R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-1. Purpose.

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

R25-7-2. Authority and Exemptions.

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

(2) Senate Bill 1, Line Item 60 of the 2000 legislative session (2000 Utah Laws 344), as continued by House Bill 1, Item 57 of the 2001 legislative session (2001 Utah Laws 334), Senate Bill 1, Item 49 of the 2002 legislative session (2002 Utah Laws 277), House Bill 1, Item 52 of the 2003 legislative session (2003 Utah Laws 342), and Senate Bill 1, Item 50 of the 2004 legislative session, contains intent language directing that the mileage reimbursement rate authorized in Section R25-7-10 also be applied to legislative staff, the Judicial Branch and to the Utah System of Higher Education.

R25-7-3. Definitions.

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

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

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

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

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

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

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

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

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

R25-7-4. Eligible Expenses.

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

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

R25-7-5. Approvals.

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

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

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

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

R25-7-6. Reimbursement for Meals.

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

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

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

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

TABLE 1

In-State Travel Meal Allowances

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

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

TABLE 2

Out-of-State Travel Meal Allowances

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

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

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

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

(c) Actual meal cost includes tips.

(d) Alcoholic beverages are not reimbursable.

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

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

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

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

(a) The day the travel begins. The traveler's entitlement is determined by the time of day he leaves his home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

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

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

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are

deducted from the total daily meal allowance.

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

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

TABLE 4

The Day Travel Ends

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

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

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

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

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

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

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

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

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

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

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

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

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

R25-7-8. Reimbursement for Lodging.

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

(1) Lodging is reimbursed for single occupancy only.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date of occupancy, amount and date paid, signature of agent, number in the party, and single or double occupancy.

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

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

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

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

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

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

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

R25-7-9. Reimbursement for Incidentals.

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

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

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

(b) No other gratuities will be reimbursed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) More than thirty days - start over

(6) Actual laundry expenses up to $18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

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

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

(7) An amount of $5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

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

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

R25-7-10. Reimbursement for Transportation.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Reimbursement for a private vehicle will be at the rate of 32 cents per mile, or 37 1/2 cents per mile if a state fleet vehicle is not available to the employee.

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

(d) Exceptions must be approved in writing by the Director of Finance.

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

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

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

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

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

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

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 32 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director.

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

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

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

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

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

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

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

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

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

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

be reimbursed.

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

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

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

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

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

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

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

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

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

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

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

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

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

July 1, 2004 **63A-3-107**

Notice of Continuation May 1, 2003 **63A-3-106**

2000 Utah Laws 344

2001 Utah Laws 334

2002 Utah Laws 277

2003 Utah Laws 342

S.B. 1 Item 50, 2004 General Session

R70. Agriculture and Food, Regulatory Services.
R70-330. Raw Milk for Retail.
R70-330-1. Authority.

A. Promulgated under the authority of Section 4-3-2.

B. Scope: This rule establishes the requirements for the production, distribution, and sale of raw milk for retail.

R70-330-2. Raw Milk Defined.

Raw milk for retail shall be milk as defined by law that has not been pasteurized. The word milk shall be interpreted to include the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy hoofed mammals.

R70-330-3. Permits.

A permit shall be required to sell raw milk for retail. Such permit shall be suspended when these rules or applicable sections of the Utah Dairy Act, Utah Code Annotated (UCA), Vol. 1, Title 4, Chapter 3, are violated.

R70-330-4. Building and Premises Requirements.

The building and premises requirements at the time of the issuance of a new permit shall be the same as the current Grade A building guidelines. In addition to these guidelines, there shall be separate rooms provided for (1) packaging and sealing of raw milk, (2) the washing of returned multi-use containers when applicable, and (3) a sales room for the sale of raw milk in a properly protected area that is not located in any of the milk handling rooms. These rooms shall meet or exceed the construction standards of a Grade A milkhouse.

R70-330-5. Sanitation and Operating Requirements.

A. The Utah Department of Agriculture and Food, with the concurrence of the U.S. Food and Drug Administration (FDA) strongly advises against the consumption of raw milk. There are numerous documented outbreaks of milkborne disease involving Salmonella and Campylobacter infections directly linked to the consumption of un-pasteurized milk. Cases of raw milk associated campylobacteriosis have been reported in the states of Arizona, California, Colorado, Georgia, Kansas, Maine, Montana, New Mexico, Oregon, Pennsylvania, and Utah. An outbreak of samonellosis, involving 50 cases was confirmed in Ohio in 2002. Recent cases of E. coli 0157:H7, Listeria monocytogenes, and Yersinia enterocolitica infections have also been attributed to raw milk consumption.

B. Sanitation and operating requirements of all raw milk facilities shall be the same as that required on a Grade A dairy farm producing milk for pasteurization. Milk packaging areas and container washing areas at the raw milk facilities shall meet the requirements for Grade A pasteurized milk processing plants.

C. All milk shall be cooled to 41 degrees F. or less within two hours after milking, provided that the blend temperature after the first milking and subsequent milkings does not exceed 50 degrees F. Milk not handled in this manner may be deemed adulterated and shall not be sold.

D. The sale and delivery of raw milk shall be made on the premise where the milk is produced and packaged. The sale shall be to consumers for household use and not for resale. The sale of block cheese, when held at 35 degrees F. for 60 days or longer, may be sold at retail or for wholesale distribution, at locations other than the premise where the milk was produced.

E. All products made from raw milk including cottage cheese, buttermilk, sour cream, yogurt, heavy whipping cream, half and half, butter, and ice cream shall not be allowed for sale in Utah to individual consumers due to potential negative public health implications of such products.

R70-330-6. Testing.

A. Raw Milk for Retail Testing.

1. The requirements, standards, and enforcement procedures for testing raw milk for retail to include: added water, antibiotics, pesticides, and/or other adulterants shall be the same as those used for raw milk for Grade A.

2. The requirements, standards, and enforcement procedures for testing for Somatic Cell Count (SCC) in raw milk for retail, shall be that the Somatic Cell Count shall not exceed 350,000 cells per milliliter (ml).

3. The requirements, standards, and enforcement procedures for testing for bacteria and coliform shall be the same as those prescribed for Grade A pasteurized milk. The bacterial standard shall be a Standard Plate Count (SPC) of no more than 20,000 per ml.; Coliform count shall not exceed 10 per ml.

B. Animal Health Tests.

1. General herd health examination. Prior to inclusion in a raw milk supply, and each six months thereafter, all animals shall be examined by a veterinarian. Each animal in the herd must be positively identified as an individual. This examination shall include an examination of the milk by the California Mastitis Test (CMT), shall include a statement of the udder health of each animal, and a general systemic health evaluation.

2. Tuberculosis testing. Prior to inclusion in a raw milk supply, each animal shall have been tested for tuberculosis within 60 days prior to the beginning of milk production and shall be retested for tuberculosis once each year thereafter. All positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11.

3. Brucellosis testing. Each animal from which raw milk for retail is produced shall be positively identified as a properly vaccinated animal or shall be negative to the official blood test for brucellosis within 30 days prior to the beginning of each lactation. All positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11. Goats and sheep shall be tested once each year for brucellosis with the official blood test and all positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11.

4. Bulk tank milk testing. All raw milk for retail shall be bulk tank tested at least four times yearly with the brucella milk ring test. If such brucella ring test is positive for brucellosis, then each animal in the herd shall be tested with the official blood test and any reactors found shall be immediately sent to slaughter in accordance with R58-10 and R58-11.

C. Personnel Health.

Each employee of the dairy working in the milk handling operation shall obtain a valid medical examination health card signed by a physician and approved by the department once each year or shall hold a valid food handler's permit. No person shall work in a milk handling operation if infected from any contagious illness or if they have on their hands or arms any exposed infected cut or lesion. If there is any question in this regard, the department may ask for an additional certification from a physician that this person is free from disease which may be transmitted by milk.

R70-330-7. Packaging and Labeling.

A. Label Requirements.

The consumer containers for raw milk for retail shall be furnished by the permittee and shall be labeled with the following information:

1. The common or usual name of the product without grade designation. The common name for raw milk is "Raw Milk". If it is other than cow's milk, the word "milk" shall be preceded with the name of the animal, i.e., "Raw Goat Milk".

2. The name, address, and zip code of the place of production and packaging.

3. Proper indication of the volume of the product either on the container itself or on the label.

4. Nutritional labeling information when applicable.

5. The phrase: "Studies have established a direct causal link between gastrointestinal disease and the consumption of raw milk. Raw milk, no matter how carefully produced, may be unsafe.", shall appear on the label in a conspicuous place. The height of the smallest letter shall be no less than one sixteenth inch.

6. Other provisions of labeling laws in effect in Utah as they apply to dairy/food products.

B. Products not labeled as required shall be deemed misbranded.

KEY: food inspection
June 2, 2004 4-3-2
Notice of Continuation August 24, 2001

R152. Commerce, Consumer Protection.
R152-21. Credit Services Organizations Act Rules.
R152-21-1. Purpose.

The purpose of this rule is to clarify the legal mandates and prohibitions of Section 13-21-3.

R152-21-2. Definitions.

The definitions set forth in Section 13-21-2, as well as the following supplementary definitions, shall be used in construing the meaning of this rule.

(1) "Challenge" means any act performed by a credit services organization for the purpose of facilitating the disputation, by any person, of an entry appearing on the buyer's credit report.

(2) "Credit report" means any document prepared by a credit reporting agency showing the credit-worthiness, credit standing, or credit capacity of the buyer.

(3) "Inaccurate information" means data affected by typographical errors and other similar inadvertent technical faults which create a reasonable doubt about the reliability of such data.

(4) "Material error" means false or misleading information that could reasonably affect a decision to extend or deny credit to the buyer. "Accurate" information contains no material errors.

(5) "Material omission" means missing information that could reasonably affect a decision to extend or deny credit to the buyer. "Complete" information contains no material omissions.

(6) "Outdated information" means information that should not appear on the buyer's credit report because of its age. How long a given entry may remain on a credit report is determined by applicable state and federal law. Information which is not outdated is "timely."

(7) "Unverifiable information" means an entry on a credit report lacking sufficient supporting evidence to convince a reasonable person that it is proper. Information which is not unverifiable is "verifiable".

R152-21-3. Factual Basis for Credit Report Challenges.

(1) A credit services organization shall not challenge an entry made on the buyer's credit report without first having a factual basis for believing that the entry contains a material error or omission, or outdated, inaccurate, or unverifiable information.

(2) A credit services organization has a factual basis for challenging an entry on the buyer's credit report only when it:

(a) has received a written statement from the buyer identifying any entry on his credit report that he believes contains a material error or omission, or outdated, inaccurate, or unverifiable information;

(b) has conducted an investigation to determine if the information in the buyer's written statement is correct; and

(c) has concluded in good faith, based upon the results of its investigation, that the buyer's credit report contains one or more material errors or omissions, or outdated, inaccurate, or unverifiable information.

(3) In connection with any investigation undertaken pursuant to this rule, a credit services organization shall:

(a) contact the person who provided the information in question to the credit reporting agency and give him a reasonable opportunity to demonstrate the accuracy, completeness, timeliness, and verifiability of such information;

(b) memorialize, in writing and in detail, the results of the investigation; and

(c) retain the investigative report for not less two years after it is completed.

R152-21-4. Fraudulent Practices.

It shall be a violation of Section 13-21-3 for a credit services organization to do any of the following:

(1) to state or imply that it can permanently remove from a buyer's credit report an accurate, complete, timely, and verifiable entry;

(2) to challenge an entry on a buyer's credit report without a factual basis for believing the entry contains a material error or omission, or outdated, inaccurate, or unverifiable information; or

(3) to challenge an entry on a credit report for the purpose of temporarily denying accurate, complete, timely, and verifiable information to any person about the credit-worthiness, credit standing, or credit capacity of the buyer.

KEY: credit services, consumer, protection
1994 13-2-5
Notice of Continuation June 15, 2004

R156. Commerce, Occupational and Professional Licensing.
R156-44a. Nurse Midwife Practice Act Rules.
R156-44a-101. Title.

These rules are known as the "Nurse Midwife Practice Act Rules."

R156-44a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 44a, as used in Title 58, Chapters 1 and 44a or these rules:

(1) "Approved certified nurse midwifery education program" means an educational program which is accredited by the American College of Nurse Midwives.

(2) "CNM" means a certified nurse midwife.

(3) "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.

(4) "Direct supervision" as used in Section 58-44a-305 means that the person providing supervision shall be available on the premises at which the supervisee or consultee is engaged in practice.

(5) "Generally recognized scope and standards of nurse midwifery" means the scope and standards of practice set forth in the "Core Competencies for Basic Midwifery Practice", May 1997, and the "Standards for the Practice of Nurse-Midwifery", August 1993, published by the American College of Nurse Midwives which are hereby adopted and incorporated by reference, or as established by the professional community.

(6) "Supervision" in Section R156-44a-601 means the provision of guidance or direction, evaluation and follow up by the certified nurse midwife for accomplishment of tasks delegated to unlicensed assistive personnel or other licensed individuals.

(7) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 44a, is further defined in Section R156-44a-502.

R156-44a-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 44a.

R156-44a-104. Organization - Relationship to Rule R156-1.

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

R156-44a-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-44a-302(5), the examination required for licensure is the national certifying examination administered by the American College of Nurse Midwives Certification Council, Inc.

R156-44a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 44a is established by rule in Section R156-1-308.

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

(3) Each applicant for licensure renewal shall hold a valid certification from the American College of Nurse Midwives Certification Council, Inc.

R156-44a-305. Inactive Licensure.

(1) A licensee may apply for inactive licensure status in accordance with Sections 58-1-305 and R156-1-305.

(2) To reactivate a license which has been inactive for five years or less, the licensee must document current compliance with the continuing competency requirements as established in Subsection R156-44a-303(3).

(3) To reactivate a license which has been inactive for more than five years, the licensee must document one of the following:

(a) active licensure in another state or jurisdiction;

(b) completion of a refresher program approved by the American College of Nurse Midwives; or

(c) passing score on the required examinations as defined in Section R156-44a-302 within six months prior to making application to reactivate a license.

R156-44a-402. Administrative Penalties.

In accordance with Subsections 58-44a-102(1) and 58-44a-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in practice as a CNM or RN when not licensed or exempt from licensure: initial offense: $2,000 - $5,000
subsequent offense(s): $5,000 - $10,000

(2) Representing oneself as a CNM or RN when not licensed:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(3) Using any title that would indicate that one is licensed under this chapter:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(4) Practicing or attempting to practice nursing without a license or with a restricted license:
initial offense: $2,000 - $5,000
subsequent offense(s): $5,000 - $10,000

(5) Impersonating a licensee or practicing under a false name:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(6) Knowingly employing an unlicensed person:
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000

(7) Knowingly permitting the use of a license by another person:
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000

(8) Obtaining a passing score, applying for or obtaining a license, or otherwise dealing with the division or board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(9) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating nurse midwifery:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(10) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(11) Engaging in conduct that results in convictions or, or a plea of nolo contendere to a crime of moral turpitude or other crime:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(12) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(13) Engaging in conduct, including the use of intoxicants, drugs to the extent that the conduct does or may impair the ability to safely engage in practice as a CNM:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(14) Practicing or attempting to practice as a CNM when physically or mentally unfit to do so:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(15) Practicing or attempting to practice as a CNM through gross incompetence, gross negligence, or a pattern of incompetency or negligence:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(16) Practicing or attempting to practice as a CNM by any form of action or communication which is false, misleading, deceptive, or fraudulent:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(17) Practicing or attempting to practice as a CNM beyond the individual's scope of competency, abilities, or education:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(18) Practicing or attempting to practice as a CNM beyond the scope of licensure:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(20) Disregarding for a patient's dignity or right to privacy as to his person, condition, possessions, or medical record:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(21) Engaging in an act, practice, or omission which does or could jeopardize the health, safety, or welfare of a patient or the public:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(22) Failing to confine one's practice to those acts permitted by law:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(23) Failure to file or impeding the filing of required reports:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(24) Breach of confidentiality:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000
(25) Failure to pay a penalty:
Double the original penalty amount up to $10,000
(26) Prescribing a Schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:
initial offense: $500 - $1,000
subsequent offense(s): $500 - $2,000
(27) Any other conduct which constitutes unprofessional or unlawful conduct:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

R156-44a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:
(1) failure to abide by the "Code of Ethics for Certified Nurse-Midwives", May 1990, published by the American College of Nurse Midwives which is hereby adopted and incorporated by reference.

R156-44a-601. Delegation of Nursing Tasks.

In accordance with Subsection 58-44a-102(11), the delegation of nursing tasks is further defined, clarified, or established as follows:
(1) The nurse delegating tasks retains the accountability for the appropriate delegation of tasks and for the nursing care of the patient/client. The licensed nurse shall not delegate any task requiring the specialized knowledge, judgment and skill of a licensed nurse to an unlicensed assistive personnel. It is the licensed nurse who shall use professional judgment to decide whether or not a task is one that must be performed by a nurse or may be delegated to an unlicensed assistive personnel. This precludes a list of nursing tasks that can be routinely and uniformly delegated for all patients/clients in all situations. The decision to delegate must be based on careful analysis of the patient's/client's needs and circumstances.
(2) The licensed nurse who is delegating a nursing task shall:
(a) verify and evaluate the orders;
(b) perform a nursing assessment;
(c) determine whether the task can be safely performed by an unlicensed assistive personnel or whether it requires a licensed health care provider;
(d) verify that the delegatee has the competence to perform the delegated task prior to performing it;
(e) provide instruction and direction necessary to safely perform the specific task; and
(f) provide ongoing supervision and evaluation of the delegatee who is performing the task.
(3) The delegator shall evaluate the situation to determine the degree of supervision required to ensure safe care.
(a) The following factors shall be evaluated to determine the level of supervision needed:
(i) the stability of the condition of the patient/client;
(ii) the training and capability of the delegatee;
(iii) the nature of the task being delegated; and
(iv) the proximity and availability of the delegator to the delegatee when the task will be performed.
(b) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication. The delegator responsible for the care of the patient/client shall make supervisory visits at appropriate intervals to:
(i) evaluate the patient's/client's health status;
(ii) evaluate the performance of the delegated task;
(iii) determine whether goals are being met; and
(iv) determine the appropriateness of continuing delegation of the task.
(4) Nursing tasks, to be delegated, shall meet the following criteria as applied to each specific patient/client situation:
(a) be considered routine care for the specific patient/client;
(b) pose little potential hazard for the patient/client;
(c) be performed with a predictable outcome for the patient/client;
(d) be administered according to a previously developed plan of care; and
(e) not inherently involve nursing judgment which cannot be separated from the procedure.
(5) If the nurse, upon review of the patient's/client's condition, complexity of the task, ability of the unlicensed assistive personnel and other criteria as deemed appropriate by the nurse, determines that the unlicensed assistive personnel cannot safely provide care, the nurse shall not delegate the task.

KEY: licensing, midwifery, certified nurse midwife*
July 5, 2001 **58-1-106(1)**
Notice of Continuation June 10, 2004 **58-1-202(1)**
58-44a-101

R156. Commerce, Occupational and Professional Licensing.
R156-46a. Hearing Instrument Specialist Licensing Act Rules.
R156-46a-101. Title.

These rules are known as the "Hearing Instrument Specialist Licensing Act Rules."

R156-46a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 46a, as used in Title 58, Chapters 1 and 46a or these rules:

(1) "Analog" means a continuous variable physical signal.

(2) "Digital" means using or involving numerical digits, expressed in a scale of notation to represent discreetly all variables occurring.

(3) "Programmable" means the electronic technology in the hearing instrument can be modified independently.

(4) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 46a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-46a-502.

R156-46a-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58 Chapter 46a.

R156-46a-104. Organization - Relationship to Rule R156-1.

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

R156-46a-302a. Qualifications for Licensure - Hearing Instrument Specialist Certification Requirement.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), an applicant shall submit a notarized copy of his current certificate documenting National Board for Certification in Hearing Instrument Sciences (NBC) to satisfy the certification requirement for licensure as a hearing instrument specialist in Subsection 58-46a-302(1)(e).

R156-46a-302b. Qualifications for Licensure - Hearing Instrument Specialist Experience Requirement.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the experience requirement for licensure as a hearing instrument specialist in Subsection 58-46a-302(1)(d) is defined and clarified as follows.

An applicant shall document successful completion of 4000 hours of acceptable practice as a hearing instrument intern by submitting a notarized Completion of Internship form provided by the division.

R156-46a-302c. Qualifications for Licensure - Passing Score for Utah Law and Rules Examination.

In order to pass the Utah Law and Rules Examination for Hearing Instrument Specialists, an applicant as a hearing instrument specialist or hearing instrument intern shall achieve a score of at least 75%.

R156-46a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 46a is established by rule in Section R156-1-308.

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

R156-46a-304. Continuing Education.

In accordance with Subsection 58-46a-304, the continuing education requirement for renewal of licensure as a hearing instrument specialist is defined and clarified as follows:

(1) Continuing education courses shall be offered in the following areas:

(a) acoustics;

(b) nature of the ear (normal ear, hearing process, disorders of hearing);

(c) hearing measurement;

(d) hearing aid technology;

(e) selection of hearing aids;

(f) marketing and customer relations;

(g) client counseling;

(h) ethical practice;

(i) state laws and regulations regarding the dispensing of hearing aids; and

(j) other areas deemed appropriate by the Division in collaboration with the Board.

(2) Only contact hours from the American Speech-Language-Hearing Association (ASHA) or the International Hearing Society (IHS) shall be applied towards meeting the minimum requirements set forth in Subsection R156-46a-304(4).

(3) As verification of contact hours earned, the Division will accept copies of transcripts or certificates of completion from continuing education courses approved by ASHA or IHS.

(4) A minimum of 20 contact hours shall be obtained by a hearing instrument specialist in order to have the license renewed every two years.

R156-46a-502a. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any state or federal law applicable to persons practicing as a hearing instrument specialist or hearing instrument intern;

(2) failure to perform the minimum components of an evaluation for a hearing aid as set forth in Section R156-46a-502b;

(3) aiding or abetting any person other than a Utah licensed hearing instrument specialist, a licensed hearing instrument intern, a licensed audiologist, or a licensed physician to perform a hearing aid examination;

(4) dispensing a hearing aid without the purchaser having:

(a) received a medical evaluation by a licensed physician within the preceding six months prior to the purchase of a hearing aid; or

(b) a document signed by the purchaser being a fully informed adult waiving the medical evaluation in accordance with Food and Drug Administration (FDA) required disclosures, except a person under the age of 18 years may not waive the medical evaluation;

(5) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or other representation, however disseminated or published, which is misleading, deceiving, or untruthful;

(6) quoting prices of competitive hearing instruments or devices without disclosing that they are not the current prices or to show, demonstrate, or represent competitive models as being current when such is not the fact;

(7) using the word digital in any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or other representation when the hearing instrument circuit is less than 100% digital, unless the word digital is accompanied by the word analog, as in "digitally programmable analog hearing aid";

(8) failure to perform a prepurchase hearing evaluation; or

(9) supervising more than two hearing instrument interns at one time.

R156-46a-502b. Minimum Components of an Evaluation for a Hearing Aid and Dispensing of a Hearing Aid.

(1) The minimum components of a hearing aid

examination are the following:

(a) air conduction tests at frequencies of 250, 500, 1000, 2000, and 4000 Hertz;

(b) appropriate masking if the air conduction threshold at any one frequency differs from the bone conduction threshold of the contralateral or nontest ear by 40 decibels at the same frequency;

(c) bone conduction tests at 500, 1000, and 2000 Hertz on every client with proper masking;

(d) speech audiometry by live voice or recorded voice, including speech discrimination testing, most comfortable loudness (MCL) measurements and measurements of uncomfortable levels of loudness (UCL); and

(e) recording and interpretation of audiograms and speech audiometry and other appropriate tests for the sole purpose of determining proper selection and adaptation of a hearing aid.

(2) Only when the above procedures are clearly impractical may the selection of the best instrument to compensate for the loss be made by trial of one or more instruments.

(3) Tests performed by a physician specializing in diseases of the ear, a clinical audiologist or another licensed hearing instrument specialist shall be accepted if they were performed within six months prior to the dispensing of the hearing aid.

R156-46a-502c. Calibration of Technical Instruments.

The requirement in Subsection 58-46a-303(3)(c) for calibration of all appropriate technical instruments used in practice is defined, clarified, and established as follows:

(1) any audiometer used in the fitting of hearing aids shall be calibrated when necessary, but not less than annually;

(2) the calibration shall include to ANSI standards calibration of frequency accuracy, acoustic output, attenuator linearity, and harmonic distortion; and

(3) calibration shall be accomplished by the manufacturer, or a properly trained person, or an institution of higher learning equipped with proper instruments for calibration of an audiometer.

KEY: licensing, hearing aids

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Notice of Continuation June 24, 2004	**58-1-202(1)**
	58-46a-101
	58-46a-304

R156. Commerce, Occupational and Professional Licensing.
R156-47b. Massage Therapy Practice Act Rules.
R156-47b-101. Title.

These rules are known as the "Massage Therapy Practice Act Rules."

R156-47b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 47b, as used in Title 58, Chapters 1 and 47b, or these rules:

(1) "COMTA" means the Commission on Massage Therapy Accreditation.

(2) "Direct supervision" as used in Subsection 58-47b-302(3)(d) means that the apprentice supervisor is in the facility where massage is being performed and is immediately available to the apprentice for advice, direction and consultation while the apprentice is engaged in performing massage.

(3) "Lymphatic massage" as used in Subsections 58-47b-302(4) and 58-47b-304(1)(i) means a method using light pressure applied by the hands to the skin in specific maneuvers to promote drainage of the lymphatic fluid from the tissue.

(4) "NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 47b, is further defined, in accordance with Subsection 58-1-203(5) in Section R156-47b-502.

R156-47b-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 47b.

R156-47b-104. Organization - Relationship to Rule R156-1.

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

R156-47b-202. Massage Therapy Education Peer Committee.

(1) There is created under Subsection 58-1-203(1)(f), the Massage Therapy Education Peer Committee.

(a) The Education Peer Committee shall:

(i) advise the Utah Board of Massage Therapy regarding massage therapy educational issues;

(ii) recommend to the Board standards for massage school curriculums, apprenticeship curriculums, and animal massage training; and

(iii) periodically review the current curriculum requirements.

(b) The composition of this committee shall be:

(i) two individuals who are instructors in massage therapy;

(ii) two individuals, one who represents a professional massage therapy association, and one who represents the Utah Committee of Bodywork Schools; and

(iii) one individual from the Utah State Office of Education.

R156-47b-302a. Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards - Equivalent Education and Training.

(1) In accordance with Subsection 58-47b-302(2)(e)(i)(A), an applicant must graduate from a school of massage with a curriculum, which at the time of graduation, meets the following standards:

(a) curriculums must be registered with the Utah Department of Commerce, Division of Consumer Protection or an accrediting agency recognized by the United States Department of Education.

(b) Curriculums shall be not less than 600 hours and including the following:

(i) anatomy, physiology and pathology;

(ii) massage theory including the five basic strokes;

(iii) ethics;

(iv) safety and sanitation;

(v) clinic or practicum; and

(vi) other related massage subjects as approved by the Division in collaboration with the Board.

(2) In accordance with Subsection 58-47b-302(2)(e)(i)(B), an applicant who completes equivalent education and training must document that the education and training was approved by NCBTMB as evidenced by current NCBTMB certification.

R156-47b-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-47b-302(2)(f) and 58-47b-302(3)(f), the examination requirements for licensure are defined, clarified, or established as follows:

(1) Applicants for licensure as a massage therapist shall:

(a) pass the Utah Massage Law and Rule Examination; and

(b) pass the NCBTMB National Certification Examination.

(2) Applicants for licensure as a massage therapist who have completed a "Utah Massage Apprenticeship" must:

(a) pass the Utah Massage Theory Exam.

(3) Applicants for licensure as a massage apprentice shall:

(a) pass the Utah Massage Law and Rule Examination.

R156-47b-302c. Apprenticeship Standards for a Supervisor.

In accordance with Subsection 58-47b-302(2)(e)(ii), an apprentice supervisor shall:

(1) not begin an apprenticeship program until:

(a) the apprentice is licensed; and

(b) the supervisor is approved by the division;

(2) not begin a new apprenticeship program until:

(a) the apprentice being supervised becomes licensed as a massage therapist, unless otherwise approved by the division in collaboration with the board; and

(b) the supervisor complies with subsection (1);

(3) supervise not more than two apprentices at one time, unless otherwise approved by the division in collaboration with the board;

(4) train the massage apprentice in the areas of:

(a) massage theory - 50 hours;

(b) massage client service - 300 hours;

(c) hands on instruction - 325 hours;

(d) massage techniques - 120 hours;

(e) anatomy, physiology and pathology - 150 hours;

(f) business practices - 25 hours;

(g) ethics - 15 hours; and

(h) safety and sanitation - 15 hours.

(5) display a conspicuous sign near the work station of the apprentice stating "Apprentice in Training";

(6) keep a daily record which shall include the hours of instruction and training completed, the hours of client services performed, and the number of hours of training completed;

(7) make available to the division upon request, the apprentice's training records;

(8) verify the completion of the apprenticeship program on forms available from the division;

(9) notify the division within ten working days if the apprenticeship program is terminated; and

(10) must not have been disciplined for any unprofessional or unlawful conduct within five years of the start of any apprenticeship program.

R156-47b-302d. Good Moral Character - Disqualifying Convictions.

(1) When reviewing an application to determine the good moral character of an applicant as set forth in Subsection 58-

47b-302(2)(c) and whether the applicant has been involved in unprofessional conduct as set forth in Subsections 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Part 12 and 13, shall disqualify an applicant from becoming licensed; or

(b) a criminal conviction for the following crimes may disqualify an applicant for becoming licensed:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;

(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;

(iii) any offense involving controlled dangerous substances; or

(iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may not be considered eligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may not be considered eligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may not be considered eligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

R156-47b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 47b is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Sections R156-1-308c through R156-1-308e.

R156-47b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in any lewd, indecent, obscene or unlawful behavior while acting as a massage therapist;

(2) as an apprentice supervisor, failing to provide direct supervision to a massage apprentice;

(3) as an apprentice supervisor, failing to provide and document adequate instruction or training as applicable;

(4) as an apprentice supervisor, advising, directing or instructing an apprentice in any instruction or behavior that is inconsistent, contrary or contradictory to established professional or ethical standards of the profession;

(5) failing to notify a client of any health condition the licensee may have that could present a hazard to the client; and

(6) failure to use appropriate draping procedures to protect the client's personal privacy.

R156-47b-601. Standards for Animal Massage Training.

In accordance with Subsection 58-28-8(12)(c), a massage therapist practicing animal massage shall have received 60 hours of training in the following areas:

(1) quadruped anatomy;

(2) the theory of quadruped massage; and

(3) supervised quadruped massage experience.

KEY: licensing, massage therapy

June 7, 2004	**58-1-106(1)(a)**
Notice of Continuation February 26, 2001	**58-1-202(1)(a)**
	58-47b-101

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

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

R156-55b-102. Definitions.

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

(1) "Electrical work" as used in Subsection 58-55-102(13)(a) and in these rules means installation, fabrication or assembly of equipment or systems included in "Premises Wiring" as defined in the edition of the National Electrical Code, as identified in Subsection R156-56-701(1)(b) which is hereby adopted and incorporated by reference. Electrical work includes installation of raceway systems used for any electrical purpose, and installation of field-assembled systems such as ice and snow melting, pipe-tracing, manufactured wiring systems, and the like. Electrical work does not include installation of factory-assembled appliances or machinery that are not part of the premises wiring unless wiring interconnections external to the equipment are required in the field, and does not include cable-type wiring that does not pose a hazard from a shock or fire initiation standpoint as defined in the National Electrical Code. Wiring covered by the National Electrical Code that does not pose a hazard as described above includes Class 2 wiring as defined in Article 725, Power-Limited circuits as defined in Article 760 and wiring methods covered by Chapter 8. Other wiring, including wiring under 50 volts is subject to licensing requirements.

(2) "Minor electrical work incidental to a mechanical or service installation" as used in Subsection 58-55-305(1)(n) means the electrical work involved in installation, replacement or repair of appliances or machinery that utilize electrical power. These installations do not include modification or repair of "Premises Wiring" as defined in the National Electrical Code. Electrical work is minor and incidental only when wiring is extended no more than ten feet in length from an outlet or disconnect provided specifically for the piece of equipment.

