~Department of Public Safety, Bureau of Criminal Investigations~~], shall report the background screening and forward the fingerprint card to the Department. The Department shall review the criminal convictions within the past five years to determine whether to approve the covered individual for licensing, certification or employment.

(c) If based upon the BCI screening, the Department denies the covered individual a license or certificate, volunteer position or employment, the Department shall send a Notice of Agency Action to the child care provider or covered individual stating that the application is denied.

(3) The Department shall make the following determination if a covered individual has a criminal history record:

(a) If the covered individual was convicted of a felony, the covered individual may not provide child care, volunteer, or own or operate a child care program with a license[~~licensed~~] or certificate issued by the Department.

(b) If the covered individual was convicted of a misdemeanor within the past five years, the covered individual may not provide child care, volunteer, or own or operate a child care program with a license[~~licensed~~] or certificate issued by the Department[;] if the misdemeanor involves offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense.

(c) If the covered individual is a person with a felony or misdemeanor conviction who resides in a home where child care is provided, the Department shall not issue a license or certificate for day care in the home.

(4) The Executive Director may consider an approval for issuing a license, certificate,[~~licensing~~] or employment of a covered individual who has been convicted of a misdemeanor but not a misdemeanor involving offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person,

pornography, prostitution, or any type of sexual offense, according to the following criteria:

(a) If the convictions were older than five years, the covered individual may provide child care and operate a child care program with a license~~[licensed]~~ or certificate issued by the Department.

(b) If the convictions were within the last five years, the Department shall make a comprehensive review of the individual circumstances. If the Department finds that the covered individual's conduct is not adverse to the public health, morals, welfare, and safety of children, the covered individual may provide child care and operate a child care program with a license~~[licensed]~~ or certificate issued by the Department.

(c) If the convictions demonstrate a pattern of behavior which indicates that the covered individual's conduct is adverse to the public health, morals, welfare, and safety of children, the covered individual may not provide child care and operate a child care program with a license~~[licensed]~~ or certificate issued by the Department.

(5) The Department shall rely on the BCI as conclusive evidence of the conviction and the Department may revoke or deny a license, certificate and employment based on that evidence.

(6) If the covered individual is denied a license, certificate or employment based upon the BCI and the covered individual disagrees with the BCI report, the covered individual may seek redress through the [~~Utah Department of Public Safety, Bureau of Criminal Identification~~]Criminal Investigations and Technical Services Division, as provided in Section 77-18-2.

(7) All covered individuals shall report all felony and misdemeanor convictions of covered individuals for offenses [~~identified in the Utah Criminal Case as~~]identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense to the Department within 48 hours of conviction.

R430-6-5. Child Abuse Management Information System.

(1) Pursuant to Utah Code 26-39-104(1)(a)(ii) the Department shall screen all covered individuals for a history of substantiated abuse, neglect, or exploitation from the management information system maintained by the Utah Department of Human Services (DHS).

(2) If a covered individual appears on the data base, the Department may deny or revoke a license, certificate or employment.

(3) If the Department determines there exists credible evidence that the covered individual poses a threat to the safety and health of children being served in a licensed or certified child care setting, the Department shall not grant or renew a license, certificate or employment. The Department shall review the date of the substantiated finding, type of substantiation, written documentation, and the legal status of the covered individual. [~~If the Department determines there exists credible evidence that the covered individual poses a threat to the safety and health of children being served in licensed child care settings, the Department shall not grant or renew a license or employment]~~

(4) If the Department denies or revokes a license, certificate or employment based upon the child or adult abuse management information system, the Department shall send a Notice of Agency Action to the licensee and the covered individual.

(5) If the covered individual disagrees with the record of substantiation of abuse, he must pursue an appeal with the [~~Department of Human Services~~]DHS. If the covered individual agrees with the substantiated finding of abuse that was the basis of the Department's denial or revocation, the covered individual may request a hearing with the Department.

(a) Upon request, the Department may permit the covered individual to be employed under supervision until a decision is reached and if the applicant can demonstrate that the work arrangement does not pose a threat to the safety and health of children being served in the licensed or residential certificate child care setting.

(b) The Department may hold the license, certificate or employment denial in abeyance until DHS renders a decision, if a covered individual appeals the record of substantiation.

(6) If the [~~Department of Human Services~~]DHS determines a covered individual has a substantiated finding of abuse, neglect or exploitation after the Department issues a license, certificate or grants employment, the licensee and covered individual has five working days to notify the Department. Failure to notify the Department may result in revocation of the license or certificate.

KEY: child care facilities
[January 20,]1998

26-39



Health, Health Systems Improvement,
Child Care Licensing
R430-50
Residential Certificate Child Care
Standards

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 21236

FILED: 06/22/1998, 17:13

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: With the passage of S.B. 26 the Utah Department of Health is responsible for establishing rules to enact the provisions of the law creating a residential certificate child care provider.

SUMMARY OF THE RULE OR CHANGE: This rule establishes the standards to protect the health and safety of children who receive services from a residential certificate child care provider by: (1) defining the term "residential certificate child care"; (2) permits an exempt child care provider to request a certificate; (3) defines the owner qualifications; (4) identifies that the owner may not care for more than eight children; (5) establishes child discipline standards to avoid abuse; (6) identifies the child and care giver records to be maintained; (7) establishes the child health, medication administration, immunization, and communicable disease rules; (8) identifies

the fire, safety and sanitation standard to be maintained in the home; and (9) identifies the transportation standards for safely transporting children in care.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None.
 ❖LOCAL GOVERNMENTS: None.
 ❖OTHER PERSONS: \$84,000 maximum total - many persons will already have one or more required items. If as many as 80 providers have an unsafe outdoor play area, then an additional \$120,000 could be incurred for fencing. Justification - if 800 child care providers decide to become residential certificate providers and they have not previously been licensed or if they have been an alternate approved participant in the federal food program then it is assumed that: (1) \$16,000 - 800 providers have a one-time cost of \$20 to make files and copying costs for child care admission agreement, immunization records, and emergency contact information; (2) \$16,000 - 800 providers have a one-time cost of \$20 to purchase a first-aid kit; (3) \$4,000 - 800 providers annual maintenance cost of a first aid kit at \$5; (4) \$32,000 - 800 providers have a one-time cost of \$40 to purchase a fire extinguisher and smoke detector(s) per provider; (5) \$8,000 - 800 providers have an annual maintenance fee for batteries for smoke detectors and recharging or replacement of fire extinguishers if needed at \$10; (6) \$120,000 if 80 providers have an unsafe outdoor play area and are required to fence the area for children in care at a one-time expense of \$1,500; (7) \$4,000 - 800 providers are required to obtain a \$5 food handler's permit every two or three years; (8) \$4,000 - if 400 providers have to purchase locks to secure guns, medication, or sexually explicit materials from children at \$10.

COMPLIANCE COSTS FOR AFFECTED PERSONS: \$110 per person maximum, unless a fence must be added at the residence. Justification - \$20 to make child care files and copy forms; \$20 to purchase a first aid kit; \$5 a year to maintain the first aid kit; \$40 to purchase fire extinguisher and smoke detector(s); \$10 for maintaining batteries or recharging extinguishers; \$5 for a food handler permit; and \$10 to purchase locks to secure fire arms and other items; and \$1,500 if the outdoor play area is unsafe and a four foot fence is required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Passage of S.B. 26 in the 1998 Legislature created the residential certificate category of child care. The statute limits the Department to rules necessary to implement Section 26-39-105.5. The cost estimates prepared by the Department assume that no providers have first aid kits, fire extinguishers, or smoke detectors. Obviously many residential certificate providers already have these basic items in their homes and will not incur these expenses. Outdoor play areas will only need a four foot fence if needed to protect children from a traffic or water hazard. I believe that the costs to affected child care providers have been appropriately balanced against the safety and health needs of the children in these programs. If after public comment the Department learns of

unanticipated costs, a careful reevaluation of the rule will be made.

(DAR Note: S.B. 26 is found at 1998 Utah Laws 158, and was effective May 4, 1998.)

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Health
 Health Systems Improvement,
 Child Care Licensing
 288 North 1460 West
 PO Box 142003
 Salt Lake City, UT 84114-2003, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or by Internet E-mail at dwynkoop@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: Rod Betit, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-50. Residential Certificate Child Care Standards.

R430-50-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-50-2. Purpose.

This rule establishes standards to protect the health and safety of children who receive services from a residential certificate child care provider.

R430-50-3. Definition.

"Residential certificate child care" means:

(1) child care provided in the home of a provider for five to eight children, having a regularly scheduled, ongoing enrollment, for direct or indirect compensation; or

(2) child care provided in the home of a provider for four or more children, based on the sum of the provider's own children under four years of age and other children under two years of age.

R430-50-4. Voluntary Certificate.

A provider of child care for four or fewer children in the providers home may request a residential certificate.

R430-50-5. Owner Qualifications.

(1) To be eligible for a residential certificate the owner must:

(a) be at least 18 years of age;

(b) have a current certification in basic first-aid and Cardiac Pulmonary Resuscitation (CPR). First-aid and CPR certification refers to courses given by the American Red Cross, the Utah

Emergency Medical Training Council, or other courses that the licensee can demonstrate to the Department to be equivalent; and

(c) meet at least one of the following:

(i) have a high school diploma or G.E.D.;

(ii) be an approved federal food program provider as of July 1, 1998; or

(iii) if (i) or (ii) cannot reasonably be met by the owner and an undue hardship is created, the owner may request a variance from the Department.

(2) The owner shall submit to the department at the time of initial application documentation that five hours of Department-approved training has been completed. Training will be Department-approved if it includes:

(a) reporting requirements for witnessing or suspicion of abuse, neglect and exploitation;

(b) proper hand washing and sanitation techniques;

(c) recognizing early signs of illness and determining if there is a need to exclude a sick child from the home;

(d) accident prevention and safety principles;

(e) positive guidance for the management of children;

(f) child development;

(g) age appropriate activities for children; and

(h) If child care is provided to children under the age of two, the training must also include:

(i) Preventing Shaken Baby Syndrome;

(ii) Coping with crying babies; and

(iii) Preventing Sudden Infant Death Syndrome.

(3) The owner shall ensure that each care giver or volunteer who has direct contact with or access to children successfully completes the required five hours of department approved before starting assigned duties.

R430-50-6. Care Giver to Child Ratios.

The owner may not care for more than eight children.

R430-50-7. Child Discipline.

(1) The owner shall inform all care givers, parents or guardians and children of expected conduct by setting clear and understandable rules.

(2) Disciplinary measures shall be implemented so as to encourage the child's self-control. Discipline measures shall be explained to the child at the time the discipline is imposed and may include:

(a) positive behavioral rewards;

(b) other forms of positive guidance;

(c) redirection; or

(d) time out.

(3) Care givers shall not do any of the following:

(a) corporal punishment, including hitting, shaking, biting, pinching, or spanking;

(b) restraining a child's movement by binding or tying;

(c) using abusive, demeaning or profane language;

(d) withdrawal of food or bathroom opportunities; or

(e) confining a child in a locked closet, room, or similar area.

(4) "Time out" that enables the child to regain control of himself or herself and that keeps the child in visual contact with the care giver shall be used selectively, taking into account the child's developmental stage and the usefulness of "time out" for the individual child.

(5) For children 18 months and older "tantrums" shall be interrupted every three minutes until control is obtained.

R430-50-8. Records.

(1) The owner shall obtain from the parent or legal guardian an admission agreement, which identifies the following:

(a) child's full name and nickname;

(b) parent or guardian's name, address and day time phone number;

(c) name, address and phone number of at least one additional person to be notified in the event of an emergency if the parent or guardian cannot be located;

(d) name, address and phone number of the child's primary source of emergency health and dental care;

(e) description of any allergies or special food needs; and

(f) immunization record.

(2) The owner shall obtain, in advance, from the parent or legal guardian the names, addresses and phone numbers of persons authorized to take the child from the residence.

(3) The owner shall maintain documentation that all individuals in the home over age 18 have been cleared by the Department for criminal convictions or substantiated findings of child abuse.

R430-50-9. Child Health and Medications.

(1) The owner shall inform the parents or guardians of all injuries and incidents that occur during the child's stay at the home. The owner shall immediately notify the parents or guardians if medical treatment is required.

(2) If an owner chooses to administer medications, then the over-the counter and prescription medications must be in the original or pharmacy container, have the original label, include the child's name, have child proof caps, and have instructions for administration.

(a) The parent or guardian shall provide written permission for the administration of all medications.

(b) The owner shall report any adverse reaction to a medication or error in administration to the parent or legal guardian immediately upon recognizing the error or reaction.

(c) The owner shall ensure that all medications are secured from access to children. If medications are required to be refrigerated, then they shall be stored in spill-proof packaging.

(d) The owner will return all unused and out-of date medications to the parent or guardian.

(3) The owner may not admit or provide care to a child without proof of current immunizations, or evidence of conditional enrollment, or evidence of a personal, medical or religious exemption. Conditional enrollment means that the child has received at least one dose of each required vaccine prior to enrollment and be on a schedule for subsequent immunizations.

(4) The owner shall inform parents of communicable illnesses or parasites on the day of discovery.

(5) The owner shall ensure that the use of tobacco in any form, the use of alcohol, the ingestion of any substance (including prescription medications) in amounts known to compromise responsible judgement, and the use of or possession of illegal substances are prohibited by any person anywhere on the premises during the hours of operation when children are under care.

R430-50-10. Fire, Safety, and Sanitation.

(1) The owner shall have a disaster plan in case of fire, flood, earthquake, blizzard, power failure or other disasters that could create structural damage to the facility or pose a health hazard. The owner shall also have an emergency plan in the case of a missing child, death or serious injury to a child, which includes the name of a substitute care giver in the event the owner must leave the residence for any reason.

(a) A first aid kit shall be available in the home.

(b) The owner shall maintain an operating telephone in the home, unless there is a utility failure.

(c) The owner shall post the names and telephone numbers of the emergency medical personnel, fire department, police, and poison control by the telephone.

(2) The owner shall maintain fire extinguishers and smoke detectors in good operating condition on each floor occupied by children. Two exits, leading to an open space at ground level, shall be present to permit the orderly evacuation of children. If the basement is used to provide child care, at least one exit shall be present leading to an open space at ground level.

(3) Each home shall have an outdoor play space which is safe, free from hazards, located away from traffic or water hazards, and is available on the premises or is easily and safely accessible to the home. If a fence is required to protect children from any traffic or water hazards then the fence shall be at least four feet high. If local ordinances conflict, the owner may request a variance from the Department. Any gaps within the fence and the bottom edges of the fence shall not be more than three and one-half inches above the ground.

(4) If children are diapered at the home, then diapering shall occur in an area separate from food storage, food preparation, and eating area. A smooth nonabsorbent diaper changing surface and a sanitary container for soiled and wet diapers shall be available.

(5) Care givers and children shall wash their hands after using the toilet, before and after eating and before and after food preparation.

(6) Equipment and furniture must be durable, in good repair, structurally sound, and stable.

(7) Sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.

(8) Electrical outlets accessible to children shall be protected or capped with safety devices.

(9) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(10) There shall be adequate housekeeping to maintain a clean and sanitary home, to control, and eliminate the presence of insects, rodents, and other vermin on the premises.

(11) All care givers who prepare or serve food and snacks must have a food handlers permit.

(12) The owner shall ensure that there are no firearms or other weapons accessible to children during times children are on the premises. Firearms and other weapons shall be stored separately from ammunition and all shall be in a locked cabinet or area.

(13) If the owner has pets in the home:

(a) the animals shall be clean and in good health;

(b) the animals shall have current vaccination records available for all diseases transmissible to humans;

(c) the animals shall have no history of dangerous or aggressive behavior;

(d) the children shall not clean nor assist with the cleaning of animals, animal cages, pens or equipment;

(e) the animal cages and equipment shall not be cleaned in food preparation or food storage areas; and

(f) Children shall not be permitted to handle reptiles, including turtles and lizards.

(14) During all times that children are on the premises, the owner shall ensure that no sexually explicit materials are accessible to children or viewed by any person on the premises.

R430-50-11. Transportation.

Only the owner may transport children in non-public vehicles. Children must be transported in the following manner:

(1) The vehicle is licensed, registered and inspected.

(2) The owner has a current Utah driver's license.

(3) The vehicle and owner are insured.

(4) The vehicle is equipped with individual, size appropriate safety restraints.

KEY: child care facilities**1998****26-39**

Health, Health Systems Improvement,
Child Care Licensing
R430-90
Licensed Family Child Care

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 21246

FILED: 06/26/1998, 09:47

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To enhance the understandability of the child care licensing rules, the Child Care Licensing Advisory Committee recommended that the rules for licensed family care and licensed center care be separated from Rule R430-100, which was made effective in February 1998.

SUMMARY OF THE RULE OR CHANGE: This rule simplifies and clarifies the adopted standards which only apply to licensed family and family group child care programs which were included in R430-100. The rule changes the minimum care giver to child ratios to allow each licensed provider to provide care for additional children and adds a requirement that the licensee shall have an emergency plan in case of a missing child or death or serious injury to a child which includes the name of a substitute care giver in the event the licensee must leave the residence.

(**DAR Note:** R430-100 was a proposed new rule that is effective as of February 5, 1998. It was published in the December 15, 1997, issue of the *Utah State Bulletin* under DAR No. 20269.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: None.
- ❖LOCAL GOVERNMENTS: None.
- ❖OTHER PERSONS: It is anticipated that the 2300 licensed family and family care providers may realize a savings and increase in revenues if they enroll more children for care due to the change in the care giver to child ratios and reduction in some of the previous requirements of R430-100.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should not be an increase in cost for compliance, since the requirements of this rule were already adopted as part of R430-100 and are simply being moved into a separate rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule separates licensing requirements for a licensed family provider from those applicable to other providers. This should make it much simpler for providers to understand the requirements that must be met to receive a license. I concur that costs to licensed providers will be reduced as a result of other changes in the rule. In the event that public comment identifies costs that were not anticipated, these comments will be carefully reviewed before the rule becomes final.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Health
Health Systems Improvement,
Child Care Licensing
288 North 1460 West
PO Box 142003
Salt Lake City, UT 84114-2003, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or by Internet E-mail at dwynkoop@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: Rod Betit, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-90. Licensed Family Child Care.

R430-90-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-90-2. Purpose.

The purpose of this rule is to establish standards for the operation and maintenance of family child care providers who care for one to 16 children in their home. It establishes minimum requirements for the health and safety of children in licensed programs.

R430-90-3. Definitions.

(1) "Conditional enrollment" means that a child is admitted to a child care program and has received at least one dose of each required vaccine prior to enrollment and maintains a schedule for subsequent required vaccinations.

(2) "Direct Supervision" means that the care giver must be able to see and hear the children, and be near enough to intervene when needed.

(3) "Related children" means children whose child care is provided by their parents, legal guardians, grandparents, brothers, sisters, uncles or aunts.

R430-90-4. License Required.

(1) A person who provides child care in a home for nine to 16 children not related to the licensee for less than 24 hours a day, with a regularly scheduled, on-going enrollment, for direct or in-direct compensation must be licensed as a family group child care program.

(2) A person who provides child care in a home for less than nine unrelated children for less than 24 hours per day, having a regularly scheduled, ongoing enrollment, for direct or indirect compensation may be licensed as a family child care program.

R430-90-5. Licensee Qualifications and Duties.

(1) The licensee of the child care program must:

(a) be at least 18 years of age;

(b) have a high school diploma or G.E.D.; and

(c) have knowledge of and comply with applicable laws and rules.

(2) The licensee shall establish and implement policies and procedures for the health and safety of children in the home.

R430-90-6. Care Giver Qualifications.

(1) The licensee shall ensure that each care giver or volunteer who has direct contact with or access to children is oriented to the licensed program and successfully completes the required orientation training before starting assigned duties. The licensee shall document in a care giver personnel record the date of completion of orientation training. The orientation training must include:

(a) procedures for maintaining health and safety and handling emergencies and accidents;

(b) specific job responsibilities;

(c) child discipline procedures of R430-90-6; and

(d) reporting requirements if the care giver witnesses or suspects child abuse, neglect or exploitation.

(2) All care givers who provide services shall be at least 18 years of age or have completed high school or a G.E.D..

(3) There shall be at least one care giver at the home during business hours who has a current certification in basic child and infant first-aid and Cardiac Pulmonary Resuscitation, (CPR), and

training in the Heimlich Maneuver for treatment of an obstructed airway.

(a) First-aid and CPR certification refers to courses given by the American Red Cross, the Utah Emergency Medical Training Council, or other courses that the licensee of the program can demonstrate to the Department to be equivalent.

(b) Documentation of the completed First-Aid and CPR training must be in the care giver's personnel record.

(4) The licensee must ensure that an annual in-service training plan is developed and carried out. The plan shall be pertinent to the ages of the children in the program and must address the following areas:

(a) proper hand washing and sanitation techniques;

(b) principles of good nutrition;

(c) proper procedures in administration of medications;

(d) recognizing early signs of illness, communicable diseases and determining if there is a need to exclude a child from the program;

(e) accident prevention and safety principles;

(f) positive guidance for the management of children;

(g) child development; and

(h) age appropriate activities.

(5) If child care is provided to children under age two, the following in-service topics are also required:

(a) Preventing Shaken Baby Syndrome;

(b) Coping with crying babies; and

(c) Preventing Sudden Infant Death Syndrome.

(6) The licensee shall ensure that they and all care givers complete 20 hours of annual in-service training. At least ten hours of in-service training shall be person-to-person instruction.

(7) The licensee shall document successful completion of in-service training and maintain a record for themselves and each care giver which includes:

(a) the date training was completed;

(b) the topics covered; and

(c) the trainer's name and organizational affiliation.

(8) Each care giver upon employment and each licensee shall have a initial health evaluation within the past six months and complete tuberculosis testing every two years or as specified by the local health department.

R430-90-7. Child Discipline.

(1) The licensee shall inform all care givers, parents or guardians and children of expected conduct by setting clear and understandable rules.

(2) Disciplinary measures shall be implemented so as to encourage the child's self-control. Discipline measures shall be explained to the child at the time the discipline is imposed and may include:

(a) positive behavioral rewards;

(b) other forms of positive guidance;

(c) redirection; or

(d) time out.

(3) Care givers shall not do any of the following:

(a) give corporal punishment, including hitting, shaking, biting, pinching, or spanking;

(b) restrain a child's movement by binding or tying;

(c) use abusive, demeaning or profane language;

(d) withdraw food or bathroom opportunities; or

(e) confine a child in a locked closet, room, or similar area.

(4) "Time out" that enables the child to regain control of himself or herself and that keeps the child in visual contact with the care giver shall be used selectively, taking into account the child's developmental stage and the usefulness of "time out" for the individual child.

(5) For children 18 months and older "tantrums" shall be interrupted every three minutes until control is obtained.

R430-90-8. Records.

(1) The licensee shall obtain from the parent or legal guardian an admission agreement, which identifies the following:

(a) child's full name and nickname;

(b) parent or guardian's name, address and phone number;

(c) name, address and phone number of at least three additional persons to be notified in the event of an emergency when the parent or guardian cannot be located;

(d) name, address and phone number of the child's primary source of emergency health and dental care.