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

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

(5) "Work commonly done by unskilled labor" as used in Subsection 58-55-102(13)(b)(iii) means work such as digging, sweeping, hammering, carrying, drilling holes, or other tasks that do not directly involve the installation of raceways, conductors, cables, wiring devices, overcurrent devices, or distribution equipment. Tasks such as handling wire on large wire pulls or assisting in moving heavy electrical equipment may utilize unlicensed persons in accordance with Subsections 58-55-102(11)(b)(i) and (ii) when the task is performed in the immediate presence of and supervised by properly licensed persons. Tasks that are normally performed by the skilled labor of other trades, such as operating heavy equipment, driving, forming and pouring concrete, welding and erecting structural steel shall not be considered part of the electrical trade.

R156-55b-103. Authority.

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

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

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

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

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

(a) Utah Electrical Licensing Examination for Master Electricians;

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

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

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

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

(3) If an applicant passes any one section of the examination and fails any one or more of the other sections, he is only required to retake the section of the examination failed. There must be a minimum of 30 days between the first test and the retake of any failed section. Test approval letters expire six months from the date of issue. Reapplication for licensure is required to obtain a new test authorization letter.

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

(5) An examinee who fails any section of the Utah Electricians Licensing Examination two times shall not be permitted to retake the examination until:

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

(b) upon successful completion of the required remedial program of education or experience, the examinee shall apply to the Division to retake the failed portion of the examination a maximum of two times with at least 30 days between tests. Failure to pass all required portions of the examination upon retake shall result in denial of their application for licensure. An applicant continuing to seek licensure must reapply for licensure by filing a new application with the required fee and may do so only after completing additional remedial education and experience as determined by the Division and the Board.

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

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

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

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

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

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

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

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

is deemed substantially equivalent.

(4) It shall be the responsibility of the applicant to provide adequate documentation to establish equivalency.

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

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

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

(a) approximately 3000-4800 hours residential journeyman electrician; 4000-6400 hours journeyman electrician in raceways, boxes and fittings, wire and cable to include conduit, wireways, cableways and other raceways and associated fittings, individual conductors and multiconductor cables, and nonmetallic-sheathed cable;

(b) approximately 600-1200 hours residential journeyman electrician; 800-1600 hours journeyman electrician in wire and cable to include individual conductors and multi-conductor cables;

(c) approximately 300-900 hours residential journeyman electrician; 400-1200 hours journeyman electrician in distribution and utilization equipment to include transformers, panel boards, switchboards, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motors, and other distribution and utilizations equipment; and

(d) approximately 300-900 hours residential journeyman electrician; 400-1200 hours journeyman electrician in specialized work to include grounding, wiring of systems for sound, data, communications, alarms, automated systems, generators, batteries, computer equipment, etc.

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

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

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

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

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

R156-55b-304. Continuing Education.

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

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

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

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

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

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

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

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

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

(iii) the licensing agency of another state;

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

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

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

R156-55b-401. Scope of Practice.

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

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

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

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

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

R156-55b-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failure of a licensee to carry a copy of their current license at all times when performing electrical work; and

(2) failure of an electrical contractor to certify an apprentice's hours and breakdown of work experience by category when requested by an apprentice that is or has been an employee.

KEY: occupational licensing, licensing, contractors, electricians

June 15, 2004	**58-1-106(1)(a)**
Notice of Continuation January 7, 2002	**58-1-202(1)(a)**
	58-55-308(1)

R156. Commerce, Occupational and Professional Licensing.
R156-61. Psychologist Licensing Act Rules.
R156-61-101. Title.

These rules are known as the "Psychologist Licensing Act Rules."

R156-61-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 61, as used in Title 58, Chapters 1 and 61 or these rules:

(1) "Approved diagnostic and statistical manual for mental disorders" means the "Diagnostic and Statistical Manual of Mental Disorders", 4th edition, published by the American Psychiatric Association, or the ICD-10-CM published by Medicode or the American Psychiatric Association.

(2) "Qualified faculty", as used in Subsection 58-1-307(b), means that university faculty member providing pre-doctoral supervision of clinical or counseling experience, that is experience in a university setting which is acquired prior to the pre-doctoral internship, who is licensed in Utah as a psychologist and who is training students in the context of a doctoral program leading to license eligibility. Qualified faculty does not include adjunct faculty. The qualified faculty supervisor must be legally able to personally provide the services which he is supervising. The qualified faculty supervisor must meet all other requirements for supervision as described in Section R156-61-302e. This provision does not allow such qualified faculty supervisors to provide supervision of hours needed for license eligibility, such as internship and post doctoral experience, unless the supervisor is otherwise qualified according to Section R156-61-302d. Supervisors in settings other than a university setting as described in this subsection must meet all requirements for supervisors as described in Sections R156-61-302d and R156-61-302e.

(3) "Residency program", as used in Subsection 58-61-301(1)(b), means a program of post-doctoral supervised clinical training necessary to meet licensing requirements as a psychologist.

R156-61-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 61.

R156-61-104. Organization - Relationship to Rule R156-1.

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

R156-61-201. Advisory Peer Committee Created - Membership - Duties.

(1) There is hereby enabled in accordance with Subsection 58-1-203(6), the Ethics Committee as an advisory peer committee to the Psychology Licensing Board on either a permanent or ad hoc basis consisting of members licensed in good standing as psychologists qualified to engage in the practice of mental health therapy, in number and area of expertise necessary to fulfill the duties and responsibilities of the committee as set forth in Subsection (3).

(2) The committee shall be appointed and serve in accordance with Section R156-1-204.

(3) The duties and responsibilities of the committee shall include assisting the division in its duties, functions, and responsibilities defined in Section 58-1-203 as follows:

(a) upon the request of the division, review reported violations of Utah law or the standards and ethics of the profession by a person licensed as a psychologist and advise the division if allegations against or information known about the person presents a reasonable basis to initiate or continue an investigation with respect to the person;

(b) upon the request of the division provide expert advice to the division with respect to conduct of an investigation; and

(c) when appropriate serve as an expert witness in matters before the division.

R156-61-302a. Qualifications for Licensure - Education Requirements.

(1) An institution or program of higher education, or a degree qualifying an applicant for licensure as a psychologist, to be recognized by the division in collaboration with the board under Subsection 58-61-304(1)(d), shall be accredited by the Committee on Accreditation of the American Psychological Association or meet the following criteria:

(a) if located in the United States or Canada, be accredited by a professional accrediting body approved by the Council for Higher Education of the American Council on Education, at the time the applicant received the required earned degree; or

(b) if located outside of the United States or Canada, be equivalent to an accredited program under Subsection (a), and the burden to demonstrate equivalency shall be upon the applicant; and

(c) result from successful completion of a program conducted on or based on a formal campus;

(d) result from a program which includes at least one year of residence at the educational institution;

(e) if located in the United States or Canada, be an institution having a doctoral psychology program meeting "Designation" criteria, as recognized by the Association of State and Provincial Psychology Boards/National Register Joint Designation Committee, at the time the applicant received the earned degree, or if located outside of the United States or Canada, meet the same criteria by which a program is recognized by the Association of State and Provincial Psychology Boards at the time the applicant received the earned degree;

(f) have an organized sequence of study to provide an integrated educational experience appropriate to preparation for the professional practice of psychology, and shall clearly identify those persons responsible for the program with clear authority and responsibility for the core and specialty areas regardless of whether or not the program cuts across administrative lines in the educational institution;

(g) clearly identify in catalogues or other publications the psychology faculty, demonstrate that the faculty is sufficient in number and experience to fulfill its responsibility to adequately educate and train professional psychologists, and demonstrate that the program is under the direction of a professionally trained psychologist;

(h) grant earned degrees resulting from a program encompassing a minimum of three academic years of full time graduate study with an identifiable body of students who are matriculated in the program for the purpose of obtaining a doctoral degree;

(i) include supervised practicum, internship, and field or laboratory training appropriate to the practice of psychology;

(j) require successful completion of a minimum of two semester/three quarter hour graduate level core courses including:

(i) scientific and professional ethics and standards;

(ii) research design and methodology;

(iii) statistics; and

(iv) psychometrics including test construction and measurement;

(k) require successful completion of a minimum of two graduate level semester hours/three graduate level quarter hours in each of the following knowledge areas. Course work must have a theoretical focus as opposed to an applied, clinical focus:

(i) biological bases of behavior such as physiological psychology, comparative psychology, neuropsychology, psychopharmacology, perception and sensation;

(ii) cognitive-affective bases of behavior such as learning, thinking, cognition, motivation and emotion;

(iii) social and cultural bases of behavior such as social psychology, organizational psychology, general systems theory, and group dynamics; and

(iv) individual differences such as human development, personality theory and abnormal psychology.

(l) require successful completion of specialty course work and professional education courses necessary to prepare the applicant adequately for the practice of psychology.

(2) An applicant who has received a doctoral degree in psychology by completing the requirements of Subsections (1)(a) through (i), without completing the core courses required under Subsection (j), or the specialty course work required in Subsection (l) may be allowed to complete the required course work post-doctorally. The supplemental course work shall consist of formal graduate level work meeting the requirements of Subsections (j) and (l) in regularly offered and scheduled classes. University based directed reading courses may be approved at the discretion of the board.

(3) The date of completion of the doctoral degree shall be the graduation date or the date on which all formal requirements for graduation were met as certified by the university registrar.

R156-61-302b. Qualifications for Licensure - Experience Requirements.

(1) Psychology training of a minimum of 4,000 hours qualifying an applicant for licensure as a psychologist under Subsection 58-61-304(1)(e), and mental health therapy training under Subsection 58-61-304(1)(f), to be approved by the division in collaboration with the board, shall:

(a) be completed in not less than two years and in not more than four years unless otherwise approved by the board and division; and

(b) be completed while the applicant is under the supervision of a qualified psychologist meeting the requirements under Section R156-61-302d.

(2) In accordance with Subsection 58-61-301(1)(b), an individual engaged in a post-doctoral residency program of supervised clinical training shall be certified as a psychology resident.

(3) An applicant for licensure as a psychologist who has commenced and completed all or part of the psychology or mental health therapy training requirements under Subsection (1) outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to the requirements for training under Subsections 58-61-304(1)(e) and (f), and Subsection R156-61-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to the requirements under this Subsection.

R156-61-302c. Qualifications for Licensure - Examination Requirements.

(1) The examination requirements which must be met by an applicant for licensure as a psychologist under Subsection 58-61-304(1)(g) are:

(a) passing the Examination for the Professional Practice of Psychology (EPPP) developed by the American Association of State Psychology Board (ASPPB) with a passing score as recommended by the ASPPB; and

(b) passing the Utah Psychology Law Examination with a score of not less than 75%.

(2) A person may be admitted to the EPPP examination in Utah only after meeting the requirements under 58-61-305, and after receiving written approval from the division.

(3) If an applicant is admitted to an EPPP examination based upon substantive information that is incorrect and furnished knowingly by the applicant, the applicant shall automatically be given a failing score and shall not be permitted to retake the examination until the applicant submits fees and a correct application demonstrating the applicant is qualified for the examination. If an applicant is inappropriately admitted to an EPPP examination because of a division or board error and the applicant receives a passing score, the results of the examination may not be used for licensure until the deficiency which would have barred the applicant for admission to the examination is corrected.

(4) An applicant who fails the EPPP examination three times will not be allowed subsequent admission to the examination until the applicant has appeared before the board, developed with the board a plan of study in appropriate subject matter, and thereafter completed the planned course of study to the satisfaction of the board.

(5) An applicant who is found to be cheating on the EPPP examination or in any way invalidating the integrity of the examination shall automatically be given a failing score and shall not be permitted to retake the examination for a period of at least three years as is determined by the division in collaboration with the board.

(6) The Utah Psychology Law Examination may be taken only after an applicant has taken the EPPP examination.

R156-61-302d. Qualifications for Designation as an Approved Psychology Training Supervisor.

To be approved by the division in collaboration with the board as a supervisor of psychology or mental health therapy training required under Subsections 58-61-304(1)(e) and (f), an individual shall:

(1) be currently licensed in good standing as a psychologist in the jurisdiction in which the supervised training is being performed; and

(2) demonstrate practice as a licensed psychologist for not less that 4,000 hours in a period of not less than two years.

R156-61-302e. Duties and Responsibilities of a Supervisor of Psychology Training and Mental Health Therapist Training.

The duties and responsibilities of a psychologist supervisor are further defined, clarified or established as follows:

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

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

(3) supervise not more than 120 hours of supervised experience per week;

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

(5) comply with the confidentiality requirements of Section 58-61-602;

(6) provide timely and periodic review of the client records assigned to the supervisee;

(7) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of psychology;

(8) submit appropriate documentation to the division with respect to work completed by the supervisee evidencing the performance of the supervisee during the period of supervised psychology training and mental health therapist training,

including the supervisor's evaluation of the supervisee's competence in the practice of psychology and mental health therapy;

(9) ensure that the supervisee is certified by the Division as a psychology resident.

R156-61-302f. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 61, is established by rule in Section R156-1-308.

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

R156-61-302g. License Reinstatement - Requirements.

An applicant for reinstatement of his license after two years following expiration of that license shall be required to:

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

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4000 hours of psychology and/or mental health therapy training;

(3) pass the Utah Psychology Law Examination;

(4) pass the EPPP Examination if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a psychologist; and

(5) complete a minimum of 48 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a psychologist.

R156-61-302h. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed or certified under Title 58, Chapter 61.

(2) During each two year period commencing on October 1 of each even numbered year:

(a) a licensed psychologist shall be required to complete not less than 48 hours of qualified professional education directly related to the licensee's professional practice; or

(b) a certified psychology resident shall be required to complete not less than 24 hours of qualified professional education directly related to professional practice.

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

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a psychologist;

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

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

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

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

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

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

(b) a maximum of ten hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing education professional education courses in the field of psychology, or supervision of an individual completing his experience requirement for licensure as a psychologist;

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a psychologist;

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

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

R156-61-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violation of any provision of the "Ethical Principles of Psychologists and Code of Conduct" of the American Psychological Association (APA) as adopted by the APA, December 1992 edition, which is adopted and incorporated by reference;

(2) violation of any provision of the "ASPPB Code of Conduct" of the Association of State and Provincial Psychology Boards (ASPPB) as adopted by the ASPPB, 1991 edition, which is adopted and incorporated by reference;

(3) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-61-302d and R156-61-302e;

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

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

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

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

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

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

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

(11) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his

personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and that individual;

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

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

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

(15) exploiting a client for personal gain;

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

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

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

(19) failure to cooperate with the Division during an investigation

(20) participating in a residency program without being certified as a psychology resident; and

(21) supervising a residency program of an individual who is not certified as a psychology resident.

KEY: licensing, psychologists

June 1, 2001	**58-1-106(1)**
Notice of Continuation June 10, 2004	**58-1-202(1)**
	58-61-101

R162. Commerce, Real Estate.
R162-201. Residential Mortgage Definitions.
R162-201-1. Residential Mortgage Definitions.

As used in Section 61-2c-102(1) of the Utah Residential Mortgage Practices Act, "control" is defined as the power to directly or indirectly:

(a) direct or exercise a controlling influence over:

(i) the management or policies of an entity;

(ii) the election of a majority of the directors, officers, managers, or managing partners of an entity;

(b) vote 20% or more of any class of voting securities of an entity by an individual; or

(c) vote more than 5% of any class of voting securities of an entity by another entity.

KEY: residential mortgage loan origination
June 29, 2004 61-2c-103(3)

R162. Commerce, Real Estate.
R162-202. Initial Application.
R162-202-1. Licensing Examination.

202.1 Effective January 1, 2004, an individual applying for an initial license is required to have passed the licensing examination approved by the commission before making application to the division for a license.

202.1.1 All examination results are valid for 90 days after the date of the examination. If the applicant does not submit an application for licensure within 90 days after successful completion of the examination, the examination results shall lapse and the applicant shall be required to retake and successfully pass the examination again in order to apply for a license.

202.2 Form of Application. All applications must be made in the form required by the division and shall include the following information:

202.2.1 Any name under which the individual will transact business in this state;

202.2.2 The address of the principal business location of the applicant;

202.2.3 The home street address and home telephone number of any individual applicant or control person of an entity applicant;

202.2.4 A mailing address for the applicant;

202.2.5 The date of birth and social security number of any individual applicant or control person of an entity applicant;

202.2.6 Answers to a "Licensing Questionnaire" supplying information about present or past mortgage licensure in other jurisdictions, past license sanctions or surrenders, pending disciplinary actions, pending investigations, past criminal convictions or pleas, and/or civil judgments based on fraud, misrepresentation, or deceit;

202.2.7 A "Letter of Waiver" authorizing the division to obtain the fingerprints of the applicant or control person, review past and present employment and education records, and to conduct a criminal history background check;

202.2.8 If an individual applicant or a control person of an entity applicant has been convicted of any felonies or misdemeanors involving moral turpitude within the ten years preceding application, the charging document, the judgment and sentencing document, and the case docket on each such conviction must be provided with the application; and

202.2.9 If an individual or entity applicant or a control person of an entity applicant has had a license or registration suspended, revoked, surrendered, canceled or denied in the five years preceding application based on misconduct in a professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans, the documents stating the sanction taken against the license or registration and the reasons therefore must be provided with the application.

202.3 Incomplete Application. If an applicant for a license makes a good faith attempt to submit a completed application within 90 days after passing the examination, but the application is incomplete, the Division may grant an extension of the validity of the examination results for a period not to exceed 30 days to enable the applicant to provide the missing documents or information necessary to complete the application. Following the extension period, the application will be denied as incomplete if the applicant has not supplied the missing documents or information.

202.4 Nonrefundable fees. All fees required in conjunction with an application for a license are nonrefundable and will not be refunded if the applicant fails to complete an application or if a completed application is denied for failure to meet the licensing criteria.

202.5 Determining Fitness for Licensure.

202.5.1 Good Moral Character. The Commission and the Division will consider information necessary to determine whether an applicant for a license or the control person of an entity that has applied for a license meets the requirement of good moral character, which may include the following in addition to whether the individual has been convicted of a felony or misdemeanor involving moral turpitude in the ten years preceding the application:

(a) The circumstances that led to any criminal convictions considered by the Commission and the Division;

(b) The amount of time that has passed since the individual's last criminal conviction;

(c) Any character testimony presented at the hearing and any character references submitted by the individual;

(d) Past acts related to honesty or moral character involving the business of residential mortgage loans;

(e) Whether the individual has been guilty of dishonest conduct in the five years preceding the application that would have been grounds under Utah law for revocation or suspension of a registration or license had the individual then been registered or licensed;

(f) Whether a civil judgment based on fraud, misrepresentation, or deceit has been entered against the individual, or whether a finding of fraud, misrepresentation or deceit by the individual has been made in a civil suit, regardless of whether related to the residential mortgage loan business, and whether any money judgment has been fully satisfied;

(g) Whether fines and restitution ordered by a court in a criminal proceeding have been fully satisfied, and whether the individual has complied with court orders in the criminal proceeding;

(h) Whether a probation agreement, plea in abeyance, or diversion agreement entered into in a criminal proceeding in the ten years preceding the application has been successfully completed;

(i) Whether any tax and child support arrearages have been paid; and

(j) Whether there has been good conduct on the part of the individual subsequent to the individual's offenses.

202.5.2 Competency to Transact the Business of Residential Mortgage Loans. The Commission and the Division will consider information necessary to determine whether an applicant for a license or the control person of an entity that has applied for a license meets the requirement of competency to transact the business of residential mortgage loans, which shall include the following:

(a) Past acts related to competency to transact the business of residential mortgage loans;

(b) Whether a civil judgment involving the business of mortgage loans has been entered against the individual, and whether the judgment has been fully satisfied, unless the judgment has been discharged in bankruptcy;

(c) The failure of any previous mortgage loan business in which the individual engaged, and the reasons for any failure;

(d) The individual's management and employment practices in any previous mortgage loan business, including whether or not employees were paid the amounts owed to them;

(e) The individual's training and education in mortgage lending, if any was available to the applicant;

(f) The individual's training, education, and experience in the mortgage loan business or in management of a mortgage loan business, if any was available to the individual;

(g) A lack of knowledge of the Utah Residential Mortgage Practices Act on the part of the individual;

(h) A history of disregard for licensing laws;

(i) A prior history of drug or alcohol dependency within the last five years, and any subsequent period of sobriety; and

(j) Whether the individual has demonstrated competency in business subsequent to any past incompetence by the individual in the mortgage loan business.

202.5.3 Age. All applicants shall be at least 18 years old.

202.6 Conversion of Existing Registrations. In order to comply with Section 61-2c-201(1), the division shall convert all existing registrations to licenses on January 1, 2004. The licenses issued to individuals under the authority of this rule shall be issued subject to Section 61-2c-202(4)(a)(ii).

KEY: residential mortgage loan origination
June 29, 2004 61-2c-103(3)

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-1. Incorporation by Reference.

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan must be incorporated by reference into these rules. Copies of the Utah State Implementation Plan are available at the Utah Department of Environmental Quality, Division of Air Quality.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on July 3, 2002, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on September 9, 1998, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. (Reserved.)

Reserved.

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on June 5, 2002, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Involvement.

The Utah State Implementation Plan, Section XII,

Involvement, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. R307-110-26 Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on May 5, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program,, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on August 1, 2001, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, particulate matter, ozone
June 8, 2004 19-2-104(3)(e)
Notice of Continuation March 27, 2002

R307. Environmental Quality, Air Quality.
R307-215. Emission Standards: Acid Rain Requirements.
R307-215-1. Part 76 Requirements.

The provisions of 40 CFR Part 76, as in effect on December 19, 1996, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the executive secretary of the Air Quality Board, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 76 conflict with or are not included in R307-415, Operating Permit Requirements, provisions and requirements of 40 CFR Part 76 shall apply and take precedence.

KEY: acid rain, air quality, permitting authority*, operating permits*
September 15, 1998 19-2-101
Notice of Continuation June 8, 2004 19-2-104(3)(q)

R307. Environmental Quality, Air Quality.
R307-309. Davis, Salt Lake and Utah Counties, Ogden City and Any Nonattainment Area for PM10: Fugitive Emissions and Fugitive Dust.
R307-309-1. Applicability and Definitions.

(1) Applicability. R307-309 applies to all sources of fugitive dust and fugitive emissions located in Davis, Salt Lake and Utah Counties, Ogden City, and any nonattainment area for PM10, except as specified in (2) below. Any source located in those areas for which limitations for fugitive dust or fugitive emissions are assigned pursuant to R307-401 is subject to R307-309 on May 4, 1999, unless the source has an operating permit issued under R307-415 prior to that date. If the source has an operating permit, the source is subject to R307-309 on the date of permit renewal or permit reopening as specified in R307-415, whichever occurs first.

(2) Exemptions.

(a) The provisions of R307-309 do not apply to agricultural or horticultural activities.

(b) Any source which is subject to R307-305-2 through 7 or R307-307 is exempt from all provisions of R307-309 except for R307-309-4.

(c) Any source regulated by R307-205-5 or R307-205-6 is exempt from all provisions of R307-309 except for R307-309-4.

(3) The following additional definitions apply to R307-309:

"Material" means sand, gravel, soil, minerals or other matter which may create fugitive dust.

"Road" means any public or private road.

R307-309-2. Fugitive Emissions.

Fugitive emissions from any source shall not exceed 15% opacity.

R307-309-3. General Requirements for Fugitive Dust.

(1) Opacity caused by fugitive dust shall not exceed: (a) 10% at the property boundary; and (b) 20% on site unless an approval order issued under R307-401 or a dust control plan specifies a lower level; except when the wind speed exceeds 25 miles per hour and the owner or operator is taking appropriate actions to control fugitive dust. If the source has a dust control plan approved by the executive secretary, control measures in the plan are considered appropriate. Wind speed may be measured by a hand-held anemometer or equivalent device.

(2) Any source with a dust control plan approved by the executive secretary prior to March 4, 1999, shall review and revise the plan in accordance with R307-309-4 below. The revised plan shall be submitted to the executive secretary no later than May 4, 1999.

R307-309-4. Fugitive Dust Control Plan.

(1) Any person owning or operating a new or existing source of fugitive dust, including storage, hauling or handling operations or engaging in clearing or leveling of land one-quarter acre or greater in size, earthmoving, excavation, or movement of trucks or construction equipment over cleared land one-quarter acre or greater in size or access haul roads shall submit a plan to control fugitive dust to the executive secretary no later than 30 days after the source becomes subject to the rule. The plan shall address fugitive dust control strategies for the following operations as applicable:

(a) Material Storage;
(b) Material handling and transfer;
(c) Material processing;
(d) Road ways and yard areas;
(e) Material loading and dumping;
(f) Hauling of materials;
(g) Drilling, blasting and pushing operations;
(h) Clearing and leveling;
(i) Earth moving and excavation;
(j) Exposed surfaces;
(k) Any other source of fugitive dust.

(2) Strategies to control fugitive dust may include:

(a) Wetting or watering;
(b) Chemical stabilization;
(c) Enclosing or covering operations;
(d) Planting vegetative cover;
(e) Providing synthetic cover;
(f) Wind breaks;
(g) Reducing vehicular traffic;
(h) Reducing vehicular speed;
(i) Cleaning haul trucks before leaving loading area;
(j) Limiting pushing operations to wet seasons;
(k) Paving or cleaning road ways;
(l) Covering loads;
(m) Conveyor systems;
(n) Boots on drop points;
(o) Reducing the height of drop areas;
(p) Using dust collectors;
(q) Reducing production;
(r) Mulching;
(s) Limiting the number and power of blasts;
(t) Limiting blasts to non-windy days and wet seasons;
(u) Hydro drilling;
(v) Wetting materials before processing;
(w) Using a cattle guard before entering a paved road;
(x) Washing haul trucks before leaving the loading site; or
(y) Terracing.

(3) Each source shall comply with all provisions of the fugitive dust control plan as approved by the executive secretary.

R307-309-5. Storage, Hauling and Handling of Aggregate Materials.

Any person owning, operating or maintaining a new or existing material storage, handling or hauling operation shall prevent, to the maximum extent possible, material from being deposited onto any paved road other than a designated deposit site. Any such person who deposits materials which may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-6. Construction and Demolition Activities.

Any person engaging in clearing or leveling of land with an area of one-quarter acre or more, earthmoving, excavating, construction, demolition, or moving trucks or construction equipment over cleared land or access haul roads shall prevent, to the maximum extent possible, material from being deposited onto any paved road other than a designated deposit site. Any such person who deposits materials which may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-7. Roads.

(1) Any person responsible for construction or maintenance of any existing road or having right-of-way easement or possessing the right to use the same whose activities result in fugitive dust from the road shall minimize fugitive dust to the maximum extent possible. Any such person who deposits materials which may create fugitive dust on a public or private paved road shall clean the road promptly.

(2) Unpaved Roads.

(a) When unpaved roads have an average daily traffic volume of less than 150 vehicle trips per day, averaged over a consecutive 5-day period, fugitive dust shall be minimized to the maximum extent possible.

(b) When unpaved roads have an average daily traffic volume of 150 vehicle trips per day or greater, averaged over a

consecutive 5 day period, control techniques shall be used which are equal to or better than 2-inch bituminous surface.

(c) Any person responsible for construction or maintenance of any new or existing unpaved road shall prevent, to the maximum extent possible, the deposit of material from the unpaved road onto any intersecting paved road during construction or maintenance. Any person who deposits materials which may create fugitive dust on a public or private paved road shall clean the road promptly.

KEY: air pollution, dust*

May 4, 1999	**19-2-101**
Notice of Continuation June 8, 2004	**19-2-104**
	19-2-109

R307. Environmental Quality, Air Quality.
R307-343. Davis and Salt Lake Counties and Ozone Nonattainment Areas: Emissions Standards for Wood Furniture Manufacturing Operations.
R307-343-1. Purpose.

(1) The purpose of R307-343 is to limit volatile organic compound emissions from wood furniture manufacturing sources located in Davis and Salt Lake Counties and ozone nonattainment areas.

R307-343-2. Applicability.

Provisions of R307-343 apply to each wood furniture manufacturing source that is not an incidental wood furniture manufacturer, has the potential to emit 25 tons or more per year of volatile organic compounds and is located in Salt Lake County, Davis County, or any ozone nonattainment area.

R307-343-3. Definitions.

The following additional definitions apply to R307-343:

"Affected Source" means a wood furniture manufacturing source that meets the criteria in R307-343-2.

"Alternative Method" means any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but that has been demonstrated to the executive secretary's satisfaction to, in specific cases, produce results adequate for a determination of compliance.

"As Applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Basecoat" means a coat of colored material, usually opaque, that is applied before graining inks, glazing coats, or other opaque finishing materials, and is usually topcoated for protection.

"Capture Device" means a hood, enclosed room, floor sweep, or other means of collecting solvent emissions or other pollutants into a duct so that the pollutant can be directed to a pollution control device such as an incinerator or carbon adsorber.

"Capture Efficiency" means the fraction of all organic vapors generated by a process that is directed to a control device.

"Certified Product Data Sheet(CPDS)" means documentation furnished by a coating supplier or an outside laboratory that provides the volatile organic compound content by percent weight, the solids content by percent weight, and the density of a finishing material, strippable booth coating, or solvent, measured using EPA Method 24 or an equivalent or alternative method, or formulation data if the coating meets the criteria specified in R307-343-7(1). The purpose of the CPDS is to assist the affected source in demonstrating compliance with the emission limitations presented in Subsection R307-343-4.

"Cleaning Operations" means operations in which organic solvent is used to remove coating materials from equipment used in wood furniture manufacturing operations.

"Coating" means a protective, decorative, or functional material applied in a thin layer to a surface. Such materials may include paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, inks, and temporary protective coatings.

"Compliant Coating" means a finishing material or strippable booth coating that meets the emission limits specified in R307-343-4(1).

"Continuous Coater" means a finishing system that continuously applies finishing materials onto furniture parts moving along a conveyor system. Finishing materials that are not transferred to the part are recycled to the finishing material reservoir. Several types of application methods can be used with a continuous coater including spraying, curtain coating, roll coating, dip coating, and flow coating.

"Continuous Compliance" means that the affected source meets the emission limitations and other requirements of R307-343 at all times and fulfills all monitoring and recordkeeping provisions of R307-343 in order to demonstrate compliance.

"Control Device" means any equipment that reduces the quantity of a pollutant that is emitted to the air. The device may destroy or secure the pollutant for subsequent recovery. Control devices include, but are not limited to, incinerators, carbon adsorbers, and condensers.

"Control Device Efficiency" means the ratio of the pollution released by a control device and the pollution introduced to the control device, expressed as a fraction.

"Control System" means the combination of capture and control devices used to reduce emissions to the atmosphere.

"Conventional Air Spray" means a spray coating method in which the coating is atomized by mixing it with compressed air at an air pressure greater than 10 pounds per square inch (gauge) at the point of atomization. Airless, air assisted airless spray technologies, and electrostatic spray technology are not considered conventional air spray.

"Day" means a period of 24 consecutive hours beginning at midnight local time, or beginning at a time consistent with a source's operating schedule.

"Emission" means the direct or indirect release or discharge of volatile organic compound into the ambient air.

"Equipment Leak" means emissions of volatile organic compounds from pumps, valves, flanges, or other equipment used to transfer or apply finishing materials or organic solvents.

"Equivalent Method" means any method of sampling and analyzing for an air pollutant that has been demonstrated to the executive secretary's satisfaction to have a consistent and quantitatively known relationship to the reference method under specific conditions.

"Finishing Application Station" means the part of a finishing operation where the finishing material is applied, such as a spray booth.

"Finishing Material" means a coating used in the wood furniture industry, including basecoats, stains, washcoats, sealers, and topcoats.

"Finishing Operation" means those activities in which a finishing material is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

"Incidental wood furniture manufacturer" means a major source as defined in 40 CFR 63.2 that is primarily engaged in the manufacture of products other than wood furniture or wood furniture components and that uses no more than 100 gallons per month of finishing material in the manufacture of wood furniture or wood furniture components.

"Incinerator" means an enclosed combustion device that thermally oxidizes volatile organic compounds to carbon monoxide and carbon dioxide. This term does not include devices that burn municipal or hazardous waste material.

"Noncompliant Coating" means a finishing material or strippable booth coating that has a volatile organic compound content greater than the emission limitation specified in Subsection R307-343-4(1).

"Normally Closed Container" means a container that is closed unless an operator is actively engaged in activities such as emptying or filling the container.

"Operating Parameter Value" means a minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limit.

"Organic Solvent" means a liquid containing volatile organic compounds that is used for dissolving or dispersing constituents in a coating, adjusting the viscosity of a coating, cleaning, or washoff. When used in a coating, the organic

solvent evaporates during drying and does not become a part of the dried film.

"Overall Control Efficiency" means the efficiency of a control system, calculated as the product of the capture and control device efficiencies, expressed as a percentage.

"Permanent Total Enclosure" means a permanently installed enclosure that completely surrounds a source of emissions such that all emissions are captured and contained for discharge through a control device, and which meets the criteria presented in Subsection R307-343-7(5)(a)(i) through (iv).

"Reference Method" means any method of sampling and analyzing for an air pollutant that is published in Appendix A of 40 CFR 60.

"Responsible Official" has the same meaning as in R307-415, Operating Permit Requirements.

"Sealer" means a finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. A washcoat used to optimize aesthetics is not a sealer.

"Solids" means the part of the coating that remains after the coating is dried or cured; solids content is determined using data from EPA Method 24, or an alternative or equivalent method approved by the executive secretary.

"Solvent" means a liquid used in a coating for dissolving or dispersing constituents in a coating, adjusting the viscosity of a coating, cleaning, or washoff. When used in a coating, it evaporates during drying and does not become a part of the dried film.

"Stain" means any color coat having a solids content by weight of no more than 8.0 percent that is applied in single or multiple coats directly to the substrate, including nongrain raising stains, equalizer stains, sap stains, body stains, no-wipe stains, penetrating stains, and toners.

"Strippable Booth Coating" means a coating that:

(1) is applied to a booth wall to provide a protective film to receive overspray during finishing operations;

(2) is subsequently peeled off and disposed; and

(3) by achieving (1) and (2), reduces or eliminates the need to use organic solvents to clean booth walls.

"Substrate" means the surface onto which coatings are applied, or into which coatings are impregnated.

"Temporary Total Enclosure" means an enclosure that meets the requirements of Subsection R307-343-7(5)(a)(i) through (iv) and is not permanent, but is constructed only to measure the capture efficiency of pollutants emitted from a given source. Additionally, any exhaust point from the enclosure shall be at least 4 equivalent duct or hood diameters from each natural draft opening.

"Topcoat" means the last film-building finishing material applied in a finishing system. Non-permanent final finishes are not topcoats.

"Touch-up and Repair" means the application of finishing materials to cover minor finishing imperfections.

"Washcoat" means a transparent special purpose coating having a solids content by weight of 12.0 percent or less that is applied over initial stains to protect and control color and to stiffen the wood fibers in order to aid sanding.

"Washoff Operations" means those operations in which organic solvent is used to remove coating from a substrate.

"Wood Furniture" means any product made of wood, a wood product such as rattan or wicker, or an engineered wood product such as particleboard that is manufactured under any of the following standard industrial classification codes: 2434, 2511, 2512, 2517, 2519, 2521, 2531, 2541, 2599, or 5712.

"Wood Furniture Manufacturing Operations" means the finishing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components.

"Working Day" means a day, or any part of a day, in which a source is engaged in manufacturing.

R307-343-4. Emission Standards.

(1) Each owner or operator of an affected source subject to R307-343 shall limit volatile organic compound emissions from finishing operations. Methods in (a) through (e) below are accepted.

(a) Use topcoats with a volatile organic compound content no greater than 0.8 kilogram per kilogram of solids, as applied; or

(b) Use a finishing system of sealers with a volatile organic compound content no greater than 1.9 kilograms per kilogram of solids, as applied, and topcoats with a volatile organic compound content no greater than 1.8 kilograms per kilogram of solids, as applied; or

(c) For affected sources using acid-cured alkyd amino vinyl sealers or acid-cured alkyd amino conversion varnish topcoats, use sealers and topcoats based on the following criteria:

(i) If the affected source is using acid-cured alkyd amino vinyl sealers and acid-cured alkyd amino conversion varnish topcoats, the sealer shall contain no more than 2.3 kilograms of volatile organic compound per kilogram of solids, as applied, and the topcoat shall contain no more than 2.0 kilograms of volatile organic compound per kilogram of solids, as applied;

(ii) If the affected source is using a sealer other than an acid-cured alkyd amino vinyl sealer and acid-cured alkyd amino conversion varnish topcoats, the sealer shall contain no more than 1.9 kilograms of volatile organic compound per kilogram of solids, as applied, and the topcoat shall contain no more than 2.0 kilograms of volatile organic compound per kilogram of solids, as applied; or

(iii) if the affected source is using an acid-cured alkyd amino vinyl sealer and a topcoat other than an acid-cured alkyd amino conversion varnish topcoat, the sealer shall contain no more than 2.3 kilograms of volatile organic compound per kilogram of solids, as applied, and the topcoat shall contain no more than 1.8 kilograms of volatile organic compound per kilogram of solids, as applied; or

(d) Use a control system that will achieve an equivalent reduction in emissions as the requirements of Subsection R307-343-4(1)(a) or (b), as calculated using the compliance provisions in R307-343-6(2), as appropriate; or

(e) Use a combination of the methods presented in (a) through (d) above.

(2) Each owner or operator of an affected source subject to R307-343 shall limit volatile organic compound emissions from cleaning operations when using a strippable booth coating. A strippable booth coating shall contain no more than 0.8 kilogram of volatile organic compound per kilogram of solids, as applied.

R307-343-5. Work Practice Standards.

(1) Work Practice Implementation Plan.

(a) Each owner or operator of an affected source subject to R307-343 shall prepare and maintain a written work practice implementation plan that defines environmentally desirable work practices for each wood furniture manufacturing operation and addresses each of the topics specified in R307-343-5(2) through (10). The plan shall be completed no later than August 1, 1999. The owner or operator of the affected source shall comply with each provision of the work practice implementation plan. The written work practice implementation plan shall be available for inspection by the executive secretary, upon request. If the executive secretary determines that the work practice implementation plan does not adequately address each of the topics specified in (2) through (10) below or that the plan does not include sufficient mechanisms for ensuring that the work practice standards are being implemented, the executive secretary may require the affected source to modify the plan.

(2) Operator Training.

(a) Each owner or operator of an affected source shall train new and existing personnel, including contract workers, who are involved in finishing, gluing, cleaning, or washoff operations, use of manufacturing equipment, or implementation of the requirements of R307-343. All new personnel, those hired after June 2, 1999, shall be trained upon hiring. All existing personnel, those hired before June 2, 1999, shall be trained by December 4, 1999. All personnel shall be given refresher training annually.

(b) The affected source shall maintain a copy of the training program with the work practice implementation plan. The training program shall include, at a minimum, the following:

(i) A list of all current personnel by name and job description that are required to be trained;

(ii) An outline of the subjects to be covered in the initial and refresher training for each position or group of personnel;

(iii) Lesson plans for courses to be given at the initial and the annual refresher training that include, at a minimum, appropriate application techniques, appropriate cleaning and washoff procedures, appropriate equipment setup and adjustment to minimize finishing material usage and overspray, and appropriate management of cleanup wastes; and

(iv) A description of the methods to be used at the completion of initial or refresher training to demonstrate and document successful completion and a record of the training date for all personnel.

(3) Leak Inspection and Maintenance Plan. Each owner or operator of an affected source shall prepare and maintain with the work practice implementation plan a written leak inspection and maintenance plan that specifies:

(a) A minimum visual inspection frequency of once per month for all equipment used to transfer or apply finishing materials, or organic solvents;

(b) An inspection schedule;

(c) Methods for documenting the date and results of each inspection and any repairs that were made;

(d) The time elapsed between identifying the leak and making the repair, using at a minimum the following schedule:

(i) A first attempt at repair, such as tightening of packing glands, shall be made no later than five working days after the leak is detected; and

(ii) Final repairs shall be made within 15 working days, unless the leaking equipment is to be replaced by a new purchase, in which case repairs shall be completed within three months.

(4) Cleaning and Washoff Solvent Accounting System. Each owner or operator of an affected source shall develop an organic solvent accounting form to record:

(a) The quantity and type of organic solvent used each month for washoff and cleaning;

(b) The number of pieces washed off each month, and the reason for the washoff; and

(c) The net quantity of spent organic solvent generated from each washoff and cleaning operation each month, and whether it is recycled onsite or disposed offsite. The net quantity of spent solvent is equivalent to the total amount of organic solvent that is generated from the activity minus any organic solvent that is reused onsite for operations other than cleaning or washoff and any organic solvent that was sent offsite for disposal.

(5) Spray Booth Cleaning. Each owner or operator of an affected source shall not use compounds containing more than 8.0 percent by weight of volatile organic compound for cleaning spray booth components other than conveyors, continuous coaters and their enclosures, or metal filters, unless the spray booth is being refurbished. If the spray booth is being refurbished, that is, the spray booth coating or other material used to cover the booth is being replaced, the affected source shall use no more than 1.0 gallon of organic solvent to prepare the booth prior to applying the booth coating.

(6) Storage Requirements. Each owner or operator of an affected source shall use normally closed containers for storing finishing, cleaning, and washoff materials.

(7) Application Equipment Requirements. Each owner or operator of an affected source shall use conventional air spray guns for applying finishing materials only under any of the following circumstances:

(a) To apply finishing materials that have a volatile organic compound content no greater than 1.0 kilogram per kilogram of solids, as applied;

(b) For touch-up and repair under the following circumstances:

(i) The touchup and repair occurs after completion of the finishing operation; or

(ii) The touchup and repair occurs after the application of stain and before the application of any other type of finishing material, and the materials used for touchup and repair are applied from a container that has a volume of no more than 2.0 gallons.

(c) When the spray gun is aimed and triggered automatically, not manually;

(d) When the emissions from the finishing application station are directed to a control device;

(e) The conventional air gun is used to apply finishing materials and the cumulative total usage of that finishing material is no more than 5.0 percent of the total gallons of finishing material used during that semiannual reporting period; or

(f) The conventional air gun is used to apply stain on a part for which it is technically or economically infeasible to use any other spray application technology. The affected source shall demonstrate technical or economic infeasibility by submitting to the executive secretary a videotape, a technical report, or other documentation that supports the affected source's claim of technical or economic infeasibility. The following criteria shall be used, either independently or in combination, to support the affected source's claim of technical or economic infeasibility:

(i) The production speed is too high or the part shape is too complex for one operator to coat the part and the application station is not large enough to accommodate an additional operator; or

(ii) The excessively large vertical spray area of the part makes it difficult to avoid sagging or runs in the stain.

(8) Line Cleaning. Each owner or operator of an affected source shall pump or drain all organic solvent used for line cleaning into a normally closed container.

(9) Gun Cleaning. Each owner or operator of an affected source shall collect all organic solvent used to clean spray guns into a normally closed container.

(10) Washoff Operations. Each owner or operator of an affected source shall control emissions from washoff operations by using normally closed tanks for washoff and minimizing dripping by tilting or rotating the part to drain as much organic solvent as possible.

R307-343-6. Compliance Procedures and Monitoring Requirements.

(1) Methodology. Terms and equations required in the calculation of compliance are found in Appendix B, "Control of Organic Compound Emissions from Wood Furniture Manufacturing Operations." EPA-453/R-96-007, April 1996. The terms found in B.3(b) on pages B-10 and B-11, Equation 3 on page B-18, Equations 4, 5, 6, and 7 on pages B-26 and B-27 are hereby adopted and incorporated by reference. Copies are available at the Division of Air Quality, the Division of Administrative Rules and most state depository libraries.

(2) General Compliance. The owner or operator of an affected source subject to the emission standards in Section R307-343-4 shall demonstrate compliance with those provisions by using any of the methods in (a) or (b) below.

(a) To demonstrate compliance with emission standards in R307-343-4(1)(a), (b), or (c) or R307-343-4(2), maintain certified product data sheets for each of these finishing materials and strippable booth coatings. If solvent or other volatile organic compound is added to the finishing material before application, the affected source shall maintain documentation showing the volatile organic compound content of the finishing material as applied, in kilograms of volatile organic compound per kilogram of solids.

(b) To comply through the use of a control system as specified in R307-343-4(1)(d):

(i) Determine the overall control efficiency needed to demonstrate compliance using Equation 3.

(ii) Document that the amount of volatile organic compound in Equation 3 is obtained from the volatile organic compound and solids content of the finishing material as applied;

(iii) Calculate the overall efficiency of the control device, using the procedures in R307-343-7(4) or (5), and demonstrate that the overall efficiency of the control device calculated by Equation 6 is equal to or greater than the overall efficiency of the control device calculated by Equation 3.

(3) Initial Compliance. The owner or operator of each affected source shall demonstrate compliance by submitting an initial compliance status report.

(a) Each owner or operator of an affected source that complies through the procedures established in (2)(a) above shall submit an initial compliance status report stating that compliant sealers, topcoats and strippable booth coatings are being used by the affected source.

(b) Each owner or operator of an affected source that complies by using the procedures in R307-343-6(2)(a) and applies sealers or topcoats using continuous coaters shall:

(i) Submit an initial compliance status report stating that compliant sealers or topcoats, as determined by the volatile organic compound content of the finishing material in the reservoir and the volatile organic compound content as calculated from records, are used; or

(ii) Submit an initial compliance status report stating that compliant sealers or topcoats, as determined by the volatile organic compound content of the finishing material in the reservoir, are used and the viscosity of the finishing material in the reservoir is being monitored. The affected source also shall provide data that demonstrates the correlation between the viscosity of the finishing material and the volatile organic compound content of the finishing material in the reservoir.

(c) Each owner or operator of an affected source using a control system, capture device or control device to comply with the requirements of R307-343, as allowed by R307-343-4(1)(d) and R307-343-6(2)(b), shall:

(i) Submit a monitoring plan that identifies the operating parameter to be monitored for the capture device and demonstrates why the parameter is appropriate to show ongoing compliance;

(ii) Conduct an initial performance test using the procedures and test methods listed in R307-343-7(3) and (4) or (5);

(iii) Calculate the overall control efficiency using Equation 6; and

(iv) Determine those operating conditions that are critical to determining compliance and establishing operating parameters that will ensure compliance with the standard, as follows:

(A) For a thermal incinerator, use minimum combustion temperature;

(B) For a catalytic incinerator equipped with a fixed catalyst bed, use the minimum gas temperature both upstream and downstream of the catalyst bed,

(C) For a catalytic incinerator equipped with a fluidized catalyst bed, use the minimum gas temperature upstream of the catalyst bed and the pressure drop across the catalyst bed;

(D) For a carbon adsorber, use either the total regeneration mass stream flow for each regeneration cycle and the carbon bed temperature after each regeneration, or the concentration level of organic compounds exiting the adsorber, unless the owner or operator requests and receives approval from the executive secretary to establish other operating parameters;

(E) For a control device not listed in (A) through (D) above, the operating parameter shall be established using the procedures in R307-343-6(4)(c)(vi).

(v) Each owner or operator complying with R307-343-6(3)(c) shall calculate the site-specific operating parameter value as the arithmetic average of the maximum or minimum operating parameter values, as appropriate, that demonstrate compliance with the standards, during the three test runs required by R307-343-7(3)(a).

(d) Each owner or operator of an affected source subject to the work practice standards in R307-343-5 shall submit an initial compliance status report, as required by R307-343-9(2), stating that the work practice implementation plan has been developed and procedures have been established for implementing the provisions of the plan.

(4) Continuous Compliance Demonstrations.

(a) Each owner or operator of an affected source subject to the provisions of R307-343-4 that comply using the procedures established in R307-343-6(2)(a) shall demonstrate continuous compliance by using compliant materials, maintaining records that demonstrate the materials are compliant, and submitting a compliance certification with the semiannual report required by R307-343-9(3).

(i) The compliance certification shall state that compliant sealers, topcoats and strippable booth coatings have been used during the semiannual reporting period, or should otherwise identify the days of noncompliance and the reasons for noncompliance.

(ii) The compliance certification shall be signed by a responsible official.

(b) Each owner or operator of an affected source subject to the provisions of R307-343-4 that comply using the procedures established in R307-343-6(2)(a) and applies sealers or topcoats using continuous coaters shall demonstrate continuous compliance by following the procedures in (i) or (ii) below.

(i) Use compliant materials, as determined by the volatile organic compound content of the finishing material in the reservoir and the volatile organic compound content as calculated from records, and submit a compliance certification with the semiannual report required by R307-343-9(3).

(A) The compliance certification shall state that compliant sealers and topcoats have been used during the semiannual reporting period, or should otherwise identify the days of noncompliance and the reasons for noncompliance.

(B) The compliance certification shall be signed by a responsible official.

(ii) Use compliant materials, as determined by the volatile organic compound content of the finishing material in the reservoir, maintaining a viscosity of the finishing material in the reservoir that is no less than the viscosity of the initial finishing material by monitoring the viscosity with a viscosity meter or by testing the viscosity of the initial finishing material and retesting the material in the reservoir each time solvent is added, maintaining records of solvent additions, and submitting a compliance certification with the semiannual report required by R307-343-9(3).

(A) The compliance certification shall state that compliant sealers and topcoats, as determined by the volatile organic compound content of the finishing material in the reservoir, have been used during the semiannual reporting period. Additionally, the certification shall state that the viscosity of the finishing material in the reservoir has not been less than the viscosity of the initial finishing material, that is, the material that is initially mixed and placed in the reservoir, during the semiannual reporting period.

(B) The compliance certification shall be signed by a responsible official.

(C) An affected source is in violation of the standard when a sample of the finishing material as applied exceeds the applicable limit established in R307-343-4(1)(a), (b), or (c), as determined using EPA Method 24 or an alternative or equivalent method, or the viscosity of the finishing material in the reservoir is less than the viscosity of the initial finishing material.

(c) Each owner or operator of an affected source subject to the provisions of R307-343-4 that complies using a control system, capture device or control device shall demonstrate continuous compliance by installing, calibrating, maintaining, and operating the appropriate monitoring equipment according to manufacturers specifications.

(i) Where a capture or control device is used, a device to monitor the site-specific operating parameter established in accordance with R307-343-6(3)(c)(i) is required.

(ii) Where an incinerator is used, a temperature monitoring device equipped with a continuous recorder is required.

(A) Where a thermal incinerator is used, a temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange occurs.

(B) Where a catalytic incinerator equipped with a fixed catalyst bed is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(C) Where a catalytic incinerator equipped with a fluidized catalyst bed is used, a temperature monitoring device shall be installed in the gas stream immediately before the bed. In addition, a pressure monitoring device shall be installed to determine the pressure drop across the catalyst bed. The pressure drop shall be measured monthly at a constant flow rate.

(iii) Where a carbon adsorber is used, one of the following monitoring devices shall be used:

(A) An integrating regeneration stream flow monitoring device having an accuracy of plus or minus 10 percent, capable of recording the total regeneration stream mass flow for each regeneration cycle; and a carbon bed temperature monitoring device having an accuracy of plus or minus one percent of the temperature being monitored expressed in degrees Celsius, or plus or minus 0.5 C, whichever is greater, capable of recording the carbon bed temperature after each regeneration and within fifteen minutes of completing any cooling cycle;

(B) An organic monitoring device, equipped with a continuous recorder, to indicate the concentration level of organic compounds exiting the carbon adsorber; or

(C) Any other monitoring device that has been approved by the executive secretary as allowed under (vi) below.

(iv) Each owner or operator of an affected source shall not operate the capture or control device at a daily average value greater than or less than the operating parameter value, as defined in the plan required by R307-343-6(3)(c)(i). The daily average value shall be calculated as the average of all values for a monitored parameter recorded during the operating day.

(v) Each owner or operator of an affected source that complies through the use of a catalytic incinerator equipped with a fluidized catalyst bed shall maintain a constant pressure drop, measured monthly, across the catalyst bed.

(vi) An owner or operator using a control device not listed in R307-343-6(3)(c) shall submit to the executive secretary a description of the device, test data verifying the performance of the device, and appropriate operating parameter values that will be monitored to demonstrate continuous compliance with the standard. Use of this device to demonstrate compliance is subject to the executive secretary's approval.

(d) Each owner or operator of an affected source subject to the work practice standards in R307-343-5 shall demonstrate continuous compliance by following the work practice implementation plan and submitting a compliance certification with the semiannual report required by R307-343-9(3).

(i) The compliance certification shall state that the work practice implementation plan was followed, or should otherwise identify the periods of noncompliance with the work practice standards.

(ii) The compliance certification shall be signed by a responsible official.

R307-343-7. Performance Test Methods.

(1) The EPA Method 24 (40 CFR 60) shall be used to determine the volatile organic compound content and the solids content by weight of the finishing materials as supplied by the manufacturer. The owner or operator of the affected source may request approval from the executive secretary to use an alternative or equivalent method for determining the volatile organic compound content of the finishing material. Batch formulation information may be accepted by the executive secretary if the source demonstrates that a finishing material does not release volatile organic compound reaction byproducts during the cure. If the EPA Method 24 value is higher than the source's formulation data, the EPA Method 24 test shall govern. Sampling procedures shall follow the guidelines in "Standard Procedures for Collection of Coating and Ink Samples for volatile organic compound Content Analysis by Reference Method 24 and Reference Method 24A," EPA-340/1-91-010.

(2) Each owner or operator using a control system to demonstrate compliance shall determine the overall control efficiency of the control system as the product of the capture and control device efficiencies, using the test methods cited in (3) below and the procedures in (4) or (5) below.

(3) Each owner or operator using a control system shall demonstrate initial compliance using the procedures in (a) through (f) below.

(a) The EPA Method 18, 25, or 25A shall be used to determine the volatile organic compound concentration of gaseous air streams. The test shall consist of three separate runs, each lasting a minimum of 30 minutes.

(b) The EPA Method 1 or 1A shall be used for sample and velocity traverses.

(c) The EPA Method 2, 2A, 2C, or 2D shall be used to measure velocity and volumetric flow rates.

(d) The EPA Method 3 shall be used to analyze the exhaust gases.

(e) The EPA Method 4 shall be used to measure the moisture in the stack gas.

(f) The EPA Methods 2, 2A, 2C, 2D, 3, and 4 shall be performed, as applicable, at least twice during each test period.

(4) Each owner or operator using a control system to demonstrate compliance with R307-343 shall use the procedures in (a) through (f) below.

(a) Construct the overall volatile organic compound control system so that volumetric flow rates and volatile organic compound concentrations can be determined by the test methods specified in R307-343-7(3);

(b) Measure the capture efficiency from the affected emission points by capturing, venting, and measuring all volatile organic compound emissions from the affected emission points. To measure the capture efficiency of a capture device located in an area with nonaffected volatile organic compound emission

points, the affected emission points shall be isolated from all other volatile organic compound sources by one of the following methods:

(i) Build a temporary total enclosure around the affected emission points;

(ii) Shut down all nonaffected volatile organic compound emission points and continue to exhaust fugitive emissions from the affected emission points through any building ventilation system and other room exhausts such as drying ovens. All exhaust air must be vented through stacks suitable for testing; or

(iii) Use another methodology approved by the executive secretary provided it complies with the EPA criteria for acceptance under 40 CFR Part 63, Appendix A, Method 301.

(c) Operate the control system with all affected emission points connected and operating at maximum production rate;

(d) Determine the efficiency of the control device using Equation 4;

(e) Determine the efficiency of the capture system using Equation 5;

(f) Compliance is demonstrated if the overall control efficiency in Equation 6 is greater than or equal to the overall control efficiency calculated by Equation 3, in accordance with R307-343-6(2)(b)(i).

(5) An alternative to the compliance method presented in (4) above is the installation of a permanent total enclosure.

(a) Each affected source that complies using a permanent total enclosure shall demonstrate that the total enclosure meets the following requirements:

(i) The total area of all natural draft openings shall not exceed five percent of the total surface area of the enclosure's walls, floor, and ceiling;

(ii) All sources of emissions within the enclosure shall be a minimum of four equivalent diameters away from each natural draft opening;

(iii) Average inward face velocity (FV) across all natural draft openings shall be a minimum of 3,600 meters per hour or 200 feet per minute as determined by the following procedures:

(A) All forced makeup air ducts and all exhaust ducts are constructed so that the volumetric flow rate in each can be accurately determined by the test methods and procedures specified in (3)(b) and (3)(c) above. Volumetric flow rates shall be calculated without the adjustment normally made for moisture content; and

(B) Determine face velocity by Equation 7:

(iv) All access doors and windows whose areas are not included as natural draft openings and are not included in the calculation of face velocity shall be closed during routine operation of the process.

(b) Determine the control device efficiency using Equation 4, and the test methods and procedures specified in R307-343-7(3).

(c) For a permanent total enclosure, the capture efficiency in Equation 5 is equal to one.

(d) For owners or operators using a control system to comply with the provisions of R307-343, compliance is demonstrated if:

(i) The capture efficiency of the enclosure is determined to equal one; and

(ii) The overall efficiency of the control system calculated by Equation 6 in accordance with (4) above is greater than or equal to the overall efficiency of the control system calculated by Equation 3 in accordance with R307-343-6(2)(b).

R307-343-8. Recordkeeping Requirements.

(1) The owner or operator of an affected source subject to the emission limits in R307-343-4 shall maintain records of the following:

(a) A certified product data sheet for each finishing material and strippable booth coating subject to the emission limits in R307-343-4;

(b) The volatile organic compound content, kilograms of volatile organic compound per kilogram of solids, as applied, of each finishing material and strippable booth coating subject to the emission limits in R307-343-4, and copies of data sheets documenting how the as applied values were determined.

(2) The owner or operator of an affected source following the compliance procedures of R307-343-6(4)(b) shall maintain the records required by (1) above and records of solvent and finishing material additions to the continuous coater reservoir and viscosity measurements.

(3) The owner or operator of an affected source following the compliance method of R307-343-6(2)(b) shall maintain the following records:

(a) Copies of the calculations to demonstrate that the control system achieves emission control equivalent to the requirements of R307-343-4(1)(a) or (b), as well as the data that are necessary to support the calculation of the emission limit in Equation 3 and the calculation of overall control efficiency in Equation 6;

(b) Records of the daily average value of each continuously monitored parameter for each operating day. If all recorded values for a monitored parameter are within the range established during the initial performance test, the owner or operator may record that all values were within the range rather than calculating and recording an average for that day; and

(c) Records of the pressure drop across the catalyst bed for sources complying with the emission limitations using a catalytic incinerator with a fluidized catalyst bed.

(4) The owner or operator of an affected source subject to the work practice standards in R307-343-5 shall maintain onsite the work practice implementation plan and all records associated with fulfilling the requirements of that plan, including:

(a) Records demonstrating that the operator training program is in place;

(b) Records maintained in accordance with the inspection and maintenance plan;

(c) Records associated with the cleaning solvent accounting system;

(d) Records associated with the limitation on the use of conventional air spray guns showing total finishing material usage and the percentage of finishing materials applied with conventional air spray guns for each semiannual reporting period;

(e) Records showing the volatile organic compound content of compounds used for cleaning booth components, except for solvent used to clean conveyors, continuous coaters and their enclosures, or metal filters; and

(f) Copies of logs and other documentation to demonstrate that the other provisions of the work practice implementation plan are followed.

(5) In addition to the records required by R307-343-8(1) of this section, the owner or operator of an affected source that complies using the provisions of R307-343-6(2)(a) or R307-343-5 shall maintain a copy of the compliance certifications submitted in accordance with R307-343-9(3) for each semiannual period following the compliance date.

(6) The owner or operator of an affected source shall maintain a copy of all other information submitted with the initial status report required by R307-343-9(2) and the semiannual reports required by R307-343-9(3).

(7) The owner or operator of an affected source shall maintain all records for a minimum of five years.

R307-343-9. Reporting Requirements.

(1) The owner or operator of an affected source using a control system to fulfill the requirements R307-343 is subject to R307-214-2 in which the reporting requirements of 40 CFR Part

63, subpart A are incorporated by reference; and to the following reporting requirements:

(2) The owner or operator of an affected source subject to R307-343 shall submit an initial compliance report no later than August 1, 1999. The report shall include the items required by R307-343-6(3).

(3) The owner or operator of an affected source subject to R307-343 and demonstrating compliance in accordance with R307-343-6(2)(a) or (b) shall submit a semiannual report covering the previous six months of wood furniture manufacturing operations according to the following schedule:

(a) The first report shall be submitted no later than January 2, 2000.

(b) Subsequent reports shall be submitted no later than July 2 and January 2 each year thereafter.

(c) Each semiannual report shall include the information required by R307-343-6(4), a statement of whether the affected source was in compliance or noncompliance. If the affected source was not in compliance, the measures taken to bring the affected source into compliance shall be reported.

KEY: air pollution, ozone, wood furniture*, coatings*
June 2, 1999 19-2-104(1)(a)
Notice of Continuation June 8, 2004 19-2-104(3)(e)

R307. Environmental Quality, Air Quality.
R307-420. Permits: Ozone Offset Requirements in Davis and Salt Lake Counties.
R307-420-1. Purpose.

The purpose of R307-420 is to maintain the offset provisions of the nonattainment area new source review permitting program in Salt Lake and Davis Counties after the area is redesignated to attainment for ozone. R307-420 also establishes more stringent offset requirements for nitrogen oxides that may be triggered as a contingency measure under the ozone maintenance plan.

R307-420-2. Definitions.

The following additional definitions apply to R307-420:

"Major Source" means:

(1)(a) any stationary source of air pollutants which emits, or has the potential to emit, fifty tons per year or more of volatile organic compounds; or

(b) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of nitrogen oxides; or

(c) any physical change that would occur at a source not qualifying under (1)(a) or (b) as a major source, if the change would constitute a major source by itself.

(2) The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412 (section 111 or 112 of the federal Clean Air Act).

"Significant" means, for the purposes of determining what is a significant net emission increase and therefore a major modification, a rate of emissions that would equal or exceed any of the following rates:

(1) for volatile organic compounds, 25 tons per year,
(2) for nitrogen oxides, 40 tons per year.

R307-420-3. Applicability.

(1) Nitrogen Oxides. Effective August 18, 1997, any new major source or major modification of nitrogen oxides in Davis County or Salt Lake County shall offset the proposed increase in nitrogen oxide emissions by a ratio of 1.15:1 before the executive secretary may issue an approval order to construct, modify, or relocate under R307-401.

(2) Volatile Organic Compounds. Effective December 2, 1998 any new major source or major modification of volatile organic compounds in Davis County or Salt Lake County shall offset the proposed increase in volatile organic compound emissions by a ratio of 1.2:1 before the executive secretary may issue an approval order to construct, modify, or relocate under R307-401.

R307-420-4. General Requirements.

(1) All emission offsets shall meet the general requirements for calculating and banking emission offsets that are established in R307-403-4, R307-403-7 and R307-403-8.

(2) Emission offset credits generated in Davis County or Salt Lake County may be used in either county.

(3) Offsets may not be traded between volatile organic compounds and nitrogen oxides.

R307-420-5. Contingency Measure: Offsets for Oxides of Nitrogen.

If the nitrogen oxide offset contingency measure described in Section IX, Part D.2.h(3) of the state implementation plan is triggered, the following conditions shall apply in Davis County and Salt Lake County.

(1) Paragraph (1)(b) in the term "major source," which is defined in R307-420-2, shall be changed to read: any stationary source of air pollutants which emits, or has the potential to emit, fifty tons per year or more of nitrogen oxides.

(2) The nitrogen dioxide level that is included in the term "significant", which is defined in R307-420-2, shall be changed from 40 tons per year to 25 tons per year.

(3) The emission offset ratio shall be 1.2:1 for nitrogen oxides.

KEY: air pollution, ozone, offset*
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R317. Environmental Quality, Water Quality.
R317-10. Certification of Wastewater Works Operators.
R317-10-1. Objectives.

The certification program is established in order to assist in protecting the quality of waters in the state of Utah by helping ensure that personnel in charge of wastewater works are trained, experienced, reliable and efficient; to protect the public health and the environment and provide for the health and safety of wastewater works operators; and to establish standards and methods whereby wastewater works operating personnel can demonstrate competency.

R317-10-2. Scope.

These certification rules apply to all wastewater treatment works and sewerage systems, with the exception of Onsite Wastewater Systems and Large Underground Wastewater Disposal Systems as defined in R317-1-1. This includes both wastewater collection systems and wastewater treatment systems except underground wastewater disposal systems. Wastewater works operated by political subdivisions must employ certified operators as required in this rule. Operators of wastewater systems not requiring certified operators (such as industrial wastewater treatment systems) may be certified according to provisions of these rules for testing and certification.

R317-10-3. Authority.

The Certification Program for Wastewater Works Operators is authorized by Section 19-5-104 of the Utah Code Annotated.

R317-10-4. Definitions.

A. "Board" means the Water Quality Board.

B. "Category" means type of certification (collection or wastewater treatment).

C. "Certificate" means a certificate issued by the Council, stating that the recipient has met the minimum requirements for the specified operator grade described in this rule.