(2) The licensee shall ensure that children's records are organized and maintained to include the following:

(a) immunization record (Utah School Immunization Record -USIR) according to R396-100;

(b) a current (within the past six months) physical examination for children under age 6 (only at admission);

(c) child's health history required in R430-90-10(5) and any updates;

(d) injury, accident and incident reports; and

(e) medication administration records required in R430-90-10(7)(d).

(3) The licensee of the program shall maintain care giver records to include:

(a) background screening records;

(b) initial health evaluations and TB testing;

(c) food handler's permits;

(d) first-aid and CPR certifications; and

(e) in-service training records.

(3) The licensee shall ensure a record or log is maintained to document each enrolled child's attendance.

R430-90-9. Care Giver to Child Ratios.

The minimum ratio of care givers to children permitted in licensed small family and family group child care are set forth in tables 1 and 2.

TABLE 1
Family Minimum Care Giver to Child Ratios

Care giver	Children	Limits for Mixed Ages(a)
1	8	No more than two children under age 2
1	6	No more than three children under age 2

(a) The mixed ages include the care giver's children under age 5.

TABLE 2
Family Group Minimum Care giver to Child Ratios

Care Giver	Children	Limits for Ages	Group Size(b)(c)
1	12	All Children	16
		School-age	
2	9-16	Mixed ages,	20
		only four under	
		age 2	

(b) There shall be at least two care givers in the licensed family group program at all times when there are nine or more children present, counting the care givers' own children, grand children, nieces, nephews, wards, step-children, under age 12, or when more than two infant's are present.

(c) The care giver's own children, grand children, nieces, nephews, wards, step-children are included in the maximum group size if they are under the age of 12.

R430-90-10. Child Health and Medications.

(1) The licensee may not care for a child without proof of immunization, or evidence of conditional enrollment, or evidence of personal, medical or religious exemption. Each child shall have immunizations as required by the Utah School Immunization Law, R396-100.

(2) The licensee shall observe each child daily for signs of illness.

(a) The licensee shall notify the parent or legal guardian immediately when illness is observed or suspected.

(b) The licensee must keep ill children separate from other children.

(3) If a communicable illness or parasite is discovered, the owner shall notify the parent or legal guardian of all enrolled children on the day of discovery. Notification shall protect the confidentiality of care givers and children.

(4) The parent or legal guardian shall submit a physical examination for all children under age six upon admission. The physical examination shall be completed by a licensed physician, nurse practitioner, or registered nurse.

(5) The parent or legal guardian shall provide a child health history upon admission which identifies:

- (a) known allergies;
- (b) chronic illnesses, disabilities or medical conditions;
- (c) instructions for routine care; and
- (d) instructions for emergency care.

(6) The parent or legal guardian shall annually review and update the child's health history with the licensee.

(7) If the licensee chooses to administer medications then:

(a) Medications may be administered to children only by a designated care giver who does the following:

- (i) check the label and confirm the name of the child,
- (ii) read the directions regarding measured doses, frequency, expiration date, and other administration guidelines, and
- (iii) properly document administration of medication records according to subsection (d).

(b) Over-the-counter and prescription medications must be in the original or pharmacy container, have the original label, include the child's name, have child proof caps, and have instructions for administration.

(c) The parent or legal guardian must complete a medication release form for each child receiving medications that contains:

- (i) the name of the medication,
- (ii) the dosage,

- (iii) the route of administration,
- (iv) the times and dates to be administered,
- (v) the illness or condition being treated, and
- (vi) the parent's or legal guardian's signature.

(d) The care giver who administers a child's medication shall maintain a medication record that includes:

- (i) the time, date, and dosage of the medication given;
- (ii) the signature or initials of the care giver who administered the medication; and
- (iii) documentation of any errors in administration or adverse reactions.

(e) The licensee shall report any adverse reaction to a medication or error in administration to the parent or legal guardian immediately upon recognizing the error or reaction.

(f) Medications shall be secured from access to children.

(g) Medications stored in refrigerators shall be in spill-proof packaging and shall be kept in a covered, leakproof storage container.

(h) The licensee shall return all unused or out-of-date medications to the parent or legal guardian.

R430-90-11. Parent Notification and Child Security.

(1) The licensee shall establish a procedure for care givers to check who has written authorization to pick up children. Only the parents, legal guardian, or persons with written authorization from a parent or legal guardian shall be allowed to take any child from the home, except that verbal authorization may be used in emergency situations.

(2) The home of the licensee shall be accessible and open to parents or legal guardians during the hours of operation.

(3) The licensee shall establish a procedure for ensuring that all children's attendance is accounted for, which shall include requiring a sign-in and out procedure.

(4) The licensee shall establish written policies and monitor care givers to ensure that the use of tobacco in any form, the use of alcohol, the ingestion of any substance (including prescription medications) in amounts known to compromise responsible judgement, and the use of or possession of illegal substances or sexually explicit materials are prohibited by any person anywhere on the premises during the hours of operation when children are under care

(5) In the case of a serious injury to a child which requires immediate hospital treatment, the licensee shall contact the parents or legal guardians after emergency personnel have been contacted.

(6) The licensee shall report to the Department any fatality, hospitalization, or emergency medical treatment required for a child in care within five working days from the occurrence.

R430-90-12. Activities.

(1) The licensee shall develop a daily activity plan that is designed for the age and development of the children accepted for care and ensure that there are sufficient supplies on hand.

(2) There shall be a minimum of 35 square feet of indoor play area per child. Toilet rooms, closets, hallways, and alcoves may not be included in calculating indoor play space. Play space does not include areas in the care giver home which are not included in the child care area.

(3) Outdoor play areas shall have at least 40 square feet per child. The total outdoor play area shall accommodate at least 40 per cent of the licensed capacity at one time.

(a) Outdoor play areas shall be fenced or have a natural barrier that provides protection from unsafe areas. Fences shall be at least four feet high. If local ordinances conflict with this requirement, the licensee may request a variance from the Department. Any gaps within the fence shall not be greater than three and one-half inches. The bottom edges of the fence shall not be more than three and one-half inches above the ground.

(b) Outdoor play areas shall have a shaded area to protect children from excessive sun and heat. Drinking water shall be continuously accessible to children in the outdoor play area.

(4) If off-site activities are provided, parent or legal guardian permission is required for children to participate. Care givers shall take with them emergency phone numbers for each child attending the activity.

(5) If swimming activities are planned, care givers shall accompany children at pool side and lifeguards and pool personnel are not counted in care giver ratios.

(6) If care is provided to infants, a care giver shall provide physical and verbal stimulation every 30 minutes to each infant during waking hours, including the opportunity for physical activity. Physical activity may not confine an awake child to a single device, such as a walker or swing which restricts active movements for more than 30 minutes.

R430-90-13. Transportation.

(1) The licensee shall maintain documentation that any vehicle used for transporting children has a current vehicle registration, insurance for child care transportation, safety inspection and shall maintain the vehicle in a clean and safe manner.

(2) Each vehicle shall:

(a) have a first-aid kit and body fluid clean-up kit;

(b) be equipped with individual, size-appropriate safety restraints such as car seats or seat belts which are described in the federal motor vehicle safety standards contained in the Code of Federal Regulations, title 49, section 571.213, for each child that are appropriate to the vehicle type and are installed and used in the manner prescribed by the manufacturer;

(c) be enclosed; and

(d) be locked during transport.

(3) Smoking in vehicles is prohibited at all times that children are in the vehicle.

(4) Any vehicle used for transporting children shall be driven by an adult who holds a current state driver's license that authorizes the driver to operate the type of vehicle driven.

(5) The driver shall ensure that no child is unattended in the vehicle. The driver shall remove the keys whenever the driver is not in the driver's seat.

R430-90-14. Infection Control.

(1) All care givers shall comply with the universal blood and bodily fluid precautions according to the OSHA Bodily Fluid Blood-Borne Pathogen Standard.

(a) The licensee shall keep and maintain a portable blood and bodily fluid clean-up kit.

(b) All care givers shall know the location of the kit and how to use it.

(c) All care givers shall wear new disposable latex gloves or an approved equivalent listed in OSHA part 1910.1030 for first-aid procedures involving blood or clean-up of blood containing bodily fluids.

(2) If children are admitted for care who require diapers, the following applies:

(a) Care givers shall change a child's diaper on a clean, smooth, washable, non-absorbent diapering surface and sanitize the surface after each use.

(b) The diapering area shall not be located in a food preparation area.

(c) Care givers shall place soiled diapers in a container that is lined and has a tightly fitting lid or take the diapers directly to an outside covered receptacle. Care givers shall clean and disinfect the inside diaper containers daily.

(3) If a child's clothing is soiled by fecal material or urine, a care giver shall change the clothing promptly and place the clothing in a leakproof container to be sent home with the parent or legal guardian.

(4) If personal hygiene items for children are maintained at the home such as combs or toothbrushes, they shall not be shared between children and shall be labeled and stored separately.

(5) The licensee shall clean and sanitize indoor activity equipment and toys weekly or more often as necessary.

(a) Stuffed animals shall be machine washable.

(b) If four or more infants are present for care, the licensee shall clean and sanitize the indoor equipment and toys used by the infants during the day.

(6) Care givers shall assure protection from contamination and the spread of microorganisms by implementing good hand washing practices. Care givers shall teach children proper hand washing techniques and oversee hand washing whenever possible. Care givers and children shall wash their hands after using the toilet, before and after eating, and before and after food preparation.

(7) Single-use paper towels or individually labeled cloth towels shall be used for drying hands. If cloth towels are used, the care giver shall wash the towels daily.

R430-90-15. Safety.

(1) Indoor and outdoor play spaces, toys and equipment shall be maintained in a safe manner to prevent injury to children.

(2) Infants and toddlers shall not have access to toys smaller than 1-1/4 inches in total diameter or length. Toys and equipment used by children must comply with the guidelines of the Consumer Product Safety Commission.

(3) High chairs shall have safety straps or devices to prevent children from falling out.

(4) There shall be no firearms or other weapons accessible to children. Firearms and other weapons shall be stored separately from ammunition and all shall be in a locked cabinet or area during times when children are on the premises.

(5) Electrical outlets accessible to children shall be protected or capped with safety devices.

(6) Toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials shall be in a locked or protected area to prevent access to children. All toxic or hazardous chemicals shall be stored in the original container, or labeled in the container.

(7) Fireplaces, open-face heaters, and wood burning stoves shall be inaccessible to children when in use. Portable space heaters are not permitted when children are on the premises.

(8) Outdoor play equipment shall be located over soft material or grass.

(9) All water hazards such as a swimming pool, stationary wading pool, ditches, and fish ponds shall be fenced to prevent access by children.

(10) Sharp objects, medicines, plastic bags, poisonous plants, lighters and matches must be stored out of reach and inaccessible to children.

(11) Hot water accessible to children shall not exceed the scalding standard of 120 degrees Fahrenheit.

(12) Strings and cords long enough to encircle a child's neck, such as those found on pull toys, window blinds, or drapery cords, shall be inaccessible to children under five years of age.

(13) Any structure built prior to 1978 which has peeling, flaking, chalking, or failing paint on the interior or exterior shall be tested for lead-based paint. If paint lead levels are equal to or exceed 0.06% by weight, the structure must be remodeled by encapsulation or enclosure when possible or by complete removal of lead-based paint by trained individuals.

(14) Infant walkers with wheels are not permitted.

(15) The licensee shall provide separate sleep equipment for each infant designed for infant use, such as a crib, bassinet, portacrib, or play pen. Infants shall be placed on their backs for sleeping.

R430-90-16. Fire, Emergency, and Disaster.

(1) The licensee shall have a written emergency and disaster plan in case of fire, flood, earthquake, blizzard, power failure, or other disasters that could create structural damage to the home or pose a health hazard. The plan shall include the procedure to transport and evacuate children to another location and the procedures to turn off gas, electricity and water.

(2) The licensee shall have an emergency plan in the case of a missing child or death or serious injury to a child, which includes the name of a substitute care giver in the event the owner must leave the residence for any reason.

(3) The licensee shall hold simulated fire drills quarterly and an annual disaster drill. The licensee shall document the date of drills, participants, and the problems encountered.

(4) Each home shall have fire extinguishers and smoke detectors in good operating condition on each floor occupied by children. Two exits leading to an open space at ground level, shall be present to permit the orderly evacuation of children. If the basement is used to provide child care, at least one exit at ground level shall be present leading to an open space.

(5) The licensee shall ensure that the telephone service is in working order, unless there is a utility failure, and inform the Department of the current phone number. The names and telephone numbers of the emergency medical personnel, fire department, police, and poison control shall be posted by the telephone.

(6) The licensee shall maintain a first-aid kit at the residence.

R430-90-17. Housekeeping and Maintenance.

(1) The licensee shall take effective and safe measures to prevent, control, and eliminate the presence of insects, rodents, and other vermin on the premises.

(2) There shall be adequate housekeeping services to maintain a clean, odor free, and sanitary environment.

(3) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.

(4) The licensee shall maintain the home at air temperatures between 72 degrees Fahrenheit and 85 degrees Fahrenheit as measured 30 inches above the floor. Infant care areas shall maintain temperatures of at least 70 degrees Fahrenheit at floor level.

(5) If sleeping equipment or mats for sleeping are provided, all mats and sleeping equipment shall be cleaned and sanitized weekly, and prior to use by another child.

(6) The home shall be maintained to ensure that the equipment, fixtures, and furnishings are safe and in good repair.

(7) Sand boxes and outdoor play areas shall be kept free of animal excrement and harmful objects.

R430-90-18. Animals.

(1) If the licensee permits animals in the home:

(a) the animals shall be clean and in good health;

(b) the animals shall have current vaccination records available at the program for all diseases transmissible to humans; and

(c) the animals shall have no history of dangerous or aggressive behavior.

(2) Children shall not assist with the cleaning of animals, animal cages, pens or animal equipment. Animal cages and equipment shall not be cleaned in food preparation or food storage areas.

(3) The licensee of the program shall inform the parent or legal guardian of any known allergic or immune suppressed child of the types of animals kept at the home.

(4) Children shall not handle reptiles, including turtles and lizards.

R430-90-19. Food Service.

(1) If the local health department completes an inspection, the inspection report shall be maintained at the program for review by the Department.

(2) Food prepared by the care givers for the children in care shall be from an approved source as provided in R392-100.

(a) Food brought in by parents or legal guardians to serve to other children must be from an approved source or commercially prepared;

(b) Food brought in by parents or legal guardians for individual child use must be labeled.

(c) Baby food must be refrigerated after opening, marked with the date and time of opening and discarded if not consumed within 24 hours of opening;

(d) Infant formula and breast milk shall be discarded after feeding or within two hours of initiating a feeding

(3) All care givers who prepare or serve food and snacks must have a food handler's permit.

(4) Children's food shall be served on plates, napkins or other sanitary holders, which include a high chair tray. Multiple-use sanitary holders shall be washed, rinsed, and sanitized with a sanitizer approved in R392-100 for food contact surfaces prior to each use. Food shall not be placed on a bare table or other eating surface.

(5) Meals and snacks shall be served at least once every three hours, or according to the menu.

(a) The current week's menu shall be posted for review by parents or guardians and all substitutions shall be noted on the menu;

(b) Menus can be obtained from the Department or shall be Department-approved, independently approved and signed by a registered dietitian, or approved through the United States Department of Agriculture Child and Adult Care Food Program.

(6) Children and infants shall be served special diets, formula, breast milk, or food supplements in accordance with the written instructions from a parent or legal guardian.

(7) If an infant is unable to sit upright and hold his own bottle, a care giver shall hold the infant during bottle feeding.

R430-90-20. Penalty.

Any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of \$5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6 and Section 26-39-108.

KEY: child care facilities
1998

26-39



Health, Health Systems Improvement,
Health Facility Licensure
R432-35
Background Screening

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 21257

FILED: 06/30/1998, 15:33

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Passage of S.B. 168, "Child Abuse Database Amendments" and S.B. 64, "Background Check of Health Care Professionals" in the FY 98 Legislative Session requires the Utah Department of Health, Bureau of Licensing to adopt rules to implement the background checks for individuals providing direct patient care in covered health care facilities.

(DAR Note: S.B. 64 is found at 1998 Utah Laws 169 and was effective January 1, 1998. S.B. 168 is found at 1998 Utah Laws 196 and was effective May 4, 1998.)

SUMMARY OF THE RULE OR CHANGE: This rule defines the circumstances under which a person who has been convicted of a criminal offense or has a substantiated report of child abuse or neglect or disabled or elder abuse or neglect, may provide care to a patient in a covered health care facility,

taking into account the nature of the criminal offense and its relation to patient care.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-21-9.5

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Fees for fingerprints will be collected and passed through to the Criminal Investigations and Technical Service Division if the covered individual has convictions or has not lived in the state for the past five years.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: Between 1995 and 1997 there were 16,712 individuals registered as health care assistants. In 1996 only 7,000 renewed the registration and in 1997 3,000 paid late fees and renewed. During the time that the Division of Occupational and Professional Licensing (DOPL) required a Bureau of Criminal Identification (BCI) for the health care assistants, 250 individuals had multi-state records. Since not all of these individuals work in the covered health care facilities, the Bureau's best estimate of the number of covered individuals who provide direct patient care in the covered health care facilities may be 15,000. During the time that DOPL required a BCI for registration, 20% of the individuals were required to submit fingerprints for identification. If we estimate that 15 percent of the covered individuals (n=2,250) are required to submit fingerprints to the Department, the cost may be \$22,500 in dedicated credits deposited to the Criminal Investigations and Technical Services Division. If we estimate that 300 people may not have lived in Utah for the past five years the cost will be \$7,200 to submit fingerprints to the FBI. If all of the health care assistants had to re-register to continue working in the covered health care facility, the costs for 15,000 x \$20 registration would equal \$300,000, this rule creates a savings by eliminating the required health care assistant registration. COMPLIANCE COSTS FOR AFFECTED PERSONS: If a covered individual must provide fingerprints, the statute requires the licensee to pay \$10 for a statewide check and \$24 for an FBI check.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In most cases the cost of background screening will be paid out of the standard licensing fee established for each facility. If the facility employs an individual that has not resided in Utah for five years, there will be a \$24 fee to the FBI to provide fingerprints and obtain a fingerprint check. The \$10 fingerprint fee for a statewide check will only apply if a possible match is obtained upon the initial screen and fingerprints are requested. These costs appear to be necessary and appropriate to implement the statutory changes. In the event that public comment identifies other costs, these will be carefully evaluated before the rule becomes effective.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Health
Health Systems Improvement,
Health Facility Licensure

Cannon Health Building
288 North 1460 West
PO Box 142003
Salt Lake City, UT 84114-2003, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or by Internet E-mail at dwynkoop@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: A. Richard Melton, Acting Executive Director

R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-35. Background Screening.

R432-35-1. Authority.

The Utah Code, Section 26-21-9.5, requires that a Bureau of Criminal Identification screening, referred to as BCI, and a child or disabled or elderly adult management information system screening be conducted on each person who provides direct care to a patient for the following covered health care facilities:

- (1) Home health care agencies;
- (2) Hospice agencies;
- (3) Nursing Care facilities;
- (4) Assisted Living facilities;
- (5) Small Health Care facilities;
- (6) Residential Health Care facilities; and
- (7) End Stage Renal Disease Facilities.

R432-35-2. Purpose.

The purpose of this rule is to define the circumstances under which a person who has been convicted of a criminal offense or has a substantiated report of child abuse or neglect or disabled or elder abuse or neglect, may provide direct care to a patient in a covered health care facility, taking into account the nature of the criminal offense and its relation to patient care.

R432-35-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 21. In addition:

(1) "Covered Individual" means all proposed employees who provide direct patient care in a covered health care facility, including volunteers, existing employees, and, for assisted living settings, all individuals residing in the home where an assisted living program is to be licensed, who are 18 years old and over.

(2) "Department" means the Utah Department of Health.

(3) "Substantiated" means a Department of Human Service finding, at the completion of an investigation by the Department of Human Services, that there is a reasonable basis to conclude that one or more of the following types of abuse or neglect has occurred:

- (a) physical abuse;
- (b) sexual abuse;

- (c) sexual exploitation;
- (d) abandonment;
- (e) medical neglect resulting in death, disability, or serious illness; or
- (f) chronic or severe neglect.

R432-35-4. Bureau of Criminal Identification.

(1) The Utah Code, Section 26-21.9.5, requires that a BCI be conducted on covered individuals requesting to be licensed, to renew a license, or to be employed or volunteer in a covered health care facility.

(a) Immediately upon or prior to employing or licensing a covered individual, the health care facility shall submit applicant information, fees and releases to the Department to allow the Department to perform a criminal background screening.

(b) If the BCI indicates that the covered individual has a criminal record that indicates there is a conviction for a felony or misdemeanor, the covered individual shall submit a fingerprint card, waiver and fee upon request by the Department. The Department shall submit them to the Criminal Investigations and Technical Services Division for additional screening.

(c) The fingerprint card that the covered individual submits shall be prepared either by the local law enforcement agency or an agency approved by local law enforcement.

(d) The Criminal Investigations and Technical Services Division, shall report the background screening and forward the fingerprint card to the Department. The Department shall review the criminal convictions within the past five years to determine whether to approve the covered individual for licensing or employment.

(e) If a covered individual applicant has lived in Utah less than five years, the covered individual shall submit fingerprints for an FBI national criminal history record check.

(f) If based upon the BCI screening, the Department denies the covered individual a license, volunteer position or employment, the Department shall send a Notice of Agency Action to the health care provider or covered individual stating that the application is denied.

(2) The Department shall make the following determination if a covered individual has a criminal history record:

(a) If the covered individual was convicted of a felony, the covered individual may not provide direct services to a patient or volunteer in a program licensed by the Department.

(b) If the covered individual was convicted of a misdemeanor within the past five years, the covered individual may not provide direct patient services or volunteer in a health care program licensed by the Department if the misdemeanor involves offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense.

(c) If the covered individual is a person with a felony or misdemeanor conviction who resides in a home where health care is provided, the Department shall not issue a license for health care in the home.

(3) The Executive Director may consider an approval for licensing or employment of a covered individual who has been convicted of a misdemeanor, but not a misdemeanor involving offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense, according to the following criteria:

(a) If the convictions are older than five years, the covered individual may provide direct patient care in a health care program licensed by the Department.

(b) If the convictions are within the last five years, the Department shall make a comprehensive review of the individual's circumstances. If the Department finds that the covered individual's conduct is not adverse to the public health, morals, welfare, and safety of children or elderly or disabled adults, the covered individual may provide direct patient care in a health care facility licensed by the Department.

(c) If the convictions demonstrate a pattern of behavior which indicates that the covered individual's conduct is adverse to the public health, morals, welfare, and safety of children or elder and disabled adults, the covered individual may not provide direct patient care in a health care facility licensed by the Department.

(4) The Department shall rely on the BCI as conclusive evidence of the conviction and the Department may revoke or deny a license and employment based on that evidence.

(5) If the covered individual is denied a license or employment based upon the BCI and the covered individual disagrees with the BCI report, the covered individual may seek redress through the Criminal Investigations and Technical Services Division, as provided in Section 77-18-2.

(6) All covered individuals shall report all felony and misdemeanor convictions of covered individuals for offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense to the Department within 48 hours of conviction.

R432-35-5. Child, Elder, and Disabled Adult Abuse Management Information System.

(1) Pursuant to Utah Code 26-21-9.5(3) the Department shall screen all covered individuals for a history of substantiated abuse or neglect, from the management information system maintained by the Utah Department of Human Services (DHS) for children and disabled or elder adults.

(2) If a covered individual appears on the management information system, the Department shall review the date of the substantiated finding, type of substantiation, written documentation, and the legal status of the covered individual.

(3) If the Department determines there exists credible evidence that the covered individual poses a threat to the safety and health of children or disabled or elder adults being served in a covered health care facility, the Department shall not grant or renew a license, or employment.

(4) If the Department denies or revokes a license or employment based upon the child or disabled or elder adult abuse management information system, the Department shall send a Notice of Agency Action to the licensee and the covered individual.

(5) If the covered individual disagrees with the record of substantiation of abuse, he must pursue an appeal with the DHS. If the covered individual agrees with the substantiated finding of abuse that was the basis of the Department's denial or revocation, but disagrees with the Department's denial or revocation, the covered individual may request a hearing with the Department.

(a) Upon request, the Department may permit the covered individual to be employed under supervision until a decision is reached and if the applicant can demonstrate that the work arrangement does not pose a threat to the safety and health of

children or disabled or elder adults being served in the licensed health care facility.

(b) If a covered individual appeals the record of substantiation, the Department may hold the license or employment denial in abeyance until DHS renders a decision.

(6) If the DHS determines a covered individual has a substantiated finding of abuse, or neglect after the Department issues a license, or grants employment, the licensee and covered individual has five working days to notify the Department. Failure to notify the Department may result in revocation of the license.

KEY: health care facilities

August 1998

26-21-9.5

**Human Services, Administration,
Administrative Services, Licensing**

R501-12

Foster Care Core Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 21258

FILED: 06/30/1998, 15:55

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule needs to be changed to reflect the changes in state law, to be in compliance with the Social Security Act, and the David C. Settlement Agreement. Foster care licensing has undergone a transition from the Division of Child and Family Services (DCFS) to the Office of Licensing. Changes in rules limit the role of licensing to enforcement of basic standards, eliminating internal procedural matters, and respond to Federal requirements, as well as requirements of the Settlement Agreement.

SUMMARY OF THE RULE OR CHANGE: Definitions have been added to incorporate and provide consistency across all licensed out-of-home care, including private providers as well as providers under contract to the Division of Child and Family Services (DCFS) or the Division of Youth Corrections (DYC). Follow up evaluation for families undergoing major changes (family structure, geographical move, etc.) has been added, pursuant to the Settlement Agreement. Refusal of licensing based on race, color, or national origin is not allowed, pursuant to the Social Security Act. Specifics in the physical aspect of the home environment have been added for consistency with other licensing residential standards, and with Child Welfare National Standards. Rules relating to children's rights in foster care (Section R501-12-14) will be incorporated into proposed legislation for the 1999 session, per the Department's commitment to clarify consumer rights in the Licensing statute.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-2-101 through 62A-2-121

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Some increased staff time (approximately 1/2 full time employee (FTE)) is anticipated for monitoring homes undergoing major changes.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: Subsection R501-12-4(C) is described under "Compliance costs for affected persons." Aggregate cost of \$.32 stamp per foster care applicant referral letter (2000) would be approximately \$640. Section R501-12-7: Specifics are added for the physical environment of the home. These are not necessarily upgrades from current practice, requiring additional expense or remodeling. This issue is further addressed as follows under "Compliance costs for affected persons."

COMPLIANCE COSTS FOR AFFECTED PERSONS: Foster parents receive payment from the state for their services. No changes in these rules require increases in on-going foster parent expenses, or impact state payment to them. Subsection R501-12-4(C): The requirement has increased from two referral letters for foster parent applicants to three. Cost could be \$.32 postage for each new referral letter. Foster parents are not required to pay this, nor are letters required to be mailed. Section R501-12-7: The specificity added for physical environment of the home is meant to be reasonable, to clarify standards for licensors and foster parents (particularly potential foster parents), to be consistent with other residential facility standards, and to be consistent with Child Welfare national standards, and are not expected to require additional costs for foster parents. We have no current data on existing fire extinguisher grades, bedroom sizes, windows and ventilation, etc. but the committees and boards providing input into these standards felt the requirements were reasonable for basic health and safety standards.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Subsection R501-12-4(A): All "child placing agencies" (CPA) licensed by the Department who contract for foster care have been involved in the development of these standards, and there have been no objections based on anticipated costs. The follow up requirement for homes undergoing changes could impact CPA's, but for the most part on-going monitoring of foster or proctor homes already takes place.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Services
Administration, Administrative Services,
Licensing
Room 303
120 North 200 West
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kay Harrison at the above address, by phone at (801) 538-4242, by FAX at (801) 538-4553, or by Internet E-mail at kharriso.adm.hs.ut.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/15/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/16/1998

AUTHORIZED BY: Reta D. Oram, Director

R501. Human Services, Administration, Administrative Services, Licensing.

R501-12. Foster Care Rules. [Core Standards.]

R501-12-1. Purpose Statement.

[Foster care means the provision of care in family homes which are conducive to the physical, social, emotional and mental health of children, dependent adults, persons with handicaps, or adjudicated youth who are temporarily unable to remain in their own homes.] The purpose of these standards is to establish the minimum requirements for licensure of foster homes and proctor homes for children in the Department of Human Services, hereinafter referred to as DHS.

R501-12-2. Definitions.

~~[These core and categorical standards are the minimum requirements for licensure of all Department of Human Services, hereinafter referred to as DHS, family foster homes.]~~ A. "Foster care" means the provision of care which is conducive to the physical, social, emotional and mental health of children or adjudicated youth who are temporarily unable to remain in their own homes.

B. "Proctor care" means the provision of foster care for only one youth at a time placed in a licensed foster home. The youth shall be adjudicated to the custody of the Division of Youth Corrections.

C. "Licensing agent" means a person who is authorized to certify foster and proctor care providers in accordance with the legally approved Foster Care Rules.

D. "Foster care agency" is any authorized licensed private agency certifying providers for foster care services.

E. "Child" means anyone under 18 years of age with the exception of DYC proctor care where custody and guardianship may be maintained to the age of 21.

F. Rules applying to foster care are also applicable to proctor care unless otherwise specified below.

R501-12-3. Authority.

~~[It is the policy of DHS that all foster homes approved by the Department shall be licensed according to the set of standards contained in this rule.~~

~~— Foster care services are provided pursuant to the following:
— Division of Child and Family Services, hereinafter referred to as DCFS, according to Section 62A-4-108:~~

— Division of Services for People with Disabilities, hereinafter referred to as DSPD, according to Section 62A-5-103.

— Division of Youth Corrections, hereinafter referred to as DYC, according to Section 62A-7-116.

— Division of Aging and Adult Services, hereinafter referred to as DAAS, according to Section 62A-3-104. ~~Foster care services are provided pursuant to 62A-4a-106 for the Division of Child and Family Services, hereinafter referred to as DCFS, and 62A-7-104 for the Division of Youth Corrections, hereinafter referred to as DYC.~~

R501-12-4. [License Procedure:]Licensing and Renewal.

A. Application: An individual or legally married couple age 21 and over may apply to be foster parents. The applicant shall be provided with an application and a copy of the foster care licensing standards. The application shall require the applicant to list each member of the applicant's household. ~~[Application: Any adult may apply to the regional office to be a foster parent. The applicant will be provided with an application, a copy of standards and advised of licensing requirements and procedure.]~~

1. ~~The application shall include all members of applicant's household and indicate the type of consumer who can be served in the foster parent home.]~~

B. Medical Information:

1. At the time of application, each potential foster parent shall obtain and submit to the foster care agency or the Office of Licensing, hereinafter referred to as OL, a medical reference letter, completed by a licensed health care professional, which assesses the physical ability of the individual to be a foster parent. On an annual basis thereafter, each foster parent shall submit a personal health status statement.

~~[2. At the time of application, the prospective parents must have a medical reference letter completed by a physician to become part of the provider record. If there are questions about a foster parent's health, the individual concerned shall be asked to have a medical examination and furnish results to the agency. Yearly thereafter the foster parents must submit an affidavit that their health is unchanged. If medical concern is noted by any worker, a current physical form by the caregiver's doctor will be required.]~~
2. A psychological examination of a potential or current foster parent may be required by OL or the foster care agency if there are questions regarding the individual's mental stability which may impair functioning as a foster parent. The psychological examination shall be arranged and paid for by the foster parent.

~~[3. If, at initial application or thereafter, there are serious questions of parents' mental stability, the agency may require a psychological examination. This examination will be paid for by the foster parents.]~~

C. References:

The applicant shall submit the names of individuals not related to the applicant who may be contacted by the foster care agency or OL for a reference. The named individuals, such as neighbors, school personnel, or clergy, shall be knowledgeable of the ability of the potential foster parents to nurture children. Three acceptable letters of reference must be received by the foster care agency or OL before a license will be issued.

~~[B. References: The applicant shall submit the names and addresses of four non-related reference persons, such as, neighbor,~~

~~school, clergy, or others as appropriate, who may be contacted by DHS.~~

~~Two acceptable letters of reference must be received before a license is issued.~~

C.]D. Background Screening:

1. Criminal Background Screening, referred to as CBS, pursuant to 62A-2-120, [Section 62A-4a-413] requires that all child foster care applicants or persons 18 years of age or older [over 18] living in the home must have the [BCF]criminal background screening completed. This shall be completed on initial home approval and yearly thereafter. In accordance with 62A-2-120, no applicant can be licensed to provide foster care services when the applicant has been convicted of a felony.

~~[In accordance with Section 62A-4a-413, no applicant can be licensed to provide foster care services when the applicant has been convicted of a felony.]~~

~~[D.]~~ 2. The child abuse data base [USSDS Database] shall also be [checked]screened for each [child and adult foster care] applicant or persons 18 years of age or older living in the home to see if a report of alleged abuse and neglect has been substantiated. This [with]shall be done on initial home approval and yearly thereafter.

a. In accordance with 62A-4a-116(2)(b) the following types of abuse and neglect shall be considered for licensing purposes:

1. physical abuse,
2. sexual abuse,
3. sexual exploitation,
4. abandonment, medical neglect resulting in death, disability, or serious illness, or
5. chronic or severe neglect.

b. In accordance with 62A-2-121, [Section 62A-4a-413;] if the name of any individual living in the home appears on the child abuse data base as substantiated, [Database] a license may be denied, approved, or renewed based on a comprehensive review of the individual circumstances, conducted by DHS, in accordance with R501-18.

E. Home Study: There shall be a current home study report on record prepared, or reviewed and signed off, by a licensed Social Worker. A home study shall be completed for each potential foster home. The home study shall be updated annually with a home visit.
~~[E. Home Study: There shall be a current home study report for each licensed home, recorded and filed in provider record. It shall be updated annually.]~~

~~1. Kinship, Specific Home Approval: A home may be approved on a special one-time basis for placement of one specific child or family of children. The home study must still be completed. Such a license will be valid only for the duration of the specific placement.~~

~~2. Limitations on Providers Approved for More than One Service: Generally, providers shall not be approved to provide care for both adults and children. Homes should ordinarily not be approved for the following configurations of services: group care and emergency care, group care and foster care. DCFS providers shall not be approved to be licensed for both child care and foster care. Usually a home should be approved for either emergency care or foster care. DCFS providers also may not be licensed by more than one agency and may not accept placement from another agency without prior approval from the Regional Director.]~~

[F. The assessment and evaluation study shall be conducted in a professional manner and in compliance with the Utah Information Practices Act, which requires that information concerning applicants and reference persons be protected.]F. Provider Code of Conduct: Each foster care applicant shall read, abide by, and sign a current copy of the DHS Provider Code of Conduct.

[G. Standards: Applicants shall receive a copy of Foster Care Core and Categorical Standards.]

~~H. Training:~~G. Training:

Each foster care applicant shall complete the required pre-service training as specified in R501-12-5 prior to receiving a license.

[1. Each foster care applicant shall complete the required training, refer to R501-12-5, prior to receiving a license. Waivers for completion of basic training shall no longer be granted for DCFS kinship-specific providers.]

~~2. Each foster care applicant shall read, understand, and sign the Provider Code of Conduct.~~

~~3. For license renewal, each applicant shall be required annually to complete on-going training with approved curriculum.~~

~~I. Approval or Denial Procedure:~~

~~1. Following pre-licensing training, assessment of an applicant shall be completed within 20 working days if all needed documentation is received in a timely manner:~~

~~2. Approval is based on whether the applicant and family meet minimum Division Standards for Foster and Emergency Homes. In addition, the applicant shall be responsible to identify and meet any local ordinances applicable to that type of care. Approval is no guarantee of placement in the home.]~~H. Approval or Denial:

1. Following pre-service training and submission of all required documentation, the home study and assessment of an applicant shall be completed.

2. A license shall be issued for applicants who meet Foster Care Licensing Rules. In addition, the applicants shall be responsible to identify and meet any local ordinances applicable to the type of care.

3. The decision to approve or deny the applicant shall be made on the basis of observable facts and the professional judgement of the foster care agency or OL regarding the safety and sanitation conditions of the home.

[3. The final decision to approve or deny or revoke or utilize the provider is the responsibility of the regional office. These decisions shall be made on the basis of observable facts and the professional judgment of the worker, as to whether requirements of current program standards have been met relative to:

~~a. Safety and sanitation conditions of the home.~~

~~b. Provider's emotional health, degree of maturity, ability to discern and meet emotional, social, cognitive, physical needs of the child or adult who will be placed in care; characteristics such as good judgment, flexibility, ability to cooperate and communicate with the worker.~~

~~c. All other Standards.]~~4. No person may be denied a foster care license on the basis of race, color, or national origin of the person, or a child, involved, pursuant to the Social Security Act, Section 471(a)(18)(A).

5. The provider shall be evaluated annually for compliance with standards when renewing a license.

6. Kinship and Specific Home Approval: An applicant may be licensed for placement of one specific child or sibling group. The home study shall be completed and all licensing requirements met. This license is valid for the duration of the specific placement only and must be renewed annually.

7. Licensure approval is not a guarantee that a child will be placed in the home.

8. Limitations on Licensed Providers:

a. Providers shall not be licensed to provide care for both adults and children.

b. Providers shall not be licensed to provide both child care and foster care.

c. Providers shall not be licensed for the following configurations of services: group care and child emergency care, or group care and foster care.

9. The Office of Licensing Director or designee may grant a variance to a rule if it is in the best interest of the specific child.

10. All providers shall report any major changes as listed in a, through e, in their lives to the licensor or foster care agency within 48 hours. These changes shall be re-evaluated within one month of the change by the licensor or foster care agency. A major change in the lives of the foster parents shall include, but is not limited to the following:

a. death or serious illness among the members of the foster family.

b. separation or divorce.

c. loss of employment.

d. change of residence, or

e. suspected abuse or neglect of any child in the foster home.

[~~4. When questions arise, the worker may use consultation from Division and community resources in developing accurate evaluations and professional judgments.~~

~~5. A Regional Director in conjunction with the Divisional Director may grant a variance to a standard if it is in the best interest of the child or adult. Please refer to Licensing Manual; Section I, Variance. A written notice of variance must be sent to the appropriate Division.]~~

R501-12-5. Training.

[Training shall be developed and provided by each Division of DHS. Training sessions for foster parents are to be scheduled so as to facilitate attendance by both spouses. At least one spouse of couple must complete the entire training series in order for the home to be licensed. The other person must attend at least one third of the training.]A. Applicants shall attend training required by the applicable DHS Division or other approved entity and submit verification of completed training to the licensor or foster care agency.

B. At least one spouse shall complete the entire training series in order for the home to be licensed. The other spouse shall attend at least one third of the training.

C. Providers associated with a foster care agency that is contracted to provide foster care or proctor care services shall meet the training requirements specified by the contract.

[~~A. Training Requirements of the Division of Family Services:~~

~~1. Handbook: Applicants shall receive a copy of the Foster Parent Handbook. The date this is given to the applicant shall be noted on the application and applicant shall sign the form.~~

2. Before foster care may be provided, each applicant shall complete a minimum of the basic foster care training. Specialized foster care training, crisis care training and structured foster care training is additional.

The following are minimum amounts of training which will be required:

TABLE

	Basic Training (8 Hrs)	Specialized Training (8 Hrs)	Crisis Training (4 Hrs)	Infectious Diseases First Aid Model CPR (2 Hrs)	Family Teaching Training (8 Hrs)	Annual Training (12 Hrs)
Basic Foster Care	8 Hrs			2 Hrs		8 Hrs
Specialized Foster Care	8 Hrs	8 Hrs		2 Hrs		12 Hrs
Shelter/ Crisis Foster Care	8 Hrs		4 Hrs	2 Hrs		8 Hrs
Structured Foster Care	8 Hrs			2 Hrs	24 Hrs	12 Hrs

3. Emergency Care: Before becoming licensed to provide shelter or emergency care, each applicant shall complete training which shall focus on crisis intervention, parenting skills according to a pre-approved curriculum:

4. Specialized or Structured: Foster parents who wish to provide specialty foster care, must be trained before the home is approved:

5. Kinship, Specific Care: Families who wish to be licensed for specific children must complete 14 hours of basic pre-service training which may not be waived. A Regional Director may grant a variance to waive CPR and on-going in-service training:

B. Training Requirements of the Division of Services to People with Disabilities:

1. Prior to licensure in an Adult Specialized home, training will be provided by the DHS case manager to include:

- a. Person's status
- b. Abuse and neglect laws

2. Within three months of licensing, the DHS case manager will ensure that the provider receives six hours of training to include at a minimum:

- a. Individual rights of the person being served
- b. Behavior management
- c. Confidentiality

3. Annually the DHS regions will ensure that the provider receives at the minimum ten hours of training to include:

- a. First aid and illness symptom recognition
- b. CPR and Heimlich certification
- c. Nutrition
- d. Current teaching methodologies
- e. Other relevant subjects

C. Training Requirements of the Division of Youth Corrections:

Delinquent Youth: Each applicant will participate in orientation and training sessions designed to enhance their skills in coping with delinquent youth and improve the understanding of the juvenile justice system. Applicants will be required to participate in a minimum of 12 hours initial training and six hours per year thereafter. To meet these requirements, applicants shall attend Foster Parent Training approved by Youth Corrections:

D. Training Requirements of the Division of Aging and Adult Services:

Adult Specialized and Emergency Care: Each applicant shall receive a minimum of six hours training within three months of certification, which includes rights of the client, payment, certification, adult abuse and neglect, and other agency procedures and requirements of adults in care. Annually thereafter, the provider must complete ten hours training related to adult care. Providers should receive ongoing consultation and training from staff to help in meeting the client's needs. Training shall be provided by the regional DHS workers:]

R501-12-6. Foster Parent [and Family] Requirements.

A. Personal characteristics of foster parents shall include the following:[and family:]

1. Foster parents shall be in good health, able to provide physical and emotional care to the child[consumer].

2. Foster parents shall[must] be emotionally stable and responsible persons over 21 years of age. [Both legally]Legally married couples and single individuals, may be foster parents.

3. Foster parents shall[must] have the ability to help the [consumer]child grow and change in behavior.

4. Foster parents shall[have sufficient income to maintain the family so they are] not be dependent on the foster care payment for their expenses beyond those associated with foster care, and shall allocate funds as directed by Division policy. Verification of income shall be submitted with the application to OL or foster care agency on an annual basis.

5. [Agency]Division employees shall not be approved as foster parents to care for children in the custody of their respective Divisions. [In emergency situations an]An employee may provide care for children in the custody of a different Division with approval of the Regional Director in accordance with DHS conflict of interest policy.

6. Owners, directors, and members of the governing body for foster care agencies shall not serve as foster parents.[6. An agency employee may be approved as a foster-adopt family in accordance with DCFS Child Welfare Manual IV-J-5, #6.]

7. Foster parents shall[must] follow agency rules and work cooperatively with the agency, State Court, and law enforcement officials.

B. Family Composition shall meet the following:[and Consumer Placement:]

1. The number, ages, and gender[sexes] of persons in the home shall be taken into consideration[account] as they may be affected by or have an effect upon the child[or adult].

2. Variance requests for the following must address why a variance is in the best interests of the child, and how basic health and safety requirements will be maintained, in accordance with R501-1-8.[2. If the family wishes to be approved for placement of school aged children, one parent must be at home when the child

returns from school or there must be an approved care arrangement.]
 [3:]a. No more than two children under the age of two, shall reside in a foster home, including natural children.

[4:]b. No more than two non-ambulatory children[consumers] shall be placed in a foster home including[~~This includes~~] infants under the age of two.

[5:]c. No more than four foster children [~~or three unrelated adults~~] shall be placed in any one home.

[The composition may be flexible and shall consider the needs of each child or adult and the family or provider.

— 6. The placement of sibling groups larger than four must be approved by the Regional Director.

— 7. A foster family shall have no more than six children, including the foster parent's children under age 18:]d. No more than six children shall be in a foster home including the foster parent's children under the age of 18.

e. No more than one foster child shall be in any one home designated for proctor care by agencies contracted with DYC.

R501-12-7. Physical Aspects of Home.

A. The home shall be located in a vicinity in which[where] school, church, recreation, and other community facilities are reasonably available.

B. The physical facilities of the home shall be clean, in good repair, and shall provide for normal comforts in accordance with accepted community standards.

C. The home shall be free from health and fire hazards. Each home shall have a working smoke detector on each floor and at least one approved fire extinguisher. An approved fire extinguisher shall be inspected annually and be a minimum of 2A:10BC five point, rated multi-purpose, dry chemical fire extinguisher.[The extinguisher shall be serviced annually.]

D. There shall be sufficient bedroom space to provide for the following:[so that:]

1. rooms are not shared by children[consumers] of the opposite sex, except infants under the age of two years.[;]

2. [~~consumers shall~~]children do not sleep in the parents' room, except infants under the age of two years,[:]

3. each child has [~~consumer shall have~~] his or her own solidly constructed bed adequate to the child's size.[; and]

[~~— 4. adult and child consumer shall have separate bedrooms.~~]

4. a minimum of 80 square feet is provided in a single occupant bedroom and a minimum of 60 square feet per child is provided in a multiple occupant bedroom excluding storage space, and

5. no more than four children are housed in a single bedroom.

E. Sleeping areas shall have a source of natural light and shall be ventilated by mechanical means or equipped with a screened window that opens.

[E:]E. Closet and dresser space shall be provided within the bedroom for the [~~consumer's~~]children's personal possessions and for a reasonable degree of privacy.

[F:]G. There shall be adequate indoor and outdoor space for recreational activities.

[G:]H. [~~The foster~~]Foster homes shall offer sufficiently balanced meals to meet the child's[consumer's] needs.