D. "Certified Operator" means a person with the appropriate education and experience, as specified in this rule, who has successfully completed the certification exam or otherwise meets the requirements of this rule.

E. "Chief Operator" means the supervisor in direct responsible charge of all shift operators for a collection or treatment system.

F. "Collection System" means the system designed to collect and transport sewage from the beginning points that the collection entity regards as their responsibility to maintain and operate, to the points where the treatment facility assumes responsibility for operation and maintenance.

G. "Council" means the Utah Wastewater Operator Certification Council.

H. "Continuing Education Unit (CEU)" means ten contact hours of participation in and successful completion of an organized and approved continuing education experience. College credit in approved courses may be substituted for CEUs on an equivalency basis as defined in this rule.

I. "Direct Responsible Charge (DRC)" means active on-site charge and performance of operation duties. The person in direct responsible charge is generally a supervisor over wastewater treatment or collection who independently makes decisions affecting all treatment or system processes during normal operation which may effect the quality, safety, and adequacy of treatment of wastewater discharged from the plant. In cases where only one operator is employed, this operator shall be considered to be in direct responsible charge.

J. "Executive Secretary" means the Executive Secretary of the Water Quality Board.

K. "Grade Level" means any one of the possible steps within a certification category of either wastewater collection or wastewater treatment. There are four levels each for collection and treatment system operators, Grade I being the lowest and Grade IV the highest level. There is one level for lagoon operators.

L. "Grandfather Certificate" means a certificate issued to an operator, without taking an examination, by virtue of the operator meeting experience and other requirements in R317-10-11.G of this rule.

M. "Operating Experience" means experience gained in operating a wastewater treatment plant or collection system which enables the operator to make correct supervisory, operational, safety, and maintenance decisions affecting personnel, water quality, public health, regulatory compliance, and wastewater works operation, efficiency, and longevity.

N. "Operator" means any person who is directly involved in or may be responsible for operation of any wastewater works or facilities treating wastewater.

O. "Population Equivalent (P.E.)" means the population which would contribute an equivalent waste load based on the calculation of total pounds of B.O.D. contributed divided by 0.2. This calculation may be used where a significant amount of industrial waste is discharged to a wastewater system.

P. "Restricted Certificate" means a certificate issued upon passing the certification examination when other requirements have not been met.

Q. "Small Lagoon System" means a wastewater lagoon system designed to serve fewer than 3500 design population equivalent.

R. "Wastewater Works" means facilities for collecting, pumping, treating or disposing of sanitary wastewater.

R317-10-5. Wastewater Works Owner Responsibilities.

A. The chief operator and supervisors who make process decisions for the system and are designated to be in direct responsible charge must be certified at no less than the level of the facility classification. All other operators in direct responsible charge must be certified at no less than one grade lower than the facility classification or at the lowest required facility classification except as provided in B below. All facilities must have an operator certified at the facility level on duty or on call. If a facility or system undergoes a re-rating, all operators considered to be in DRC must be certified at the appropriate level within one year after notification of the new rating.

B. The Executive Secretary must be notified by the facility owner within 10 working days after termination of employment of the Chief Operator considered in DRC, or when he is otherwise unable to perform those duties. The wastewater works must have a certified operator or an operator with a restricted certificate at the appropriate level within one year from the date the vacancy occurred.

C. For newly constructed wastewater works, a certified operator or an operator with a restricted certificate at the appropriate level must be employed within one year after the system is deemed operable.

D. Those required to be certified may operate a system with a restricted certificate of the required grade for up to one year for a Class I or Class II facility, or up to two years for a Class III or Class IV facility, but may not continue to operate a system if they are unable to obtain an unrestricted certificate at the end of the stipulated period.

E. Contracts

1. General. In lieu of employing a DRC operator as part of its workforce, a facility owner may enter into a contract for DRC services with an operator certified at the appropriate level, or with another public or private entity with operators certified at the appropriate level.

2. Any such contract must be reviewed and approved by the Executive Secretary.

3. If the contract is with another entity, it must include the

names of the certified individuals who will be in direct responsible charge of the operation of the facility. At a minimum the contract must contain the following elements:

a. A clear description of the overall duties and responsibilities of the facility owner and the responsibilities of the contracted DRC operator(s) related to the supervision of the facility's operation, including the frequency of visits and the duties to be performed.

b. Identification of the contract period and effective date of the contract

c. Consideration

d. Termination clause

e. Execution by authorized signatories

R317-10-6. Facility Classification System.

Treatment plants and collection systems shall be classified in accordance with Table 1.

TABLE 1
FACILITY CLASSIFICATION SYSTEM

FACILITY CATEGORY		CLASS I	II	III	IV
Collection (1)	Pop. Served	3,500 and less	3,501 to 15,000	15,001 to 50,000	50,001 and greater
Treatment Plant (2)	Range of Fac. Points	30 and less	31 to 55	56 to 75	76 and greater
Small Lagoon Systems(3)	Design Pop. Equiv.	3,500 and less			

(1) Simple "in-line" treatment (such as booster pumping, preventive chlorination, or odor control) is considered an integral part of a collection system.

(2) Treatment plants shall be assigned "facility points" in accordance with Table 2 "Wastewater Treatment Plant Classification System".

(3) A combined certificate shall be issued for treatment works/collection system operation.

TABLE 2
WASTEWATER TREATMENT PLANT CLASSIFICATION SYSTEM

Each Unit process should have points assigned only once.

Item	Points
SIZE (2 PT Minimum - 20 PT Maximum)	
Max. Population equivalent (PE) served, peak day(1)	1 - 10
Design flow average day or peak month average, whichever is larger(2)	1 - 10
VARIATION IN RAW WASTE (3)	
Variations do not exceed those normally or typically expected	0
Recurring deviations or excessive variations of 100 - 200% in strength and/or flow	2
Recurring deviations or excessive variations of more than 200% in strength and/or flow	4
Raw wastes subject to toxic waste discharges	6
Acceptance of septage or truck-hauled waste	2
PRELIMINARY TREATMENT	
Plant pumping of main flow	3
Screening, comminution	3
Grit removal	3
Equalization	1
PRIMARY TREATMENT	
Clarifiers	5
Imhoff tanks or similar	5
SECONDARY TREATMENT	
Fixed film reactor	10
Activated sludge	15
Stabilization ponds w/o aeration	5
Stabilization ponds w/aeration	8
TERTIARY TREATMENT	
Polishing ponds for advanced waste treatment	2
Chemical/physical advanced waste treatment w/o secondary	15
Chemical/physical advanced waste treatment following secondary	10
Biological or chemical/biological advanced waste treatment	12
Nitrification by designed extended aeration only	2
Ion exchange for advanced waste treatment	10
Reverse osmosis, electrodialysis and other membrane filtration techniques	15
Advanced waste treatment chemical recovery, carbon regeneration	4
Media Filtration	5
ADDITIONAL TREATMENT PROCESSES	
Chemical additions (2 pts./each for max. of 6 pts.)	2 - 6
Dissolved air flotation (for other than sludge thickening)	8
Intermittent sand filter	2
Recirculating intermittent sand filter	3
Microscreens	5
Generation of oxygen	5
SOLIDS HANDLING	
Solids conditioning	2
Solids thickening (based on technology)	2 - 5
Mechanical dewatering	8
Anaerobic digestion of solids	10
Utilization of digester gas for heating or cogeneration	5
Aerobic digestion of solids	6
Evaporative sludge drying	2
Solids reduction (including incineration, wet oxidation)	12
On-site landfill for solids	2
Solids composting	10
Land application of biosolids by contractor	2
Land application of biosolids under direction of facility operator in DRC	10
DISINFECTION (10 pt. max.)	
Chlorination or ultraviolet irradiation	5
Ozonation	10
EFFLUENT DISCHARGE (10 pt. max.)	
Mechanical Post aeration	2
Direct recycle and reuse	6
Land treatment and disposal (surface or subsurface)	4
INSTRUMENTATION (6 pt. max.)	
Use of SCADA or similar instrumentation systems to provide data with no process operation	0
Use of SCADA or similar instrumentation systems to provide data with limited process operation	2
Use of SCADA or similar instrumentation systems to provide data with moderate process operation	4
Use of SCADA or similar instrumentation systems to provide data with extensive/total process operation	6
LABORATORY CONTROL (15 pt. max)(4)	
Bacteriological/biological (5 pt. max):	
Lab work done outside the plant	0
Membrane filter procedures	3
Use of fermentation tubes or any dilution method (fecal coliform determination)	5
Chemical/physical (10 pt. max):	
Lab work done outside the plant	0
Push-button, visual methods for simple tests (i.e. pH, settleable solids)	3
Additional procedures (ie, DO, COD, BOD, gas analysis, titrations, solids volatile content)	5
More advanced determinations (ie, specific constituents; nutrients, total oils, phenols)	7
Highly sophisticated instrumentation (i.e., atomic absorption, gas chromatography)	10

(1) 1 point per 10,000 P.E. or part; maximum of 10 points

(2) 1 point per MGD or part

(3) Key concept is frequency and/or intensity of deviation or excessive variation from normal or typical fluctuations; such deviation may be in terms of strength, toxicity, shock loads, inflow and infiltration, with point values

ranging from 0 - 6.
(4) Key concept is to credit laboratory analyses done on-site by plant
personnel under the direction of the operator in direct responsible charge with point
values ranging from 0 - 15.

R317-10-7. Qualifications for Operator Grades.

A. General

1. "Qualification Points" means total of years of education and experience required. All substitutions are year for year equivalents. A college "year" is considered 45 quarter hours or 30 semester hours of credit.

2. College-level education must be in a job-related field to be credited. However, partial credit may be given for non-job related education at the discretion of the Council.

3. Experience may be substituted for a high school education or a graduate equivalence degree in Grades I and II only.

4. Education may be substituted for experience, as specified below.

B. Grade I - 13 points required

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. One year operating experience (one point per year).

3. Experience may be substituted for all or any part of the education requirements, on a one-to-one basis.

4. Education may not be substituted for experience.

C. Grade II - 14 points required

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Two years operating experience (one point per year)

3. Up to one year of additional education may be substituted for an equivalent amount of operating experience.

4. Experience may be substituted for all or any part of the education requirement, on a one-to-one basis.

D. Grade III - 16 points required

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Four years operating experience (one point per year)

3. Up to 2 years of additional education may be substituted for an equivalent amount of operating experience. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to 1 year of education.

4. At least one year of the operating experience must have been at a Class II facility or higher.

E. Grade IV - 18 points required

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points)

2. Six years operating experience (one point per year)

3. Up to 2 years of additional education may be substituted for an equivalent amount of operating experience. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to 1 year of education.

4. At least two years of the operating experience must have been at a Class III facility or higher.

R317-10-8. Council.

A. Members of the Council shall be appointed by the Board from recommendations made by interested organizations including the Department of Environmental Quality, Utah League of Cities and Towns, Water Environment Association of Utah, the Professional Wastewater Operators Division of the Water Environment Association of Utah, the Utah Rural Water Association, Utah Valley State College, and the Civil/Environmental Engineering Departments of Utah's universities. The Council shall serve at the discretion of the Board to oversee the certification program.

B. The Council shall consist of eight members as follows:

1. Three members who are operators holding valid certificates. At least one shall be a wastewater collection system operator.

2. One member with three years management experience in wastewater treatment and collection, who shall represent municipal wastewater management.

3. One member who is a civil or environmental engineering faculty member of a university in Utah.

4. One non-voting member who is a Senior Environmental Engineer in the Division of Water Quality or other duly designated person who shall represent the Board.

5. One member from the private sector.

6. One member representing vocational training.

C. Voting Council members shall serve as follows:

1. Terms of office shall be for three years with two members retiring each year (except for the third year when three shall retire).

2. Appointments to succeed a Council member who is unable to serve his full term shall be for the remainder of the unexpired term.

3. Council members may be reappointed, but they do not automatically succeed themselves.

D. Each year the Council shall elect from its membership a Chairman and Vice Chairman.

E. The duties of the Council shall include:

1. Preparing and conducting examinations for the various grades of operators, and issuing and distributing the certificates.

2. Regularly reviewing the certification examinations to ensure compatibility between the examinations and operator responsibilities.

3. Ensuring that the certification examinations and training curricula are compatible.

4. Distributing examination applications and notices.

5. Receiving all applications for certification and evaluating the record of applicants as required to establish their qualifications for certification under this rule.

6. Maintaining records of operator qualifications and certification.

7. Preparing an annual report for distribution to the Board and other interested parties.

F. A majority of voting members shall constitute a quorum for the purpose of transacting official Council business.

R317-10-9. Application for Examination.

Prior to taking an examination, an applicant must file an application of intention with the Council, accompanied by evidence of qualifications for certification in accordance with the provisions of this rule on application forms available from the Council.

R317-10-10. Examination.

A. The time and place of examinations to qualify for a certificate shall be determined by the Council. All examinations shall be graded and the applicant notified of the results. Examination fees shall be charged to cover the costs of testing.

B. Normally, all examinations for certification shall be written. However, upon request an oral examination will be given. Such examination shall be conducted by at least two Council members in a manner that will ensure the integrity of the certification program.

C. In the event an applicant fails an exam, the applicant may request to review the exam within 30 days following receipt of the exam score. The Council shall not review examination questions for the purpose of changing individual examination scores. However, questions may be edited for future examinations. If an error is found in the grading of the exam, credit may be given.

R317-10-11. Certificates.

A. All certificates shall indicate one of the following grades for which they are issued.

1. Wastewater Treatment Operator - Grades I through IV.

2. Restricted Wastewater Treatment Operator - Grades I through IV.

3. Wastewater Collection Operator - Grades I through IV.

4. Restricted Wastewater Collection Operator - Grades I through IV.

5. Small Lagoon System Operator - Grade I Wastewater Treatment and Collection System Combined.

6. Restricted Small Lagoon System Operator - Grade I Wastewater Treatment and Collection System Combined.

B. An applicant shall have the opportunity to take any grade of examination higher than the classification of the system which he or she operates. A restricted certificate shall be issued if the applicant passes the exam but lacks the experience or education required for a particular grade.

An unrestricted certificate shall be issued if the applicant passes the exam and the experience and education requirements appropriate to the particular grade are met. Restricted certificates shall become unrestricted when the appropriate experience and education requirements are met and a change in status fee is paid. A restricted certificate does not qualify a person as a certified operator at the grade level that the restricted certificate is issued, until the limiting conditions are met, except as provided in R317-10-5. Upon application, a restricted certificate may be renewed subject to the conditions in C below. Replacement certificates may be obtained by payment of a duplicate certificate fee.

C. Certificates shall continue in effect for a period of up to three years unless revoked prior to that time. The certificate must be renewed each three years by payment of a renewal fee and submittal of evidence of required CEUs. The certificates expire on December 31 of the last year of the certificate. Operators considered in DRC must renew by the expiration date in order for the wastewater works to remain in compliance with this rule. Request for renewal shall be made on forms supplied by the Council. It shall be the responsibility of the operator to make application for certificate renewal.

D. An expired certificate may be reinstated within three months after expiration by payment of a reinstatement fee. After three months, an expired certificate cannot be reinstated, and the operator must retest to become certified. The required CEUs for renewal must be accrued before expiration of the certificate.

E. CEUs must be earned during the 3 year period prior to the expiration date of the certificate.

F. The Council may, after appropriate review, waive examination of applicants holding a valid certificate or license issued in compliance with other certification plans having equivalent standards, and issue a comparable Utah certificate upon payment of a reciprocity fee.

If the applicant is working in another state at the time of application, or has relocated to Utah but has not yet obtained employment in the wastewater field in Utah, a letter of intent to issue a certificate by reciprocity may be provided. When the applicant provides proof of employment in the wastewater field in Utah, and meets all other requirements, a certificate may be issued.

G. A grandfather certificate shall be issued, upon application and payment of an administrative fee, to qualified operators who must be certified (chief operators, supervisors, or anyone considered in direct responsible charge). The certificate shall be valid only for the wastewater works at which the operator is employed as that facility existed on March 16, 1991. Operators must obtain initial certification on or before March 16, 1994. The certificate may not be transferred to another facility or person. If the facility undergoes an addition of a new process, even if the facility classification does not change, or the collection system has a change in rating, the respective operator must obtain a restricted or unrestricted certificate within one year as specified in this rule.

Grandfather certificates shall be issued for a period of up to three years and must be renewed prior to the expiration date to remain in effect. Renewal shall include the payment of a renewal fee and submittal of evidence of required CEUs. The renewal fee shall be the same as that charged for renewal of other certificates. If the grandfather certificate is not renewed prior to the expiration date, the wastewater works may be considered to be out of compliance with this rule. The operator would then be required to pass the appropriate certification examination to become a certified operator.

The grandfather certificate shall be issued if the currently employed operator:

1. Was a chief operator or person in direct responsible charge of the wastewater works on March 16, 1991; and

2. Had been employed at least ten years in the operation of the wastewater works prior to March 16, 1991; and

3. Demonstrates to the Council his capability to operate the wastewater works at which he is employed by providing employment history and references.

R317-10-12. CEUs and Approved Training.

A. CEUs shall be required for renewal of each certificate according to the following schedule:

TABLE 3
REQUIRED CEUs FOR RENEWAL OF EACH CERTIFICATE

OPERATOR GRADE	CEUs REQUIRED IN A 3-YEAR PERIOD
Grade I	2
Grade II	2
Grade III	3
Grade IV	3

B. All CEUs for certificate renewal shall be subject to review for approval to ensure that the training is applicable to wastewater works operation and meets CEU criteria. Identification of approved training, appropriate CEU or credit assignment and verification of successful completion is the responsibility of the Council. Training records shall be maintained by the Council.

C. All in-house or in-plant training which is intended to meet any part of the CEU requirements must be approved by the Council. In-house or in-plant training must meet the following general criteria to be approved:

1. Instruction must be under the supervision of an instructor approved by the Council.

2. An outline must be included with all submittals listing subjects to be covered and the time allotted to each subject.

3. A list of the teacher's objectives must be submitted which documents the essential points of the instruction ("need-to-know" information) and the methods used to illustrate these principles.

D. No more than one-half of required CEU credits, over a three-year period prior to the expiration date of a certificate, shall be given for registration and attendance at the annual technical program meetings of the Water Environment Association of Utah, the Water Environment Federation, Rural Water Association of Utah, or similar organizations.

E. Training must be related to the responsibilities of a wastewater works operator. If a person holds multiple wastewater operator certificates (treatment and collection), CEU credit may be received for each certificate from one training experience only if the training is applicable to each certificate. It is recommended that at least one-half of the required CEUs be technical training directly related to the job duties.

R317-10-13. Recommendations of the Council.

A. Initial recommendations. All decisions of the Council

shall be in the form of recommendations for action by the Executive Secretary. The Council shall notify an applicant of any initial recommendation. Any such applicant may, within 30 days of the date the Council's notice was mailed, request reconsideration and an informal hearing before the Council by writing to: Wastewater Operator Certification Council, Division of Water Quality, Department of Environmental Quality, State of Utah, Salt Lake City, Utah 84114-4870. The Council shall notify the person of the time and location for the informal hearing.

B. Following the informal hearing, or the expiration of the period for requesting reconsideration, the Council shall notify the Executive Secretary of its final recommendation.

C. A challenge to the Executive Secretary's determination regarding Certification may be made as provided in R317-9-3.

R317-10-14. Certificate Suspension and Revocation Procedures.

A. Grounds for suspending or revoking an operator's certificate may be any of the following:

1. Demonstrated disregard for the public health and safety;

2. Misrepresentation or falsification of figures and/or reports submitted to the State;

3. Cheating on a certification exam;

4. Falsely obtaining or altering a certificate; or

5. Gross negligence, incompetence or misconduct in the performance of duties as an operator.

B. Suspension or revocation may result where it may be shown that circumstances and events relative to the operation of the wastewater works were under the operator's jurisdiction and control. Circumstances beyond the control of an operator shall not be grounds for suspension or revocation action.

C. The Council may make recommendations to the Executive Secretary regarding the suspension or revocation of a certificate. Prior to making any such recommendation, the Council shall inform the individual in writing of the reasons the Council is considering such a recommendation. The Council shall allow the individual an opportunity for an informal hearing before the Council. Any request for an informal hearing shall be made within 30 days of the date the Council's notification is mailed.

D. Following an informal hearing, or the expiration of the period for requesting a hearing, the Council shall notify the Executive Secretary of its final recommendation.

E. A challenge to the Executive Secretary's determination may be made as provided in R317-9-3.

R317-10-15. Noncompliance.

A. Noncompliance with these Certification rules is a violation of Section 19-5-115 Utah Code Annotated.

B. The Council shall refer cases of noncompliance with this rule to the Executive Secretary.

KEY: water pollution, operator certification, wastewater treatment
June 23, 2004 19-5
Notice of Continuation October 7, 2002

R365. Governor, Planning and Budget, Chief Information Officer.
R365-6. IT Plan Submission Rule for Agencies.
R365-6-1. Purpose.

State agencies are required by statute to submit IT plans for review and approval by the Chief Information Officer (CIO) office. This rule provides the format and content requirements for IT Plan submission.

R365-6-2. Authority.

This rule is issued by the Chief Information Officer under the authority of Section 63D-1a-301.2 of the Information Technology Act, in accordance with Section 63-46a-3 of the Utah Rulemaking Act, Utah Code Annotated, and section 63D-1a-303 of the Utah code, Agency Information Technology Plans.

R365-6-3. Scope of Application.

All state agencies of the executive branch of the State of Utah government shall comply with this rule, which provides a consistent technology planning method for the State of Utah.

R365-6-4. Definitions.

(1) "Project" Investment in development of a new application/system or to upgrade or enhance and existing information system.

(2) Plan Timeframe: Two fiscal years into the future; i.e., 1) Budget fiscal year and 2) Planning fiscal year.

(3) Severity level: Severity level is rated on four categories: impact on citizens, visibility to the public and Legislature, impact on state operations, and the consequences of doing nothing. The severity rating reflects the impact on external stakeholders.

(4) Risk level: The risk criteria measure the impact of the project on the organization, the effort needed to complete the project, the stability of the proposed technology, and the agency preparedness. The risk rating reflects the impact on the internal stakeholders.

R365-6-5. Compliance and Responsibilities.

The following are the compliance issues and the responsibilities for state agencies:

(1) Any state executive branch agency that develops, hosts, or funds information technology projects or infrastructure shall submit a plan following the format outlined in R365-06-5(a) below.

(2) The CIO office shall provide education and instruction to the agencies to enable consistent response.

(3) Agency IT Plans shall be delivered to the CIO office, in electronic format, by July 1 of each year.

(4) Agency IT Plans shall use document formatting methods as defined in CIO instruction.

(5) Agency IT Plans at a division level, shall be combined for submission to the CIO office at the Agency/Department level.

(6) Amendments to the IT Plan shall be submitted for any significant change in a project or if an IT supplemental appropriation is requested during the budget process.

R365-6-6. Agency IT Plan Format.

The following is the IT plan format:

(1) SUBMIT AN EXECUTIVE SUMMARY.

(a) Department/Agency Mission Statement.

(b) Department/Agency Business Objectives that have IT projects supporting them.

(c) Statement of IT Vision/Mission.

(d) Description of accomplishments of past calendar year.

(e) Description of IT alignment with business objectives.

(f) IT Budget Summary for Department/Agency.

(g) Verification of compliance procedures for information technology policies, administrative rules, and statutes.

(2) IT PLAN DETAILS.

(a) IT Assets Inventory.

(b) Security Plan Documentation.

(c) Disaster Recovery/Business Resumption Plan Documentation.

(d) Budget Fiscal Year : If a supplemental IT appropriation is anticipated, describe.

(e) Planning Fiscal Year: Describe anticipated changes in objectives, projects or initiatives.

(f) Planning Fiscal Year: If a building block request for an IT appropriation is anticipated, describe.

(3) PROPOSED PROJECT DESCRIPTION

Complete a project description for each IT project including the following information:

(a) Project organizational impact:

(i) Division (or other dept. sub-unit) project; identify:

(ii) Department project.

(iii) Cross-department project.

(b) Project Name.

(c) Project Manager.

(d) Project Purpose (check all that apply):

(i) Maintain/enhance existing infrastructure.

(ii) New infrastructure.

(iii) Maintain/enhance existing application/product.

(iv) Develop new application/product.

(v) Support of UCA 46-4-503.

(vi) Pilot project.

(vii) Implement/enhance GIS.

(viii) Collaboration with local government.

(ix) Public/private partnership.

(x) Other, please specify.

(4) DOCUMENT SUPPORT OF EXECUTIVE BRANCH STRATEGIC GOALS.

(5) DESCRIBE PROPOSED PROJECT AND ITS ANTICIPATED BENEFITS.

(6) DESCRIBE PERFORMANCE MEASURES USED BY THE AGENCY FOR IMPLEMENTING THE AGENCY'S INFORMATION TECHNOLOGY OBJECTIVES.

(7) IDENTIFY THE IMPACT ON ITS SERVICES THAT MAY RESULT WITH THE DEVELOPMENT OF THIS PROJECT.

(8) LIST ESTIMATED START AND END DATE FOR PROJECT.

(9) ESTIMATE PROJECT COSTS INCLUDING LABOR, HARDWARE, SOFTWARE, CONTRACT SERVICES AND OTHER.

(10) ESTIMATE ANNUAL OPERATION/MAINTENANCE COSTS.

(11) DESCRIBE RISK LEVEL OF PROJECT FOLLOWING CIO INSTRUCTION FOR FORMAT.

(12) DESCRIBE SEVERITY LEVEL OF PROJECT FOLLOWING CIO INSTRUCTION FOR FORMAT.

R365-6-7. Exceptions.

Any variance to format or content as established in this rule shall be approved by the CIO office.

R365-6-8. Rule Compliance Management.

The CIO may enforce this rule by non-approval of the IT Plan as defined in Utah Code, Section 63D-1a-303.

KEY: IT planning
June 28, 2004 **63D-1a-301.2**
63D-1a-303
63-46a-3

R365. Governor, Planning and Budget, Chief Information Officer.
R365-7. Acceptable Use of Information Technology Resources.
R365-7-1. Purpose.

Information technology resources are provided to state employees to assist in the efficient day to day operations of state agencies. Employees shall use information technology resources in compliance with this rule.

R365-7-2. Application.

All agencies of the executive branch of state government including its administrative sub-units, except the State Board of Education and the Board of Regents and institutions of higher education, shall comply with this rule.

R365-7-3. Authority.

This rule is issued by the Chief Information Officer under the authority of Section 63D-1a-305 of the Information Technology Act, Utah Code, and in accordance with Section 63-46a-3 of the Utah Rulemaking Act, Utah Code.

R365-7-4. Employee and Management Conduct.

(1) Providing IT resources to an employee does not imply an expectation of privacy. Agency management may:

(a) View, authorize access to, and disclose the contents of electronic files or communications, as required for legal, audit, or legitimate state operational or management purposes;

(b) Monitor the network or email system including the content of electronic messages, including stored files, documents, or communications as are displayed in real-time by employees, when required for state business and within the officially authorized scope of the person's employment.

(2) An employee may engage in incidental and occasional personal use of IT resources provided that such use does not:

(a) Disrupt or distract the conduct of state business due to volume, timing, or frequency;

(b) Involve solicitation;

(c) Involve for-profit personal business activity;

(d) Involve actions, which are intended to harm or otherwise disadvantage the state; or

(e) Involve illegal or other activities prohibited by this rule.

(3) An employee shall:

(a) comply with the Government Records Access and Management Act, as found in Section 63-1-101 et seq., Utah Code, when transmitting information with state provided IT resources.

(b) Report to agency management any computer security breaches, or the receipt of unauthorized or unintended information.

(4) While using state provided IT resources, an employee may not:

(a) Access private, protected or controlled records regardless of the electronic form without management authorization;

(b) Divulge or make known his/her own password(s) to another person;

(c) Distribute offensive, disparaging or harassing statements including those that might incite violence or that are based on race, national origin, sex, sexual orientation, age, disability or political or religious beliefs;

(d) Distribute information that describes or promotes the illegal use of weapons or devices including those associated with terrorist activities;

(e) View, transmit, retrieve, save, print or solicit sexually-oriented messages or images;

(f) Use state-provided IT resources to violate any local, state, or federal law;

(g) Use state-provided IT resources for commercial purposes, product advertisements or "for-profit" personal activity;

(h) Use state-provided IT resources for religious or political functions, including lobbying as defined according to Section 36-11-102, Utah Code, and rule R623-1;

(i) Represent oneself as someone else including either a fictional or real person;

(j) Knowingly or recklessly spread computer viruses, including acting in a way that effectively opens file types known to spread computer viruses particularly from unknown sources or from sources from which the file would not be reasonably expected to be connected with;

(k) Create and distribute or redistribute "junk" electronic communications, such as chain letters, advertisements, or unauthorized solicitations.

(5) Once agency management determines that an employee has violated this rule, they may impose disciplinary actions in accordance with the provisions of DHRM rule R477-11-1.

KEY: information technology resources, acceptable use
June 28, 2004 63D-1a-305

R380. Health, Administration.
R380-25. Submission of Data Through an Electronic Data Interchange.
R380-25-1. Purpose and Authority.

This rule provides for the submission of information to the Department of Health through an electronic data interchange (EDI). Subsections 26-1-30(2)(d), 26-1-30(2)(e), 26-1-30(2)(f), 26-1-30(2)(g), 26-1-30(2)(p), and 26-1-30(2)(w); Sections 26-3-5; and 26-3-6 authorize this rule.

R380-25-2. Definitions.

These definitions apply to the rule:

(1) "Health data" as defined in Subsection 26-3-1(2).

(2) "Electronic data interchange" means an entity that receives billing, claim, or other electronically transmissible information from a data supplier and transmits it to another party.

(3) "Data supplier" as defined in Section 26-33a-102(3).

R380-25-3. Confidentiality.

(1) Health data received by the Department of Health is confidential and protected as provided in Title 26, Chapter 3.

(2) The Department of Health shall not store or use any information it receives from an EDI that the Department is not authorized to collect by statute, rule or agreement with a data supplier.

(3) An EDI that receives and forwards health data or other information to the Department of Health on behalf of a data supplier without inspecting the contents of the information does not violate patient confidentiality or individual privacy rights.

R380-25-4. Required Forwarding.

An EDI that is instructed by a data supplier to forward information to the Department of Health must do so as instructed.

KEY: health, electronic data interchange
July 1, 1999 **26-1-30(2)(d)**
Notice of Continuation June 30, 2004 **26-1-30(2)(e)**
26-1-30(2)(f)
26-1-30(2)(g)
26-1-30(2)(p)
26-1-30(2)(w)
26-3-5
26-3-6

R384. Health, Community and Family Health Services, Chronic Disease.
R384-100. Cancer Reporting Rule.
R384-100-1. Purpose Statement.

(1) The Cancer Reporting Rule is adopted under authority of sections 26-1-30 and 26-5-3.

(2) Cancers constitute a leading cause of morbidity and mortality in Utah and, therefore, pose an important risk to the public health. Through the routine reporting of cancer cases, trends in cancer incidence and mortality can be monitored and prevention and control measures evaluated.

(3) Cancer records are managed by the Utah Cancer Registry (Registry) on behalf of the Utah Department of Health. This Cancer Reporting Rule is adopted to specify the reporting requirements for cases of cancer to the Registry. The Utah Department of Health retains ownership and all rights to the records.

R384-100-2. Definitions.

As used in this rule:

(1) "Cancer" means all in-situ (with the exception of in-situ cervical cancers) or malignant neoplasms diagnosed by histology, radiology, laboratory testing, clinical observation, autopsy or suggestible by cytology, but excluding basal cell and squamous cell carcinoma of the skin unless occurring in genital sites such as the vagina, clitoris, vulva, prepuce, penis and scrotum.

(2) "Follow-up data" includes date last seen or date of death, status of disease, date of first recurrence, type of recurrence, distant site(s) of first recurrence, and the name of the physician who is following the case.

(3) "Health care provider" includes any person who renders health care or professional services such as a physician, physician assistant, nurse practitioner, registered nurse, licensed practical nurse, dentist, optometrist, podiatric physician, osteopathic physician, osteopathic physician and surgeon, or others rendering patient care.

(4) "Registrar" means a person who:

(a) is employed as a registrar and who has attended a cancer registrar training program;

(b) has two years of experience in medical record discharge analysis, coding, and abstracting, and has successfully completed a course in anatomy, physiology, and medical terminology; or

(c) has successfully passed the Certified Tumor Registrar examination offered by the National Cancer Registrars' Association.

(5) "Reportable benign tumor" means any noncancerous neoplasm occurring in the brain.

R384-100-3. Reportable Cases.