[H. ~~The Department of Health has the right to inspect foster homes:~~

— I. Building and grounds:

— 1:]L. All indoor and outdoor areas shall be maintained to ensure a[in a] safe physical environment.[and sanitary manner:]

[2:]J. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers.

[F:]K. Equipment:

[1.]All furniture and equipment shall be maintained in a clean and safe condition. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet individual needs.[and sanitary manner:

— 2. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet individual needs:

— K. Storage:

— 1. There shall be locked storage for medications:

— 2. There shall be locked storage for hazardous chemicals and materials:]

L. Exits:

There shall be at least two means of exit on each level of the home.

[R501-12-8. Nutrition:

— A. Daily meals and snacks shall meet the component, quality, and quantity of the Recommended Daily Allowance, referred to as RDA, for children and adults:

— B. Sanitary drinking water shall be available at all times.

]

R501-12-[9]8. Safety.

A. Foster families shall conduct and document fire drills at least quarterly.

B. [~~The parents~~]Foster parents shall [~~train consumers how to respond~~]provide training to children regarding response to fire warnings and other instructions for life safety.

C. The home shall[must] have a telephone. Telephone numbers for emergency assistance shall be posted next to the telephone.

D. The home shall have an adequately supplied first aid kit.[a First Aid Kit:]

E. [~~Parents~~]Foster parents maintaining firearms in the home shall assure that the firearms [~~and ammunition are securely locked, making the firearms~~]are inaccessible to children[consumers] at all times. Firearms and ammunition shall be securely locked. Firearms kept in the home or on the premises will be rendered inoperable when possible.

F. No firearms shall be allowed in foster homes that contract with[for] DYC[~~or DAAS~~].

G. Foster parents who have alcoholic beverages in their home shall assure that the beverages are kept inaccessible to children at all times.

H. There shall be locked storage for hazardous chemicals and materials.

R501-12-[10]9. Emergency Plans.

A. Foster parents shall have a written plan of action for emergencies and disaster to include the following:

1. evacuation with a pre-arranged site for relocation,[:]

2. transportation and relocation of children[consumers] when necessary,[:]

3. supervision of children[consumers] after evacuation or relocation,[:] and

4. notification of appropriate authorities.

B. ~~[The foster]~~Foster parents shall have a written plan for medical emergencies, including~~[with]~~ arrangements for medical transportation, treatment and care.

~~[C. The foster parents shall notify the consumer's physician and DHS worker of any accidents or injuries which require medical treatment or other emergency which involves the consumers.~~

~~D.]~~C. ~~[The foster parent]~~Foster parents shall immediately report any serious illness, injury or death of a foster child to the appropriate Division or foster care agency worker and OL licensor.~~[consumer to the Regional Office.]~~

~~[E. The regional office shall follow the procedure as outlined in the DHS Fatality policy, DHS-91-01, which includes notification of the Office of Liability.]~~

R501-12-10~~[11]~~. Infectious Disease.

~~[A. The provider or foster parent]~~Foster parents shall ~~[have]~~abide by policies and procedures designed to prevent or control infectious and communicable diseases in the home.~~[A technical assistance manual is available from the Department of Human Services.~~

~~B. For policy for HIV victims see Department Resource Manual, Technical Assistance or DCFS Child Welfare Manual III-16-2.]~~

R501-12-11~~[12]~~. Medication.

A. Foster parents shall administer prescribed medication, according to the written directions ~~[and authorization]~~of a licensed physician.~~[~~

~~]~~Medicine shall only be given to the child ~~[or adult]~~for whom it was prescribed.

~~[B. Foster parents shall supervise self medication of adults.~~

~~C.]~~B. Medication shall not be discontinued without the approval of the licensed physician, side effects shall~~[with]~~ be reported to the licensed physician.

~~[D.]~~C. Non-prescriptive medications~~[which are normally self-administered or administered by a parent]~~ may be administered by foster parents according to manufacturer's instructions.

D. Medications shall not be administered by the foster child~~[or adult]~~.

E. Medication shall not be used for behavior management or restraint unless prescribed by a licensed physician with notification to the ~~[DHS]~~Division or foster care agency worker.

F. ~~[Medication must be stored in a locked cupboard.]~~There shall be locked storage for medication.

R501-12-12~~[13]~~. Transportation.

A. ~~[The foster parent]~~Foster parents shall provide routine transportation. In case of an emergency a means of transportation shall be arranged by the foster parents.

~~[B. Transportation shall be provided according to state safety requirements.~~

~~C.]~~B. Drivers of vehicles shall have a valid Utah Drivers License and follow safety requirements of the State.

~~[D.]~~C. Transportation shall be provided in an enclosed vehicle which has been safety inspected and equipped with seatbelts and an appropriate restraint for infants and young children.

D. An emergency telephone number shall be in the vehicle used to transport children.

~~[E. There shall be a means of transportation in case of emergency.~~

~~F.]~~E. Each vehicle shall be equipped with an adequately supplied first aid kit.~~[a First Aid kit, as recommended by the American Red Cross.]~~

~~[G. Each vehicle used for DSPD shall be equipped with a fire extinguisher.]~~

R501-12-13~~[14]~~. Behavior Management.

A. ~~[The foster family]~~Foster parents shall provide appropriate supervision at all times.

B. ~~[A foster parent]~~Foster parents shall not use, nor permit the use of corporal punishment, physical or chemical restraint, infliction of bodily harm or discomfort, deprivation of meals, rest or visits with family, humiliating or frightening methods to control the actions of children~~[consumers]~~.

C. The foster parents' ~~[ideas and]~~methods of discipline shall be constructive. In ~~[planning]~~exercising discipline, the ~~[consumer's]~~child's age, emotional make-up, intelligence and past experiences shall be considered.

D. Passive restraint shall be used only in behaviorally~~[behavioral]~~ related situations as a temporary means of physical containment to protect the child~~[or adult]~~, other persons, or property from harm. Passive restraint shall not be associated with punishment in any way.

E. Foster parents shall~~[must]~~ inform the Division or foster care agency worker~~[Agency]~~ of any extreme or repeated behavioral problems of a child placed in the foster home.

~~[F. Each DSPD Program shall comply with the Provider Human Rights Committee Standards, referred to as PHRCs, available in the Services for People with Disabilities Manual, 900-1.]~~

R501-12-14~~[15]~~. ~~[Consumer]~~Child's Rights in Foster Care.

~~[A. A description of the rights and responsibilities should be provided and explained when the child or adult is admitted to the home. When appropriate, the child or adult will be informed verbally of this policy to his or her understanding.~~

~~B.]~~A. The foster parent shall adhere to the following:

1. ~~[Allow the consumer]~~allow the child to eat meals with the family, and ~~[allow the consumer]~~to eat the same food as the family unless the child~~[consumer]~~ has a special prescribed diet.~~[~~

2. ~~[Allow the consumer]~~allow the child to participate in family activities.~~[~~

3. ~~[Protect confidentiality]~~protect privacy of information.~~[~~

4. ~~[Not]~~not make copies of consumer records.~~[~~

5. ~~[Explain consumer]~~explain the child's responsibilities, including household tasks, privileges, and rules of conduct.~~[~~

6. ~~[Not]~~not allow discrimination.~~[~~

7. ~~[Treat the consumer]~~treat the child with dignity.~~[~~

8. ~~[Allow the right]~~allow the child to communicate with family, attorney, physician, clergyman, and others, except where documented otherwise.~~[to be clinically contraindicated.]~~

~~[9. Have a list of people whose visitation rights have been restricted by legal guardian or DHS worker.]~~9. follow visitation rights as provided by DHS or foster care agency worker.

10. ~~[Allow the right]~~allow the child to send and receive mail providing that security and general health and safety requirements

are met, foster parents may only censor or monitor a foster child's mail or phone calls by court order.

11. Provide for personal needs and clothing allowance, and money, according to foster care policy.

12. respect the child's religious and cultural practices. Allow a foster adult to manage his own fiscal affairs, unless contraindicated by the DHS worker and protective payee is required.

R501-12-15[16]. Record Keeping.

A. Foster parents shall maintain the following:

1. current license certificate.

2. Copy of each contract with the Department of Human Services.

3. Record of money provided to each foster child, consumer.

4. Record of expenditures for each foster child, and consumer.

5. Documentation of special need payments on behalf of the foster child.

B. Foster parents shall maintain the out of home placement information record for each child in their care to include the following:

1. placement information for each child in out of home care,

2. biographical information, including an emergency contact name and telephone number,

3. documentation of the health care record of each child, including the following:

a. immunizations,

b. physical, mental, visual, and dental examinations,

c. emergencies requiring medical treatment, and

d. medication, when applicable, and

4. summary of family visits and contacts, when appropriate, according to the service plan.

C. Foster parents shall ensure that the out of home record accompanies the child or is returned to the foster care agency upon relocation of the child.

1. Placement information, Form 952, for each child in out-of-home care:

2. Biographical information, to include an emergency contact name and phone number.

3. Documentation of each consumer to include:

a. immunizations;

b. physical, visual, and dental examinations;

c. emergencies requiring medical treatment, and

d. medication, when applicable.

4. A summary of family visits and contacts, when appropriate, according to treatment plan.

D. The OL staff shall maintain a separate record for each provider, including:

1. annual application;

2. annual home study and approval or denial;

3. record of training;

4. reference letters;

5. doctor's letter;

6. yearly contracts, Form 638;

7. copy of 519 and 519A, updated annually;

8. worker comments on use of the home;

9. record of problems or concerns which have been received about the provider but which have not resulted in revocation of the license, and

10. Form 19 for DSPD individuals, describing eligibility.

D. Technical Assistance: Regional staff shall provide technical assistance, training, consultation, ongoing evaluation, and annual reevaluation.

E. Monitoring: Regional staff will monitor for adherence to standards.

F. Complaints: Regional offices shall have a method of handling complaints concerning foster homes. Those of a protective services nature shall be handled using the procedures for other protective services complaints against facilities licensed by the State. The regional office shall notify the Division of such complaints. Other complaints shall be handled by the Regional office. Please refer to Complaint Investigation Policy.

G. Information for the Public: Each regional office will maintain the following for public review:

1. A complete set of standards.

2. List of facilities which have been granted waivers, including standard waived, justification for waiver, and length of time of waiver.

3. The list of violations of standards.

KEY: licensing, human services, foster care

[November 15, 1997]1998

62A-2-101-121



**Human Services, Recovery Services
R527-253
Collection of Child Support Judgments**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 21243

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RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Office of Recovery Services/Child Support Services (ORS/CSS) is given the authority to set or reset a schedule of payments or demand payment in full pursuant to Section 62A-11-320. If a schedule of payments is established by ORS/CSS, the statute requires that it be consistent with the obligor's ability to pay. Subsection R527-253-1(2) of the current rule is not needed because the statute already provides for, and does not preclude, any schedule of payments that gives appropriate consideration to the obligor's income, earning capacity, and resources. When ORS/CSS begins automatic generation of income withholding notices, it will not establish arrears payments based on a percentage of the current support amount, but will continue to conduct arrears assessments that focus on the obligor's ability to pay.

SUMMARY OF THE RULE OR CHANGE: Subsection R527-253-1(2) of the rule which specified that an amount equal to 50% of the current support award could be used as the required arrear payment has been deleted.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-11-320

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None. ORS/CSS will continue to conduct arrears assessments based on the obligor's ability to pay when setting or resetting payment schedules and payment in full is not required.

❖LOCAL GOVERNMENTS: None. Administrative rules of the Office of Recovery Services do not apply to local governments.

❖OTHER PERSONS: None. Because there will be no change in the way arrears payments are determined by ORS/CSS, the proposed amendment will have no cost or savings impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None. The proposed amendment does not create compliance costs for any public or private entities. ORS/CSS will continue the practice of determining arrears payments based on the obligor's ability to pay when support debts are reduced to a schedule of payments and payment in full is not required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment should not result in a change in the number of income withholding orders ORS/CSS sends to employers or other payors of income or, generally, in the withholding amounts in those orders. Therefore, it is not expected that businesses will experience any fiscal impact, either directly due to increased processing costs or indirectly from employee discontent or turnover. ORS/CSS will continue to determine arrears payments based on the obligor's income and earning capacity pursuant to Subsection 62A-11-320(1)(a), and limit the total payment amount to the maximum amount permitted under the Consumer Credit Protection Act as required under Subsection 62A-11-320(2).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Services
Recovery Services
Fourteenth Floor, Eaton/Kenway Bldg.
515 East 100 South
PO Box 45011
Salt Lake City, UT 84145-0011, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Wayne Braithwaite at the above address, by phone at (801) 536-8986, by FAX at (801) 536-8509, or by Internet E-mail at hsdadmin.hsorssl.cwbraithw@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: Emma Chacon, Director

**R527. Human Services, Recovery Services.
R527-253. Collection of Child Support Judgments.
R527-253-1. Collection of Child Support Judgments.**

1. The [σ]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. The office may set or reset a schedule of payments to pay a child support judgment that is equal to 50% of the current support award to meet the requirement of Section 62A-11-320(1)(a).~~

2. [The office]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 [the office]ORS/CSS from initiating any other remedy at the same time.

**KEY: administrative law, child support
[June 4, 1997]1998
Notice of Continuation October 31, 1997**

62A-11-320



Natural Resources, Wildlife Resources

R657-6

Taking Upland Game

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21238

FILED: 06/25/1998, 09:15

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted annually for taking public input and reviewing permit numbers for upland game species and sandhill crane.

SUMMARY OF THE RULE OR CHANGE: This rule is being amended to: provide definitions of "immediate family" and "landowner" for the purpose of obtaining landowner permits; adds provisions on the Migratory Game Bird Harvest Information Program (HIP), which requires migratory game birds hunters to register and obtain a HIP registration number; clarify application procedure requirements for sandhill crane and wild turkey, and adds application procedures for sharp-tailed grouse; clarify waiting periods when obtaining a wild turkey permit through the drawing; and makes other changes for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Division of Wildlife Resources (DWR) estimates that amendments to this rule, which allow sharp-tailed grouse hunting, will not create any direct cost or savings impact to the state budget or the DWR's budget. The DWR is providing a sharp-tailed grouse permit, free of charge, through a drawing process. However, a handling fee is required to process the drawing. Therefore, there will not be any direct cost or savings impacts to the DWR.

❖LOCAL GOVERNMENTS: None. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendments. Nor are local governments indirectly impacted because the amendments do not create a situation requiring additional services from local governments.

❖OTHER PERSONS: No impact. These amendments do not impose any requirements on persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No impact. However, a person may apply for a sharp-tailed grouse permit through a drawing by paying a \$5 handling fee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change may directly or indirectly result in more customers to retail or lodging businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Wildlife Resources
Suite 2110
1594 West North Temple
PO Box 146301
Salt Lake City, UT 84114-6301, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at (801) 538-4707, by FAX at (801) 538-4709, or by Internet E-mail at nrdwr.dsundell@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: John Kimball, Director

R657. Natural Resources, Wildlife Resources.

R657-6. Taking Upland Game.

R657-6-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 1996 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.

(2) Specific season dates, bag and possession limits, areas open, number of permits[;] and other administrative details that may change annually are published in the proclamation of the Wildlife Board for taking upland game.

R657-6-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Baited area" means any area where shelled, shucked or unshucked corn, wheat or other grain, salt, or other feed whatsoever capable of luring, attracting, or enticing migratory and upland game birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for ten days following complete removal of all such corn, wheat, or other grain, salt, or other feed.

(b) "Baiting" means the placing, depositing, exposing, distributing, or scattering of shelled, shucked or unshucked corn, wheat, or other grain, salt, or other feed so as to constitute a lure, attraction or enticement to, on, or over any area where hunters are attempting to take migratory and upland game birds.

(c) "CFR" means the Code of Federal Regulations.

(d) "Closed season" means the days on which migratory game birds shall not be taken.

(e) "Commercial hunting area" means private land operated under Rule R657-22, where hatchery or artificially raised or propagated game birds are released for the purpose of hunting during a specified season and where a fee is charged.

(f) "Falconry" means the sport of taking quarry by means of a trained raptor.

(g) "Field possession limit" means no person may possess, have in custody, or transport, whichever applies, more than the daily bag limit of migratory game birds, tagged or not tagged, at or between the place where taken and either:

(i) his or her automobile or principal means of land transportation;

(ii) his or her personal abode or temporary or transient place of lodging;

(iii) a migratory bird preservation facility; or

(iv) a post office or common carrier facility.

(h) "Immediate family" means the landowner's spouse, children, father, mother, brother, sister, stepchildren and grandchildren.

(i) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(j) "Migratory game bird" means, for the purposes of this rule, mourning dove, band-tailed pigeon, and sandhill crane.

(k) "Nontoxic shot" means soft iron, steel, copper-plated steel, nickel-plated steel, zinc-plated steel, bismuth, and any other shot types approved by the U.S. Fish and Wildlife Service. Lead, nickel-plated lead, copper-plated lead, copper and lead/copper alloy shot have not been approved.

(l) "Open season" means the days when migratory and upland game birds may lawfully be taken. Each period prescribed as an open season shall include the first and last days thereof.

(m) ~~"Permit" means, for purposes of this rule, a secondary document that:~~

— (i) requires a license as a prerequisite to its issuance; and
 — (ii) grants authority to engage in specified activities under the Wildlife Resources Code or a rule or proclamation of the Wildlife Board.

— (4)(m) "Personal abode" means one's principal or ordinary home or dwelling place, as distinguished from a temporary or transient place of abode or dwelling, such as a hunting club, cabin, tent, or trailer house used as a hunting club or any hotel, motel, or rooming house used during a hunting, pleasure, or business trip.

[(m)] — "Posted hunting unit" (n) "Cooperative Wildlife Management Unit" means a generally contiguous area of private land open for hunting small game, waterfowl, or big game by permit that is registered in accordance with [Rule] Rules R657-21 and R657-37.

[(n)] (o) "Possession limit" means, for purposes of this rule, the number of upland game birds one individual may have in possession at any one time.

[(o)] (p) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

[(p)] (q) "Upland game" means pheasant, quail, chukar partridge, Hungarian partridge, sage grouse, ruffed grouse, blue grouse, sharp-tailed grouse, cottontail rabbit, snowshoe hare, white-tailed ptarmigan, wild turkey, and the following migratory game birds: mourning dove, band-tailed pigeon, and sandhill crane.

[(q)] (r) "Wildlife Habitat Authorization" for purposes of this rule means the primary document granting authority to engage in activities under:

- (i) the Wildlife Resources Code; or
- (ii) a rule or proclamation of the Wildlife Board.

R657-6-3. Migratory Game Bird Harvest Information Program.

(1) A person must obtain a Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds (mourning dove, band-tailed pigeon and sandhill crane).

(2)(a) A person must call 1-800-WETLAND (1-800-938-5263) to obtain their HIP registration number. Use of a public pay phone will not allow access to 1-800-WETLAND.

(b) A person must write their HIP registration number on their current year's hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

- (a) hunting license number;
- (b) hunting license code key;
- (c) name;
- (d) address;
- (e) birth date; and
- (f) information about the previous year's migratory bird hunts.

(4) Lifetime license holders will receive a sticker from the Division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

R657-6-4. Permits for Ptarmigan and Band-tailed Pigeon.

- (1) A person may not take or possess:
 - (a) ptarmigan without first obtaining a ptarmigan permit; or

(b) band-tailed pigeon without first obtaining a band-tailed pigeon permit.

(2) Ptarmigan and band-tailed pigeon permits are available from [division] Division offices free of charge.

R657-6-[4]5. Application Procedure for Sandhill Crane.

(1)(a) Applications are available from [division] Division offices and license agents. Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking upland game.

(b) Residents and nonresidents may apply.

(c) The application period for sandhill crane is published in the proclamation of the Wildlife Board for taking upland game.

(2)(a) Applications completed incorrectly or received after the date prescribed in the upland game proclamation may be rejected. Late applications will be returned unopened.

(b) If an error is found on the application, the applicant may be contacted for correction.

(3)(a) [(4)] Group applications for sandhill crane will not be accepted.

[(5)](b) Applications mailed in the same envelope will be accepted, but will be processed and drawn individually.

(4)(a) A person may obtain only one sandhill crane permit each year.

(b) A person may not apply more than once annually.

(5) [(6)] A \$5 nonrefundable handling fee must be submitted with the application.

[(7)](6) A Wildlife Habitat Authorization and a small game license or combination license may be purchased before applying, or the Wildlife Habitat Authorization and small game license or combination license will be issued upon successfully drawing a permit. Fees must be submitted with the application.

[(8)](7) Personal checks, money orders [and], cashier's checks and credit cards are accepted from residents.

[(9)](8) Money orders [and], cashier's checks and credit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

[(10)](9) A person may not apply more than once.

— [(11)](10) Applications must be sent to:
 SANDHILL CRANE APPLICATIONS
 P.O. Box 168888
 Salt Lake City, Utah 84116-8888.

[(12)](11) The date of the drawing results is published in the proclamation of the Wildlife Board for taking upland game.

[(13)](12) Any permits remaining after the drawing are available by mail-in application on a first-come, first-served basis beginning [two weeks after the drawing results are posted.] on the date published in the proclamation of the Wildlife Board for taking upland game.

[R657-6-5]R657-6-6. Application Procedure for Wild Turkey.

(1)(a) Applications are available from [division] Division offices and license agents. Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking upland game.

(b) Residents and nonresidents may apply.

(c) The application period for wild turkey is published in the proclamation of the Wildlife Board for taking upland game.

(2)(a) Applications completed incorrectly or received after the date prescribed in the upland game proclamation may be rejected. Late applications will be returned unopened.

(b) If an error is found on the application, the applicant may be contacted for correction.

(3)(a)(~~4~~) Group applications for wild turkey will not be accepted.

(~~4~~)(b) Applications mailed in the same envelope will be accepted, but will be processed and drawn individually.

(4)(a) A person may obtain only one wild turkey permit each year, except a person may obtain wild turkey conservation permits in addition to obtaining a limited entry or remaining wild turkey permit.

(b) A person may not apply for wild turkey more than once annually.

(5)(~~2~~) A Wildlife Habitat Authorization and small game license or combination license may be purchased before applying or the Wildlife Habitat Authorization and small game license or combination license will be issued upon successfully drawing a permit. Fees must be submitted with the application.

(~~3~~)(6) Personal checks, money orders[~~and~~], cashier's checks and credit cards are accepted from residents.

(~~4~~)(7) Money orders[~~and~~], cashier's checks and credit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(~~5~~) A person may not apply more than once.

(~~6~~)(8) Applications for wild turkey must be sent to:

WILD TURKEY APPLICATIONS

P.O. Box 168888

Salt Lake City, Utah 84116-8888.

(~~7~~)(9) The date [~~of~~]the drawing results are posted is published in the proclamation of the Wildlife Board for taking upland game.

(~~8~~)(10) Any permits remaining after the [~~drawing~~]drawings are available by mail-in application on a first-come, first-served basis beginning [~~two weeks after the drawing results are posted~~]on the date published in the proclamation of the Wildlife Board for taking upland game.

(~~9~~)(11) Unsuccessful applicants will receive a refund in March.