Each case of cancer or reportable benign tumor, as described in R384-100-2, that is diagnosed or treated in Utah shall be reported to the Utah Cancer Registry, 546 Chipeta Way; Suite 2100; Salt Lake City, Utah 84108, telephone number 801-581-8407, FAX number 801-581-4560.

R384-100-4. Case Report Contents.

Each report of cancer or reportable benign tumor shall include information on report forms provided by the Registry. These reports shall be made in the format prescribed by the Registry and shall include items such as the name and address of the patient, medical history, environmental factors, date and method of diagnosis, primary site, stage of disease, tissue diagnosis, laboratory data, methods of treatment, recurrence and follow-up data, and physician names.

R384-100-5. Agencies or Individuals Required to Report Cases.

(1) All hospitals, radiation therapy centers, pathology laboratories licensed to provide services in the state, nursing homes, and other facilities and health care providers involved in the diagnosis or treatment of cancer patients shall report or provide information related to a cancer or reportable benign tumor to the Registry.

(2) Procedures for reporting:

(a) Hospital employed registrars shall report hospital cases.

(b) Registrars employed by radiation therapy centers shall report center cases.

(c) Pending implementation of electronic reporting by pathology laboratories, pathology laboratories shall allow the Registry to identify reportable cases and extract the required information during routine visits to pathology laboratories.

(d) If a health care provider diagnoses a reportable case but does not send a tissue specimen to a pathology laboratory or arrange for treatment of the case at a hospital or radiation therapy center, then the health care provider must report the case to the Registry.

(e) If the Registry has not received complete information on a reportable case from routine reporting sources (hospitals, radiation therapy centers, pathology laboratories), the Registry may contact health care providers and require them to complete a report form.

R384-100-6. Time Requirements.

(1) New Cases:

(a) Hospitals and radiation therapy facilities shall submit reports to the Registry within six months of the date of diagnosis.

(b) Other facilities and health care providers shall submit reportable data to the Registry upon request.

(2) Follow-up Data:

(a) Hospitals and radiation therapy centers shall submit annual follow-up data to the Registry within 13 months of the date the patient was last contacted by hospital or facility personnel.

(b) Physicians shall submit follow-up data to the Registry upon request.

R384-100-7. Reporting Format.

Reports shall be submitted in the standard format designated by the Registry. Report forms can be obtained by contacting the Registry.

R384-100-8. Data Quality Assurance.

Records maintained by hospitals, pathology laboratories, cancer clinics, and physicians are subject to review by Registry personnel acting on behalf of the Department of Health to assure the completeness and accuracy of reported data.

R384-100-9. Confidentiality of Reports.

All reports required by this rule are confidential under the provisions of Title 26, Chapter 3 and are not open to inspection except as allowed by Title 26, Chapter 3. The Registry shall maintain all reports according to the provisions of Title 26, Chapter 3.

R384-100-10. Penalties.

Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Cancer Reporting Rule, are prescribed under Section 26-23-6 and are punishable as a class B misdemeanor on the first offense, a class A misdemeanor on the second offense or by civil money penalty of up to $5,000 for each violation.

KEY: cancer, reporting requirements and procedures
August 16, 1999 26-1-30

Notice of Continuation June 15, 2004 26-5-3

R386. Health, Community Health Services, Epidemiology.
R386-702. Communicable Disease Rule.
R386-702-1. Purpose Statement.

(1) The Communicable Disease Rule is adopted under authority of Sections 26-1-30, 26-6-3, and 26-23b.

(2) This rule outlines a multidisciplinary approach to communicable and infectious disease control and emphasizes reporting, surveillance, isolation, treatment and epidemiological investigation to identify and control preventable causes of infectious diseases. Reporting requirements and authorizations are specified for communicable and infectious diseases, outbreaks, and unusual occurrence of any disease. Each section has been adopted with the intent of reducing disease morbidity and mortality through the rapid implementation of established practices and procedures.

(3) The successes of medicine and public health dramatically reduced the risk of epidemics and early loss of life due to infectious agents during the twentieth century. However, the recent emergence of new diseases, such as Human Immunodeficiency Virus, Hantavirus, and Severe Acute Respiratory Syndrome, and the rapid spread of diseases to the United States from other parts of the world, such as West Nile virus, made possible by advances in transportation, trade, food production, and other factors highlight the continuing threat to health from infectious diseases. Continual attention to these threats and cooperation among all health care providers, government agencies and other entities that are partners in protecting the public's health are crucial to maintain and improve the health of the citizens of Utah.

R386-702-2. Definitions.

(1) Terms in this rule are defined in Section 26-6-2 and 26-23b-102, except that for purposes of this rule, "Department" means the Utah Department of Health.

(2) In addition:

(a) "Outbreak" means an epidemic limited to a localized increase in incidence of disease.

(b) "Case" means a person identified as having a disease, health disorder, or condition that is reportable under this rule or that is otherwise under public health investigation.

(c) "Suspect" case means a person who a reporting entity, local health department, or Department believes might be a case, but for whom it has not been established that the criteria necessary to become a case have been met.

R386-702-3. Reportable Diseases, Emergency Illnesses, and Health Conditions.

(1) The Utah Department of Health declares the following conditions to be of concern to the public health and reportable as required or authorized by Section 26-6-6 and Title 26, Chapter 23b of the Utah Health Code.

(a) Acquired Immunodeficiency Syndrome
(b) Adverse event resulting after smallpox vaccination
(c) Amebiasis
(d) Anthrax
(e) Arbovirus infection
(f) Botulism
(g) Brucellosis
(h) Campylobacteriosis
(i) Chancroid
(j) Chickenpox
(k) Chlamydia trachomatis infection
(l) Cholera
(m) Coccidioidomycosis
(n) Colorado tick fever
(o) Creutzfeldt-Jakob disease and other transmissible human spongiform encephalopathies
(p) Cryptosporidiosis
(q) Cyclospora infection
(r) Dengue fever
(s) Diphtheria
(t) Echinococcosis
(u) Ehrlichiosis, human granulocytic, human monocytic, or unspecified
(v) Encephalitis
(w) Enterococcal infection, vancomycin-resistant
(x) Enterohermorrhagic Escherichia coli (EHEC) infection, including Escherichia coli O157:H7
(y) Giardiasis
(z) Gonorrhea: sexually transmitted and ophthalmia neonatorum
(aa) Haemophilus influenzae, invasive disease
(bb) Hansen Disease (Leprosy)
(cc) Hantavirus infection and pulmonary syndrome
(dd) Hemolytic Uremic Syndrome, postdiarrheal
(ee) Hepatitis A
(ff) Hepatitis B, cases and carriers
(gg) Hepatitis C, acute and chronic infection
(hh) Hepatitis, other viral
(ii) Human Immunodeficiency Virus Infection. Reporting requirements are listed in R388-803.
(jj) Influenza, laboratory confirmed
(kk) Kawasaki syndrome
(ll) Legionellosis
(mm) Listeriosis
(nn) Lyme Disease
(oo) Malaria
(pp) Measles
(qq) Meningitis, aseptic and bacterial (specify etiology)
(rr) Meningococcal Disease, invasive
(ss) Mumps
(tt) Norovirus, formerly called Norwalk-like virus, infection
(uu) Pelvic Inflammatory Disease
(vv) Pertussis
(ww) Plague
(xx) Poliomyelitis, paralytic
(yy) Psittacosis
(zz) Q Fever
(aaa) Rabies, human and animal
(bbb) Relapsing fever, tick-borne and louse-borne
(ccc) Reye syndrome
(ddd) Rheumatic fever
(eee) Rocky Mountain spotted fever
(fff) Rubella
(ggg) Rubella, congenital syndrome
(hhh) Saint Louis encephalitis
(iii) Salmonellosis
(jjj) Severe Acute Respiratory Syndrome (SARS)
(kkk) Shigellosis
(lll) Smallpox
(mmm) Staphylococcal diseases, all outbreaks
(nnn) Staphylococcus aureus with resistance or intermediate resistance to vancomycin isolated from any site
(ooo) Staphylococcus aureus with resistance to methicillin isolated from any site
(ppp) Streptococcal disease, invasive, isolated from a normally sterile site
(qqq) Streptococcus pneumoniae, drug-resistant, isolated from a normally sterile site
(rrr) Syphilis, all stages and congenital
(sss) Tetanus
(ttt) Toxic-Shock Syndrome, staphyloccal or streptococcal
(uuu) Trichinosis
(vvv) Tuberculosis. Special Measures for the Control of Tuberculosis are listed in R388-804.
(www) Tularemia
(xxx) Typhoid, cases and carriers

(yyy) Viral hemorrhagic fever
(zzz) West Nile virus infection
(aaaa) Yellow fever
(bbbb) Any outbreak or epidemic, including suspected or confirmed outbreaks of foodborne or waterborne disease. Any unusual occurrence of infectious or communicable disease or any unusual or increased occurrence of any illness that may indicate an outbreak, epidemic, Bioterrorism event, or public health hazard, including any newly recognized, emergent or re-emergent disease or disease producing agent, including newly identified multi-drug resistant bacteria.

(2) In addition to the reportable conditions set forth in R386-702-3(1) the Department declares the following reportable emergency illnesses or health conditions to be of concern to the public health and reporting is authorized by Title 26, Chapter 23b, Utah Code, unless made mandatory by the declaration of a public health emergency.

(a) respiratory illness (including upper or lower respiratory tract infections, difficulty breathing and Adult Respiratory Distress Syndrome);
(b) gastrointestinal illness (including vomiting, diarrhea, abdominal pain, or any other gastrointestinal distress);
(c) influenza-like constitutional symptoms and signs;
(d) neurologic symptoms or signs indicating the possibility of meningitis, encephalitis, or unexplained acute encephalopathy or delirium;
(e) rash illness;
(f) hemorrhagic illness;
(g) botulism-like syndrome;
(h) lymphadenitis;
(i) sepsis or unexplained shock;
(j) febrile illness (illness with fever, chills or rigors);
(k) nontraumatic coma or sudden death; and
(l) other criteria specified by the Department as indicative of disease outbreaks or injurious exposures of uncertain origin.

R386-702-4. Reporting.

(1) Each reporting entity shall report each confirmed case and any case who the reporting entity believes in its professional judgment is likely to harbor an illness, infection, or condition reportable under R386-702-3(1), and each outbreak, epidemic, or unusual occurrence described in R386-(1)(bbbb) to the local health department or to the Office of Epidemiology, Utah Department of Health. Unless otherwise specified, the report of these diseases to the local health department or to the Office of Epidemiology, Utah Department of Health shall provide the following information: name, age, sex, address, date of onset, and all other information as prescribed by the Department. A standard report form has been adopted and is supplied to physicians and other reporting entities by the Department. Upon receipt of a report, the local health department shall promptly forward a written or electronic copy of the report to the Office of Epidemiology, Utah Department of Health.

(2) Where immediate reporting is required, the reporting entity shall report as soon as possible, but not later than 24 hours after identification. Immediate reporting shall be made by telephone to the local health department or to the Office of Epidemiology, Utah Department of Health at 801-538-6191 or 888-EPI-UTAH (888-374-8824). All diseases not required to be reported immediately or by number of cases shall be reported within three working days from the time of identification. Reporting entities shall send reports to the local health department or the Office of Epidemiology, 288 North 1460 West, P. O. Box 142104, Salt Lake City, Utah 84114-2104.

(3) Entities Required to Report Communicable Diseases: Title 26, Chapter 6, Section 6 Utah Code lists those individuals and facilities required to report diseases known or suspected of being communicable.

(a) Physicians, hospitals, health care facilities, home health agencies, health maintenance organizations, and other health care providers shall report details regarding each case.

(b) Schools, child day care centers, and citizens shall provide any relevant information.

(c) Laboratories and other testing sites shall report laboratory evidence confirming any of the reportable diseases. Laboratories and other testing sites shall also report any test results that provide presumptive evidence of infection such as positive tests for syphilis, measles, and viral hepatitis.

(d) Pharmacists shall report unusual prescriptions or patterns of prescribing as specified in section 26-23b-105.

(4) Immediately Reportable Conditions: Cases and suspect cases of anthrax, botulism, cholera, diphtheria, Haemophilus influenzae (invasive disease), measles, meningococcal disease, pertussis, plague, poliomyelitis, rabies, rubella, Severe Acute Respiratory Syndrome (SARS), smallpox, syphilis (primary or secondary stage), tuberculosis, tularemia, typhoid, viral hemorrhagic fever, yellow fever, and any condition described in R386-702-3(1)(bbbb) are to be made immediately as provided in R386-702-4(2).

(5) Staphylococcus aureus (MRSA) and vancomycin resistant enterococcus (VRE) shall be reported monthly by number of cases. Full reporting of all relevant patient information related to MRSA and VRE cases is authorized and may be required by local or state health department personnel for purposes of public health investigation of a documented threat to public health.

(6) Reports of emergency illnesses or health conditions under R386-702-3(2) shall be made as soon as practicable using a process and schedule approved by the Department. The report shall include at least, if known, the name of the facility, a patient identifier, the date and time of visit, the patient's age and sex, the zip code of the patient's residence, the reportable condition suspected and whether the patient was admitted to the hospital. Full reporting of all relevant patient information is authorized.

(7) An entity reporting emergency illnesses or health conditions under R386-702-3(2) is authorized to report on other encounters during the same time period that do not meet definition for a reportable emergency illness or health condition. The report shall include the following information for each such encounter:
(a) facility name;
(b) date of visit;
(c) time of visit;
(d) patient's age;
(e) patient's sex; and
(f) patient's zip code for patient's residence;

(8) Mandatory Submission of Isolates: Laboratories shall submit all isolates of the following organisms to the Utah Department of Health, public health laboratory:
(a) Bacillus anthracis;
(b) Bordetella pertussis;
(c) Brucella species;
(d) Campylobacter species;
(e) Clostridium botulinum;
(f) Cornybacterium diphtheriae;
(g) Enterococcus, vancomycin-resistant;
(h) Escherichia coli, enterohemorrhagic;
(i) Francisella tularensis;
(j) Haemophilus influenzae, from normally sterile sites;
(k) Influenza, types A and B;
(l) Legionella species;
(m) Listeria monocytogenes;
(n) Mycobacterium tuberculosis complex;
(o) Neisseria gonorrhoeae;
(p) Neisseria meningitidis, from normally sterile sites;
(q) Salmonella species;
(r) Shigella species;
(s) Staphylococcus aureus with resistance or intermediate

resistance to vancomycin isolated from any site;

(t) Vibrio cholera;

(u) Yersinia species; and

(v) any organism implicated in an outbreak when instructed by authorized local or state health department personnel.

Submission of an isolate does not replace the requirement to report the case also to the local health department or Office of Epidemiology, Utah Department of Health.

(9) Epidemiological Review: The Department or local health department may conduct an investigation, including review of the hospital and health care facility medical records and contacting the individual patient to protect the public's health.

(10) Confidentiality of Reports: All reports required by this rule are confidential and are not open to public inspection. Nothing in this rule, however, precludes the discussion of case information with the attending physician or public health workers. All information collected pursuant to this rule may not be released or made public, except as provided by Section 26-6-27. Penalties for violation of confidentiality are prescribed in Section 26-6-29.

R386-702-5. General Measures for the Control of Communicable Diseases.

(1) The local health department shall maintain all reportable disease records as needed to enforce Chapter 6 of the Health Code and this rule, or as requested by the Utah Department of Health.

(2) General Control Measures for Reportable Diseases.

(a) The local health department shall, when an unusual or rare disease occurs in any part of the state or when any disease becomes so prevalent as to endanger the state as a whole, contact the Office of Epidemiology, Utah Department of Health for assistance, and shall cooperate with the representatives of the Utah Department of Health.

(b) The local health department shall investigate and control the causes of epidemic, infectious, communicable, and other disease affecting the public health. The local health department shall also provide for the detection, reporting, prevention, and control of communicable, infectious, and acute diseases that are dangerous or important or that may affect the public health. The local health department may require physical examination and measures to be performed as necessary to protect the health of others.

(c) If, in the opinion of the local health officer it is necessary or advisable to protect the public's health that any person shall be kept from contact with the public, the local health officer shall establish, maintain and enforce involuntary treatment, isolation and quarantine as provided by Section 26-6-4. Control measures shall be specific to the known or suspected disease agent. Guidance is available from the Office of Epidemiology, Utah Department of Health or official reference listed in R386-702-11.

(3) Prevention of the Spread of Disease From a Case.

The local health department shall take action and measures as may be necessary within the provisions of Section 26-6-4; Title 26, Chapter 6b; and this rule, to prevent the spread of any communicable disease, infectious agent, or any other condition which poses a public health hazard. Action shall be initiated upon discovery of a case or upon receipt of notification or report of any disease.

(4) Public Food Handlers.

A person known to be infected with a communicable disease that can be transmitted by food, water, or milk, or who is suspected of being infected with such a disease may not engage in the commercial handling of food, water, or other drink or be employed in a dairy or on any premises handling milk or milk products, until he is determined by the local health department to be free of communicable disease, or incapable of transmitting the infection.

(5) Communicable Diseases in Places Where Milk or Food Products are Handled or Processed.

If a case, carrier, or suspected case of a disease that can be conveyed by milk or food products is found at any place where milk or food products are handled or offered for sale, or if a disease is found or suspected to have been transmitted by these milk or food products, the local health department may immediately prohibit the sale, or removal of milk and all other food products from the premises. Sale or distribution of milk or food products from the premise may be resumed when measures have been taken to eliminate the threat to health from the food and its processing as prescribed by R392-100.

(6) Request for State Assistance.

If a local health department finds it is not able to completely comply with this rule, the local health officer or his representative shall request the assistance of the Utah Department of Health. In such circumstances, the local health department shall provide all required information to the Office of Epidemiology. If the local health officer fails to comply with the provisions of this rule, the Utah Department of Health shall take action necessary to enforce this rule.

(7) Approved Laboratories.

Laboratory analyses which are necessary to identify the causative agents of reportable diseases or to determine adequacy of treatment of patients with a disease shall be ordered by the physician or other health care provider to be performed in or referred to a laboratory holding a valid certificate under the Clinical Laboratory Improvement Amendments of 1988.

R386-702-6. Special Measures for Control of Rabies.

(1) Rationale of Treatment.

A physician must evaluate individually each exposure to possible rabies infection. The physician shall also consult with local or state public health officials if questions arise about the need for rabies prophylaxis.

(2) Management of Biting Animals.

(a) A healthy dog, cat, or ferret that bites a person shall be confined and observed at least daily for ten days from the date of bite as specified by local animal control ordinances. It is recommended that rabies vaccine not be administered during the observation period. Such animals shall be evaluated by a veterinarian at the first sign of illness during confinement. A veterinarian or animal control officer shall immediately report any illness in the animal to the local health department. If signs suggestive of rabies develop, a veterinarian or animal control officer shall direct that the animal be euthanized, its head removed, and the head shipped under refrigeration, not frozen, for examination of the brain by a laboratory approved by the Utah Department of Health.

(b) If the dog, cat, or ferret shows no signs of rabies or illness during the ten day period, the veterinarian or animal control officer shall direct that the unvaccinated animal be vaccinated against rabies at the owner's expense before release to the owner. If a veterinarian is not available, the animal may be released, but the owner shall have the animal vaccinated within 72 hours of release. If the dog, cat, or ferret was appropriately vaccinated against rabies before the incident, the animal may be released from confinement after the 10-day observation period with no further restrictions.

(c) Any stray or unwanted dog, cat, or ferret that bites a person may be euthanized immediately by a veterinarian or animal control officer, if permitted by local ordinance, and the head submitted, as described in R386-702-6(2)(a), for rabies examination. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(d) Wild animals include raccoons, skunks, coyotes, foxes,

bats, the offspring of wild animals crossbred to domestic dogs and cats, and any carnivorous animal other than a domestic dog, cat, or ferret.

(e) Signs of rabies in wild animals cannot be interpreted reliably. If a wild animal bites or scratches a person, the person or attending medical personnel shall notify an animal control or law enforcement officer. A veterinarian, animal control officer or representative of the Division of Wildlife Resources shall kill the animal at once, without unnecessary damage to the head, and submit the brain, as described in R386-702-6(2)(a), for examination for evidence of rabies. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(f) Rabbits, opossums, squirrels, chipmunks, rats, and mice are rarely infected and their bites rarely, if ever, call for rabies prophylaxis or testing. Unusual exposures to any animal should be reported to the local health department or the Office of Epidemiology, Utah Department of Health.

(g) When rare, valuable, captive wild animals maintained in zoological parks approved by the United States Department of Agriculture or research institutions, as defined by Section 26-26-1, bite or scratch a human, the Office of Epidemiology, Utah Department of Health shall be notified. The provisions of subsection R386-702-6(2)(e) may be waived by the Office of Epidemiology, Utah Department of Health if zoological park operators or research institution managers can demonstrate that the following rabies control measures are established:

(i) Employees who work with the animal have received preexposure rabies immunization.

(ii) The person bitten by the animal voluntarily agrees to accept postexposure rabies immunization provided by the zoological park or research facility.

(iii) The director of the zoological park or research facility shall direct that the biting animal be held in complete quarantine for a minimum of 180 days. Quarantine requires that the animal be prohibited from direct contact with other animals or humans.

(h) Any animal bitten or scratched by a wild, carnivorous animal or a bat that is not available for testing shall be regarded as having been exposed to rabies.

(i) For maximum protection of the public health, unvaccinated dogs, cats, and ferrets bitten or scratched by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer. If the owner is unwilling to have the animal euthanized, the local health officer shall order that the animal be held in strict isolation in a municipal or county animal shelter or a veterinary medical facility approved by the local health department, at the owner's expense, for at least six months and vaccinated one month before being released. If any illness suggestive of rabies develops in the animal, the veterinarian or animal control officer shall immediately report the illness to the local health department and the veterinarian or animal control officer shall direct that the animal be euthanized and the head shall be handled as described in subsection R386-702-6(2)(a).

(j) Dogs, cats, and ferrets that are currently vaccinated and are bitten by rabid animals, shall be revaccinated immediately by a veterinarian and confined and observed by the animal's owner for 45 days. If any illness suggestive of rabies develops in the animal, the owner shall report immediately to the local health department and the animal shall be euthanized by a veterinarian or animal control officer and the head shall be handled as described in subsection R386-702-6(2)(a).

(k) Livestock exposed to a rabid animal and currently vaccinated with a vaccine approved by the United States Department of Agriculture for that species shall be revaccinated immediately by a veterinarian and observed by the owner for 45 days. Unvaccinated livestock shall be slaughtered immediately. If the owner is unwilling to have the animal slaughtered, the animal shall be kept under close observation by the owner for six months.

(l) Unvaccinated animals other than dogs, cats, ferrets, and livestock bitten by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer.

(3) Measures for Standardized Rabies Control Practices.

(a) Humans requiring either pre- or post-exposure rabies prophylaxis shall be treated in accordance with the recommendations of the U.S. Public Health Service Immunization Practices Advisory Committee, as adopted and incorporated by reference in R386-702-11(2). A copy of the recommendations shall be made available to licensed medical personnel, upon request to the Office of Epidemiology, Utah Department of Health.

(b) A physician or other health care provider that administers rabies vaccine shall immediately report all serious systemic neuroparalytic or anaphylactic reactions to rabies vaccine to the Office of Epidemiology, Utah Department of Health, using the process described in R386-702-4.

(c) The Compendium of Animal Rabies Prevention and Control, as adopted and incorporated by reference in R386-702-11(3), is the reference document for animal vaccine use.

(d) A county, city, town, or other political subdivision that requires licensure of animals shall also require rabies vaccination as a prerequisite to obtaining a license.

(e) Animal rabies vaccinations are valid only if performed by or under the direction of a licensed veterinarian in accordance with the Compendium of Animal Rabies Prevention and Control.

(f) All agencies and veterinarians administering vaccine shall document each vaccination on the National Association of State Public Health Veterinarians (NASPHV) form number 51, Rabies Vaccination Certificate, which can be obtained from vaccine manufacturers. The agency or veterinarian shall provide a copy of the report to the animal's owner. Computer-generated forms containing the same information are also acceptable.

(g) Animal rabies vaccines may be sold or otherwise provided only to licensed veterinarians or veterinary biologic supply firms. Animal rabies vaccine may be purchased by the Utah Department of Health and the Utah Department of Agriculture.

(4) Measures to Prevent or Control Rabies Outbreaks.

(a) The most important single factor in preventing human rabies is the maintenance of high levels of immunity in the pet dog, cat, and ferret populations through vaccination.

(i) All dogs, cats, and ferrets in Utah should be immunized against rabies by a licensed veterinarian; and

(ii) Local governments should establish effective programs to ensure vaccination of all dogs, cats, and ferrets and to remove strays and unwanted animals.

(b) If the Utah Department of Health determines that a rabies outbreak is present in an area of the state, the Utah Department of Health may require that:

(i) all dogs, cats, and ferrets in that area and adjacent areas be vaccinated or revaccinated against rabies as appropriate for each animal's age;

(ii) any such animal be kept under the control of its owner at all times until the Utah Department of Health declares the outbreak to be resolved;

(iii) an owner who does not have an animal vaccinated or revaccinated surrender the animal for confinement and possible destruction; and

(iv) such animals found at-large be confined and possibly destroyed.

R386-702-7. Special Measures for Control of Typhoid.

(1) Because typhoid control measures depend largely on sanitary precautions and other health measures designed to

protect the public, the local health department shall investigate each case of typhoid and strictly manage the infected individual according to the following outline:

(2) Cases: Enteric precautions are required during hospitalization. Hospital care is desirable during acute illness. Release of the patient from supervision by the local health department shall be based on not less that three negative cultures of feces and of urine in patients with schistosomiasis, taken as specified in R386-702-7(6). If any of these cultures is positive, repeat cultures at intervals of one month during the 12-month period following onset until at least three consecutive negative cultures are obtained. The patient shall be restricted from food handling and from providing patient care during the period of supervision by the local health department.

(3) Contacts: Administration of typhoid vaccine is required for all household members of known typhoid carriers. Household and close contacts shall not be employed in occupations likely to facilitate transmission of the disease, such as food handling, during the period of contact with the infected person until at least two negative feces and urine cultures, taken at least 24 hours apart, are obtained from each contact.

(4) Carriers: If a laboratory or physician identifies a carrier of typhoid, the attending physician shall immediately report the details of the case by telephone to the local health department or the Office of Epidemiology, Utah Department of Health using the process described in R386-702-4. Each infected individual shall submit to the supervision of the local health department. Carriers are prohibited from food handling and patient care until released in accordance with R386-702-7(4)(a) or R386-702-7(4)(b). All reports and orders of supervision shall be kept confidential and may be released only as allowed by Subsection 26-6-27(2)(c).

(a) Convalescent Carriers: Any person who harbors typhoid bacilli for three but less than 12 months after onset is defined as a convalescent carrier. Release from occupational and food handling restrictions may be granted at any time from three to 12 months after onset, as specified in R386-702-7(6).

(b) Chronic Carriers: Any person who continues to excrete typhoid bacilli for more than 12 months after onset of typhoid is a chronic carrier. Any person who gives no history of having had typhoid or who had the disease more than one year previously, and whose feces or urine are found to contain typhoid bacilli is also a chronic carrier.

(c) Other Carriers: If typhoid bacilli are isolated from surgically removed tissues, organs, including the gallbladder or kidney, or from draining lesions such as osteomyelitis, the attending physician shall report the case to the local health department or the Office of Epidemiology, Utah Department of Health. If the person continues to excrete typhoid bacilli for more than 12 months, he is a chronic carrier and may be released after satisfying the criteria for chronic carriers in R386-702-7(6).

(5) Carrier Restrictions and Supervision: The local health department shall report all typhoid carriers to the Office of Epidemiology, and shall:

(a) Require the necessary laboratory tests for release;

(b) Issue written instructions to the carrier;

(c) Supervise the carrier.

(6) Requirements for Release of Convalescent and Chronic Carriers: The local health officer or his representative may release a convalescent or chronic carrier from occupational and food handling restrictions only if at least one of the following conditions is satisfied:

(a) For carriers without schistosomiasis, three consecutive negative cultures obtained from fecal specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;

(b) for carriers with schistosomiasis, three consecutive negative cultures obtained from both fecal and urine specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped; or

(c) the local health officer or his representative determine that additional treatment such as cholecystectomy or nephrectomy has terminated the carrier state.

R386-702-8. Special Measures for the Control of Ophthalmia Neonatorum.

Every physician or midwife practicing obstetrics or midwifery shall, within three hours of the birth of a child, instill or cause to be instilled in each eye of such newborn one percent silver nitrate solution contained in wax ampules, or tetracycline ophthalmic preparations or erythromycin ophthalmic preparations, as these are the only antibiotics of currently proven efficacy in preventing development of ophthalmia neonatorum. The value of irrigation of the eyes with normal saline or distilled water is unknown and not recommended.

R386-702-9. Public Health Emergency.

(1) Declaration of Emergency: With the Governor's and Executive Director's or in the absence of the Executive Director, his designee's, concurrence, the Department or a local health department may declare a public health emergency by issuing an order mandating reporting emergency illnesses or health conditions specified in sections R386-702-3 for a reasonable time.

(2) For purposes of an order issued under this section and for the duration of the public health emergency, the following definitions apply.

(a) "emergency center" means:

(i) a health care facility licensed under the provisions of Title 26, Chapter 21, Utah Code, that operates an emergency department; or

(ii) a clinic that provides emergency or urgent health care to an average of 20 or more persons daily;

(b) "encounter" means an instance of an individual presenting at the emergency center who satisfies the criteria in section R386-702-3(2); and

(c) "diagnostic information" means an emergency center's records of individuals who present for emergency or urgent treatment, including the reason for the visit, chief complaint, results of diagnostic tests, presenting diagnosis, and final diagnosis, including diagnostic codes.

(3) Reporting Encounters: The Department shall designate the fewest number of emergency centers as is practicable to obtain the necessary data to respond to the emergency.

(a) Designated emergency centers shall report using the process described in R386-702-4.

(b) An emergency center designated by the Department shall report the encounters to the Department by:

(i) allowing Department representatives or agents, including local health department representatives, to review its diagnostic information to identify encounters during the previous day; or

(ii) reviewing its diagnostic information on encounters during the previous day and reporting all encounters by 9:00 a.m. the following day, or

(iii) identifying encounters and submitting that information electronically to the Department, using a computerized analysis method, and reporting mechanism and schedule approved by the Department; or

(iv) by other arrangement approved by the Department.

(4) For purposes of epidemiological and statistical analysis, the emergency center shall report on encounters during the public health emergency that do not meet the definition for

a reportable emergency illness or health condition. The report shall be made using the process described in 702-9(3)(b) and shall include the following information for each such encounter:

(a) facility name;
(b) date of visit;
(c) time of visit;
(d) patient's age
(e) patient's sex
(f) patient's zip code for patient's residence;

(5) If either the Department or a local health department collects identifying health information on an individual who is the subject of a report made mandatory under this section, it shall destroy that identifying information upon the earlier of its determination that the information is no longer necessary to carry out an investigation under this section or 180 days after the information was collected. However, the Department and local health departments shall retain identifiable information gathered under other sections of this rule or other legal authority.

Reporting on encounters during the public health emergency does not relieve a reporting entity of its responsibility to report under other sections of this rule or other legal authority.

R386-702-10. Penalties.

Any person who violates any provision of R386-702 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.

R386-702-11. Official References.

All treatment and management of individuals and animals who have or are suspected of having a communicable or infectious disease that must be reported pursuant to this rule shall comply with the following documents, which are adopted and incorporated by reference:

(1) American Public Health Association. "Control of Communicable Diseases Manual". 17th ed., Chin, James, editor, 2000.

(2) Centers for Disease Control and Prevention. Recommendation of the Immunization Practices Advisory Committee (ACIP): Human rabies Prevention - United States, 1999. "Morbidity and Mortality Weekly Report." 1999; 48: RR-1, 1-21.

(3) The National Association of State Public Health Veterinarians, Inc., "Compendium of Animal Rabies Prevention and Control, 2004, Part II."

(4) American Academy of Pediatrics. "Red Book: 2003 Report of the Committee on Infectious Diseases" 26th Edition. Elk Grove Village, IL, American Academy of Pediatrics; 2003.

KEY: communicable diseases, rules and procedures

June 11, 2004	**26-1-30**
Notice of Continuation August 20, 2002	**26-6-3**
	26-23b

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-55. Medicaid Policy for Hospital Emergency Department Copayment Procedures.
R414-55-1. Introduction and Authority.

This rule establishes Medicaid copayment policy for non-emergency use of outpatient hospital emergency departments by Medicaid clients who are not in any of the categories exempted from copayment requirements. The rule is authorized by 42 CFR 447.15 and 447.50 through 447.59, Oct. 2003 ed., which are adopted and incorporated by reference.

R414-55-2. Definitions.

In addition to the definitions in R414-1, the following definitions also apply to this rule:

(1) "Child" means any person under the age of 18.

(2) "Copayment" means that form of cost sharing required of a Medicaid client at the time a service is provided, with the amount of copayment specified beforehand.

(3) "Emergency Services" means those services defined by a select group of International Classification of Diseases, Ninth Revision, (ICD9) diagnosis codes which Medicaid shall identify for hospital Emergency Departments by means of Medicaid Information Bulletins.

(4) "Hospital Emergency Department" means that area of a hospital in which emergency services are provided on a 24-hour-a-day basis.

R414-55-3. Copayment Policy.

(1) Medicaid clients in the following categories are exempted from copayment requirements:

(a) children;

(b) pregnant women; and

(c) institutionalized individuals.

(2) Emergency services are exempted from copayment requirements.

(3) Family planning services and supplies are exempted from copayment requirements.

(4) Medicaid shall impose a copayment in the amount of $6 when a Medicaid client, as designated on his Medicaid card, receives non-emergency services in a Hospital Emergency Department.

(5) The provider shall collect the copayment amount from the Medicaid client for those services which require copayment. Medicaid shall deduct the $6 copayment amount from the reimbursement paid to the provider.

KEY: Medicaid
June 17, 2004 26-1-5
Notice of Continuation September 16, 2003 26-18-3

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-8. Exclusions From Child Care Licensing - Parochial Education Institution.
R430-8-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-8-2. Purpose.

The purpose of this rule is to define what constitutes child care at a parochial education institution.

R430-8-3. Parochial Education Institution.

(1) Care provided to children in a physical structure controlled by a parochial institution will be considered to be at a parochial education institution if:

(a) All children in care are over the age of three;

(b) The institution has a written curriculum used as part of a course of study for the children in care;

(c) A majority of the time that a child is in care is devoted to studying the established curriculum; and

(d) The parochial institution has a governing board that actively supervises and directs the curriculum and program used by the institution.

(2) Care provided to children in a physical structure controlled by a parochial institution may be considered to be at a parochial education institution if three of the four requirements in R430-8-3(1) are met; and the institution is able to satisfy the Department that the care provided is clearly educational rather than primarily care in lieu of that which a parent provides.

R430-8-4. Exclusion for Parochial Education Institution.

Care provided to children at a parochial education institution is excluded from the requirement of obtaining a license under subsection 26-39-105(6). All other child care provided at a parochial institution is subject to the requirement of obtaining a license under R430-100.

KEY: child care facilities
September 22, 1999 26-39
Notice of Continuation June 16, 2004

R477. Human Resource Management, Administration.
R477-5. Employee Status and Probation.
R477-5-1. Career Service Status.

(1) Only an employee who is appointed through a pre-approved competitive process shall be eligible for appointment to a career service position.

(2) An employee shall complete a probationary period in a competitive career service position prior to receiving career service status.

(3) An exempt employee may only convert to career service status under the following conditions:

(a) The employee previously held career service status with no break in service between exempt status and the previous career service position.

(b) The employee was hired from a hiring list as prescribed by R477-4-10(1), and completed a probationary period.

R477-5-2. Probationary Period.

The probationary period allows agency management to evaluate an employee's ability to perform the duties, responsibilities, skills, and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

(1) An employee shall receive full and fair opportunity to demonstrate competence in the job in a career position. As a minimum, a performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.

(a) During the probationary period, an employee may be separated from state employment in accordance with R477-11-2(1).

(b) At the end of the probationary period, an employee shall receive a performance evaluation. Evaluations shall be entered into HRE as the performance evaluation that reflects successful or unsuccessful completion of probation.

(2) Each career position shall be assigned a probationary period consistent with its job.

(a) The probationary period may not be extended except for periods of leave without pay, workers compensation leave, or temporary transitional assignment.

(b) The probationary period may not be reduced after appointment.

(c) An employee who has completed a probationary period and obtained career service status shall not be required to serve a new probationary period unless there is a break in service.

(3) An employee in a career service position who works at least 50 percent of the time or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.

(4) Probationary periods may be interrupted by military service covered under USERRA.

(5) An employee serving probation in a competitive career service position may be transferred, reassigned or promoted to another competitive career service position. Each new appointment shall include a new probationary period unless the agency determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period. If an agency determines that a new probationary period is needed, it shall be the full probationary period defined in the job description.

(6) A reemployed veteran shall be required to complete the remainder of the probationary period if it was not completed in his pre-service employment.

R477-5-3. Temporary Transitional Position.

(1) An employee on probation who is temporarily disabled may be placed in another position with lighter duty or reduced responsibility and pay.

(a) This accommodation shall occur for no longer than one year from the date of disability.

(b) Time spent in a transitional position does not reduce the required probationary period in the primary position.

R477-5-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with R477-2-2(1).

KEY: employment, personnel management, state employees
July 1, 2003 67-19-6
Notice of Continuation June 11, 2002 67-19-16(5)(b)

R477. Human Resource Management, Administration.
R477-10. Employee Development.
R477-10-1. Performance Evaluation.

Agency management shall develop an employee performance management system consistent with these rules and subject to approval by the Executive Director, DHRM. The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with R477-2-2. For this rule, the word employee refers to a career service employee, unless otherwise indicated.

(1) An acceptable performance management system shall satisfy the following criteria:

(a) Performance standards and expectations for each employee shall be specifically written in a performance plan by August 30 of each fiscal year.

(b) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and conduct outlined in the performance plan.

(c) Each employee shall be informed concerning the actions to be taken, time frames, and the supervisor's role in providing assistance to improve performance and increase the value of service.

(d) Each employee shall have the right to include written comment with his performance evaluation.

(e) Agency management shall select a performance management rating system or a combination of systems by August 30 to be effective for the entire fiscal year. The rating system shall be one or more of the following:

TABLE

SYSTEM	# RATING	POINTS
1	Pass	2
	Fail	0
2	Exceptional	3
	Successful	2
	Unsuccessful	0
3	Exceptional	3
	Highly Successful	2.5
	Successful	2
	Unsuccessful	0
4	Exceptional	3
	Highly Successful	2.5
	Successful	2
	Marginal	1
	Unsuccessful	0

(2) In addition to the above ratings, agency management may establish a rating category for highest level performers under the following conditions:

(a) Each employee who receives this rating shall receive a performance rating of 4.

(b) Agencies shall devise and publish the criteria they will use to select the highest level performers by August 30 of each year. Selection criteria for non-supervisory employees shall be comparable to the Utah Code 67-19c-101(3)(c). Selection criteria for supervisory or management employees shall be comparable to "The Manager of the Year Award."

(3) Each state employee shall receive a performance evaluation effective on or before the beginning of the first pay period of each fiscal year.

(a) A probationary employee shall receive a performance evaluation at the end of the probationary period and again prior to the beginning of the first pay period of the fiscal year.

(4) The employee shall sign the evaluation. Signing the evaluation only means that the employee has reviewed the evaluation. Refusal to sign the evaluation shall constitute insubordination, subject to discipline.

(a) The evaluation form shall include a space for the employee's comments. The employee shall check a space indicating either agreement or disagreement with the evaluation. The employee may comment in writing, either in the space provided or on a separate attachment.

R477-10-2. Corrective Action.

When an employee's performance does not meet established standards due to failure to maintain skills, incompetence, or inefficiency, agency management shall take appropriate, documented, and clearly labeled corrective action in accordance with the following rules:

(1) The supervisor shall discuss the substandard performance with the employee to discover the reasons and to develop an appropriate written corrective action plan. The employee shall sign the written corrective action plan to certify that it has been reviewed. Refusal to sign the corrective action shall constitute insubordination subject to discipline. An employee shall have the right to submit written comment to accompany the corrective action plan.

(a) Corrective actions shall include one or more of the following:

(i) closer supervision;

(ii) training;

(iii) referral for personal counseling by an agency head's approved designee;

(iv) reassignment;

(v) use of appropriate leave;

(vi) career counseling and outplacement;

(vii) period of constant review;

(viii) opportunity for remediation;

(ix) written warnings.

(2) The supervisor shall designate an appropriate corrective action period and shall provide periodic evaluation of the employee's progress.

(3) At the conclusion of corrective action, a formal performance evaluation shall be written.

(4) If, after reasonable effort, the corrective action taken does not result in improved performance that is satisfactory, the employee shall be disciplined according to R477-11. The written record of the corrective action shall satisfy the requirement of Section 67-19-18(1).

(5) DHRM shall provide assistance to agency management upon request.

R477-10-3. Employee Development and Training.

Agency management may establish a program for training and staff development consistent with these rules.

(1) All agency sponsored training shall be agency specific or designed for highly specialized or technical jobs and tasks.

(2) Agency management shall consult with the Executive Director, DHRM, when proposed training and development activities may have statewide impact or may be offered more cost effectively on a statewide basis. The Executive Director, DHRM, shall determine whether DHRM will be responsible for the training standards.

(3) The Executive Director, DHRM, shall work with agency management to establish standards to guide the development of statewide activities and to facilitate sharing of resources statewide.

(4) When an agency directs an employee to participate in an educational program, the agency shall pay full costs before the course begins.

(5) Agencies are required to provide refresher training and make reasonable efforts to requalify veterans reemployed under USERRA, as long as it does not cause an undue hardship to the employing agency.

R477-10-4. Liability Prevention Training.

Agencies shall provide liability prevention training to their employees. The curriculum shall be approved by DHRM and Risk Management. Topics shall include but not be limited to: new employee orientation, prevention of sexual harassment, and supervisor training on prevention of workplace violence.

R477-10-5. Education Assistance.

State agencies may assist an employee in the pursuit of educational goals by granting administrative leave to attend classes, a subsidy of educational expenses, or both.

(1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions:

(a) The educational program will provide a benefit to the state.

(b) The employee shall successfully complete the required course work or the educational requirements of a program.

(c) The employee shall agree to repay any assistance received if the employee resigns from state employment within 12 months of completing educational work.

(d) Education assistance shall not exceed $5,250 per employee in any one calendar year unless approved in advance by the agency head.

(2) Agency management shall be responsible for determining the taxable or nontaxable status of educational assistance reimbursements.

(3) Agencies may offer educational assistance to law enforcement and correctional officers consistent with section 67-19-12.2 and with these criteria:

(a) The program shall comply with R477-10-5(1) and R477-10-5(2).

(b) The program shall be published and available to all qualified employees. To qualify:

(i) The employee's job duties shall satisfy the conditions of subsection 67-19-12.2 (1).

(ii) The employee shall have completed probation.

(iii) The employee shall maintain a grade point average of at least 3.0 or equivalent from an accredited college or university.

(c) The program may provide additional compensation for an employee who completes a higher degree on or after April 30, 2001, in a subject area directly related to the employee's duties. If this policy is adopted, then:

(i) Two steps shall be given for an associate's degree.

(ii) Two steps shall be given for a bachelor's degree.

(iii) Two steps shall be given for a master's degree.

KEY: educational tuition, employee performance evaluations, employee productivity, training programs
July 1, 2003 67-19-6
Notice of Continuation June 11, 2002 67-19-12.4

R477. Human Resource Management, Administration.
R477-15. Unlawful Harassment Policy and Procedure.
R477-15-1. Purpose.

It is the State of Utah's policy to:

(1) provide all employees a working environment that is free from unlawful harassment based on race, religion, national origin, color, sex, age, disability, or protected activity under the anti-discrimination statute; and

(2) comply with state and federal laws regarding discrimination based on unlawful harassment.

R477-15-2. Policy.

(1) Unlawful harassment means discriminatory treatment based on race, religion, national origin, color, sex, age, protected activity or disability. Discrimination based on unlawful harassment will not be tolerated. Violators shall be subject to corrective action or disciplined and may be referred for criminal prosecution. Discipline may include termination of employment.

(2) Unlawful harassment includes the following subtypes:

(a) behavior or conduct in violation of R477-15-2(1) that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment;

(b) behavior or conduct in violation of R477-15-2(1) that results in a tangible employment action being taken against the harassed employee.

(3) The imposition of corrective action and discipline is governed by R477-10-2 and R477-11.

(4) An employee shall be subject to corrective action or discipline for unlawful harassment towards another employee, even if that harassment occurs outside of scheduled work time or work location, provided that the harassment meets the requirements of R477-15-2(2).

(5) Individuals affected by alleged unlawful harassment may, but shall not be required to, confront the accused harasser before filing a complaint.

(6) Once a complaint has been filed, the accused shall not communicate with the complainant regarding allegations of harassment.

R477-15-3. Retaliation.

(1) No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this policy, or is otherwise engaged in protected activity.

(2) Any act of retaliation toward the complainant, witnesses or others involved in the investigation shall be subject to corrective action or disciplinary action. Prohibited actions include:

(a) open hostility to complainant, participant or others involved;

(b) exclusion or ostracism of the complainant, participant or others;

(c) creation of or the continued existence of a hostile work environment;

(d) discriminatory remarks about the complainant, participant or others;

(e) special attention to or assignment of the complainant, participant or others to demeaning duties not otherwise performed;

(f) tokenism or patronizing behavior;

(g) discriminatory treatment;

(h) subtle harassment; or

(i) unreasonable supervisory imposed time restrictions on employees in preparing complaints or compiling evidence of unlawful harassment activities or behaviors.

R477-15-4. Complaint Procedure.

Individuals affected by unlawful harassment may file complaints and engage in an administrative process free from bias, collusion, intimidation or retaliation.

(1) Individuals who feel they are being subjected to unlawful harassment should do the following:

(a) document the occurrence;

(b) continue to report to work; and

(c) identify a witness, if applicable.

(2) An employee may file an oral or written complaint of unlawful harassment with their immediate supervisor, any other supervisor within their direct chain of command, the agency human resource office or the Department of Human Resource Management.

(3) Any complaint of unlawful harassment shall be acted upon following receipt of the complaint.

(a) Complaints may be submitted by any individual, witness, volunteer or other employee.

(b) Complaints may be made through either verbal or written notification and shall be handled in compliance with confidentiality guidelines.

(c) Any supervisor who has knowledge of unlawful harassment shall take immediate, appropriate action and document the action.

(4) If an immediate investigation by the agency is not warranted, a meeting shall be held with the complainant, the supervisor or manager of the appropriate division, and others as appropriate to communicate the findings and management's resolution of the complaint.

R477-15-5. Investigative Procedure.

(1) The investigative procedures established by agencies shall allow the complainant to make specific requests relating to the investigation process and about the person or persons who will conduct the investigation. The agency shall attempt to comply with these requests, but may take whatever action necessary and appropriate to resolve the complaint.

(2) Preliminary reviews and investigations must be conducted in accordance with procedures issued by the Department of Human Resource Management.

(3) Results of Investigation

(a) If the investigation reveals that disciplinary action is warranted, the agency head shall take appropriate action as provided in R477-11.

(b) If an investigation reveals evidence of criminal conduct in unlawful harassment allegations, the agency head or Executive Director, DHRM, may refer the matter to the Attorney General's Office or County or District Attorney as appropriate.

(c) If an investigation of unlawful harassment reveals that the accusations are unfounded, the findings shall be documented, the investigation terminated, and appropriate parties notified.

(d) Investigations shall be conducted by qualified individuals based on DHRM standards.

R477-15-6. Records.

(1) A separate protected record of all unlawful harassment complaints shall be maintained and stored in the agency's human resource office, DHRM office or in the possession of an authorized official. Removal or disposal of records in the protected file may only be done with the approval of the agency head or Executive Director, DHRM, and only after minimum timelines specified herein have been met. Records shall be kept for: a minimum of three years from the resolution of the complaint or investigative proceeding.

(2) Supervisors shall not keep separate files related to complaints of unlawful harassment.

(3) All information contained in the complaint file shall be

classified as protected pursuant to requirements of Section 63-2-304, Government Records Access and Management Act.

(4) Information contained in the unlawful harassment protected file shall only be released by the agency head or Executive Director, DHRM, when in compliance with the requirements of law.

(5) Participants in any unlawful harassment proceeding shall treat all information as protected.

(6) Final disposition of unlawful harassment cases shall be communicated to appropriate parties.

R477-15-7. Training.

(1) Agencies shall comply with the Unlawful Harassment Prevention Training Standards set by DHRM. As a minimum, these shall contain:

(a) course curriculum standards;

(b) training presentation requirements;

(c) trainer qualifications; and

(d) training records management criteria.

KEY: administrative procedures, hostile work environment
July 3, 2001 67-19-6
Notice of Continuation June 11, 2002 67-19-18
Governor's Executive Order on Sexual Harassment, March 17, 1993

R495. Human Services, Administration.
R495-882. Termination of Parental Rights.
R495-882-1. Arrears Obligation for Children in Care.

In accordance with Sections 62A-1-117 and 78-3a-906, child support is assigned to the state when a child is placed in the care/custody of the state or with an individual other than the parent for at least 30 days. The juvenile court shall also order the parents or any other obligated person to pay child support to the Office of Recovery Services (ORS) while the child is in a placement. If parental rights are terminated, and if any child support payable to the state has accrued prior to the termination of parental rights, the parent shall be responsible for paying this amount to the state in accordance with Section 78-3a-413. ORS will attempt to collect all past due support that accrued prior to the termination of parental rights for children who were in the care or custody of the state.

KEY: state custody, parental rights
June 29, 2004

62A-1-117
78-3a-413
78-3a-906

R497. Human Services, Administration, Administrative Hearings.
R497-100. Adjudicative Proceedings.
R497-100-1. Definitions.

The terms used in this rule are defined in Section 63-46b-1. In addition,

(1) For the purpose of this section, "agency" means the Department of Human Services or a division or office of the Department of Human Services including the Division of Child and Family Services (DCFS), the Division of Services to People with Disabilities (DSPD), the Division of Juvenile Justice Services (DJJS), the Division of Aging and Adult Services (DAAS), the Division of Mental Health (DMH), the Division of Substance Abuse (SA), the Office of Licensing (OL), the Utah State Developmental Center (USDC), the Utah State Hospital (USH), and any boards, commissions, officers, councils, committees, bureaus, or other administrative units, including the Executive Director and Director of the Department or other persons acting on behalf of or under the authority of the Executive Director or Director. For purposes of this section, the term "Department of Human Services" does not include the Office of Recovery Services (ORS). The rules regarding ORS are stated in R527-200.

(2) "Agency actions or proceedings" of the Department of Human Services include, but are not limited to the following:

(a) challenges to findings of abuse, neglect and dependency pursuant to Section 62A-4a-116.5;

(b) due process hearings afforded to foster parents prior to removal of a foster child from their home pursuant to Section 62A-4a-206;

(c) the denial, revocation, modification, or suspension of any Department foster home license, or group care license;

(d) the denial, revocation, modification or suspension of a license issued by the Office of Licensing pursuant to Section 62A-2-101, et seq.;

(e) challenges to findings of abuse, neglect or exploitation of a disabled or elder adult pursuant to Section 62A-3-301, et seq.;

(f) the licensure of community alternative programs by the Office of Licensing;

(g) actions by the Division of Juvenile Justice Services and the Youth Parole Authority relating to granting or revocation of parole, discipline or, resolution of grievances of, supervision of, confinement of or treatment of residents of any Juvenile Justice Services facility or institution;

(h) resolution of client grievances with respect to delivery of services by private, nongovernmental, providers within the Department's service delivery system;

(i) actions by Department owned and operated institutions and facilities relating to discipline or treatment of residents confined to those facilities;

(j) placement and transfer decisions affecting involuntarily committed residents of the Utah State Developmental Center pursuant to Sections 62A-5-313;

(k) protective payee hearings;

(l) Department records amendment hearings held pursuant to Section 63-2-603.

(3) "Aggrieved person" includes any applicant, recipient or person aggrieved by an agency action.

(4) "Declaratory Order" is an administrative interpretation or explanation of the applicability of a statute, rule, or order within the primary jurisdiction of the agency to specified circumstances.

(5) "Office" means the Office of Administrative Hearings in the Department of Human Services.

(6) "Presiding officer" means an agency head, or individual designated by the agency head, by these rules, by agency rule, or by statute to conduct an adjudicative proceeding and may include the following:

(a) hearing officers;
(b) administrative law judges;
(c) division and office directors;
(d) the superintendent of agency institutions;
(e) statutorily created boards or committees.

R497-100-2. Exceptions.

The provisions of this section do not govern the following:

(1) The procedures for promulgation of agency rules, or the judicial review of those procedures. See Section 63-46b-1(2)(a).

(2) Department actions relating to contracts for the purchase or sale of goods or services by and for the state or by and for the Department, including terminations of contracts by the Department.

(3) Initial applications for and initial determinations of eligibility for state-funded programs.

R497-100-3. Form of Proceeding.

(1) All adjudicative proceedings commenced by the Department of Human Services or commenced by other persons affected by the Department of Human Services' actions shall be informal adjudicative proceedings.

(2) However, any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(3) If a proceeding is converted from informal to formal, the Procedure for Formal Adjudicative Proceedings in Section 63-46b-1, et seq. shall apply. In all other cases, the Procedures for Informal Proceedings in R497-100-6 shall apply.

R497-100-4. Commencement of Proceedings.

(1) All adjudicative proceedings shall be commenced by either:

(a) a notice of agency action, if proceedings are commenced by the agency; or

(b) a request for agency action, if proceedings are commenced by persons other than the agency.

(2) (a) When adjudicative proceedings are commenced by the agency, the notice of agency action shall conform to Section 63-46b-3(2)(a) and shall also include:

(i) a statement that the adjudicative proceeding is to be conducted informally;

(ii) if a hearing is to be held in an informal adjudicative proceeding, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default; and

(iii) if the agency's rules do not provide for a hearing, a statement that the parties may request a hearing within ten working days of the notice of agency action.

(b) The notice of agency action shall be mailed or published in conformance with Section 63-46b-3(2)(b).

(c) When adjudicative proceedings are commenced by a person other than the agency, the request for agency action shall conform to Section 63-46b-3(3)(a) and (b) and include the name of the adjudicative proceeding, if known.

(d) In the case of adjudicative proceedings commenced under Subsection (2)(c) by a person other than the agency, the presiding officer shall within ten working days give notice by mail to all parties. The written notice shall:

(i) give the agency's file number or other reference number;

(ii) give the name of the proceeding;

(iii) designate that the proceeding is to be conducted informally;

(iv) if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default;

(v) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within ten working days of the agency's response; and

(vi) give the name, title, mailing address, and telephone number of the presiding officer.

R497-100-5. Availability of Hearing.

(1) Hearings may be held in any informal adjudicative proceedings conducted in connection with an agency action if the aggrieved party requests a hearing and if there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer may deny a request for a hearing and determine all issues in the adjudicative proceeding, if done in compliance with the policies and standards of the applicable agency. If the aggrieved person objects to the denial of a hearing, that person may raise that objection as grounds for relief in a request for reconsideration.

(2) There is no issue of fact if:

(a) the aggrieved person tenders facts which on their face establish the right of the agency to take the action or obtain the relief sought in the proceeding;

(b) the aggrieved person tenders facts upon the request of the presiding officer and the fact does not conflict with the facts relied upon by the agency in taking its action or seeking its relief.

R497-100-6. Procedures for Informal Proceedings.

In compliance with Section 63-46b-5, the procedure for the informal adjudicative proceedings is as follows:

(1) (a) The respondent to a notice of agency action or request for agency action may, but is not required to, file an answer or responsive pleading to the allegations contained in the notice of agency action or the request for agency action within 10 working days following receipt of the adverse party's pleading.

(b) A hearing shall be provided to any party entitled to request a hearing in accordance with Section 63-46b-5.

(c) In the hearing, the party named in the notice of agency action or in the request for agency action may be represented by counsel and shall be permitted to testify, present evidence and comment on the issues.

(d) Hearings will be held only after a timely notice has been mailed to all parties.

(e) Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence. The office may require that parties exchange documents prior to the hearing in order to expedite the process. All parties to the proceedings will be responsible for the appearance of witnesses.

(f) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

(g) Intervention is prohibited, except that intervention is allowed where a federal statute or rule requires that a state permit intervention.

(h) Within a reasonable time after the close of the hearing, or after the party's failure to request a hearing within the time prescribed by the agency's rules, the presiding officer shall issue a signed order in writing that conforms to Section 63-46b-5(l)(I).

(i) All hearings shall be open to all parties.

(j) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at the hearings.

(k) A copy of the presiding officer's order shall be promptly mailed to each of the parties.

(2) All hearings shall be tape recorded at the office's expense. A transcript of the record may be prepared pursuant to Section 63-46b-5(2)(b). The hearing tape will be maintained for one year after the order has been issued.

R497-100-7. Declaratory Orders.

(1) Who May File. Any person or governmental entity directly affected by a statute, rule or order administered, promulgated or issued by an agency, may file a petition for a declaratory order by addressing and delivering the written petition to the presiding officer of the appropriate agency.

(2) Content of Petition.

(a) The petition shall be clearly designated as a request for an agency declaratory order and shall include the following information;

(i) the statute, rule or order to be reviewed;

(ii) a detailed description of the situation or circumstances at issue;

(iii) a description of the reason or need for a declaratory order, including a statement as to why the petition should not be considered frivolous;

(iv) an address and telephone where the petitioner can be contacted during regular work days;

(v) a statement about whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

(vi) the signature of the petitioner or an authorized representative.

(3) Exemptions from Declaratory Order Procedure. A declaratory order shall not be issued by any agency of the Department under the following circumstances:

(a) the subject matter of the petition is not within the jurisdiction and competency of the agency;

(b) the person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the declaratory order request;

(c) the declaratory order procedure is likely to substantially prejudice the rights of a person who would be a necessary party, unless that person consents in writing to a determination of the matter by a declaratory proceeding;

(d) the declaratory order is trivial, irrelevant, or immaterial;

(e) a declaratory order proceeding is otherwise prohibited by state or federal law;

(f) a declaratory order is not in the best interest of the agency or the public;

(g) the subject matter is not ripe for consideration; or

(h) the issue is currently pending in a judicial proceeding.

(4) Intervention in Accordance with 63-46b-5(1)(g) and 63- 46b-21.

(a) Intervention is prohibited in informal adjudicative proceedings, except where a federal statute or rule requires that intervention be permitted.

(b) In the case of an adjudicative proceeding that has been converted to a formal adjudicative proceeding, a person may intervene in a declaratory order proceeding by filing a petition to intervene with the presiding officer of the agency within 30 days after the conversion of the proceeding.

(c) The agency presiding officer may grant a petition to intervene if the petition meets the following requirements:

(i) the intervener's legal interests may be substantially affected by the declaratory order proceedings; and

(ii) the interests of justice and the orderly and prompt conduct of the declaratory order proceeding will not be

materially impaired by allowing intervention.

(5) Review of Petition for Declaratory Order.

(a) After review and consideration of a petition for a declaratory order, the presiding officer of the agency may issue a written order that conforms to Section 63-46b-21(6)(a);

(b) If the matter is set for an adjudicative proceeding, written notice shall be mailed to all parties that shall:

(i) give the name, title, mailing address, and telephone number of the presiding officer;

(ii) give the agency's file number or other reference number;

(iii) give the name of the proceeding;

(iv) state whether the proceeding shall be conducted informally or formally;

(v) state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default; and

(vi) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within 10 working days of the agency's response.

(c) If the agency's presiding officer issues a declaratory order, it shall conform to Section 63-46b-21(6)(b) and shall also contain:

(i) a notice of any right of administrative or judicial review available to the parties; and

(ii) the time limits for filing an appeal or requesting review.

(d) A copy of all declaratory orders shall be mailed in accordance with Section 63-46b-21(6)(c).

(e) If the agency's presiding officer has not issued a declaratory order within 60 days after receipt of the petition, the petition is deemed denied.

R497-100-8. Agency Review.

Agency review shall not be allowed. Nothing contained in this rule prohibits a party from filing a petition for reconsideration pursuant to Section 63-46b-13. If the 20th day for filing a request for reconsideration falls on a weekend or holiday the deadline will be extended until the next working day.

R497-100-9. Scope and Applicability.

The provisions of this section supersede the provisions of any other Department rules which may conflict with the foregoing rules.

KEY: administrative procedures, social services

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Notice of Continuation November 27, 2000	**62A-1-111**

R501. Human Services, Administration, Administrative Services, Licensing.
R501-2. Core Rules.
R501-2-1. Definition.

Core Rules are required for Human Service Programs, listed in R501-2-14. Where there is duplication of review by another oversight agency, the Office of Licensing, shall accept that documentation as proof of compliance. Pursuant to 62A-2-106, the Office of Licensing will not enforce rules for licensees under contract to a Division in the Department of Human Services in the following areas:

A. the administration and maintenance of client and service records;

B. staff qualifications; and

C. staff to client ratios.

R501-2-2. Program Administration.

A. The program shall have a written statement of purpose to include the following:

1. program philosophy,

2. description of long and short term goals, this does not apply to social detoxification or child placing adoption agencies,

3. description of the services provided,

4. the population to be served,

5. fee policy,

6. participation of consumers in activities unrelated to treatment plans, and

7. program policies and procedures which shall be submitted prior to issuance of an initial licensing.

B. Copies of the above statements shall be available at all times to the Office of Licensing upon request. General program information shall be available to the public.

C. The program shall have a written quality assurance plan. Implementation of the plan shall be documented.

D. The program shall have clearly stated guidelines and appropriate administrative procedures, to include the following:

1. program management,

2. maintenance of complete, accurate and accessible records, and

3. record retention.

E. The governing body, program operators, management, employees, consultants, volunteers, and interns shall read, understand, follow and sign a copy of the current Department of Human Services Provider Code of Conduct.

F. The program shall comply with State and Federal laws regarding abuse reporting in accordance with 62A-4a-403 and 62A-3-302, and shall post copies of these laws in a conspicuous place within the facility.

G. All programs which serve minors or vulnerable adults shall submit identifying information for background screening of all adult persons associated with the licensee and board members who have access to children and vulnerable adults in accordance with R501-14 and R501-18.

H. The program shall comply with all applicable National Interstate Compact Laws.

I. A licensed substance abuse treatment program shall complete the National Survey of Substance Abuse Treatment annually. Substance abuse treatment programs shall also comply with Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2.

J. The program's license shall be posted where it is easily read by consumers, staff and visitors. See also R501-1-5-F. The program shall post Civil Rights License on Notice of Agency Action, abuse and neglect reporting and other notices as applicable.

K. The program shall not handle the major personal business affairs of a consumer, without request in writing by the consumer and legal representative.

L. Programs providing foster or proctor care services shall adhere to the following:

1. approve homes that comply with Foster Care Rules, R501-12. The agency shall be required to recruit, train, and supervise foster parents as defined by R501-12.

2. foster families meeting requirements shall be approved or certified by the agency. The agency must maintain written records of annual home approval. The approval process shall include a home study evaluation and training plan.

3. the agency must have a procedure to revoke or deny home approval.

4. the agency must have a written agreement with the foster parents which includes the expectations and responsibilities of the agency, staff, foster parents, the services to be provided, the financial arrangements for children placed in the home, the authority foster parents can exercise on children placed in the home, actions which require staff authorization.

5. planning, with participation of the child's legal guardian for care and services to meet the child's individual needs.

6. obtaining, coordinating and supervising any needed medical, remedial, or other specialized services or resources with the ongoing participation of the foster parents.

7. providing ongoing supervision of foster parents to ensure the quality of the care they provide.

R501-2-3. Governance.

A. The program shall have a governing body which is responsible for and has authority over the policies, training and monitoring of staff and consumer activities for all phases of the program. The governing body's responsibilities shall include the following:

1. to ensure program policy and procedures compliance,

2. to ensure continual compliance with relevant local, state and federal requirements,

3. to notify the Office of Licensing within 30 days of changes in program administration and purpose,

4. to ensure that the program is fiscally and operationally sound, by providing documentation by a financial professional that the program is a "going concern",

5. to ensure that the program has adequate staffing as identified on the organizational chart,

6. to ensure that the program has general liability insurance, professional liability insurance as appropriate, vehicle insurance for transport of consumers, and fire insurance, and

7. for programs serving youth, the program director or designee shall meet with the Superintendent or designee of the local school district at the time of initial licensure, and then again each year as the programs renews it's license to complete the necessary student forms including youth education forms.