(~~10~~)(12) Any person who obtained a Rio Grande turkey permit during the preceding year may not apply for or obtain a Rio Grande turkey permit for the following two years. Any person who obtains a Rio Grande turkey permit in the current year, may not apply for or obtain a Rio Grande turkey permit for a period of two years, except:[-

]
[R657-6-6] (a) Waiting periods do not apply to the purchase of turkey permits remaining after the drawing. However, waiting periods are incurred as a result of purchasing remaining permits. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

(b) Waiting periods do not apply to conservation permits or landowner permits.

R657-6-7. Landowner Permits.

(1)(a) Up to an additional 20 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys are available to private landowners through a drawing.

(b) Landowners interested in obtaining landowner permits must contact the [~~division~~]regional Division office in their area before December 15 to be eligible for the landowner permit drawing.

(c) Landowner permit applications that are not signed by the local Division biologist will be rejected.

(d) Landowner permit applications must be received in the Salt Lake Division Office by the date published in the proclamation of the Wildlife Board for taking upland game.

(2)(a) A landowner[~~(2)(a)~~] who owns at least 640 acres of critical habitat that [~~support~~]supports wild Merriam's turkeys or at least 20 acres of critical habitat that support wild Rio Grande turkeys within any of the open limited entry areas for wild turkeys is eligible[~~may participate in the drawing~~].

(~~b~~) The division may allow a landowner who owns less than 640 acres or less than 20 acres] to participate in the drawing [if that person's land provides critical habitat for wild turkeys.]for available landowner turkey permits.

(~~3~~)(b) "Critical habitat" means areas where wild turkeys regularly and consistently roost, feed, loaf, nest or winter.

(3)(a) A landowner who [~~receives~~]applies for a landowner permit may:

(i) be issued the permit[~~or~~];

(ii) designate a member of the landowner's immediate family or landowner's regular full-time employee to receive the permit; or

(iii) donate the permit to a qualified 501C-3 conservation organization as provided in Rule R657-41.

(b) The landowner permit may be used only on the open limited entry area in which the landowner's property is located during the [~~seasons~~]open season established for hunting wild turkeys.

(4) The drawing results for landowner permits shall be [~~conducted concurrently with the drawing for public permits~~]posted on the date published in the proclamation of the Wildlife Board for taking upland game.

(5) Any permits remaining after the drawing are available by mail-in application on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game.

(6)(a) A waiting period does not apply to landowner permits.

(b) Only one permit may be issued to a landowner per year.

R657-6-[7]8. Purchase of Wildlife Habitat Authorization, License, or Permit by Mail.

(1) A nonresident may obtain a license and Wildlife Habitat Authorization by mail by sending the following information to the Salt Lake [~~division~~]Division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of hunter education certification[-] and fees.

(2) A person may obtain a ptarmigan permit~~[-or]~~, band-tailed pigeon permit or sharp-tailed grouse permit by mail by sending the following information to the Salt Lake ~~[division]~~Division office: full name, complete mailing address, phone number, Wildlife Habitat Authorization number and hunting license number.

(3) Residents may send a personal check, cashier's check, or money order. Nonresidents must send either a cashier's check or money order. Personal checks are not accepted from nonresidents.

(4) Checks must be made payable to Utah Division of Wildlife Resources.

R657-6-~~[8]~~9. Firearms and Archery Tackle.

(1) A person may not use any weapon or device to take upland game except as provided in this section.

(2)(a) Upland game may be taken with archery equipment, or a shotgun no larger than 10 gauge, or a handgun. Loads for shotguns and handguns must be one-half ounce or more of shot size no. 2 or smaller and no. 8 or larger, except:

(i) migratory game birds may not be taken with a shotgun capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

(ii) wild turkey may be taken only with a bow and broadhead arrows or a shotgun no larger than 10 gauge and no smaller than 20 gauge, firing shot sizes BB or smaller and no. 6 or larger;

(iii) cottontail rabbit and snowshoe hare may be taken with archery equipment or any firearm not capable of being fired fully automatic; and

(iv) only shotguns, firing shot sizes no. 4 or smaller, may be used on temporary game preserves as specified in the Big Game Proclamation.

(b) Crossbows are not legal archery equipment for taking upland game species.

(3) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

R657-6-~~[9]~~10. Nontoxic Shot.

(1) Only nontoxic shot may be used to take sandhill crane.

(2) Except as provided in Subsection (3), nontoxic shot is not required to take any species of upland game, except sandhill crane.

(3) A person may not possess or use lead shot or any other shot that has not been approved by the U.S. Fish and Wildlife Service for taking migratory game birds while hunting sandhill crane or while on federal refuges or the following state wildlife management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, and Timpie Springs.

R657-6-~~[10]~~11. Use of Firearms and Archery Tackle on State Wildlife Management Areas.

A person may not possess a firearm or archery tackle, except during the specified hunting seasons or as authorized by the ~~[division]~~Division on the following wildlife management areas: Bear River Bottoms, Bud Phelps, Castle Dale, Huntington, Cedar,

Goshen Warm Springs, James Walter Fitzgerald, Logan, Mallard Springs, Manti Meadows, Milford, Nephi, Pahvant, Richfield, Roosevelt, Scott M. Matheson Wetland Preserve, Vernal, and Willard Bay.

R657-6-~~[11]~~12. Use of Firearms and Archery Tackle on State Waterfowl Management Areas.

(1) A person may not possess a firearm or archery tackle, except during the specified waterfowl hunting seasons or as authorized by the ~~[division]~~Division on the following waterfowl management areas: Bicknell Bottoms, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be held in possession.

R657-6-~~[12]~~13. Shooting Hours.

(1)(a) Except as provided in Subsection (b), shooting hours for upland game are as follows:

(i) Mourning dove~~[-and]~~, band-tailed pigeon and sandhill crane may be taken only between one-half hour before official sunrise through official sunset.

(ii) Sage grouse, ruffed grouse, blue grouse, sharp-tailed grouse, white-tailed ptarmigan, chukar partridge, Hungarian partridge, pheasant, quail, wild turkey, cottontail rabbit, and snowshoe hare may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

~~[(iii) Sandhill crane may be taken only between one-half hour before official sunrise through official sunset.~~

—(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the proclamation of the Wildlife Board for taking upland game.

(2) ~~[Shooting shall begin at]~~ Pheasant and quail may not be taken prior to 8 a.m. on the opening day of the pheasant and quail seasons.

(3) A person may not discharge a firearm on state owned lands adjacent to the Great Salt Lake, state waterfowl management areas~~[-]~~ or on federal refuges between official sunset through one-half hour before official sunrise.

R657-6-~~[13]~~14. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in ~~[Section]~~Rule R651-603-5.

(2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns or archery tackle is prohibited within one quarter mile of the above stated areas.

R657-6-~~[14]~~15. Falconry.

(1)(a) Falconers must obtain an annual Wildlife Habitat Authorization, a small game or combination license and a falconry license to hunt upland game and must also obtain:

(b) a ptarmigan permit before taking ptarmigan;

(c) a band-tailed pigeon permit before taking band-tailed pigeon;~~and~~

(d) a sharp-tailed grouse permit before taking sharp-tailed grouse; or

~~(e)~~(e) a sandhill crane permit before taking sandhill crane.

(2) Areas open and bag and possession limits for falconry are provided in the proclamation of the Wildlife Board for taking upland game.

R657-6-~~15~~16. Live Decoys and Electronic Calls.

A person may not take a wild turkey by the use or aid of live decoys, records or tapes of turkey calls or sounds, or electronically amplified imitations of turkey calls.

R657-6-~~16~~17. Baiting Upland Game.

(1) A person may not hunt upland game birds by baiting, or on or over a baited area.

(2) It is not necessary for the hunter to know an area is baited to be in violation.

R657-6-~~17~~18. Turkeys.

A person may not take or attempt to take any turkey sitting or roosting in a tree.

R657-6-~~18~~19. Use of Motorized Vehicles.

Motorized vehicle travel on all state wildlife management areas is restricted to county roads and improved roads.

R657-6-~~19~~20. Possession of Live Protected Wildlife.

A person may not possess live, protected wildlife. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

R657-6-~~20~~21. Tagging Requirements.

(1) The carcass of a sandhill crane or turkey must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue sandhill crane, sharp-tailed grouse or turkey after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-6-~~21~~22. Identification of Species and Sex.

(1) One fully feathered wing must remain attached to each upland game and migratory game bird taken, except wild turkey, while it is being transported to allow species identification.

(2) The head must remain attached to the carcass of wild turkey while being transported to permit species and sex identification.

R657-6-~~22~~23. Waste of Upland Game Birds.

A person shall not kill or cripple any upland game bird without making a reasonable effort to retrieve the bird.

R657-6-~~23~~24. Utah Pheasant Project.

(1) Boy Scouts, Girl Scouts, or youth enrolled in 4-H or FFA may collect and rear pheasants from eggs in nests destroyed by normal hay mowing operations. The 4-H club leader, FFA adviser[,] or Scout Master shall first apply for and obtain a certificate of registration for this activity.

(2) Landowners or operators of mowing equipment may collect the eggs and possess them for no more than 24 hours for pick up by a person with a certificate of registration.

(3) Pheasants must be released by 16 weeks of age.

(4) These pheasants remain the property of the state of Utah.

R657-6-~~24~~25. Use of Dogs.

(1) Dogs may be used to locate and retrieve upland game during open hunting seasons.

(2) Dogs are not allowed on state ~~[upland game]~~wildlife management or waterfowl management areas~~[from April 1 through August 15].~~except during open hunting seasons or as posted by the Division.

~~(3) Dog training is allowed only on designated areas of upland game~~(3) State wildlife management and waterfowl management areas ~~[as posted from August 16 through March 31]~~are listed under Sections R657-6-11 and R657-6-12.

~~(4) In Tooele County, the James Walter Fitzgerald Wildlife Management Area is closed to dog training, except dogs may be used to locate and retrieve upland game during open hunting seasons.~~

~~R657-6-25~~R657-6-26. Closed Areas.

A person may not hunt upland game in any area posted closed by the ~~[division]~~Division or any of the following areas:

(1) Salt Lake County Airport~~[-Boundary begins at the intersection of North Temple and 2200 West; then north on 2200 West to a point approximately 650 feet south of 2100 North; west approximately 1300 feet and north approximately 650 feet along the airport boundary as posted to 2100 North; west on 2100 North to 4000 West; south on 4000 West and Airport Road to North Temple (US-40); east on North Temple to 2200 West.]~~boundaries as posted.

(2) Incorporated municipalities: Most of the incorporated areas of Alta, Layton, Logan, Pleasant View City, West Jordan, and West Valley City are closed to the discharge of firearms. Check with the respective city officials for specific boundaries. Other municipalities may have additional firearm restrictions.

(3) Waterfowl ~~[production areas]~~Management Areas:

(a) Waterfowl ~~[production]~~management areas are open for hunting upland game only during designated waterfowl hunting seasons, including: Bear River National Wildlife Refuge, Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Ouray National Wildlife Refuge, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(b) Fish Springs National Wildlife Refuge is closed to upland game hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

R657-6-~~26~~27. Live Decoys and Electronic Calls.

A person may not take migratory game birds by the use or aid of live decoys, records or tapes of migratory bird calls or sounds, or electronically amplified imitations of bird calls.

R657-6-[27]28. Baiting Migratory Game Birds.

Migratory game birds may not be taken by the aid of baiting, or on or over any baited area. However, nothing in this paragraph shall prohibit:

(1) the taking of sandhill crane, mourning dove, and band-tailed pigeon on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shucked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; or

(2) the taking of sandhill crane, mourning dove, and band-tailed pigeon on or over any lands where feed has been distributed or scattered solely as the result of bona fide agricultural operations or procedures, or as a result of manipulation of a crop or other feed on the land where grown for wildlife management purposes.

R657-6-[28]29. Transporting Another Person's Birds.

(1) No person may receive, transport, or have in custody any migratory game birds belonging to another person unless such birds have a tag attached that states the total number and species of birds, the date such birds were killed, and the address, signature, and license number of the hunter.

(2) No person shall import migratory game birds belonging to another person.

R657-6-[29]30. Gift of Migratory Game Birds.

No person may receive, possess, or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunters address, the total number and species of birds and the date such birds were taken.

R657-6-[30]31. Shipping.

(1) No person may transport by the Postal Service or a common carrier migratory game birds unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds contained therein clearly and conspicuously marked on the outside of the container.

(2) A shipping permit issued by the ~~[division]~~Division must accompany each package containing migratory game birds within or from the state.

R657-6-[31]32. Importation Limits.

No person shall import during any one calendar week beginning on Sunday more than 25 doves, singularly or in the aggregate, or ten band-tailed pigeons from any foreign country, except Mexico. Importation of doves and band-tailed pigeons from Mexico may not exceed the maximum number permitted by Mexican authorities to be taken in any one day.

R657-6-[32]33. Transfer of Possession.

(1) A person may not put or leave any migratory game bird at any place other than at his personal abode or in the custody of another person for picking, cleaning, processing, shipping, transporting, or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt, or

transportation slip signed by the hunter stating his address, the total number and species of birds, and the date such birds were killed.

(2) A migratory bird preservation facility may not receive or have in custody any migratory game bird without the documents required in Subsection (1).

R657-6-[33]34. Waste of Migratory Game Birds.

No person shall kill or cripple any migratory game bird without making a reasonable effort to retrieve the bird, and retain it in his actual custody, at the place where taken or between that place and his automobile or principle means of land transportation; and either his personal abode or temporary or transient place of lodging; or a migratory bird preservation facility or a post office or a common carrier facility.

R657-6-[34]35. Season Dates, Bag and Possession Limits, and Areas Open.

Season dates, bag and possession limits, areas open, and number of permits for taking upland game are provided in the proclamation of the Wildlife Board for taking upland game.

KEY: wildlife, birds, rabbits*, game laws

~~[August 1, 1997]~~1998

23-14-18

23-14-19



Natural Resources, Wildlife Resources
R657-41
 Conservation and Sportsman Permits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21239

FILED: 06/25/1998, 09:15

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to the Wildlife Board meeting conducted for taking public input and reviewing the upland game and sandhill crane wildlife programs.

SUMMARY OF THE RULE OR CHANGE: This amendment adds "R657-6" to Subsection R657-41-6(4), which provides that any person who obtains a conservation or sportsman permit is subject to the waiting periods provided in the applicable rules of the Wildlife Board.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** The Division of Wildlife Resources (DWR) determines that this rule will not create any cost or savings impact to the state budget or the DWR's budget. The amendment establishes Rule R657-6 as an applicable

rule to be referred to in regard to waiting periods for upland game species.

❖LOCAL GOVERNMENTS: None. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖OTHER PERSONS: No impact. These amendments do not impose any requirements on persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No impact. This rule does not impose any requirements or burdens on persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Wildlife Resources
Suite 2110
1594 West North Temple
PO Box 146301
Salt Lake City, UT 84114-6301, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at (801) 538-4707, by FAX at (801) 538-4709, or by Internet E-mail at nrdwr.dsundell@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: John Kimball, Director

**R657. Natural Resources, Wildlife Resources.
R657-41. Conservation and Sportsman Permits.**

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R657-41-6. Using a Conservation or Sportsman Permit.

(1)(a) A conservation or sportsman permit allows the recipient to take only the species for which the permit is issued.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(2) The recipient of a conservation or sportsman permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(3) Bonus points shall not be awarded or utilized:
(a) when applying for conservation or sportsman permits; or
(b) in obtaining conservation or sportsman permits.

(4) Any person who has obtained a conservation or sportsman permit is subject to all waiting periods as provided in Rules R657-5, R657-6, R657-10 and R657-33.

**KEY: wildlife, wildlife permits
[November 15, 1997]1998**

23-14-18
23-14-19



**Natural Resources, Wildlife Resources
R657-42
Big Game Hunting Permit Exchanges**

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 21240
FILED: 06/25/1998, 09:15
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to include the surrenders and refunds of licenses, certificates of registration and permits, and the reallocation of permits.

SUMMARY OF THE RULE OR CHANGE: Provisions of this rule are amended to allow cougar harvest objective unit permit exchanges; and adds provisions to allow the surrendering and refunding of licenses, certificates of registration and permits; and adds provisions to allow the reallocation of limited entry, once-in-a-lifetime, and Cooperative Wildlife Management Unit permits.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-19-1 and 23-19-38

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Division of Wildlife Resources (DWR) charges a handling fee to exchange permits. The DWR may also issue refunds in accordance with Section 23-19-38. In addition, the DWR may reallocate surrendered limited entry, once-in-a-lifetime, and Cooperative Wildlife Management Unit permits. Therefore, the results of exchanging permits, issuing refunds and reallocating permits may create a cost or savings impact to the budget. However, the DWR is unable to determine the number of permits that will be exchanged, refunded or reallocated, and therefore, cannot estimate on exact dollar amounts to the costs or savings impact of this rule.

❖LOCAL GOVERNMENTS: None. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖OTHER PERSONS: No impact. These amendments do not impose any requirements on persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No impact. This rule does not impose any requirements or burdens on persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Wildlife Resources
Suite 2110
1594 West North Temple
PO Box 146301
Salt Lake City, UT 84114-6301, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at (801) 538-4707, by FAX at (801) 538-4709, or by Internet E-mail at nrdwr.dsundell@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: John Kimball, Director

R657. Natural Resources, Wildlife Resources.

R657-42. [Big Game Hunting Permit Exchanges.] Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits.

R657-42-1. Purpose and Authority.

(1) Under the authority of [~~Section~~]Sections 23-19-1 and 23-19-38, the division may issue licenses, permits, tags[;] and certificates of registration in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for [~~exchanging~~]the:

- (a) exchange of permits;
- (b) surrender of licenses, certificates of registration and permits;
- (c) refund of licenses, certificates of registration and permits; and
- (d) reallocation of permits.

R657-42-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and [~~Rule R657-5;~~]the applicable rules and proclamations of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

R657-42-3. Permit Exchanges.

(1)(a) Any person who has obtained a general buck deer or a general bull elk permit may exchange that permit for any other available general permit if both permits are for the same species and sex.

(b) [~~General~~]A person must make general buck deer and general bull elk permit exchanges [~~must be made~~]at any division office prior to the season date of the permit to be exchanged.

(2) [~~A handling fee may be charged for the exchange of a permit.~~]

R657-42-4. Permit Returns.

(1)Any person who has obtained a cougar harvest objective unit permit may exchange that permit for any other available cougar harvest objective unit permit.

(3) The division may charge a handling fee for the exchange of a permit.

R657-42-4. Surrender of Licenses, Certificates of Registration and Permits.

(1) Any person who has obtained a license, certificate of registration or permit and decides not to use it, may surrender the [~~permit to the Salt Lake division office~~]license, certificate of registration or permit to any division office.

(2) If a license, certificate of registration or permit is surrendered prior to the season date of the license, certificate of registration or permit, the division shall waive[~~permit to be surrendered.~~]

(2) The division may not issue a refund, however, the waiting period normally assessed [~~shall be waived~~]and the number of bonus points, if applicable, shall be reinstated.

(3) A Cooperative Wildlife Management Unit permit must be surrendered before the following dates:

- (a) September 1 for general buck deer, general bull elk, pronghorn, and moose;
- (b) the opening of the general archery deer season for archery buck deer and archery bull elk;
- (c) September 1 for muzzleloader deer and elk seasons;
- (d) August 15 for antlerless elk seasons;
- (e) August 15 for antlerless deer seasons;
- (f) prior to the applicable season date for small game and waterfowl; and
- (g) prior to the applicable season date of any variance approved by the Wildlife Board in accordance with Rules R657-21 and R657-37.

(4) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-5. Refunds of Licenses, Certificates of Registration and Permits.

(1) The refund of a license, certificate of registration or permit shall be made in accordance with Section 23-19-38.

(2) All refunds must be processed through the Salt Lake Division office.

R657-42-6. Reallocation of Permits.

(1)(a) The division may reallocate surrendered limited entry, once-in-a-lifetime and Cooperative Wildlife Management Unit permits.

(b) The division shall not reallocate resident and nonresident big game general permits.

(2) Permits shall be reallocated through the Salt Lake Division office.

(3)(a) Any limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit surrendered to the division shall be reallocated through the drawing process by contacting the next person listed on the alternate drawing list.

(b) The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

(c) The division shall make a reasonable effort to contact the next person on the alternate list by telephone or mail.

(d) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit, does not accept the permit or the division is unable to contact that person, the reallocation process will continue until the division has reallocated the permit or the season opens for that permit.

(4) Any private Cooperative Wildlife Management Unit permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the Division in accordance with Rule R657-37.

R657-42-7. Reallocated Permit Cost.

Any person who accepts the offered reallocated permit must pay the applicable permit fee.

KEY: wildlife, permits

[~~June 3, 1997~~]1998

23-19-1

23-19-38



Natural Resources, Wildlife Resources

R657-45

Wildlife License, Permit, Certificate of Registration, Habitat Authorization and Heritage Certificate Forms

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 21241

FILED: 06/25/1998, 09:15

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Under the authority of Sections 23-14-19 and 23-19-2, the Wildlife Board is establishing this rule for prescribing the forms of a wildlife license, permit, certificate of registration, habitat authorization, and heritage certificate.

SUMMARY OF THE RULE OR CHANGE: The forms of a license, permit, certificate of registration, habitat authorization, and heritage certificate shall include the licensee's name,

address, date of birth, social security number, and any other information the Division of Wildlife Resources may request.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-19 and 23-19-2

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Division of Wildlife Resources (DWR) determines that this rule will not create any cost or savings impact to the state budget or the DWR's budget. The rule is established to prescribe the forms of licenses and permits, and does not impose additional requirements to the DWR.

❖LOCAL GOVERNMENTS: None. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖OTHER PERSONS: No impact. These amendments do not impose any requirements on persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No impact. This rule does not impose any requirements or burdens on persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Natural Resources
Wildlife Resources
Suite 2110
1594 West North Temple
PO Box 146301
Salt Lake City, UT 84114-6301, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at (801) 538-4707, by FAX at (801) 538-4709, or by Internet E-mail at nrdrwr.dsundell@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: John Kimball, Director

R657. Natural Resources, Wildlife Resources. R657-45. Wildlife License, Permit, Certificate of Registration, Habitat Authorization and Heritage Certificate Forms. R657-45-1. Purpose and Authority.

Under authority of Sections 23-14-19 and 23-19-2 the Wildlife Board has established this rule for prescribing the forms of a Wildlife License, Permit, Certificate of Registration, Habitat Authorization and Heritage Certificate

R657-45-2. Information Listed on the License, Permit, Certificate of Registration, Habitat Authorization and Heritage Certificate Forms.

(1) A License, Permit, Certificate of Registration, Habitat Authorization and Heritage Certificate for hunting or fishing shall be made upon forms and in the manner prescribed by the Wildlife Board.

(2) The License, Permit, Certificate of Registration, Habitat Authorization and Heritage Certificate forms shall include the licensee's name, address, date of birth, social security number, and any other information the Division of Wildlife may request.

KEY: license, permit, certificate of registration
1998

23-19-2

◆ ————— ◆
**Professional Practices Advisory
Commission, Administration
R686-101
Alcohol Related Offenses**

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 21262

FILED: 06/30/1998, 15:56

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is created to establish procedures for disciplining educators regarding alcohol related offenses.

SUMMARY OF THE RULE OR CHANGE: The rule provides minimum time periods and procedures to follow in administratively disciplining educators for alcohol related offenses and approving prospective educators.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-7-110

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None - This rule is not about money, but rather sets minimum standards for an educator, or prospective educator, who has had alcohol related convictions.

❖LOCAL GOVERNMENTS: None - This rule is not about money, but rather sets minimum standards for an educator, or prospective educator, who has had alcohol related convictions.

❖OTHER PERSONS: None - This rule is not about money, but rather sets minimum standards for an educator, or prospective educator, who has had alcohol related convictions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Costs of compliance with this rule are speculative; if an educator has

had alcohol problems, there may be costs associated with rehabilitation or certification reinstatement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. (Scott W. Bean)

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Professional Practices Advisory Commission
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or by Internet E-mail at clear@usoe.k12.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: Carol B. Lear, School Law Specialist

R686. Professional Practices Advisory Commission, Administration.

R686-101. Alcohol Related Offenses.

R686-101-1. Definitions.

A. "Commission" means the Professional Practices Advisory Commission.

B. "Alcohol related offense" means:

(1) driving while intoxicated;

(2) alcohol-related reckless driving;

(3) public intoxication;

(4) driving with an open container;

(5) unlawful sale or supply of alcohol;

(6) unlawful purchase, possession, or consumption of alcohol;

(7) unlawful permitting of consumption of alcohol by minors;

(8) unlawful consumption of alcohol in public places.

C. Certificated educator means an individual issued a certificate by the State Board of Education authorizing the certificate-holder to work in the Utah public school system.

D. Board" means the Utah State Board of Education.

R686-101-2. Authority and Purpose.

A. This rule is authorized by Section 53A-7-110 which directs the Commission to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures for disciplining educators regarding alcohol related offenses.

R686-101-3. Action by the Commission if a Certificated Educator Has Been Convicted of an Alcohol Related Offense.

A. If as a result of a background check, it is discovered that a certificated educator has been convicted of an alcohol related

offense in the previous five years, the following minimum conditions shall apply:

(1) One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule;

(2) Two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the second conviction. If the educator is currently employed, the Commission shall also send a letter of reprimand to the educator regarding the convictions with a copy to the educator's employer.

(3) Three convictions--the Commission shall recommend to the Board suspension of the educator's certificate.

B. This rule does not preclude more serious or additional action by the Commission against an educator for other related or unrelated offenses.

R686-101-4. Commission Action Towards an Individual Who Does Not Hold Certification.

If as a result of a background check, it is discovered that an individual inquiring about teacher certification, seeking information about teacher certification, or placed in a public school for a variety of purposes has been convicted of an alcohol related offense within five years of the date of the background check, the following minimum conditions shall apply:

A. One conviction--the individual shall be denied approval for Commission clearance for a period of one year from the date of the arrest;

B. Two convictions--the individual shall be denied approval for Commission clearance for a period of two years from the date of the most recent arrest and the applicant shall present documentation of clinical treatment before Commission clearance shall be considered; and

C. Three convictions--the Commission shall recommend denial of clearance.

R686-101-5. Previous Clearance.

If the applicant or certificated educator presents documentation to the Commission that recently discovered conviction(s) have previously been addressed by the Commission, the Commission need not reconsider the conviction(s) absent additional convictions of the applicant or certificated educator.

KEY: teachers, disciplinary actions

1998

53A-7-110

**Professional Practices Advisory
Commission, Administration**

R686-102

Drug Related Offenses

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 21263

FILED: 06/30/1998, 15:56

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is created to establish procedures for disciplining educators regarding drug related offenses.

SUMMARY OF THE RULE OR CHANGE: This rule provides minimum time periods and procedures to follow in administratively disciplining educators for drug related offenses and approving prospective educators.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-7-110

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** None - This rule is not about money, but rather sets minimum standards for an educator, or prospective educator, who has had drug related convictions.

❖**LOCAL GOVERNMENTS:** None - This rule is not about money, but rather sets minimum standards for an educator, or prospective educator, who has had drug related convictions.

❖**OTHER PERSONS:** None - This rule is not about money, but rather sets minimum standards for an educator, or prospective educator, who has had drug related convictions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Costs of compliance with this rule are speculative; if an educator has had drug problems, there may be costs associated with rehabilitation or certification reinstatement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. (Scott W. Bean)

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Professional Practices Advisory Commission
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or by Internet E-mail at clear@usoe.k12.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: Carol B. Lear, School Law Specialist

R686. Professional Practices Advisory Commission, Administration.

R686-102. Drug Related Offenses.

R686-102-1. Definitions.

A. "Commission" means the Professional Practices Advisory Commission.

B. "Drug related offense" means any offense designated in Section 58-37 through 37e.

C. "Drug" means any controlled substance designated as such in Section 58-37-4.

D. "Certificated educator" means an individual issued a certificate by the State Board of Education authorizing the certificate-holder to work in the Utah public school system.

E. "Conviction" means the final disposition of a judicial action for a drug related offense defined under 58-37 through 37e. It includes no contest pleas, pleas in abeyance, expunged convictions and drug related offenses that are plead down to lesser convictions.

R686-102-2. Authority and Purpose.

A. This rule is authorized by Section 53A-7-110 which directs the Commission to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures for disciplining educators regarding drug related offenses.

R686-102-3. Action by the Commission if a Certificated Educator Has Been Convicted of a Drug Related Offense.

A. If as a result of a background check, it is discovered that a certificated educator has been convicted of a drug related offense in the previous ten years, the following minimum conditions shall apply:

(1) One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule;

(2) Two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the second conviction.

(a) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Commission shall send a letter of warning to the educator.

(b) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Commission shall send a letter of reprimand to the educator and a letter to the district with notice of treatment.

(c) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical treatment, the Commission shall send a letter of reprimand to the educator and a copy of the letter of reprimand to the educator's employer and the Commission may initiate an investigation of the educator based upon the drug offenses.

(3) Three convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the third conviction.

(a) If the most recent conviction was more than five years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Commission shall send a letter of warning to the educator.

(b) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Commission shall send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer.

(c) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical treatment, the Commission shall recommend suspension of the educator's certificate to the Board.

B. This rule does not preclude more serious or additional action by the Commission against an educator for other related or unrelated offenses.

R686-102-4. Commission Action Towards an Individual Who Does Not Hold Certification.

If as a result of a background check, it is discovered that an individual inquiring about teacher certification, seeking information about teacher certification, or placed in a public school for a variety of purposes has been convicted of a drug related offense within ten years of the date of the background check, the following minimum conditions shall apply:

A. One conviction--the individual shall be denied approval of Commission clearance for a period of one year from the date of the arrest.

B. Two convictions--the individual shall be denied approval of Commission clearance for a period of three years from the date of the most recent arrest and the applicant shall present documentation of clinical treatment before Commission clearance shall be considered.

C. Three convictions--the individual shall be denied approval of Commission clearance for a period of five years from the date of the most recent arrest. The Commission shall require the applicant to present documentation of clinical treatment and may recommend denial of clearance.

R686-102-5. Previous Clearance.

If the applicant or certificated educator presents documentation to the Commission that recently discovered conviction(s) have previously been addressed by the Commission, the Commission need not reconsider the conviction(s) absent additional convictions of the applicant or certificated educator.

KEY: teachers, disciplinary actions
1998

53A-7-110



End of the Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (•••••) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends August 14, 1998. At its option, the agency may hold public hearings.

From the end of the waiting period through November 12, 1998, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (1996); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Commerce, Occupational and Professional Licensing

R156-38

Residence Lien Restriction and Lien Recovery Fund Rules

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 21019
FILED: 06/18/1998, 15:05
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division wants to simplify the filing of notices of commencement of action required under Subsection R156-38-204a(5)(b) where civil actions include more than one owner-occupied residence.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-38-204a(8) wording that was deleted in the original rule filing is being added back in with respect to documents that are to be submitted with a claim against the fund by nonlaborers. Changes were made in Section R156-38-204b to allow the potential claimant to file one notice of commencement of action per civil action where multiple owner-occupied residences are included in the civil action, rather than a separate notice of commencement of action per owner-occupied residence as required under the present rule.

(DAR Note: The original proposed amendment upon which this change in proposed rule is based was published in the May 15, 1998, issue of the *Utah State Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 38-11-101, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Elimination of requirement of filing and responding to multiple notices of commencement of action where the incremental information is not substantially enhanced by the multiple filings, with a consequent reduction in administrative costs.

❖ **LOCAL GOVERNMENTS:** No cost or savings impact.

❖ **OTHER PERSONS:** Potential claimant will save unknown amount of time and money in filing notices of commencement of action because only one document need be filed regardless of the number of residences at issue, rather than one document for each residence.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Potential claimant will save unknown amount of time and money in filing notices of commencement of action because only one document need be filed regardless of the number of residences at issue, rather than one document for each residence.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change is designed to decrease the expense to a party filing a claim for

payment from the Lien Recovery Fund. Since the claimants against the fund are businesses which have not been paid for supplies furnished in the construction of residences, this rule change will result in a savings to the businesses making claims upon the fund for unpaid bills.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Linda Barclay at the above address, by phone at (801) 530-6208, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.lbarclay@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing. R156-38. Residence Lien Restriction and Lien Recovery Fund Rules.

R156-38-204a. Claims Against the Fund by Nonlaborers - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

- (1) one of the following:
 - (a) a copy of the written contract:
 - (i) between the owner of the owner-occupied residence or the owner's agent and the original contractor for the performance of qualified services, to obtain the performance of qualified services by others, or for the supervision of the performance by others of qualified services in construction on the residence; or
 - (ii) between the owner of the owner-occupied residence or the owner's agent and the real estate developer for the purchase of an owner-occupied residence; or
 - (b) a copy of a civil judgment containing a finding that the owner of the owner-occupied residence entered into a written contract in compliance the requirements of Subsection 38-11-204(3)(a);
- (2) if the claim involves an original contractor, documentation that the original contractor is licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;
 - (3) one of the following:
 - (a) an affidavit from the original contractor or real estate developer acknowledging that the owner of the owner-occupied residence paid the original contractor or real estate developer in full

in accordance with the written contract and any amendments to the contract;

(b) a copy of a civil judgment containing a finding that the owner of the owner-occupied residence paid the original contractor or real estate developer in full in accordance with the written contract and any amendments to the contract; or

(c) documentation that the claimant has been prevented from satisfying Subsections (a) and (b), together with independent evidence establishing that the owner of the owner-occupied residence paid the original contractor or real estate developer in full in accordance with the written contract and any amendments to the contract;

(4) one or more of the following as required:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against an original contractor, subcontractor or real estate developer described in Subsection 38-11-204(3)(c) to recover monies owed for qualified services performed, filed within 180 days from the date the claimant last provided qualified services; and

(b) a copy of the Notice of Commencement of Action filed with the division; or

(c) documentation that a bankruptcy filing by the original contractor, subcontractor or real estate developer prevented claimant from satisfying Subsections (a) and (b);

(5) one of the following:

(a) a copy of a civil judgment entered in favor of claimant against the original contractor, subcontractor or real estate developer containing a finding that the original contractor, subcontractor or real estate developer failed to pay the claimant pursuant to their contract with the claimant and any amendments to the contract; or

(b) documentation that a bankruptcy filing by the original contractor, subcontractor or real estate developer prevented the claimant from obtaining such a civil judgment, together with independent evidence establishing that the original contractor, subcontractor or real estate developer failed to pay the claimant pursuant to their contract with the claimant and any amendments to the contract;

(6) one or more of the following as required:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of claimant;

(b) a copy of the return of service of the supplemental order indicating either that service was accomplished on the original contractor, subcontractor or real estate developer or that said contractor or developer could not be located or served;

(c) a writ of execution issued if any assets are identified through the supplemental order or other process, which have sufficient value to reasonably justify the expenditure of costs and legal fees which would be incurred in preparing, issuing, and serving execution papers and in holding an execution sale; and

(d) a return of execution of any writ of execution; or

(e) documentation that a bankruptcy filing or other action by the original contractor or real estate developer prevented the claimant from satisfying Subparagraphs (a) through (d);

(7) certification that the claimant is not entitled to reimbursement from any other person at the time the claim is filed and that the claimant will immediately notify the presiding officer if the claimant becomes entitled to reimbursement from any other person after the date the claim is filed; and

(8) one of the following:

(a) an affidavit from the owner establishing that the owner is an owner as defined in Subsection 38-11-102(12) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(13);

(b) a copy of a civil judgment containing a finding that the owner is an owner as defined by Subsection 38-11-102(12) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(13); or

(c) documentation that the claimant has been prevented from obtaining an owner-occupied residence affidavit together with independent evidence establishing that the owner is an owner as defined by Subsection 38-11-102(12) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(13);
~~(8) Certification that the homeowner is an owner as defined in Subsection 38-11-102(12) or subsequent owner as defined in Subsection 38-11-102(18), that the residence is an owner-occupied residence as defined in Subsection 38-11-102(13); and that the residence is a detached single family or duplex residence as defined in Subsection 38-11-102(17);]~~

(9) In claims in which the presiding officer determines that the claimant has made a reasonable but unsuccessful effort to produce all documentation specified under this rule to satisfy any requirement to recover from the ~~fund~~ fund, the presiding officer may elect to accept the evidence submitted by the claimant if the requirements to recover from the fund can be established by that evidence.

(10) A separate claim must be filed for each residence, and a separate filing fee must be paid for each claim.

R156-38-204b. Format for Notice of Commencement of Action.

The Notice of Commencement required under Subsection R156-38-204a(5)(b) shall be in substantially the following format:

TABLE I

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
 OF THE DEPARTMENT OF COMMERCE
 OF THE STATE OF UTAH

John Doe,	:	Notice of Commencement
Plaintiff	:	of Action
	:	
-vs-	:	Case No.
	:	
Richard Roe,	:	
Defendant	:	

Notice is hereby provided of the filing of Case No. (number) on (date) before (Court).

Brief explanation of nature of case:

~~[Amount of damages sought in case:~~

~~—]Address of defendant:~~

Name and address of potential fund claimant:

Name and address of original contractor, subcontractor, and/or real estate developer described in Subsection 38-11-204(3)(c):

~~[Name and address of the owner of the owner-occupied residence:~~

~~—]Street address of the owner-occupied residence:~~

~~_____ Last date qualified services were provided for the owner-occupied residence by the potential fund claimant:]For each owner-occupied residence included in the civil action:~~

_____ Name and address of the owner of the owner-occupied residence;

_____ Street address of the owner-occupied residence;

_____ Amount of damages sought against the owner-occupied residence;

_____ Last date qualified services were provided for the owner-occupied residence by the potential fund claimant:

_____ Signature of Claimant or claimant's representative

_____ Date of signature

**KEY: licensing, contractors, liens
1998**

**38-11-101
58-1-106(1)
58-1-202(1)**



**Health, Community Health Services,
Environmental Services
R392-200-6
Construction and Maintenance of
Physical Facilities**

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 20963
FILED: 06/15/1998, 17:08
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes are being made in response to comments received by the bureau during the public comment period and a public hearing conducted on May 7, 1998, at the Cannon Health Building.

SUMMARY OF THE RULE OR CHANGE: Some dates were changed to reflect a later effective date of the proposed amendments. A later effective date will mean that schools will not have to meet certain requirements until later in the school year. Other changes clarify language to more accurately represent the intent of the School Rule Advisory Committee. Another change establishes a minimum level of accuracy of thermometers used to measure temperatures.

(DAR Note: The original proposed amendment upon which this change in proposed rule is based was published in the April 15, 1998, issue of the *Utah State Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 26-15-2(5)

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: None.
- ❖LOCAL GOVERNMENTS: The aggregate costs for schools to comply with the proposed amendments will be approximately \$2,518. This estimate is based on one \$3.30 thermometer for each of the schools in Utah.
- ❖OTHER PERSONS: Private schools would have to purchase an acceptable thermometer to measure classroom temperatures. At \$3.30 per school the costs would be about \$353.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs to affected persons for the purchase of modest to medium priced thermometers range from \$3.30 to \$28. Savings realized by purchasing thermometers in numbers of 60 or more reduce these costs to \$2.50 to \$21.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In response to comments received after publication of the proposed rule on April 15, 1998, the Bureau of Environmental Services delayed the effective date of several requirements of the rule and clarified some language. Each school has the opportunity to develop its own plan to mitigate adverse health effects on students due to excessive heat. Costs for a thermometer that complies with the rule should be minimal.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Health
Community Health Services,
Environmental Services
Second Floor, Cannon Health Building
288 North 1460 West
PO Box 142103
Salt Lake City, UT 84114-2103, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ron Ivie at the above address, by phone at (801) 538-6753, by FAX at (801) 538-6036, or by Internet E-mail at rivie@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: A. Richard Melton, Acting Executive Director

R392. Health, Community Health Services, Environmental Services.

R392-200. Design, Construction, Operation, Sanitation, and Safety of Schools.

R392-200-6. Construction and Maintenance of Physical Facilities.

A. Floors, Walls, and Ceilings

1. Construction. All buildings shall be of sound construction with floors, walls, and ceilings constructed of nonporous, cleanable material and shall be maintained in good condition.

2. Lighting - General

a. A comfortable lighting environment shall be provided in every classroom with light quality that meets the requirements of all applicable parts of this rule.

b. Permanently fixed artificial light sources shall be installed to provide, at a distance of 30 inches from the floor, sufficient light intensities on instructional surfaces, including chalkboards, without causing excess intensity eyestrain.

c. All light fixtures located in student areas shall be shielded to protect the students from injury in case of bulb breakage.

d. Light intensity ratios shall not exceed levels for surfaces causing excessive eye accommodation. Instructional areas shall have predominantly light colors to obtain low brightness ratios. Instructional areas shall not exceed the following brightness ratios:

(1) Between the task and immediately adjacent surfaces, including between a task and a desk top; ratio 3:1

(2) Between the task and more remote darker surfaces, including between a task and the floor; ratio 3:1

(3) Between the task and the more remote lighter surfaces, including between a task and the ceiling; ratio 1:5

(4) Between windows or other luminous objects and surfaces adjacent to them, except the ratio between windows and adjacent chalkboards may be exceeded; ratio 20:1

(5) Between the chalkboard and the wall or other visually adjacent area; ratio 1:3

e. Reflectance of the finishes in instructional areas shall be within the following range 0:

(1) Percentage of Reflectances

(a) Ceilings - 70 to 90

(b) Walls - 40 to 60

(c) Floors - 30 to 50

(d) Chalkboards - 15 to 20

(e) Desks and equipment - 35 to 50

f. Light fixtures shall be cleaned and repaired, and burned out bulbs or lamps replaced as often as necessary in order to maintain the illumination levels required in this section.

g. Any light fixtures emitting noise at a bothersome level shall be repaired or replaced.

B. Ventilation

1. General

a. Rooms shall be provided with natural or mechanical ventilation that admits fresh air and is sufficient to remove or prevent the accumulation of obnoxious odors, smoke, dust, and fumes. In classrooms where combustible vapors may accumulate, such vapors shall be vented either through a fume hood or by other adequate roomwide ventilation.

b. A minimum clean air replacement of 10 cubic feet per minute per person in classrooms shall be maintained. The lining of ducts with fibrous or asbestos materials is prohibited.

c. Air vents shall be placed so no person becomes chilled or overheated in any occupied room.

2. Special Ventilation

a. Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.

b. In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors or fumes originate shall be mechanically vented to the outside of the building.

C. Heating

1. Heating facilities shall be properly installed and vented and shall be maintained in a safe working condition. Unvented space heaters producing products of combustion are prohibited.

2. A temperature of 68-74 degrees F during winter months shall be maintained in classrooms. However, on a temporary basis, during a severe winter energy crisis, the temperature may be reduced to 65 degrees F. The temperature in a swimming pool area shall be warmer than the water temperature of the pool.

D. Cooling

1. By ~~June 15~~ September 1, 1998 the school district administrator shall develop a written plan to mitigate adverse health effects of excessive heat to students and staff at each school in his district. The plan, to be called the Classroom Temperature Health Intervention Plan, for each school shall:

a. include district medical, environmental, engineering and health staff in the development of the plan;

b. cover school days during the period ~~June 15~~ September 1 through September 15; however, annual plans after 1998 shall cover the period May 1 through September 15;

c. specify the method by which the heat health hazard level shall be determined as required in R392-200-6-D-6;

(1) the plan must require that ~~the~~ at least one temperature measurement be taken daily;

(a) the date, time, place, and temperature of the measurement must be recorded on a log to be kept at the school building administration office for two years. The log shall be made available to the local health officer at his request.

~~(2)~~ b school areas supplied by a properly operating air conditioning system are exempted from Subsection 6-D-1-c;

d. identify interventions for each of the heat health hazard levels listed in tables 1 and 2, and the procedures for ~~as~~ ensuring their timely implementation;

e. include an emergency plan in individualized health care plans for all children with special health care needs as identified by a health assessment of the student population;

f. be filed with the local health officer by ~~June 30~~ October 1, 1998;

g. be updated ~~annually~~ and filed with the local health officer prior to ~~May~~ October 1, 1999. After October 1, 1999 the plan shall be updated as changes occur in the school population or in the school facilities and at least annually.

2. The school district administrator shall ensure that the plans required in R392-200-6-D-1 are executed effectively.

3. The school district administrator shall develop and file the plans required in R392-200-6-D-1 with the local health officer prior to the first day of classes for a new school beginning operation after ~~June 15~~ September 1, 1998.

4. The school district administrator shall prepare a ~~an annual~~ written evaluation of the implementation of the plan required in R392-200-6-D-1 and submit it to the local health officer prior to ~~November~~ October 1, 1999.

5. The local health officer may require the school district administrator to correct a school plan required in R392-200-6-D-1 that he determines is ineffective at preventing adverse health impacts of high heat on the students and staff of the school.

6. The school district administrator shall select one of the following two methods to determine the heat health hazard level in each school:

a. Method 1: Chart the temperature reading taken from a simple wall or hand held dry bulb thermometer into column 2 of table 1. Find the corresponding heat health hazard level in column 1;

(1) the thermometer must have a full range accuracy of plus or minus 2%;

b. Method 2: Properly use a sling psychrometer to determine the relative humidity. Chart the relative humidity into column 1 of table 2. Find the temperature reading taken from a simple wall or hand held dry bulb thermometer in one of the columns directly across from the relative humidity reading. Find the corresponding heat health hazard level at the top of the column in which the temperature is found.