B. The governing body shall be one of the following:

1. a Board of Directors in a non-profit organization; or

2. commissioners or appointed officials of a governmental unit; or

3. Board of Directors or individual owner or owners of a for-profit organization.

C. The program shall have a list of members of the governing body, indicating name, address and term of membership.

D. The program shall have an organization chart which identifies operating units of the program and their inter-relationships. The chart shall define lines of authority and responsibility for all program staff and identifies by name the staff person who fills each position on the chart.

E. When the governing body is composed of more than one person, the governing body shall establish written by-laws, and shall hold formal meetings at least twice a year, Child Placing Agencies must meet at least quarterly, maintain written minutes, which shall be available for review by the Office of

Licensing, to include the following:
1. attendance,
2. date,
3. agenda items, and
4. actions.

R501-2-4. Statutory Authority.

A. A publicly operated program shall document the statutory basis for existence.

B. A privately operated program shall document its ownership and incorporation.

R501-2-5. Record Keeping.

The program shall have, a written record for each consumer to include the following:

A. Demographic information to include Medicaid number as required,

B. Biographical information,

C. Pertinent background information, including the following;

1. personal history, including social, emotional, psychological and physical development,

2. legal status,

3. emergency contact with name, address and telephone number, and

4. photo as needed.

D. Health records of a consumer including the following:

1. immunizations, for children only,

2. medication,

3. physical examinations, dental, and visual examinations, and

4. other pertinent health records and information.

E. Signed consent forms for treatment and signed Release of Information form,

F. Copy of consumer's individual treatment or service plan,

G. A summary of family visits and contacts, and

H. A summary of attendance and absences.

R501-2-6. Direct Service Management.

A. Direct service management, as described herein, is not applicable to social detoxification. The program shall have on file for public inspection a written eligibility policy and procedure, approved by a licensed clinical professional to include the following:

1. legal status,

2. age and sex of consumer,

3. consumer needs or problems best addressed by program,

4. program limitations, and

5. appropriate placement.

B. The program shall have a written admission policy and procedure to include the following:

1. appropriate intake process,

2. age groupings as approved by the Office of Licensing,

3. pre-placement requirements,

4. self-admission,

5. notification of legally responsible person, and

6. reason for refusal of admission, to include a written, signed statement.

C. Intake evaluation.

1. At the time of intake an assessment shall be conducted to evaluate health and family history, medical, social, psychological and, as appropriate, developmental, vocational and educational factors.

2. In emergency situations which necessitate immediate placement, the intake evaluation shall be completed within seven days of admission.

3. All methods used in evaluating a consumer shall consider age, cultural background, dominant language, and mode of communication.

D. A written agreement, developed with the consumer, and the legally responsible person if applicable, shall be completed, signed by all parties, and kept in the consumer's record, with copies available to involved persons. It shall include the following:

1. rules of program,

2. consumer and family expectations,

3. services to be provided and cost of service,

4. authorization to serve and to obtain emergency care for consumer,

5. arrangements regarding absenteeism, visits, vacation, mail, gifts, and telephone calls, when appropriate, and

6. sanctions and consequences.

E. Consumer treatment plan shall be individualized, as applicable according to the following.

1. A staff member shall be assigned to each consumer having responsibility and authority for development, implementation, and review of the plan.

2. The plan shall include the following:

a. findings of intake evaluation and assessment,

b. measurable long and short term goals and objectives,

1) goals or objectives clearly derived from assessment information,

2) goals or objectives stated in terms of specific observable changes in behavior, skills, attitudes or circumstances,

3) evidence that consumer input was integrated where appropriate in identifying goals and objectives, and

4) evidence of family involvement in treatment plan, unless clinically contraindicated,

c. specification of daily activities, services, and treatment, and

d. methods for evaluation,

3. Treatment plans

a. plans shall be developed within 30 days of consumer's admission by a treatment team and reviewed by a clinical professional if applicable. Thereafter treatment plans shall be reviewed by the licensed clinical professional if applicable as often as stated in the treatment plan.

4. All persons working directly with the consumer shall be appropriately informed of the individual treatment plan.

5. Reports on the progress of the consumer shall be available to the applicable Division, the consumer, or the legally responsible person.

6. Treatment record entries shall include the following:

a. identification of program,

b. date and duration of services provided,

c. description of service provided,

d. a description of consumer progress or lack of progress in the achievement of treatment goals or objectives as often as stated in the treatment plan, and

e. documentation of review of consumer's record to include the following:

1) signature,

2) title,

3) date, and

4) reason for review.

7. Transfer and Discharge

a. a discharge plan shall identify resources available to consumer.

b. the plan shall be written so it can be understood by the consumer or legally responsible party.

c. whenever possible the plan shall be developed with consumers participation, or legally responsible party if necessary. The plan shall include the following:

1) reason for discharge or transfer,

2) adequate discharge plan, including aftercare planning,

3) summary of services provided,

4) evaluation of achievement of treatment goals or

objectives,

5) signature and title of staff preparing summary, and

6) date of discharge or transfer.

d. The program shall have a written policy concerning unplanned discharge.

8. Incident or Crisis Intervention records

a. The program shall have written policies and procedures which includes: reporting to program manager, documentation, and management review of incidents such as deaths of consumers, serious injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, strip searches and other situations or circumstances affecting the health, safety, or well-being of consumers.

b. records shall include the following:

1) summary information,

2) date, time of emergency intervention,

3) action taken,

4) employees and management responsible and involved,

5) follow up information,

6) list of referrals,

7) signature and title of staff preparing report, and

8) records shall be signed by management staff.

c. the report shall be maintained in individual consumer records.

d. when an incident involves abuse, neglect, serious illness, violations of the Provider Code of Conduct or death of a consumer, a program shall:

1) notify the Office of Licensing, legally responsible person and any applicable agency which may include law enforcement.

2) a preliminary written report shall be submitted to the Office of Licensing within 24 hours of the incident.

R501-2-7. Behavior Management.

A. The program shall have on file for public inspection, a written policy and procedure for the methods of behavior management. These shall include the following:

1. definition of appropriate and inappropriate behaviors of consumers,

2. acceptable staff responses to inappropriate behaviors, and

3. consequences.

B. The policy shall be provided to all staff, and staff shall receive training relative to behavior management at least annually.

C. No management person shall authorize or use, and no staff member shall use, any method designed to humiliate or frighten a consumer.

D. No management person shall authorize or use, and no staff member shall use nor permit the use of physical restraint with the exception of passive physical restraint. Passive physical restraint shall be used only as a temporary means of physical containment to protect the consumer, other persons, or property from harm. Passive physical restraint shall not be associated with punishment in any way.

E. Staff involved in an emergency safety intervention that results in an injury to a resident or staff must meet with the clinical professional to evaluate the circumstances that caused the injury and develop a plan to prevent future injuries.

F. Programs using time out or seclusion methods shall comply with the following:

1. The program will have a written policy and procedure which has been approved by the Office of Licensing to include:

a. Time-out or seclusion is only used when a child's behavior is disruptive to the child's ability to learn to participate appropriately, or to function appropriately with other children or the activity. It shall not be used for punishment or as a substitute for other developmentally appropriate positive methods of behavior management.

b. Time-out or seclusion shall be documented in detail and provide a clear understanding of the incident which resulted in the child being placed in that time-out or seclusion.

c. If a child is placed in time out or seclusion more than twice in any twenty-four hour period, a review is conducted by the clinical professional to determine the suitability of the child remaining in the program.

d. Any one time-out or seclusion shall not exceed 4 hours in duration.

e. Staff is required to maintain a visual contact with a child in time-out or seclusion at all times.

f. If there is any type of emergency such as a fire alarm, or evacuation notification, children in time-out or seclusion shall follow the safety plan.

g. A child placed in time-out or seclusion shall not be in possession of belts, matches, weapons, or any other potentially harmful objects or materials that could present a risk or harm to the child.

2. Time-out or seclusion areas shall comply with the following:

a. Time-out or seclusion rooms shall not have locking capability.

b. Time-out or seclusion rooms shall not be located in closets, bathrooms, or unfurnished basements, attic's or locked boxes.

c. A time-out or seclusion room is not a bedroom, and temporary beds, or mattresses in these areas are not allowed. Time-out and seclusion shall not preclude a child's need for sleep, or normal scheduled sleep period.

d. All time-out or seclusion rooms shall measure at least 75 square feet with a ceiling height of at least 7 feet. They shall have either natural or mechanical ventilation and be equipped with a break resistant window, mirror or camera that allows for full observation of the room. Seclusion rooms shall have no hardware, equipment, or furnishings that obstruct observation of the child, or that present a physical hazard or a suicide risk. Rooms used for time out or seclusion shall be inspected and approved by the local fire department

G. The program's licensed clinical professional shall be responsible for supervision of the behavior management procedure.

R501-2-8. Rights of Consumers.

A. The program shall have a written policy for consumer rights to include the following:

1. privacy of information and privacy for both current and closed records,

2. reasons for involuntary termination and criteria for re-admission to the program,

3. freedom from potential harm or acts of violence to consumer or others,

4. consumer responsibilities, including household tasks, privileges, and rules of conduct,

5. service fees and other costs,

6. grievance and complaint procedures,

7. freedom from discrimination,

8. the right to be treated with dignity,

9. the right to communicate by telephone or in writing with family, attorney, physician, clergyman, and counselor or case manager except when contraindicated by the licensed clinical professional,

10. a list of people, whose visitation rights have been restricted through the courts,

11. the right to send and receive mail providing that security and general health and safety requirements are met,

12. defined smoking policy in accordance with the Utah Clean Air Act, and

13. statement of maximum sanctions and consequences,

reviewed and approved by the Office of Licensing.

B. The consumer shall be informed of this policy to his or her understanding verbally and in writing. A signed copy shall be maintained in the consumer record.

R501-2-9. Personnel Administration.

A. The program shall have written personnel policies and procedures to include the following:

1. employee grievances,
2. lines of authority,
3. orientation and on-going training,
4. performance appraisals,
5. rules of conduct, and
6. sexual and personal harassment.

B. The program shall have a director, appointed by the governing body, who shall be responsible for management of the program and facility. The director or designated management person shall be available at all times during operation of program.

C. The program shall have a personnel file for each employee to include the following:

1. application for employment,
2. applicable credentials and certifications,
3. initial medical history if directed by the governing body,
4. tuberculin test if directed by the governing body,
5. food handler permit, where required by local health authority,
6. training record,
7. annual performance evaluations,
8. I-9 Form completed as applicable,
9. comply with the provisions of R501-14 and R501-18 for background screening, and
10. a signed copy of the current Department of Human Services Provider Code of Conduct.

D. The program shall follow a written staff to consumer ratio, which shall meet specific consumer and program needs. The staff to consumer ratio shall meet or exceed the requirements set forth in the applicable categorical rules as found in R501-3, R501-7, R501-8, R501-11, and R501-16.

E. The program shall employ or contract with trained or qualified staff to perform the following functions:

1. administrative,
2. fiscal,
3. clerical,
4. housekeeping, maintenance, and food service,
5. direct consumer service, and
6. supervisory.

F. The program shall have a written job description for each position, which includes a specific statement of duties and responsibilities and the minimum level of education, training and work experience required.

G. Treatment shall be provided or supervised by professional staff, whose qualifications are determined or approved by the governing body, in accordance with State law.

H. The governing body shall ensure that all staff are certified and licensed as legally required.

I. The program shall have access to a medical clinic or a physician licensed to practice medicine in the State of Utah.

J. The program shall provide interpreters for consumers or refer consumers to appropriate resources as necessary to communicate with consumers whose primary language is not English.

K. The program shall retain the personnel file of an employee after termination of employment, in accordance with accepted personnel practices.

L. A program using volunteers, substitutes, or student interns, shall have a written plan to include the following:

1. direct supervision by a program staff,
2. orientation and training in the philosophy of the program, the needs of consumers, and methods of meeting those needs,
3. background screening,
4. a record maintained with demographic information, and
5. signed copy of the current Department of Human Services Provider Code of Conduct.

M. Staff Training

1. Staff members shall be trained in all policies of the program, including the following:
   a. orientation in philosophy, objectives, and services,
   b. emergency procedures,
   c. behavior management,
   d. current program policy and procedures, and
   e. other relevant subjects.
2. Staff shall have completed and remain current in a certified first aid and CPR, such as or comparable to American Red Cross.
3. Staff shall have current food handlers permit as required by local health authority.
4. Training shall be documented and maintained on-site.

R501-2-10. Infectious Disease.

The program shall have policies and procedures designed to prevent or control infectious and communicable diseases in the facility in accordance with local, state and federal health standards.

R501-2-11. Emergency Plans.

A. The program shall have a written plan of action for disaster and casualties to include the following:

1. designation of authority and staff assignments,
2. plan for evacuation,
3. transportation and relocation of consumers when necessary, and
4. supervision of consumers after evacuation or relocation.

B. The program shall educate consumers on how to respond to fire warnings and other instructions for life safety including evacuation.

C. The program shall have a written plan which personnel follow in medical emergencies and arrangements for medical care, including notification of consumer's physician and nearest relative or guardian.

R501-2-12. Safety.

A. Fire drills in non-outpatient programs, shall be conducted at least quarterly and documented. Notation of inadequate response shall be documented.

B. The program shall provide access to an operable 24-hour telephone service. Telephone numbers for emergency assistance, i.e., 911 and poison control, shall be posted.

C. The program shall have an adequately supplied first aid kit in the facility such as recommended by American Red Cross.

D. All persons associated with the program who have access to children or vulnerable adults and who also have firearms or ammunition shall assure that they are inaccessible to consumers at all times. Firearms and ammunition that are stored together shall be kept securely locked in security vaults or locked cases, not in glass fronted display cases. Firearms that are stored in display cases shall be rendered inoperable with trigger locks, bolts removed, or other disabling methods. Ammunition for those firearms shall be kept securely locked in a separate location. This does not restrict constitution or statutory rights regarding concealed weapons permits, pursuant to UCA 53-5-701 et seq.

R501-2-13. Transportation.

A. The program shall have written policy and procedures for transporting consumers.

B. In each program or staff vehicle, used to transport

consumers, there shall be emergency information which includes at a minimum, the name, address and phone number of the program and an emergency telephone number.

C. The program shall have means, or make arrangement for, transportation in case of emergency.

D. Drivers of vehicles shall have a valid drivers license and follow safety requirements of the State.

E. Each vehicle shall be equipped with an adequately supplied first aid kit such as recommended by American Red Cross.

R501-2-14. Categorical Rules.

In addition to Core Rules, Categorical Rules are specific regulations which must be met for the following:

A. Child Placing Adoption Agencies R501-7,

B. Day Treatment R501-20,

C. Intermediate Secure Treatment Programs for Minors R501-16,

D. Outdoor Youth Programs R501-8,

E. Outpatient Treatment R501-21,

F. Foster Care R501-12,

G. Residential Treatment R501-19,

H. Residential Support R501-22,

I. Social Detoxification R501-11 and

J. Assisted Living for DSPD Residential R710.

R501-2-15. Single Service Program Rules.

Core Rules of the Office of Licensing do not apply to single service programs.

Single services program Rules are the regulations which must be met for the following:

A. Adult Day Care, which Rules are found in R501-13,

B. Adult Foster Care, which Rules are found in R501-17.

KEY: licensing, human services
March 17, 2004 62A-2-101 et seq.
Notice of Continuation November 25, 2002

R501. Human Services, Administration, Administrative Services, Licensing.
R501-8. Outdoor Youth Programs.
R501-8-1. Outdoor Youth Programs.

(1) The Office of Licensing in the Department of Human Services, shall license outdoor youth programs according to standards and procedures established by this rule.

R501-8-2. Authority and Purpose.

(1) Pursuant to 62A-2-101 et seq., the purpose of this rule is to define standards and procedures by which the Office of Licensing shall license outdoor youth programs. Programs designed to provide rehabilitation services to adjudicated minors shall adhere to these rules as established by the Division of Juvenile Justice Services, in accordance with 62A-7-104-11.

R501-8-3. Definitions.

(1) In addition to terms defined and used in Section 62A-2-101(20), Utah Code:

(a) "Consumer" means the minor being provided the service by the program, not the parent or contracting agent that has enrolled the minor in the program.

(b) "Field Office" means the office where all coordination of field operations take place.

(c) "Administrative Office" means the office where business operations, public relations, and the management procedures take place.

R501-8-4. Administration.

(1) In addition to the following standards and procedures, all outdoor youth programs shall comply with R501-2, Core Standards.

(2) Records of enrollment of all consumers shall be on file at the field office at all times.

(3) Information provided to parents, community, and media shall be accurate and factual.

(4) Programs shall provide an educational component as determined by the Utah State Board of Education for consumers up to 18 years of age who have been removed from their educational opportunities for more than one month. The administrators of the program shall meet and cooperate with the local Board of Education.

(5) Programs which advertise as providing educational credit to consumers shall be approved by the Utah State Board of Education.

(6) The program shall have written procedures for handling any suspected incident of child abuse or Department of Human Services, hereinafter referred to as DHS, Provider Code of Conduct violation, including the following:

(a) a procedure for ensuring that the staff member involved does not work directly with the youth involved or any other youth in the program until the investigation is completed or formal charges filed and adjudicated,

(b) a procedure for ensuring that a director or member of the governing body involved in or suspected of abuse shall be relieved of their responsibility and authority over the policies and activities of the program, or any other youth program, as well as meet the sanctions as described in 1. above, until the investigation is completed or formal charges are filed and adjudicated, and

(c) a procedure for disciplining any staff member or director involved in an incident of child abuse or DHS Provider Code of Conduct violation, including termination of employment if found guilty of felony child abuse, or loss of position, including directorship if found guilty of misdemeanor child abuse.

(7) If any director or person in a management position is involved in or suspected of child abuse or neglect, the program shall submit to an extensive review by DHS or law enforcement officials to determine or establish the continued safe operation or possible termination of the program. The licensing review shall be completed within 72 hours.

(8) Failure to implement and comply with 1., 2., 3., and G. above will be grounds for immediate suspension or revocation of program license.

(9) Until charges of abuse, neglect or licensing violations are resolved, no license shall be issued to any program with owners, silent owners, or any staff management personnel that were prior owners or staff management personnel in a program against which the above charges were alleged.

(10) If charges result in a criminal conviction or civil or administrative findings that allegations were true, no license shall be issued to any program with owners, silent owners, or staff management personnel from the prior program.

R501-8-5. Program Requirements.

(1) Programs that operate in Utah and one or more other states shall meet the requirements for licensure as established for each of the states.

(2) There shall be a written plan for expedition groups, developed and approved by the program field director, and by the program executive director, and governing body, which shall not expose consumers to unreasonable risks.

(3) The program shall inventory all consumer personal items and shall return all inventoried items, except contraband, to the consumer following program completion. The consumer shall sign the inventory list at the time of inventory and again when items are returned.

(4) The Office of Licensing shall review and approve the program's training plan governing consequences for consumer conduct.

(5) Each consumer shall have clothing and equipment to protect the consumer from the environment. This equipment shall never be removed, denied, or made unavailable to a consumer. If a consumer refuses or is unable to carry all of his or her equipment, the group shall cease hiking, and reasons for refusal or inability to continue will be established and resolved before hiking continues. Program directors are responsible to train staff regarding this standard and to regularly monitor compliance. There shall never be a deprivation of any equipment as a consequence. Such equipment shall include the following:

(a) sunscreen; the program staff shall ensure appropriate consumer usage,

(b) insect repellent,

(c) with frame or no frame backpack weight to be carried by each consumer shall not exceed 20 percent of the consumer's body weight. If the consumer is required to carry other items, the total of all weight carried shall not exceed 30% of the consumer's body weight,

(d) personal hygiene items,

(e) female hygiene supplies,

(f) sleeping bags rated for the current seasonal conditions when the average nighttime temperature is 40 degrees F. or warmer,

(g) sleeping bags rated for the current seasonal conditions, shelter and ground pad for colder months when the average nighttime temperature is 39 degrees F. or lower, and

(h) basic clothing list to ensure consumer protection against seasonal change in the environment.

(6) The program shall provide consumers with clean clothing at least weekly and shall provide a means for consumers to bathe or otherwise clean their bodies a minimum of twice weekly. Female consumers shall be issued products for hygiene purposes.

(7) Hiking shall not exceed the physical capability of the weakest member of the group. Hiking shall be prohibited at temperatures above 90 degrees F. or at temperatures below 10

degrees F. Field staff shall carry thermometers, which accurately display current temperature. If a consumer cannot or will not hike, the group shall not continue unless eminent danger exists.

(8) The expedition plan including map routes, and anticipated schedules and times shall be carried by the field staff and recorded in the field office.

(9) Field staff shall maintain a signed, daily log or dictate a recorded log to be transcribed and signed immediately following termination of the activity.

(a) The log shall contain the following information; accidents, injuries, medications, medical concerns, behavioral problems, and all unusual occurrences.

(b) All log entries shall be recorded in permanent ink.

(c) These logs shall be available to state staff.

(10) Incoming and outgoing mail to parents, guardians, and attorneys shall not be restricted but shall be delivered in as prompt a manner as the location and circumstances dictate.

(11) Incoming and outgoing U.S. postal mail to parents, guardians, and attorneys shall not be restricted but shall be delivered in as prompt a manner as the location and circumstances dictate.

(12) Incoming mail from parents or guardians shall not be read or censored without written permission from a parent or guardian.

(13) All other mail may be restricted only by parental request in writing.

(14) All incoming mail may be required to be opened in the presence of staff. Contraband shall be confiscated.

(15) All local, state, and federal regulations and professional licensing requirements shall be met.

(16) Each program staff shall be required to carry with them a reliable time piece, which may include a wrist watch or pocket watch for the purpose of accurately reflecting the time of day, and for documentation purposes, such as recording the time of day in log notes and incident reports.

(17) The program shall have policy and procedure for suicide ideation that includes a review of any placement of a suicide watch on a consumer, by the program's clinical professional.

R501-8-6. Staff, Interns, and Volunteers.

(1) All staff, interns, and volunteers shall meet the provisions of R501-14 and R501-18.

(2) Each program shall have a governing body and an executive director who shall have responsibility and authority over the policies and activities of the program. and shall coordinate office and support services, training, etc,. The executive director shall have, at a minimum, the following qualifications:

(a) be at least 25 years of age,

(b) have a BA or BS degree or equal training and experience in a related field,

(c) have a minimum of two years of outdoor youth program administrative experience,

(d) have a minimum of 30 semester or 45 quarter hours education in recreational therapy or related experience or one year Outdoor Youth Program field experience,

(e) demonstrate complete knowledge and understanding of relevant licensing rules, and

(f) have completed an initial staff training, see R501-8-8.

(3) Each program shall have a program or field director who coordinates field operations, manages the field staff, and operates the field office. The program or field director shall meet, at a minimum, the following qualifications:

(a) be at least 25 years of age,

(b) have a BA or BS degree or equal training and experience in a related field,

(c) have minimum of two years of outdoor youth program field experience,

(d) have a minimum of 30 semester or 45 quarter hours education in recreational therapy or related field, or one year Outdoor Youth Program field experience,

(e) demonstrate complete knowledge and understanding of relevant licensing rules,

(f) have primary responsibility for field activities and visit in the field a minimum of two days a week with no more than five days between visits,

(g) prepare reports of each visit, document conditions of consumers, document interactions of consumers and staff, and ensure compliance with rules,

(h) be annually trained and certified in CPR and currently certified in standard first aid, and

(i) have completed an initial staff training, see R501-8-8.

(4) Each program shall have field support staff responsible for delivery of supplies to the field, mail delivery, communications, and first aid support. The field support staff shall meet, at a minimum, the following qualifications:

(a) be at least 21 years of age,

(b) have a high school diploma or equivalency,

(c) be annually trained and certified in CPR and currently certified in standard first aid, and

(d) have completed an initial staff training and field course, see R501-8-8.

(5) Each program group shall have senior field staff working directly with the consumer who shall meet, at a minimum, the following qualifications:

(a) be at least 21 years of age,

(b) have an associate degree or high school diploma with 30 semester or 45 quarter hours education and training or comparable experience and training in a related field,

(c) have six months outdoor youth program field experience or comparable experience which shall be documented in the individual's personnel file,

(d) be annually trained and certified in CPR and currently certified in standard first aid,

(e) have completed an initial staff training, see R501-8-8, and

(6) Each program shall have a field staff working directly with the consumers who shall meet, at a minimum, the following qualifications:

(a) be a minimum of 20 years of age,

(b) have a high school diploma or equivalency,

(c) have forty-eight field days of outdoor youth program experience or comparable experience which shall be documented in the individual's personnel file,

(d) exhibit leadership skill,

(e) be annually trained and certified in CPR and currently certified in standard first aid, and

(f) have completed an initial staff training.

(7) Each program shall have assistant field staff to meet the required consumer to staff ratio. Assistant field staff shall meet, at a minimum, the following qualifications:

(a) be a minimum of 19 years of age,

(b) have a high school diploma or equivalency,

(c) have twenty-four field days of outdoor youth programs experience,

(d) exhibit leadership skill,

(e) be annually trained and certified in CPR and currently certified in standard first aid, and

(f) have completed an initial staff training

(8) Each program shall have a multi-disciplinary team, accessible to consumers which shall include, at a minimum, the following:

(a) a licensed physician or consulting licensed physician,

(b) a treatment professional who may be one of the following:

(i) a licensed psychologist,

(ii) a licensed clinical social worker,
(iii) a licensed professional counselor,
(iv) a licensed marriage and family counselor, or
(v) a licensed school counselor
(c) All clinical and therapeutic personnel shall be licensed or working under a DOPL training program certified by the State of Utah.
(9) Each program may have academic and clinical interns who are learning the program practices while completing educational requirements.
(a) Interns shall be a minimum of 19 years of age.
(b) Initial training program shall be completed by all incoming staff including interns regardless of background experience.
(c) Clinical interns pursuing licensure shall be under the supervision of a licensed therapist.
(d) Academic interns shall be supervised by program staff.
(e) Interns shall not supervise consumers at any time.
(10) Each program may have program volunteers.
(a) Volunteers shall be under direct, constant supervision of program staff.
(b) Volunteers shall not be left in the role of supervising consumers at any time.
(c) Volunteers shall be at least 18 years of age and meet program guidelines.

R501-8-7. Staff to Consumer Ratio.
(1) Each youth group shall be supervised by at least two staff members at all times, one of which must be a senior field staff.
(2) In a mixed gender group, there shall be at least one female staff and one male staff.
(3) Expedition group size, including staff members, cannot exceed sixteen people with a minimum of a one to four staff to consumer ratio.
(4) Volunteers shall be counted as a consumer in figuring staff to consumer ratios.
(5) Expedition group size shall not exceed the number specified by federal, state, or local agencies in whose jurisdiction the program is operated.

R501-8-8. Staff Training.
(1) The program shall provide a minimum of eighty hours initial staff training.
(2) Initial staff training shall not be considered completed until the staff have demonstrated to the field director proficiency in each of the following:
(a) counseling, teaching and supervisory skills,
(b) water, food, and shelter procurement, preparation and conservation,
(c) low impact wilderness expedition and environmental conservation skills and procedures,
(d) consumer management, including containment, control, safety, conflict resolution, and behavior management,
(e) instruction in safety procedures and safe equipment use; fuel, fire, life protection, and related tools,
(f) instruction in emergency procedures; medical, evacuation, weather, signaling, fire, runaway and lost consumers,
(g) sanitation procedures; water, waste, food, etc.,
(h) wilderness medicine, including health issues related to acclimation, exposure to the environment, and environmental elements,
(i) CPR, standard first aid, first aid kit contents and use, and wilderness medicine,
(j) navigation skills, including map and compass use and contour and celestial navigation,
(k) local environmental precautions, including terrain, weather, insects, poisonous plants, response to adverse situations and emergency evacuation,
(l) leadership and judgment,
(m) report writing, including development and maintenance of logs and journals, and
(n) Federal, state, and local regulations, including Department of Human Services, Bureau of Land Management, United States Forest Service, National Parks Service, Utah State Department of Fish and Game.
(3) The completion of the minimum eighty hours initial staff training shall be documented and maintained in each personnel file.
(4) The field director shall document in each personnel file that the staff have demonstrated proficiency in each of the required topic areas as listed in B. above.
(5) The initial staff training and demonstration of proficiency must be completed and documented before the staff person may count in the staff consumer ratio.
(6) The program shall also provide on-going training to staff in order to improve proficiency in knowledge and skills, and to maintain certifications. This training shall also be documented.

R501-8-9. Staff Health Requirements.
(1) Prior to engaging in any field activity, all staff shall adhere to the following:
(a) All field staff, interns, and volunteers shall have an annual physical examination and health history signed by a licensed medical professional. A recognized physical stress assessment shall be completed as part of the physical examination.
(b) Physical examinations shall be reviewed and maintained by the provider in the staff personnel file.
(c) All program staff, interns, and volunteers shall agree to submit to drug and alcohol screening as provided for by federal and state law.

R501-8-10. Consumer Admission Requirements.
(1) Consumers shall be at least 13 through 17 years of age and have a current health history which includes notation of limitations and prescriptive medications, completed and submitted within 30 days prior to entrance into the field program and verified by a parent or legal guardian.
(2) Admissions screening shall be supervised by a treatment professional before consumer entrance into the field program and shall include the following:
(a) a review of consumer social and psychological history with the parent or legal guardian prior to enrollment,
(b) an interview with the consumer prior to entrance into the field program, and
(c) a review of consumer's health history and physical examination by a licensed medical professional prior to entrance into the field program.
(3) Consumer shall have a physical examination within 15 days prior to entrance to field program. Documentation of the examination, on a form provided by the program and signed by a licensed medical professional, shall be submitted to the program within 15 days prior to entrance to field program.
(4) A physical examination form shall be provided to the licensed medical professional by the program and the form shall clearly state a description of the physical demands and environment of the program, and require the following information:
(a) urinalysis drug screen,
(b) CBC, blood count,
(c) urinalysis for possible infections,
(d) CMP, complete metabolic profile,
(e) pregnancy test for all female consumers,
(f) physical stress assessment,
(g) determination by the physician if detoxification is

indicated for consumer prior to entrance into field program,

(h) and any other tests as deemed to be indicated.

(5) Copies of consumer's medical forms shall be maintained at the field office and another copy carried by staff members in a waterproof container throughout the course.

(6) Prior to placement in the program, psychological evaluations for consumers as indicated, who have a history of chronic psychological disorders.

(7) Upon admission and for a period of no fewer than three days staff shall closely monitor the consumers for any health problems that may be a result of becoming acclimated to the environment.

R501-8-11. Water and Nutritional Requirements.

(1) Six quarts of potable water shall be available per person, per day, minimum, plus one additional quart per person for each five miles hiked. Although it is not required that the entire amount be hand carried, access to water shall be available at all times during hiking.

(2) In temperatures above 90 degrees F., staff shall make sure consumer intake is a minimum of three quarts of water per day, electrolyte replacement shall be available with the expeditionary group at all times.

(3) In temperatures above 80 degrees F., water shall be available for coating consumer's body, and other cooling down techniques shall be available for the purpose of cooling as needed.

(4) Water shall be available at each campsite. Water cache location information shall be verified with field staff before the group leaves camp each day.

(5) Expedition group shall not depend on aerial drops for water supply. Aerial water drops shall be used for emergency situations only.

(6) All water from natural sources shall be treated for sanitation to eliminate health hazards.

(7) Each program shall have a written menu describing food supplied to the consumer which shall provide a minimum of 3000 calories per day. There must be fresh fruit and vegetables at least twice a week. Food shall never be withheld from a consumer for any reason. Food may not be withheld as a punishment. If no fire is available, other food of equal caloric value, which does not require cooking shall be available.

(a) The menu shall adjust to provide 30-100 percent increase in minimum dietary needs as energy expenditure such as exercise increases, or climate conditions such as cold weather dictate.

(a) Food shall be from a balance of the food groups.

(b) Forage items shall not be used toward the determination of caloric intake.

(c) There shall be no program fasting for more than 24 hours per expeditionary cycle.

(d) Multiple vitamin supplements shall be offered daily.

R501-8-12. Health Care.

(1) First aid treatment shall be provided in a prompt manner.

(2) When a consumer has an illness or physical complaint which cannot be treated by standard first aid, the program shall immediately arrange for the consumer to be seen and treated as indicated by a licensed medical professional.

(3) Each consumer shall be assessed at least every 14 days for his physical condition by a qualified professional such as a Utah EMT. Blood pressure, heart rate, allergies, and general physical condition will be checked and documented. Any assessment concerns will be documented, and the consumer will be taken to the appropriate medical professional for treatment. Medical treatment shall be provided by medical personnel and medication provided as needed. There shall be no consequences to a consumer for requesting to see a health care professional or for anything said to a health care professional.