(1) the thermometer must have a full range accuracy of plus or minus 2%;

TABLE 1
DRY BULB INDEX

Heat Health Hazard Level	Thermometer Temperature
Caution	80-89.9 degrees F
Extreme Caution	90-99.9 degrees F
Danger	greater than or equal to 100 degrees F

TABLE 2
TEMPERATURE-HUMIDITY INDEX

% Relative Humidity	Dry Bulb Temperature (degrees F)	
	Caution	Extreme Caution
0	95.0-112.9	113.0-131.9
10	89.5-107.4	107.5-124.4
20	87.5-103.4	103.5-118.4
30	86.0-99.9	100.0-114.9
40	84.0-97.4	97.5-111.9
50	82.0-95.4	95.5-108.9
60	81.5-93.4	93.5-106.9
70	78.5-91.4	91.5-104.9
80	77.5-89.9	90.0-103.4
90	76.5-88.9	90.0-101.4
100	75.0-87.4	87.5-99.9

% Relative Humidity	Dry Bulb Temperature (degrees F)	
	Danger	
0	greater than or equal to 132.0	
10	greater than or equal to 125.0	
20	greater than or equal to 119.0	
30	greater than or equal to 115.0	
40	greater than or equal to 112.0	
50	greater than or equal to 109.0	
60	greater than or equal to 107.0	
70	greater than or equal to 105.0	
80	greater than or equal to 103.5	
90	greater than or equal to 101.5	
100	greater than or equal to 100.0	

7. The school building administrator shall ensure that the local health officer is notified immediately when:

a. the heat health hazard level of Danger is reached anywhere inside the school where students or staff are present for an hour or longer; or

b. on the same day two incidents occur in the school where health symptoms, such as heat stroke, cramps and heat exhaustion, may have been caused by heat and a heat health hazard level of Caution, Extreme Caution, or Danger has been recorded in the school.

E. Maintenance of Heating, Ventilation and Air Conditioning Equipment.

~~1. [The school building administrator shall designate a person to be responsible for the operation and maintenance of the heating, ventilation, and air-conditioning system.~~

~~2. The school building administrator has final responsibility to ensure that the heating, ventilation, and air-conditioning system inspection and necessary maintenance activities are conducted according to the manufacturer's or design engineer's recommendations. Operating experience may establish that more frequent maintenance activities are required.]~~
The school building administrator has final responsibility to ensure that the heating, ventilating, and air-conditioning system inspection and necessary maintenance activities are conducted at proper time intervals according to the manufacturer's recommendations with qualified in-house or contracted service technicians to provide peak performance of all equipment and systems.

F. Cleaning Physical Facilities

1. General

a. Floors shall be cleaned at least daily.

b. Walls, ceilings, and attached equipment shall be kept clean.

c. Hose bibs with back flow prevention devices shall be provided with running water for washing walkways, courts, passageways, and other common use areas.

2. Utility Facility. In new or extensively remodeled facilities at least one utility sink or curbed cleaning facility with a floor drain shall be located on each floor and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. The use of lavatories for this purpose is prohibited.

3. Custodian Closets

a. Custodial closets, equipment and supply storage rooms shall be kept clean and orderly and shall be kept locked if toxic supplies are present.

b. Separate storerooms or cabinets shall be provided for cleaning materials, pesticides, paints, flammables, or other hazardous or toxic chemicals, and for tools and maintenance equipment. These areas shall be kept locked and used for no other purpose and shall comply with the Uniform Fire Code.

c. Oiled mops, dust cloths, rags, and other materials subject to spontaneous combustion shall be properly stored in approved fire resistant containers as required by the Uniform Fire Code.

**KEY: public health, schools
1998**

26-15-2

Notice of Continuation October 20, 1997



Human Services, Mental Health, State Hospital
R525-6

Weapons at the Utah State Hospital

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 20891
FILED: 06/24/1998, 11:11
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: After meeting with the Administrative Rules Review Committee, it was decided to change the language to establish the Utah State Hospital campus and facilities as secure and to notify visitors of items prohibited on the campus.

SUMMARY OF THE RULE OR CHANGE: The new language establishes the Utah State Hospital and its facilities as secure areas and informs visitors of items and devices prohibited on the campus.

(DAR Note: The original proposed new rule upon which this change in proposed rule is based was published in the April 1, 1998, issue of the *Utah State Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 76-8-311.1, and Subsections 76-8-311.3(2) and 62A-12-203(4)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None.
 - ❖ LOCAL GOVERNMENTS: None.
 - ❖ OTHER PERSONS: None.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs are not burdensome.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The State Hospital will increase its number of storage lockers, however, this cost is not burdensome.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Services
Mental Health, State Hospital
1300 East Center Street
PO Box 270
Provo, UT 84604, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Danette Faretta-Brady at the above address, by phone at (801) 344-4217, by FAX at (801) 344-4291, or by Internet E-mail at hush.dfaretta@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 08/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 08/15/1998

AUTHORIZED BY: Mark I. Payne, Utah State Hospital Superintendent

**R525. Human Services, Mental Health, State Hospital.
R525-6. ~~Weapons at the Utah State Hospital:~~ Prohibited Items and Devices.**

R525-6-1. ~~Weapons Are Prohibited at the Utah State Hospital:~~ Prohibited Items and Devices.

Pursuant to the requirements of Sections 62A-12-203(4) and 76-8-311.1, the entire campus and all facilities of the Utah State Hospital, including its buildings and grounds are designated as secure areas by this rule. Accordingly all ~~W~~ weapons, contraband, ~~illegal~~ controlled substances, ammunition, items that can implement escape, explosives, spirituous or fermented liquors, firearms, ~~such as, but not limited to, pistols, sawed-off rifles, revolvers,~~ or any devices that are normally considered to be ~~could be used as a~~ weapons are prohibited ~~on~~ from entry into the campus of the Utah State Hospital. ~~Law Enforcement personnel may bring their weapons onto the~~ Persons entering the Utah State Hospital campus ~~however, they~~ must secure all ~~their~~ weapons in their locked vehicles, out of sight, or they may ~~in a~~ secure their weapon in a secure storage ~~area~~ locker. ~~before entering a treatment unit.~~ Secure storage lockers for public use are identified and accessed through directions provided at the entrance of the Utah State Hospital campus. A person is not in violation of this rule during the time required to directly enter the campus and immediately place a weapon in a secure storage locker or immediately secure it out of sight in a locked vehicle.

KEY: weapons
1998 **62A-12-203(4)**
76-8-311.1
76-8-311.3(2)

End of the Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (1996)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (••••) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (1996); and *Utah Administrative Code* Section R15-4-8.

Human Resource Management, Administration **R477-8** Working Conditions

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 21264
FILED: 07/01/1998, 16:08
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To extend the early retirement benefits with the use of sick leave provided by S.B. 138 to all retiring state employees.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-8-7(6), "Early Retirement Incentive," is amended to allow employees who retire after age 60 to purchase additional health and life insurance coverage for a spouse and medicare supplement for the employee and a spouse with their unused sick leave balance. The rule filed previously restricted this additional benefit to those employees who retired prior to age 60.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-14

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no impact on the budget because agencies will bear the cost of this provision through the labor additive pool in the Division of Finance. However,

this new language adds many more employees to the potential list of retirees who will take advantage of this benefit and places additional pressure on this pool. The Division of Finance will likely increase fees to agencies to cover these potential additional costs.

❖ **LOCAL GOVERNMENTS:** No effect, this rule is internal to state government.

❖ **OTHER PERSONS:** No effect, this rule is internal to state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No effect, this rule is internal to state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is internal to state government and will not effect any entity outside state government. DHRM only has authority to write rules which impact the operations of state government. Any impact beyond this would be indirect at best would be reflected in actions of the legislature.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The Department of Human Resource Management (DHRM) held a hearing on this provision on Monday, June 22, 1998 at the request of interested parties. There was considerable concern about the application of the benefit based on age as provided in the rule as originally filed. This hearing was followed by a series of discussions within DHRM, interested parties, the sponsor of S.B. 138, and with other state decision makers. It was concluded that the rule as filed needed to be changed in order to be consistent with the provisions of Section 67-19-14 as amended by S.B. 138.

This emergency rule is necessary to avoid a disparate effect on employees who are scheduled to retire between July 1, 1998 when S.B. 138 takes effect and August 15, 1998, the first possible date the rule change can be effective under regular rulemaking procedures.

(DAR Note: S.B. 138 is found at 1998 Utah Laws 338, and was effective July 1, 1998.)

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Resource Management Administration
2120 State Office Building
PO Box 141531
Salt Lake City, UT 84114-1531, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 07/01/1998

AUTHORIZED BY: Conroy R. Whipple, Legislative and Planning Coordinator

**R477. Human Resource Management, Administration.
R477-8. Working Conditions.**

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R477-8-7. Leave.

All employees who regularly work 40 hours or more per pay period, except Schedule AJ or other temporary workers, are eligible for leave benefits. Employees receive leave benefits in proportion to the number of hours they are scheduled to work. Employees shall use leave in no less than quarter hour increments.

- (1) Holiday Leave
 - (a) The following dates are designated legal holidays:
 - (i) New Years Day -- January 1
 - (ii) Human Rights Day -- third Monday of January
 - (iii) Presidents' Day -- third Monday of February
 - (iv) Memorial Day -- last Monday of May
 - (v) Independence Day -- July 4
 - (vi) Pioneer Day -- July 24
 - (vii) Labor Day -- first Monday of September
 - (viii) Columbus Day -- second Monday of October
 - (ix) Veterans' Day -- November 11
 - (x) Thanksgiving Day -- fourth Thursday of November
 - (xi) Christmas Day -- December 25
 - (xii) The Governor may also designate any other day a legal holiday.

(b) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday. If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(c) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall receive compensation for the excess hours worked.

(d) The following employees are eligible to receive holiday leave:

- (i) Full-time employees shall accrue eight hours of paid holiday leave on holidays;
- (ii) Part-time career service employees and partners in a job-shared position who work 40 hours or more per pay period shall receive holiday leave in proportion to the hours they normally work in a pay period;
- (iii) Employees working flex-time, as defined in R477-8-2, shall receive a maximum of 88 hours of holiday leave in each calendar year. If the holiday falls on a regularly scheduled day off, flex-time employees shall receive an equivalent work day off, not to exceed eight hours or shall receive compensation for the excess hours at a later date.

(e) In order to receive paid holiday leave, an employee must be in a paid status for a full scheduled work day before and after a holiday.

(2) Conditions of leave

(a) Eligible employees who work 40 or more hours per pay period shall accrue annual and sick leave in proportion to the time worked. They shall also receive funeral, holiday, and paid military leave in proportion to the time worked. Employees excluded from these are "at will" employees identified in R477-5-12.

(b) Seasonal, temporary, or part-time employees working less than 40 hours per pay period are not eligible for paid leave.

(c) Accrual rates for sick and annual leave are determined in proportion to the time worked, as outlined on the Annual and Sick Leave Accrual table available through DHRM.

(d) No employee may receive annual, sick or holiday leave before he has accrued it.

(e) Employees transferring from one agency of State service to another are entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

(f) Employees on paid leave shall continue to accrue annual and sick leave.

(g) Employees terminating or retiring from State service shall be cashed out in a lump sum for all annual leave and converted sick leave effective through the last day actually worked. Leave cannot be accrued after the last day worked. No leave-on-leave may accrue or be paid on the cashed out annual leave.

(h) No contributions to benefits may be paid on cashed out leave, other than FICA tax, except as it applies to the Early Retirement Incentive Program outlined in R477-8-(7)-(5)(b).

(3) Annual Leave

(a) Employees eligible for annual leave shall accrue leave based on the following years of State service:

- (i) Zero through five years -- four hours per pay period.
- (ii) Beginning of sixth year through ten years -- five hours per pay period.
- (iii) Beginning of eleventh year or more -- six hours per pay period.

(b) To determine the accrual rate, all State employment shall be counted in which an employee was eligible to accrue leave regardless of whether the employment was continuous or not.

(c) Eligible employees may begin to use annual leave time after completing the equivalent of two full pay periods of employment.

(d) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year. However, annual leave granted shall be approved in advance by management.

(e) Any unused accrued annual leave time in excess of 320 hours shall be forfeited at the beginning of the first full pay period of each calendar year.

(f) Department deputy directors and division directors appointed to career service exempt status positions shall be eligible for the maximum annual leave accrual rate upon their date of hire but shall not be eligible for any transfer of leave from other jurisdictions. Annual leave shall accrue at six hours per pay period for the tenure of employment in exempt positions. Other provisions of leave shall apply as defined in R477-8-7(3).

(4) Sick Leave

(a) Employees shall accrue sick leave with pay at the rate of four hours each pay period. Sick leave shall accrue without limit.

(b) Employees may begin to use accrued sick leave after completing the equivalent of at least two full pay periods of employment.

(c) Sick leave shall be granted for preventive health and dental care, maternity/paternity and adoption care, or for absence from duty because of illness, injury or temporary disability of a spouse or dependents living in the employee's home. Exceptions may be granted for other unique medical situations.

(d) Employees shall arrange for a telephone report to supervisors at the beginning of the scheduled work day they are absent because of illness or injury. Management may require reports for serious illnesses or injuries.

(e) Any application for a grant of sick leave to cover an absence which exceeds four successive working days shall be supported by administratively acceptable evidence such as a medical certificate. If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce a doctor's certificate of illness regardless of the number of days on sick leave.

(f) Any absence for illness beyond the accrued sick leave credit may continue under the following provisions: an approved leave-without-pay status, not to exceed 12 months, an approved Family Medical Leave Status, or in an annual or other accrued leave status.

(g) After filing a termination notice, employees must support sick leave requests with a doctor's certificate.

(h) Employees separating from State service may not receive compensation for accrued unused sick leave unless they are retiring. However, employees who are rehired within 12 months of separation to a position which receives sick leave benefits shall have their previously accrued unused sick leave credit reinstated.

(i) Employees who are rehired within 12 months of separation to a position which receives sick leave benefits shall have their previously accrued unused sick leave credit reinstated.

(ii) Employees who retire from state service and are then rehired may not reinstate their unused sick leave credit.

(5) Converted Sick Leave

As an incentive to reduce sick leave abuse, employees may convert a portion of unused sick leave to converted sick leave.

(a) To be eligible for converted sick leave, an employee must have an accumulated balance of 144 hours of unused sick leave at the end of the last pay period of the calendar year.

(i) Forty hours are eligible for conversion in a calendar year and will be converted to converted sick leave unless the employee designates otherwise.

(ii) The number of hours used in a calendar year shall be deducted from the 40 hours eligible for conversion.

(iii) The maximum hours of converted sick leave an employee may accrue is 320.

(b) Converted sick leave may be used as annual leave, regular sick leave, or as paid-up health and life insurance at the time of retirement for employees under age 65. If an employee is 65 years of age or older at the time of retirement, converted sick leave may be used to purchase a medicare supplement.

(i) Payment for health and life insurance is the responsibility of the employing agency.

(ii) Eight hours of converted sick leave equals the amount of the premium for one month's coverage for health and life insurance.

(6) Early Retirement Incentive

Employees may be offered an early retirement incentive program, according to Section 67-19-14(2).

(a) This program is optional for each department. However, any decision whether or not to participate shall be agency-wide and shall be consistent through an entire fiscal year.

(b) If an agency decides to withdraw for the next fiscal year after initially deciding to participate in early retirement, the agency must notify all employees at least 60 days before the new fiscal year begins.

(c) Employee participation in any part of this incentive program shall be voluntary, but the decision to participate shall be made at retirement.

(d) ~~The early retirement incentive for employees who retire prior to age 60, shall consist of any or all of the following:~~ Employees retiring from state service shall have the following options with their accrued unused sick leave.

(i) ~~[An option to receive a]~~ A cash payment of 25 percent for their accrued unused sick leave at their current rate of pay, or transfer these monies to an approved 401(k) account sponsored by the Utah State Retirement Board .

(ii) The use of any sick leave balance after the subtraction of 25% for the cash out and a standard deduction of 480 hours to purchase additional health and life insurance coverage and medicare supplement.

(A) The purchase rate shall be 8 hours of sick leave for each month of coverage for each person covered.

(iii) The employing department shall provide health and life insurance coverage for five years or until the employee reaches the age eligible for medicare, whichever is less.

(A) Health coverage shall be the same as carried by the employee at the time of retirement, i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided.

(B) Life insurance provided shall be the basic \$18,000 coverage provided for all State employees.

~~—(C) Health and life insurance coverage will end after five years, unless the employee has sick leave in excess of 480 hours after any cash out. Eight hours of sick leave in excess of 480 after~~

any cash out shall provide one additional month of paid health and life insurance coverage up to the age eligible for medicare.]

(iv) ~~When the employee becomes eligible for medicare, t~~ [The purchase of health and life insurance coverage for a spouse until the spouse is eligible for medicare] ~~at the rate of one month of coverage for 8 hours of unused sick leave after any cash out and the 480 hour deduction~~].

(v) The purchase of low option medicare supplement for the employee ~~and a spouse at the rate of one month of coverage for 8 hours of unused sick leave for the employee and one month of coverage for 8 hours of unused sick leave for the spouse~~].

(vi) The purchase of low option medicare supplement for the spouse.

~~(e) the early retirement incentive for employees who retire After age 60 but prior to becoming eligible for medicare shall consist of:~~

~~(i) an option to receive a cash payment of 25 percent for Their accrued unused sick leave at their current rate of pay, or transfer these monies to an approved 401(k) account sponsored by the utah state retirement board:~~

~~(ii) the employing department shall provide health and life insurance coverage for five years or until the age when the employee is eligible for medicare, whichever comes first:~~

~~(A) health coverage shall be the same as currently carried By the employee, i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided:~~

~~(B) life insurance provided shall be the basic \$18,000 Coverage provided for all state employees:~~

~~(F) employees who retire and are eligible for medicare may receive a cash payment of 25 percent for their accrued unused sick leave at their current rate of pay, or transfer these monies to an approved 401(k) account sponsored by the utah state retirement board:]~~

(7) Workers Compensation Leave

(a) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(i) The combination of leave benefit and workers compensation benefit shall not exceed the employees gross salary.

(ii) The use of accrued leave to supplement the worker compensation benefit shall be terminated if:

(A) the employee is declared medically stable by licensed medical authority; or

(B) the workers compensation fund terminates the benefit; or

(C) the employee has been absent from work for one year; or

(D) the employee refuses to accept appropriate employment offered by the state; or

(E) the employee receives Long Term Disability or Social Security Disability benefits.

(iii) The employee shall refund to the state any accrued leave paid which exceeds the employees gross salary for the period for which the benefit was received.

(b) Employees will continue to accrue state paid benefits while receiving a workers compensation time loss benefit for up to one year.

(c) Employees who file fraudulent workers compensation claims shall be disciplined according to the provisions of R477-11.

(8) Funeral Leave

Employees may receive a maximum of three days funeral leave per occurrence with pay at management's discretion to attend the funeral of a member of the immediate family. Funeral leave may not be charged against accrued sick or annual leave. One day of funeral is the equivalent of 8 hours.

(a) The "immediate family" means-- wife, husband, children, daughter-in-law, son-in-law, parents, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandparents, spouse's grandparents, step-children, and step-parents, brothers and sisters of the employee.

(9) Military Leave

One day of military leave is the equivalent of 8 hours.

(a) Employees who are members of the National Guard or Military Reserves are entitled to military leave not to exceed fifteen days per year without loss of pay, annual leave or sick leave. Employees shall be on official military orders and may not claim salary for non-working days spent in military training or for traditional weekend training.

(b) Officers and employees of the state shall be granted military leave without pay for the period of active service or duty, including travel time, Section 39-3-1.

(c) Employees are required to give notice of active military service as soon as they are notified.

(d) Upon termination from active military service, under honorable conditions, employees shall be placed in their original position or one of like seniority, status and pay. The cumulative length of time allowed for re-employment may not exceed five years. Employees are entitled to re-employment rights and benefits including increased pension and leave accrual. Persons entering military leave may elect to have payment for annual leave deferred. In order to be reemployed, employees shall present evidence of military service and leave without pay status, and:

(i) For service less than thirty-one days, return at the beginning of the next regularly scheduled work period on the first full day after release from service taking into account safe travel home plus an eight-hour rest period, or:

(ii) For service of more than thirty-one days but less than 181 days, submit an application for reemployment within fourteen days of release from service, or

(iii) For service of more than 180 days, submit an application for reemployment within ninety days of release from service.

(10) Leave of Absence Without Pay

Employees may be granted continuous leave of absence without pay for up to 12 months. Employees shall apply in writing to agency management for approval. If absence is due to FMLA, workers compensation or long-term disability, R477-8-9 or R477-8-7(7) applies.

(a) Medical leave without pay may be granted for no more than twelve months. Medical leave may be approved if a registered health practitioner certifies that an employee is temporarily disabled.

(b) Agency management may approve leave without pay for employees even though annual or sick leave balances exist. Employees may take up to ten consecutive working days of leave without pay without affecting the leave accrual rate.

(i) Employees who receive no compensation for a complete pay period shall be responsible for payment of state provided benefit premiums, unless they are covered by the provisions under the federal Family and Medical Leave Act, in R477-8-9.

(c) Employees who return to work on or before the expiration of leave without pay, shall be placed in a position with comparable pay and seniority to their previously held position, provided the same or comparable level of duties can be performed with or without reasonable accommodation. The employee shall also be entitled to previously accrued annual and sick leave.

(d) Leave without pay for non-disability reasons may be granted only when there is an expectation that the employee will return to work.

(e) Health insurance benefits shall continue for employees on leave without pay because of work-related injuries or illnesses. Except as provided under the family and medical leave provisions, employees on leave without pay must personally continue the premiums to receive health insurance benefits.

(f) Employees who are determined eligible for the Long Term Disability Program (LTD) shall be granted up to one year of medical leave, if warranted by a medical condition.

(i) The one year medical leave begins on the last day the employee worked due to the disability. During this period and until LTD benefits begin, employees shall use sick and converted sick leave. Annual leave may be used after the employee uses all available sick and converted sick leave.

(ii) If the employee is unable to return to work and has not used all available annual leave, he shall be paid for the annual leave when the termination action is processed.

(iii) Employees determined eligible for Long Term Disability benefits, after a three month waiting period, will be eligible for health insurance benefits beginning two months after the last day worked. The health insurance benefit will continue for up to twenty-two months or until they are eligible for medicare/medicaid, whichever occurs first.

(iv) Conditions for return from leave without pay shall include:

(A) If an employee is able to return to normal duties within one year of the last day worked, the agency shall place the employee in his previously held position or similar position in a comparable salary range.

(B) If an employee is unable to perform the essential functions of the job because of a permanent disability, the obligation to place the employee in the same position shall be set aside. The employing unit shall place the employee in the best available, vacant position for which he is qualified, if able to perform the job with or without reasonable accommodation. If the employing unit does not have an available position, the agency shall then attempt to place the individual. The new position shall be consistent with the employee's qualifications and capabilities.

(I) For the first year, every effort shall be made to find a position as close to the salary range and function as the original position.

(II) The agency Executive Director may extend the timeline for return to work beyond one year if the employee's injury resulted in disability prohibiting the employee from performing the essential functions of the job, as defined by ADA.

(11) Jury Leave

(a) Employees are entitled to a leave of absence with full pay when, in obedience to a subpoena or direction by proper authority, they are required to:

(i) Appear as a witness as part of their position for the federal government, the State of Utah, or a political subdivision of the state, or

(ii) Serve as a witness in a grievance hearing.

(iii) Serve on a jury

(b) Employees choosing to use annual leave while on jury duty shall be entitled to keep jurors fees; otherwise, jurors fees received shall be returned to agency payroll clerks for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the low org. where the salary is recorded.

(c) Employees who are absent in order to litigate in matters unrelated to their position shall take leave as annual or as leave without pay.

(12) Administrative Leave

(a) Administrative leave may be granted consistent with agency policy for the following reasons:

(i) corrective action;

(ii) personal decision-making prior to discipline;

(iii) suspension with pay-- during removal from job site-- pending hearing on charges;

(iv) during management decision situations that benefit the organization;

(v) incentive awards in lieu of cash;

(vi) when no work is available due to unavoidable conditions or influences;

(vii) removal from adverse or hostile work environment situations pending management corrective action;

(viii) educational assistance;

(ix) employee assistance and fitness for duty evaluations.

(b) Agency head or designee may grant paid administrative leave for no more than ten consecutive working days per occurrence. Other conditions of administrative leave are:

(i) Administrative leave in excess of 10 consecutive working days per occurrence may be granted by written approval of the agency head.

(ii) Administrative leave taken must be documented in the employee's leave record.

(13) Disaster Relief Volunteer Leave

(a) An employee may be granted an aggregate of 15 working days or 120 work hours in any 12 month period to participate in disaster relief services for the American Red Cross. To request this leave an employee must be a certified disaster relief volunteer; and file a written request with the employing agency. The request shall include:

(i) a copy of a written request for the employee's services from an official of the American Red Cross;

(ii) the anticipated duration of the absence;

(iii) the type of service the employee is to provide for the American Red Cross; and

(iv) the nature and location of the disaster where the employee's services will be provided.

(14) Furlough

(a) Agency management may furlough employees as a means of saving salary costs in lieu of reduction in force. See R477-12-3(3). Furlough plans are subject to the approval of the Executive Director, DHRM and the following conditions:

(i) Employees accrue annual and sick leave.

- (ii) Full payment of all fringe benefits continue at agency's expense.
- (iii) Employees shall return to their positions.
- (iv) Furlough is applied equitably, e.g., to all persons in a given class, all program staff, or all staff in an organization.

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KEY: compensatory time, disability insurance, leave, vacations
July 1, 1998 **67-19-6**
Notice of Continuation July 1, 1997



**Human Services, Child and Family
 Services**
R512-25
**Child Protective Services Notification
 and Due Process**

NOTICE OF 120-DAY (EMERGENCY) RULE
 DAR FILE NO.: 21226
 FILED: 06/16/1998, 16:55
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule provides procedures for the implementation of 42 U.S.C. 5106(a) for types of child abuse and neglect not included in Section 62A-4a-116.5. This rule establishes the requirements for adjudicative proceedings pertaining to individuals who have been substantiated for types of child abuse or neglect not specified in Section 62A-4a-116.5, and the individuals disagree with the substantiated finding. This rule establishes the same criteria for adjudicative proceedings as that specified in Section 62A-4a-116.5, thus eliminating the need for duplicate adjudicative proceedings for individuals substantiated for multiple allegations of child abuse or neglect when the substantiated allegations are of types specified in Section 62A-4a-116.5 (which may affect licensure, employment, or adoption) and types not specified in Section 62A-4a-116.5.

SUMMARY OF THE RULE OR CHANGE: This rule establishes criteria for adjudicative proceedings for individuals who have been substantiated for types of child abuse or neglect not included in Section 62A-4a-116.5, and the individuals disagree with the substantiated finding. The rule establishes a definition of substantiation, specifies requirements for the Notice of Agency Action, and incorporates the same legal standard and burden of proof in administrative proceedings as specified in Section 62A-4a-116.5.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-106
 FEDERAL REQUIREMENT FOR THIS RULE: 42 U.S.C. 5106(a)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL:

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: It is estimated that this rule will prevent new costs to state government as follows: (1) \$62,500 that would have been required for duplicate hearings for persons who receive mandatory notifications of substantiations from 1988 through 1994, per Sections 62A-4a-116 and 62A-4a-116.5, and who have also been substantiated for other types of child abuse or neglect. Estimated cost savings were calculated based upon costs for Division staff (4 hours for a worker and supervisor) and for administrative hearing officers to prepare for and participate in administrative hearings, based upon a hearing rate of 10% response to notices in which multiple allegations occur (estimated at 19% of all substantiated notifications); (2) \$102,000 annually for ongoing notifications and resulting administrative hearings, utilizing the cost elements specified above.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Costs for compliance with the existing process include costs of postage, costs for obtaining a copy of the case record (not a mandatory requirement for the individuals), costs to travel to the site of the administrative hearing, and costs for attorney representation (at the option of the affected individuals). This rule will potentially reduce costs to affected persons by eliminating the need to mail duplicate requests for administrative hearings and eliminating travel costs to attend a second hearing. In addition, if for individuals who utilize an attorney (which is optional), consolidating the adjudicative proceedings into one administrative hearing would reduce attorney fees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will not impact businesses because it pertains to types of child abuse or neglect which cannot be considered for licensure or employment purposes. Administrative hearings for types of child abuse and neglect which may affect businesses through licensure or employment are addressed in statute in Section 62A-4a-116.5.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent budget reduction because of budget restraints or federal requirements; and place the agency in violation of federal or state law.

Failure to immediately implement this rule places the Division of Child and Family Services in violation of 42 U.S.C. 5106(a), requiring due process for all persons substantiated for child abuse or neglect. In addition, failure to immediately implement this rule will result in additional costs to the Division and to affected persons to participate in duplicate administrative proceedings when the affected persons have been substantiated for multiple allegations of child abuse or neglect in which the allegations are of types specified in Section 62A-4a-116.5 and types not specified in Section 62A-4a-116.5.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Human Services
Child and Family Services
Room 225,
Human Services Administration Building
120 North 200 West
Salt Lake City, UT 84103, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Zohreh Saunders at the above address, by phone at (801) 538-4623, by FAX at (801) 538-3993, or by Internet E-mail at hsdadmin1.zsaunder@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 06/16/1998

AUTHORIZED BY: Ken Patterson, Director

R512. Human Services, Child and Family Services.

R512-25. Child Protective Services Notification and Due Process.

R512-25-1. Scope.

A. 42 USC Section 5106(a) requires the State to establish a mechanism by which individuals who disagree with an official finding of abuse or neglect can appeal such a finding. Sections 62A-4a-116 and 62A-4a-116.5 establish an appeal mechanism for only certain types of abuse or neglect. This rule establishes an appeal mechanism for all other types of abuse or neglect.

R512-25-2. Definitions.

A. Division. The Division of Child and Family Services within the Department of Human Services.

B. Substantiation. An official finding at the completion of an investigation that there is a reasonable basis to conclude that child abuse, neglect, or dependency occurred.

R512-25-3. Notice of Agency Action.

A. Upon the substantiation of a child protective services investigation for a type of child abuse or neglect not specified in Subsection 62A-4a-116(4), a Notice of Agency Action shall be sent to the substantiated perpetrator of child abuse, neglect, or dependency in accordance with Section 63-46b-3.

B. The Notice of Agency Action shall include the following information:

- 1. the facts that support the finding of substantiation;
- 2. that the substantiated finding shall not be accessible to the Office of Licensing within the Department of Human Services or to the Bureau of Health Facility Licensure within the Department of Health;
- 3. that the person has the right to request:
 - a. a copy of the substantiated report; and
 - b. an administrative hearing in which the finding may be challenged based upon a disputed issue of fact; and

4. that failure to request an administrative hearing within 30 days of the notice being received shall result in an unappealable finding of substantiation, unless the person can show good cause for why compliance with the 30-day requirement was virtually impossible or unreasonably burdensome.

R512-25-4. Challenge of Substantiated Finding.

A. A person may make a request to challenge a substantiated finding within 30 days of:

- 1. a notice being received under R512-25-3;
- 2. a finding by a court of competent jurisdiction based upon the same underlying facts that:
 - a. child abuse or neglect did not occur; or
 - b. the person was not responsible for the child abuse or neglect that did occur.
- 3. the dismissal of criminal charges or a verdict of not guilty based on the same underlying facts.

B. The 30-day requirement of R512-25-3 shall be extended for good cause shown that compliance was virtually impossible or unreasonably burdensome.

C. The Division may approve or deny a request to change the substantiation.

D. If the Division denies the request to change the substantiation or fails to act within 30 days after receiving a request submitted under R512-25-4, the Office of Administrative Hearings within the Department of Human Services shall hold an adjudicative proceeding pursuant to Section 63-46b.

R512-25-5. Legal Standard and Burden of Proof.

A. In an adjudicative proceeding held pursuant to R512-25-4(D), the Division shall prove by a preponderance of evidence that there is a reasonable basis to conclude that:

- 1. child abuse or neglect occurred;
- 2. the person was substantially responsible for the abuse or neglect that occurred.

B. The administrative hearing officer may make a determination based solely upon the statement of the child.

R512-25-6. Denial of or Stay of Adjudicative Proceeding.

A. A person may not make a request to challenge a substantiated finding under R512-25-4 if, at any time, a court of competent jurisdiction has made a determination based on the same underlying facts that:

- 1. the child abuse or neglect occurred; and
- 2. the person was substantially responsible for the abuse or neglect that occurred.

B. An adjudicative proceeding held pursuant to R512-25-4 may be stayed during the time a judicial action is pending.

KEY: child welfare, child abuse
June 16, 1998

42 USC 5106(a)
62A-4a-106
62A-4a-116
62A-4a-116.5
63-46b-3



FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1996).

Career Service Review Board, Administration

R137-2

Government Records Access and Management Act

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 21265
FILED: 07/01/1998, 16:58
RECEIVED BY: NL

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 63-2-204 and 63-2-904 of the Government Records Access and Management Act require governmental entities to establish procedures for access to the entity's records.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since this rule became effective on August 2, 1993.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continues to be necessary to provide procedures for access to government records of the Career Service Review Board.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Career Service Review Board
Administration
1120 State Office Building
PO Box 141561

Salt Lake City, UT 84114-1561, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Robert N. White at the above address, by phone at (801) 538-3047, by FAX at (801) 538-3139, or Internet E-mail at pedhrm.rwhite@email.state.ut.us.

AUTHORIZED BY: Robert N. White, Administrator

EFFECTIVE: 07/01/1998



Health, Health Care Financing, Coverage and Reimbursement Policy

R414-52

Optometry Services

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 21232
FILED: 06/22/1998, 14:48
RECEIVED BY: NL

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-2.1 creates the Division, which shall be responsible for implementing, organizing, and maintaining the Medicaid program. Section 26-1-5 notes that the Department shall have the power to adopt, amend, or rescind rules necessary to carry out the provisions of this title.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Review by

Division and Bureaus recommends continuation of this rule. No other comments were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it establishes guidelines for providing medically necessary services for a select group of Medicaid eligible individuals. The rule establishes the right to the service as well as limitations on the service. No opposing comments were received.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steven Bradford at the above address, by phone at (801) 538-6483, by FAX at (801) 538-6099, or Internet E-mail at sbradfor@email.state.ut.us.

AUTHORIZED BY: A. Richard Melton, Acting Executive Director

EFFECTIVE: 06/22/1998



Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-53
Eyeglasses Services

**FIVE-YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 21233
FILED: 06/22/1998, 14:48
RECEIVED BY: NL

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-2.1 creates the Division, which shall be responsible for implementing, organizing, and maintaining the Medicaid program. Section 26-1-5 notes that the Department shall have the power to adopt, amend, or rescind rules necessary to carry out the provisions of this title.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Review by Division and Bureaus recommends continuation of this rule. No other comments were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it establishes guidelines for providing medically necessary services for a select group of Medicaid eligible individuals. The rule establishes the right to the service as well as limitations on the service. No opposing comments were received.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steven Bradford at the above address, by phone at (801) 538-6483, by FAX at (801) 538-6099, or Internet E-mail at sbradfor@email.state.ut.us.

AUTHORIZED BY: A. Richard Melton, Acting Executive Director

EFFECTIVE: 06/22/1998



Public Service Commission,
Administration
R746-110
Uncontested Matters to be Adjudicated
Informally

**FIVE-YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 21248
FILED: 06/26/1998, 12:02
RECEIVED BY: NL

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 54-4-1

gives the Commission general jurisdiction to regulate every public utility in Utah and to supervise all of the business of every such public utility in Utah, and to do all things necessary or convenient in the exercise of that power and jurisdiction. Section 63-46b-5 requires the Commission to enact rules designating one or more categories of adjudicative proceedings as informal adjudicative proceedings, and to, by rule, prescribe procedures for informal adjudicative proceedings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so the Commission can continue to comply with Sections 54-4-1 and 63-46b-5.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Public Service Commission
Administration
Fourth Floor, Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Barbara Stroud or Sandy Mooy at the above address, by phone at (801) 530-6716, by FAX at (801) 530-6796, or Internet E-mail at pupsc.bstroud@state.ut.us.

AUTHORIZED BY: Barbara Stroud, Paralegal

EFFECTIVE: 06/26/1998



Public Service Commission,
Administration
R746-210
Utility Service Rules Applicable Only to
Electric Utilities

**FIVE-YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 21249
FILED: 06/26/1998, 12:02
RECEIVED BY: NL

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE

PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 54-4-1 gives the Commission general jurisdiction to regulate every public utility in Utah and to supervise all of the business of every such public utility in Utah, and to do all things necessary or convenient in the exercise of that power and jurisdiction. 16 U.S.C. 113 and 115, the Public Utility Regulatory Policy Act (PURPA), sets standards for master metered multiple tenancy dwellings which make it necessary for the Commission to set the standards and exemptions in this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The standards in this rule, for master metered multiple tenancy dwellings, continue to be relevant and necessary to the Commission's duty to supervise and regulate electric utility companies in Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Public Service Commission
Administration
Fourth Floor, Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Barbara Stroud or Sandy Mooy at the above address, by phone at (801) 530-6716, by FAX at (801) 530-6796, or Internet E-mail at pupsc.bstroud@state.ut.us.

AUTHORIZED BY: Barbara Stroud, Paralegal

EFFECTIVE: 06/26/1998



Public Service Commission,
Administration
R746-340
Substantive Rules Governing
Telecommunications Utilities

**FIVE-YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 21250
FILED: 06/26/1998, 12:02
RECEIVED BY: NL

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 54-4-1 gives the Commission general jurisdiction to regulate every public utility in Utah and to supervise all of the business of every such public utility in Utah, and to do all things necessary or convenient in the exercise of that power and jurisdiction. Section 54-4-14 authorizes the Commission to make rules that require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks and premises that promote and safeguard the health and safety of its employees, customers and the public, and the installation, use, maintenance and operation of appropriate safety or other devices or appliances and to establish standards of construction and equipment, and to require the performance of any other acts which the health or safety of its employees, customers or the public. Section 54-4-23 authorizes the Commission to establish a system of accounts to be kept by public utilities subject to its jurisdiction and to determine the manner in which such accounts shall be kept. It may also, in its discretion prescribe the forms of accounts, records, and memoranda to be kept by such public utilities and any forms, records, and memoranda which in the judgment of the commission may be necessary to comply with the provisions of this section.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Public Utilities filed a petition for rulemaking on July 9, 1993 to petition the Commission for an amendment to this rule to add quality of service standards for regulated telecommunications companies in Utah.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary to ensure adequate and satisfactory service will be rendered to the public by telecommunications utilities under the jurisdiction of the Commission. The Commission denied the petition for rulemaking filed on July 9, 1993, because the Commission had an open docket at the time which would raise quality of service issues.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Public Service Commission
Administration
Fourth Floor, Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Barbara Stroud or Sandy Mooy at the above address, by phone at (801) 530-6716, by FAX at (801) 530-6796, or Internet E-mail at pupsc.bstroud@state.ut.us.

AUTHORIZED BY: Barbara Stroud, Paralegal

EFFECTIVE: 06/26/1998



Regents (Board of), University of Utah,
Administration
R805-2
Government Records Access and
Management Act Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 21227
FILED: 06/17/1998, 10:30
RECEIVED BY: NL

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 63-2-204(2) authorizes Rule R805-2 by allowing a governmental entity to make rules on access to government records, in accordance with Title 63, Chapter 46a, the "Utah Administrative Rulemaking Act." Subsection 63-2-904(2) authorizes Rule R805-2 because a governmental entity under Title 63 may specify by rule how the Government Records Access and Management Act (GRAMA) requirements will be undertaken. Subsection 63-46a-3(3) requires Rule R805-2 because the University is effectively issuing a written interpretation of the procedural mandates of GRAMA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R805-2 concisely and clearly presents the procedure for the access of Government Records at the University of Utah in compliance with the Government Records Access and Management Act (GRAMA). Rule R805-2 considers the University of Utah a single governmental entity, and establishes a single Records Officer who acts as the presiding officer for appeals of access, classification, designation determination, or denied requests to amend records. Rule R805-2 also provides that all requests for access to records must be in writing, and presents a useful list of who to contact for all different types of records. The University's ability to respond efficiently to GRAMA requests has been facilitated by this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Regents (Board of)
University of Utah, Administration
201 Park Building
201 South President's Circle
Salt Lake City, UT 84112-9018, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dr. A. E. Rothermich at the above address, by phone at (801) 581-3033, by FAX at (801) 585-6211, or Internet E-mail at orothermich@park.admin.utah.edu.

AUTHORIZED BY: Dr. A. E. Rothermich, Director for Administrative Policies

EFFECTIVE: 06/17/1998

**Workforce Services, Administration
R982-401**

JTPA Fiscal Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 21251
FILED: 06/29/1998, 07:07
RECEIVED BY: NL

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is allowed under Subsection 35A-1-104(1).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: We have received no comments regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule governs the fiscal procedures of the Department with regards to the Job Training Partnership Act (JTPA).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Workforce Services
Administration
Fifth Floor
140 East 300 South
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Shawn Potter at the above address, by phone at (801) 526-9205, by FAX at (801) 526-9211, or Internet E-mail at wsadmpo.spotter@state.ut.us.

AUTHORIZED BY: Robert C. Gross, Executive Director

EFFECTIVE: 06/29/1998

Workforce Services, Administration

R982-501

JTPA Procurement/Property Management Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 21252
FILED: 06/29/1998, 07:07
RECEIVED BY: NL

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is allowed under Subsection 35A-1-104(1).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: We have received no comments regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule governs the fiscal procedures of the Department with regards to the Job Training Partnership Act (JTPA).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Workforce Services
Administration
Fifth Floor
140 East 300 South
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Shawn Potter at the above address, by phone at (801) 526-9205, by FAX at (801) 526-9211, or Internet E-mail at wsadmpo.spotter@state.ut.us.

AUTHORIZED BY: Robert C. Gross, Executive Director

EFFECTIVE: 06/29/1998



Workforce Services, Employment Development
R986-601

Authority and Definitions for Programs Authorized under JTPA

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 21253
FILED: 06/29/1998, 07:07
RECEIVED BY: NL

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is allowed under Subsection 35A-1-104(1).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: We have received no comments regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule outlines the Department's program responsibilities with regards to the Job Training Partnership Act (JTPA).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Workforce Services
Employment Development
Fifth Floor
140 East 300 South
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Shawn Potter at the above address, by phone at (801) 526-9205, by FAX at (801) 526-9211, or Internet E-mail at wsadmpo.spotter@state.ut.us.

AUTHORIZED BY: Robert C. Gross, Executive Director

EFFECTIVE: 06/29/1998



Workforce Services, Employment Development
R986-602
General Administrative Provisions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 21254
FILED: 06/29/1998, 07:07
RECEIVED BY: NL

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is allowed under Subsection 35A-1-104(1).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: We have received no comments regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule outlines the Department's program responsibilities with regards to the Job Training Partnership Act (JTPA).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Workforce Services
Employment Development
Fifth Floor
140 East 300 South
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Shawn Potter at the above address, by phone at (801) 526-9205, by FAX at (801) 526-9211, or Internet E-mail at wsadmpo.spotter@state.ut.us.

AUTHORIZED BY: Robert C. Gross, Executive Director

EFFECTIVE: 06/29/1998



Workforce Services, Employment Development
R986-603
Participant Data System Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 21255
FILED: 06/29/1998, 07:07
RECEIVED BY: NL

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is allowed under Subsection 35A-1-104(1).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: We have received no comments regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule outlines the Department's outcome data tracking responsibilities with regards to the Job Training Partnership Act (JTPA).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Workforce Services
Employment Development
Fifth Floor
140 East 300 South
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Shawn Potter at the above address, by phone at (801) 526-9205, by FAX at (801) 526-9211, or Internet E-mail at wsadmpo.spotter@state.ut.us.

AUTHORIZED BY: Robert C. Gross, Executive Director

EFFECTIVE: 06/29/1998



End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Administrative Services

Administrative Rules

No. 20976 (AMD): R15-4. Administrative Rulemaking Procedures.

Published: May 1, 1998
Effective: July 1, 1998

No. 20952 (AMD): R15-4-3. Publication Dates and Deadlines.

Published: April 15, 1998
Effective: July 1, 1998

Agriculture and Food

Plant Industry

No. 21096 (AMD): R68-15-3. Areas Under Quarantine.

Published: June 1, 1998
Effective: July 2, 1998

Alcoholic Beverage Control

Administration

No. 21033 (AMD): R81-1-6. Violation Schedule.

Published: May 15, 1998
Effective: July 1, 1998

No. 21032 (AMD): R81-1-18. Pilot Wine Tasting Program.

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No. 21029 (REP): R156-31. Nurse Practice Act Rules.

Published: May 15, 1998
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No. 21030 (NEW): R156-31b. Nurse Practice Act Rules.

Published: May 15, 1998
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No. 20987 (AMD): R156-56. Utah Uniform Building Standard Act Rules.

Published: May 1, 1998
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No. 20990 (AMD): R156-56-706. Amendments to the IPC.

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No. 20989 (AMD): R156-56-706. Amendments to the IPC.

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No. 20991 (AMD): R156-56-706. Amendments to the IPC.

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No. 21061 (AMD): R270-1. Award and Reparation Standards.

Published: May 15, 1998
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No. 21159 (AMD): R277-436. Gang Prevention and Intervention Programs in the Schools.

Published: June 1, 1998
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Published: June 1, 1998
Effective: July 2, 1998

No. 21161 (NEW): R277-907. ATC/ATCSR Membership Hour Accounting.

Published: June 1, 1998
Effective: July 2, 1998

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Published: March 1, 1998
Effective: June 26, 1998

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Published: June 1, 1998
Effective: July 6, 1998

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Published: May 15, 1998
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Published: May 15, 1998
Effective: June 27, 1998

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Published: May 15, 1998
Effective: June 27, 1998

No. 21066 (AMD): R477-5. Filling Positions.
Published: May 15, 1998
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Effective: June 27, 1998

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Published: May 15, 1998
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Effective: June 25, 1998

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The *Rules Index* is a cumulative index that reflects all changes to Utah's administrative rules from January 2, 1998, to the present (current as of July 6, 1998). The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: Because of space constraints, the Keyword Index is not included in this *Bulletin*.

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.state.ut.us/>).

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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	* = Text too long to print in <i>Bulletin</i> , or repealed text not printed in <i>Bulletin</i>
5YR = Five-Year Review	
EXD = Expired	

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