(4) All prescriptive and over the counter medications shall be kept in the secure possession of designated staff and provided to consumers to be used as prescribed.

(5) Prescriptive medication shall be administered as prescribed by a qualified medical practitioner who is licensed. Staff shall be responsible for the following:

(a) supervise the use of all medication,

(b) record medication, including time and dosage, and

(c) record effects of medication, if any.

(d) document any incidents of missed prescriptive medication, and

(e) document any lost or missing prescriptive medication.

(6) A foot check will be conducted at least twice daily and documented.

R501-8-13. Safety.

(1) First aid kits shall include sufficient supplies for the activity, location, and environment and shall be available during all field activities.

(2) Program shall have a support system that meets the following criteria:

(a) Reliable daily two-way radio communications with additional charged battery packs, and a reliable backup system of contact in the event the radio system fails.

(b) The support vehicles and field office shall be equipped with first aid equipment.

(c) The support personnel shall have access to all contacts, i.e., telephone numbers, locations, contact personnel, and procedures for an emergency evacuation or field incident.

(d) A.M. and P.M. contacts between field staff and support staff are to be relayed to the field office. Contact shall be available from field staff to field office on a continuous basis.

R501-8-14. Field Office.

(1) Each program shall maintain a field office.

(2) Communication system to the field office shall be monitored 24-hours a day when consumers are in the field.

(3) Support staff shall respond immediately to any emergency situation.

(4) Support staff on duty shall be within 1 hour of the field.

(5) When staff are not present in the field office a contact telephone number shall be posted on the field office door, and the field director shall designate responsible on-call staff who shall continually monitor communications and will always be within 15 minutes travel time of the field office.

(6) field office staff shall adhere to the following:

(a) maintain current staff and consumer files which include demographics, eligibility criteria, and medical forms as a minimum,

(b) maintain a current list of names of staff and consumers in each field group,

(c) maintain a master map of all activity areas,

(d) maintain copies of each expeditionary route with its schedule and itinerary, of which copies shall be sent to the Office of Licensing and local law enforcement, as requested by these agencies,

(e) maintain a log of communications,

(f) be responsible for training and orientation, management of field personnel, related files, and records,

(g) be responsible for maintaining communications, equipment inspection, and overseeing medical incidents, and

(h) provide all information as requested for review by state staff.

R501-8-15. Environmental Requirements.

(1) All programs shall adhere to land use agencies requirements relative to sanitation and low impact camping.

(2) Consumers shall be instructed daily in the observance of low-impact camping requirements.

(3) Personal hygiene supplies shall be of biodegradable materials.

R501-8-16. Emergencies.

(1) Each program shall have a written plan of action for disaster and casualties to include the following:

(a) designation of authority and staff assignments,

(b) plan for evacuation,

(c) transportation and relocation of consumers when necessary, and

(d) supervision of consumers after evacuation or relocation.

(2) The program shall have a written plan which personnel follow in medical emergencies and arrangements for medical care, including notification of consumer's physician and nearest relative or guardian.

(3) The program shall have a written agreement for medical emergency evacuation as needed.

(4) Emergency evacuation equipment shall be on stand-by.

(5) The program shall make prior arrangements with local rescue services in preparation for possible emergency evacuation needs, which shall be reviewed every six months.

R501-8-17. Infectious Disease Control.

(1) The program shall have policies and procedures designed to prevent or eliminate the spread of infectious and communicable diseases in the program.

R501-8-18. Transportation Services.

(1) The program shall have policies and procedures which ensures the safe and humane transport of consumers between their homes and the program.

(2) "Escort transportation services" means: The charging of a fee for having a responsible adult accompany the consumer during transportation from the consumers home to the program or back to their home.

(3) Escort transportation services whether provided by the program or by an independent transportation service shall not be a requisite to enrollment in the program, but shall be the choice of the consumer's parent or guardian.

(4) Programs that provide escort transportation services shall provide parents or guardians with the contact information of at least two other escort transportation services to allow them to have an informed decision.

R501-8-19. Transportation.

(1) There shall be written policy and procedures for transporting consumers.

(2) There shall be a means of transportation in case of emergency.

(3) Drivers of vehicles shall have a valid drivers license and follow safety requirements of the State.

(4) Each vehicle shall be equipped with an adequately supplied first aid kit.

(5) When transporting any consumer for any reason, there shall be two staff present at all times, one of which shall be of the same sex as the consumer, except in emergencies.

(6) Staff shall adhere to local, state, and federal laws concerning the operation of motor vehicles.

(7) Staff and consumers shall wear seat belts at all times while the vehicle is moving.

R501-8-20. Evaluation.

(1) Following the wilderness experience, each consumer shall receive a debriefing to include a written summary of the consumer's participation and the progress they achieved.

(2) Parents, consumers, and other involved individuals shall be provided the opportunity and encouraged to submit a written evaluation of the wilderness experience, which shall be retained by the program for a period of two years.

R501-8-21. Solo Experiences.

(1) If an Outdoor Youth Program conducts a solo component for consumers as part of the program they shall have and follow written policies and procedures, which shall include the following:

(a) A written description of the solo component to ensure that the consumers are not exposed to unreasonable risks.

(b) Staff shall be familiar with the site chosen to conduct solos.

(c) Plans for supervision shall be in place during the solo.

(d) Solo emergency plans.

R501-8-22. Stationary Camp Sites.

(1) An outdoor youth program that maintains a designated location for the housing of consumers is considered stationary and shall be subject to additional fire, health and safety standards.

(a) A stationary Outdoor Youth Program camp shall be inspected by a state certified fire inspector before being occupied and on an annual basis thereafter. A copy of the inspection shall be maintained at the Outdoor Youth Program camp.

The inspection shall require:

(i) Fire Extinguishers. One (1) 2-A-10BC type fire extinguisher shall at minimum be in each of the following locations as required by the fire inspector:

(A) On each floor in any building that houses consumers;

(B) In any room where cooking or heating takes place;

(C) In a group of tents within a seventy-five (75) foot travel distance; and

(D) Each fire extinguisher shall be inspected annually by a fire extinguisher service agency.

(ii) Smoke Detectors. A smoke detector shall be in buildings where consumers sleep.

(iii) Escape Routes. A minimum of two (2) escape routes from buildings where consumers sleep.

(iv) Flammable Liquids. Flammable liquids shall not be used to start fires, be stored in structures that house consumers, or be stored near ignition sources. If generators are used, they will only be refueled by staff when the generator is not running and cool to the touch.

(v) Electrical. Wiring shall be properly attached and fused to prevent overloads.

(b) A stationary Outdoor Youth Program camp shall be inspected by the Local Health Department before being occupied and on an annual basis thereafter. A copy of the inspection shall be maintained at the site of the camp. The inspection shall require the following:

(i) Food. Food be stored, prepared and served in a manner that is protected from contamination.

(ii) Water Supply. The water supply shall be from a source that is accepted by the local health authority according to UAC R392-300 "Rules for Recreation Camp Sanitation," at the time of application and for annual renewal of such licenses.

(iii) Sewage Disposal. Sewage shall be disposed of through a public system, or in absence of a public system, in a manner approved by the local health authority, according to UAC R392-300 "Rules for Recreation Camp Sanitation".

R501-8-23. Non-Compliance With Rules.

(1) Due to the difficulty of monitoring outdoor programs and the inherent dangers of the wilderness, a single violation of the foregoing life and safety rules may result in immediate revocation of the license and removal of consumers from programs pursuant to General Provisions as found in R501-1.

KEY: licensing, human services, youth
January 17, 2003 62A-2-101 et seq.
Notice of Continuation November 5, 2002

R501. Human Services, Administration, Administrative Services, Licensing.
R501-12. Child Foster Care.
R501-12-1. Authority.

(1) Pursuant to 62A-2-101 et seq., the Office of Licensing, shall license child foster care services according to the following rules. Child foster care services are provided pursuant to 62A-4a-106 for the Division of Child and Family Services, hereinafter referred to as DCFS, and 62A-7-104 for the Division of Juvenile Justice Services, hereinafter referred to as DJJS.

R501-12-2. Purpose Statement.

(1) The purpose of these rules is to establish the minimum requirements for licensure of child foster homes and proctor homes for children in the custody of the Department of Human Services, herein after referred to as DHS. Rules applying to child foster care are also applicable to proctor care unless otherwise specified below.

R501-12-3. Definitions.

(1) "Child foster care" means the provision of care which is conductive to the physical, social, emotional and mental health of children or adjudicated youth who are temporarily unable to remain in their own homes.

(2) "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 DJJS.

(3) "Foster care agency" is any authorized licensed private agency certifying providers for foster care services, hereinafter referred to as Agency.

(4) "Child" means anyone under 18 years of age with the exception of DJJS proctor care where custody and guardianship may be maintained to 21 years of age.

R501-12-4. Licensing and Renewal.

(1) Application: An individual or legally married couple age 21 and over may apply to be foster parents. The applicant shall be provided with an application and a copy of the foster care licensing rules. The application shall require the applicant to list each member of the applicant's household.

(2) Medical Information:

(a) At the time of application, each potential foster parent shall obtain and submit to the Agency or the Office of Licensing, 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.

(b) A psychological examination of a potential or current foster parent may be required by the Office of Licensing or the Agency if there are questions regarding the individual's mental status which may impair functioning as a foster parent. The psychological examination shall be arranged and paid for by the foster parent.

(3) References:

The applicant shall submit the names of no more than four individuals, two not related and one related, who may be contacted by the Agency or the Office of Licensing for a reference. These individuals, shall be knowledgeable of the ability of the potential foster parents to nurture children. Three acceptable letters of reference must be received by the Agency or the Office of Licensing before a license will be issued.

(4) Background Screening:

(a) Pursuant to 62A-2-120 and R501-14, criminal background screening, referred to as CBS, requires that all child foster care applicants or persons 18 years of age or older living in the home must have the criminal background screening successfully completed. This shall be completed on initial home approval and yearly thereafter.

(b) Pursuant to 62A-2-121 and R501-18, child abuse and neglect licensing data base shall also be screened for each applicant or persons 18 years of age or older living in the home to see if a report of a severe type of abuse and neglect has been substantiated by the Juvenile Court. This shall be done on initial home approval and yearly thereafter.

(5) 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.

(6) Provider Code of Conduct: Each foster care applicant shall read, abide by, and sign a current copy of the DHS Provider Code of Conduct.

(7) Training: Each foster care applicant shall complete the required pre-service training as specified in R501-12-5 prior to receiving a license.

(8) Approval or Denial:

(a) Following pre-service training and submission of all required documentation, the home study and an assessment of an applicant shall be completed.

(b) A license shall be issued for applicants who meet Foster Care Licensing Rules.

(c) The decision to approve or deny the applicant shall be made on the basis of facts, health and safety factors, and the professional judgment of the Agency or the Office of Licensing.

(d) 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).

(e) The provider shall be evaluated annually for compliance with foster care rules when renewing a license.

(f) 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.

(g) Licensure approval is not a guarantee that a child will be placed in the home. Additional requirements for adoptive parents and adoptive assessments for children in State custody are included in R512-41(3)(4).

(h) Providers shall not be licensed or certified to provide foster care for children in the same home in which they are providing child care, as defined in UCA 26-39-102, or a licensed human service program, as defined in UCA 62A-2-101.

(i) The Office Director or designee may grant a time limited variance to a rule if it is in the best interest of the specific child and addresses how basic health and safety requirements shall be maintained in accordance with R501-1-8.

(j) All providers shall report any major changes in their lives to the Office of Licensing or Agency within 48 hours. These changes shall be re-evaluated within one month of the change by the Office of Licensing or Agency. A major change in the lives of the foster parents shall include, but is not limited to the following;

(i) death or serious illness among the members of the foster family,

(ii) separation or divorce,

(iii) loss of employment,

(iv) change of residence, or

(v) suspected abuse or neglect of any child in the foster home.

R501-12-5. Training.

(1) Applicants shall attend training required and approved by the applicable DHS Division or other approved entity and submit verification of completed training to the Office of Licensing or Agency annually.

(2) 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.

(3) Providers associated with an Agency that is contracted to provide foster care or proctor care services shall meet the training requirements specified by the contract.

R501-12-6. Foster Parent Requirements.

(1) Personal characteristics of foster parents shall include the following:

(a) Foster parents shall be in good health, able to provide for the physical and emotional needs of the child.

(b) Foster parents shall be emotionally stable and responsible persons over 21 years of age. Legally married couples and single individuals, may be foster parents.

(c) Foster parents shall document and verify legal residential status when appropriate.

(d) Foster parents shall have the ability to help the child grow and change in behavior.

(e) Foster parents shall not be dependent on the foster care payment for their expenses beyond those associated with foster care, and shall allocate funds as directed by Division policy. Verification of income shall be submitted with the application to the Office of Licensing or Agency on an annual basis.

(f) Division employees shall not be approved as foster parents to care for children in the custody of their respective Divisions. An employee may provide care for children in the custody of a different Division with approval of the Regional Director in accordance with DHS conflict of interest policy.

(g) Owners, directors, and members of the governing body for foster care agencies shall not serve as foster parents.

(h) Foster parents shall follow Agency rules and work cooperatively with the Agency, Courts, and law enforcement officials.

(2) Family Composition shall meet the following:

(a) The number, ages, and gender of persons in the home shall be taken into consideration as they may be affected by or have an effect upon the child.

(b) No more than two children under the age of two, shall reside in a foster home, including natural children.

(c) No more than two non-ambulatory children shall be in a foster home including infants under the age of two.

(d) No more than four foster children shall be in any one home.

(e) No more than one foster child shall be in any one home designated for proctor care by agencies contracted with DJJS.

R501-12-7. Physical Aspects of Home.

(1) The foster home shall be located in a vicinity in which school, church, recreation, and other community facilities are reasonably available.

(2) The physical facilities of the foster home shall be clean, in good repair, and shall provide for normal comforts in accordance with accepted community standards.

(3) The foster home shall be free from health and fire hazards. Each foster home shall have a working smoke detector on each floor and at least one approved fire extinguisher. An approved fire extinguisher shall be inspected annually and be a minimum of 2A:10BC five point, rated multi-purpose, dry chemical fire extinguisher.

(4) There shall be sufficient bedroom space to provide for the following:

(a) rooms are not shared by children of the opposite sex, except infants under the age of two years,

(b) children do not sleep in the parents' room, except infants under the age of two years,

(c) each child has his or her own solidly constructed bed adequate to the child's size,

(d) 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

(e) no more than four children are housed in a single bedroom.

(5) Sleeping areas shall have a source of natural light and shall be ventilated by mechanical means or equipped with a screened window that opens.

(6) Closet and dresser space shall be provided within the bedroom for the children's personal possessions and for a reasonable degree of privacy.

(7) There shall be adequate indoor and outdoor space for recreational activities.

(8) Foster homes shall offer sufficiently balanced meals to meet the child's needs.

(9) All indoor and outdoor areas shall be maintained to ensure a safe physical environment.

(10) Areas determined to be unsafe, including but not limited to, steep grades, cliffs, open pits, swimming pools, hot tubs, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers.

(11) Equipment: All furniture and equipment shall be maintained in a clean and safe condition. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet individual needs.

(12) Exits: There shall be at least two means of exit on each level of the foster home.

R501-12-8. Safety.

(1) Foster families shall conduct fire drills at least quarterly and provide documentation to the Office of Licensing and Agency.

(2) Foster parents shall provide and document training to children regarding response to fire warnings and other instructions for life safety.

(3) The foster home shall have a telephone. Telephone numbers for emergency assistance shall be posted next to the telephone.

(4) The foster home shall have an adequately supplied first aid kit such as recommended by the American Red Cross.

(5) Foster parents who have firearms or ammunition shall assure that they are inaccessible to children at all times. Firearms and ammunition that are stored together shall be kept securely locked in security vaults or locked cases, not in glass fronted display cases. Firearms that are stored in display cases shall be rendered inoperable with trigger locks, bolts removed or other disabling methods. Ammunition for those firearms shall be kept securely locked in a separate location. This does not restrict constitutional or statutory rights regarding concealed weapons permits, pursuant to UCA 53-5-701 et seq.

(6) No firearms shall be allowed in foster homes that contract with DJJS.

(7) Foster parents who have alcoholic beverages in their home shall assure that the beverages are kept inaccessible to children at all times.

(8) There shall be locked storage for hazardous chemicals and materials.

R501-12-9. Emergency Plans.

(1) Foster parents shall have a written plan of action for emergencies and disaster to include the following:

(a) evacuation with a pre-arranged site for relocation,

(b) transportation and relocation of children when necessary,

(c) supervision of children after evacuation or relocation, and

(d) notification of appropriate authorities.

(2) Foster parents shall have a written plan for medical emergencies, including arrangements for medical transportation, treatment and care.

(3) Foster parents shall immediately report any serious illness, injury or death of a foster child to the appropriate Division or Agency and the Office of Licensing.

R501-12-10. Infectious Disease.

(1) Foster parents shall contact their local health department for assistance in preventing or controlling infectious and communicable diseases in the home. In the event of an infectious or communicable disease outbreak, foster parents shall follow specific instructions given by the local health department.

R501-12-11. Medication.

(1) Foster parents shall administer prescribed medication, according to the written directions of a licensed physician. Medicine shall only be given to the child for whom it was prescribed.

(2) Medication shall not be discontinued without the approval of the licensed physician, side effects shall be reported to the licensed physician.

(3) Non-prescriptive medications may be administered by foster parents according to manufacturer's instructions.

(4) Medications shall not be administered by the foster child.

(5) Medication shall not be used for behavior management or restraint unless prescribed by a licensed physician with notification to the Division or Agency worker.

(6) There shall be locked storage for medication.

R501-12-12. Transportation.

(1) Foster parents shall provide transportation. In case of an emergency a means of transportation shall be arranged by the foster parents.

(2) Drivers of vehicles shall have a valid Utah Drivers License and follow safety requirements of the State.

(3) 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.

(4) An emergency telephone number shall be in the vehicle used to transport children.

(5) Each vehicle shall be equipped with an adequately supplied first aid kit such as recommended by the American Red Cross.

R501-12-13. Behavior Management.

(1) Foster parents shall provide supervision at all times.

(2) 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.

(3) The foster parents' methods of discipline shall be constructive. In exercising discipline, the child's age, emotional make-up, intelligence and past experiences shall be considered.

(4) Passive restraint shall be used only in behaviorally related situations as a temporary means of physical containment to protect the child, other persons, or property from harm. Passive restraint shall not be associated with punishment in any way.

(5) Foster parents shall inform the Division or Agency worker of any extreme or repeated behavioral problems of a child placed in the foster home.

R501-12-14. Child's Rights in Foster Care.

(1) The foster parent shall adhere to the following:

(a) allow the child to eat meals with the family, and to eat the same food as the family unless the child has a special prescribed diet,

(b) allow the child to participate in family activities,

(c) protect privacy of information,

(d) not make copies of the child's records,

(e) explain the child's responsibilities, including household tasks, privileges, and rules of conduct,

(f) not allow discrimination,

(g) treat the child with dignity,

(h) allow the child to communicate with family, attorney, physician, clergyman, and others, except where documented otherwise,

(i) follow visitation rights as provided by DHS or Agency worker,

(j) 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,

(k) provide for personal needs and clothing allowance, and

(l) respect the child's religious and cultural practices.

R501-12-15. Record Keeping.

(1) Foster parents shall maintain the following:

(a) current license certificate,

(b) copy of each contract with DHS,

(c) record of money provided to each foster child,

(d) record of expenditures for each foster child, and

(e) documentation of special need payments on behalf of the foster child.

(2) The Office of Licensing and Agency staff shall maintain a separate record for each child foster care home or Agency.

KEY: licensing, human services, foster care
January 30, 2003 62A-2-101 et seq.
Notice of Continuation November 15, 2002

R512. Human Services, Child and Family Services.
R512-32. Children with Reportable Communicable Diseases.
R512-32-1. Definitions.

(1) "Communicable Disease" means any infectious condition reportable to the Utah Department of Health, pursuant to Section 26-6-3. These diseases are listed in the Code of Communicable Disease Rules (R386-702-2 and R386-702-3). In addition, for the purposes of this rule, human immunodeficiency virus (HIV) seropositivity will be considered a communicable disease. Non-reportable minor illnesses such as strep, flu, and colds are excluded from this definition.

(2) "Provider" means a person authorized and licensed to supply the daily needs of children in the custody of the Division of Child and Family Services. (Other divisions of the Department, for example, the Division of Juvenile Justice Services, shall function under separate communicable disease rules for those youth within their custody and jurisdiction.)

(3) "UDHS" means the Utah Department of Human Services.

(4) "DCFS" means the Division of Child and Family Services.

(5) "UDOH" means the Utah Department of Health, Bureau of Epidemiology or Bureau of HIV/AIDS Prevention and Control.

(6) "HIV Screening" means a laboratory test (Elisa Test) to detect evidence of infection with the HIV; the causative agent of acquired immunodeficiency syndrome (AIDS).

(7) "HIV Seropositivity" means the presence in an individual, as detected by confirmatory laboratory testing (Western Blot Test), of an antibody or antigen to the HIV.

(8) "High Risk Behaviors" means behaviors which may include injectable drug use, sharing intravenous needles and syringes, multiple sex partners, unprotected sex that increase the risks of contracting Hepatitis B, AIDS, HIV disease, and sexually transmitted diseases such as: gonorrhea, syphilis, chancroid, granuloma inguinale, chlamydial infections, pelvic inflammatory disease, and lymphogranuloma venereum.

(9) "Children at Risk" means an infant or child born to parent(s) engaging in or who have a history of engaging in high risk behaviors, or a child or youth who has been sexually abused by a person who engages in or has a history of engaging in high risk behaviors.

(10) "Contact" means an individual who has been exposed to a communicable disease through a known mode of transmission.

(11) "Controlled" means a classification of information (medical, psychiatric, or psychological) under the Government Records Access and Management Act (GRAMA), Section 63-2-303.

R512-32-2. Confidentiality.

(1) In accordance with Section 26-6-27, records containing personal identifiers and information regarding communicable disease are confidential. Such information shall not be disclosed to any person (including UDHS personnel) who does not have a valid and objective need to know. Such persons who may have a valid and objective need to know may include: the Division of Child and Family Services administrators, program specialists, supervisor, and caseworker, the foster parent or provider, UDOH, the Guardian ad Litem, the Juvenile Court Judge, and persons providing psychological or medical treatment.

(2) Due to the GRAMA Act and state confidentiality laws, any documentation in the case record regarding HIV status or any other communicable disease information must be filed under the "Medical/ Assessment" section of the case record.

R512-32-3. Identification and Testing of Children with Communicable Disease.

(1) Testing at Agency's Request.

(a) Many medical or laboratory tests to detect communicable disease, including HIV screening, are not routinely performed as part of physical or medical examinations of children in the custody of DCFS. When DCFS has custody and guardianship of a child who may have a communicable disease, the State has the authority to obtain a medical evaluation to determine the child's communicable disease status.

(b) If a foster parent or provider has a reasonable belief that a foster child or the foster child's parent may have a communicable disease, the foster parent or provider shall promptly discuss it with the caseworker.

(c) If the caseworker has a reasonable belief that the child may have a communicable disease, the caseworker is required to contact UDOH promptly for consultation.

(d) A "reasonable belief" includes the following: information received that may indicate the child or the child's parent may be at risk from engaging in or having a history of engaging in high risk behaviors as defined in R512-32-1(H), a child who may be at risk as defined in R512-32-1(I), or medical information received by the worker, foster parent or provider.

(e) Communicable disease testing requires written, informed consent. If DCFS has custody and guardianship of a child, the State (DCFS) has the authority to provide written, informed consent for communicable disease testing. If a child under the custody and guardianship of DCFS refuses to be tested, the worker is required to contact UDOH and the Attorney General's office immediately upon hearing of the refusal.

(f) When a parent of a child in the custody of DCFS is known or reports to be involved in high risk behaviors, the worker shall contact UDOH for consultation.

(g) All contacts with UDOH shall be documented in the child's case record and filed under the "medical assessment" section of that record.

(2) Testing at Minor's Request.

(a) A minor may seek HIV testing without parental or UDHS consent. When the minor requests the test, the right to disclose test results belongs to the minor (Section 26-6-18). If the minor chooses to disclose the test results to UDHS, UDHS cannot disclose the test results to any other person, including the Guardian Ad Litem. Upon disclosure to UDHS of a positive test result, the caseworker shall contact UDOH for consultation and follow up.

(b) When a record of HIV testing is subpoenaed, the caseworker shall immediately contact the Attorney General's office or the DCFS program specialist or DCFS assistant director.

R512-32-4. Preparation for Placement in Foster or Out-of-Home Care.

(1) Prior to placing a child with a communicable disease, or upon discovering a child has a communicable disease, the DCFS caseworker shall contact UDOH for consultation. After consultation with UDOH and prior to placing the child, the DCFS worker shall staff the case with their supervisor, assistant director, the provider (as defined in R512-32-1, Definitions), as well as the DCFS program specialist or DCFS assistant director to assess the health risk to the child, to the provider, and to any other persons in the home. After the consultation with the team, UDOH, the caseworker, and the provider shall define the precautions necessary to mitigate the health risk.

R512-32-5. Considerations Regarding Placement of a Child With a Communicable Disease.

(1) A provider's decision to accept placement of a child with a communicable disease shall be made with sufficient knowledge of the specific risks involved, as well as any special accommodations or care requirements. Prior to making this

decision, the caseworker shall refer the provider to UDOH for consultation on the nature of the disease, modes of transmission, appropriate infection control measures, special care requirements, and universal precautions.

(2) If, after consultation, the provider accepts the placement, a Communicable Disease Information Acknowledgement form shall be signed by the provider and placed in his or her file, as well as the child's case record under the Medical Section.

(3) If a minor is discovered to have a communicable disease after placement, the consultation and documentation described in R512-32-5(A) and R512-32-5(B) shall be accomplished without delay.

R512-32-6. Pick-Up Orders.

(1) Pick-up orders filed with the Juvenile Court may state that the youth is engaging, or has a history of engaging, in high risk behaviors. The order or supplementary forms cannot include information that the child has or may have a communicable disease.

R512-32-7. Returning a Minor to the Parent's Custody.

(1) If a minor in DCFS custody tests positive for the HIV disease and the minor is being returned home, UDOH shall be responsible for informing natural parents of the child's positive test. Both caseworker and UDOH shall coordinate the placement of the child back home. The caseworker shall assist the parents in planning for the child's care and medical follow up needs.

(2) If a minor in DCFS custody tests positive for a communicable disease other than HIV disease and the minor is being returned home, the caseworker is responsible for informing the natural parents of the child's positive test and if needed, referring them to UDOH for consultation and appropriate medical resources.

R512-32-8. When a Minor in Custody Has Been Exposed to a Person Who Has Tested Positive.

(1) When a minor in the custody of DCFS is identified by the Health Department as having been exposed to a person who has tested positive, UDOH shall contact the DCFS foster care specialist or assistant director who shall then contact the appropriate caseworker. The caseworker shall contact UDOH to arrange for the minor to be tested and counseled. The worker and provider will follow up on recommended medical treatment and other necessary services.

KEY: child welfare, foster care
1993 62A-4a-105
Notice of Continuation December 13, 2002

R523. Human Services, Substance Abuse and Mental Health.
R523-1. Procedures.
R523-1-1. Board of Substance Abuse and Mental Health-Responsibilities.

(1) The State Board of Substance Abuse and Mental Health is the program policy making body for the Division of Substance Abuse and Mental Health and for programs funded with state and federal monies. The Board has the authority and the responsibility to establish by rule procedures for developing its policies which seek input from local mental health authorities, consumers, providers, advocates, division staff and other interested parties (Section 62A-15-105). In order to ensure public input into the policy making procedure the Board will:

(a) Convene an annual meeting, inviting local mental health authorities, consumers, providers, advocates and division staff to provide them an opportunity to comment and provide input on new policy or proposed changes in existing policy.

(b) The Board shall include a time on the agenda at each regularly scheduled board meeting to entertain public comment on new policy or proposed changes in existing policy.

(c) Public requests to revise existing policy or consider new policy shall be made in writing to the Board in care of the Division of Substance Abuse and Mental Health.

(d) The Division shall prepare, for the Board's review, any comments they are in receipt of relative to public policy which will be addressed at a regularly scheduled board meeting.

(e) The Board may direct the Division to follow-up on any unresolved issues raised as a result of policy review and report their findings at the next scheduled board meeting.

R523-1-2. State and Local Relationships.

(1) Local Mental Health Authorities (LMHA) are the "service designees" of the State Division of Substance Abuse and Mental Health. As service designees, LMHAs receive all formula pass-through state and federal mental health funds to provide comprehensive mental health services as defined by state law. Local Mental Health Authorities are considered sole source providers for these services and are statutorily required to provide them (17-43-301).

(2) When the Division of Substance Abuse and Mental Health requires other services outside the comprehensive range specified by law, it shall provide LMHAs the first opportunity to accept or reject the service contract. If the LMHA rejects the contract in writing or fails to meet the terms of the contract as determined by the Division, the Division may contract with any qualified provider, through a Request For Proposal (RFP) process. If an agency other than the LMHA receives a contract to provide a mandated service, the contracted service provider shall inform the LMHA that they have been awarded the contract and offer to coordinate the service with existing services provided by the LMHA (17-43-301, 62A-15-103(3)).

(3) Local Mental Health Authorities must submit an annual local Mental Health Plan of Service to the Division of Substance Abuse and Mental Health for approval before each contract period. The Plan shall describe the intended use of state and federal contracted dollars.

(4) The Division of Substance Abuse and Mental Health has the responsibility and authority to monitor LMHA contracts to see that they are in compliance with existing laws, policies, standards and rules. Each mental health catchment area shall be visited at least once annually to monitor compliance. The mental health center will be provided preliminary findings from the site review and an opportunity to comment. A written report will be sent to each LMHA describing the findings from the site visit.

R523-1-3. Program Standards.

(1) The State Board of Substance Abuse and Mental Health, in compliance with law, adopts the policy that available state funds will be distributed on a 80% State, 20% local match basis to local mental health authorities which provide the continuum of care and meet the public policy priority adopted by the Board (17-43-102, 62A-1-107(6)). The Division of Substance Abuse and Mental Health will carry out this policy. A comprehensive mental health program includes:

(a) Inpatient care and services (hospitalization)
(b) Residential care and services
(c) Day treatment and psycho-social rehabilitation
(d) Outpatient care and services
(e) Twenty-four hour crisis care and services
(f) Outreach care and services
(g) Follow-up care and services
(h) Screening for referral services
(i) Consultation, education and preventive services (case consultation, public education and information, etc.)
(j) Case management.

(2) Each local mental health authority shall be responsible for providing these services directly or contracting for these services.

(3) The primary responsibility of the Division of Substance Abuse and Mental Health will be to insure the provision of services for those citizens who enter the mental health system directly as consumers and to work cooperatively with other agencies. Other public agencies such as Education, Corrections, Health and Social Services will have primary responsibility for arranging for or providing and paying for the mental health needs of citizens served by their agency when the required service directly benefits or is tied to their agency responsibility. The Division of Substance Abuse and Mental Health will clearly define items 1-9 above so that evaluation and implementation is feasible. These definitions will be approved by the State Board of Substance Abuse and Mental Health.

R523-1-4. Private Practice.

(1) Private practice policies shall be determined by local community mental health authorities. These policies will be available in written form for State review.

R523-1-5. Fee for Service.

(1) All consumers of community mental health centers within the state of Utah shall be charged the actual cost of services rendered to them by personnel of the centers.

(2) There shall be a dual fee schedule approved by the State Board of Substance Abuse and Mental Health:

(a) intensive services - uniform fee schedule as attached;

(b) outpatient services - Local cost will be based on actual unit cost as determined by the center's annual study and in accordance with the minimum discount fee schedule attached.

(c) the mental health center may waive the charging of a fee if they determine that the assessment of a fee would result in a financial hardship for the recipient of services.

(3) Unless otherwise prohibited by law, all differences between the actual cost of services rendered and third-party payments shall be charged to the consumers receiving the service. These charges may not exceed the adjusted fee, if any, based on the above mentioned fee schedules.

(4) Fee adjustments may be made following locally determined procedures. The procedures will be available in writing.

(5) Except for emergency services, all consumers are to be informed of the actual cost of services to be received and of the adjusted fee, if any, before the commencement of services.

R523-1-6. Priorities for Treatment.

(1) Mental health services provided through public funds (federal, state, and local match) will address current mental

health priorities listed below. The State Division of Substance Abuse and Mental Health, in collaboration with the Utah Council of Mental Health Program, Inc.'s evaluation committee (SCHEDULE), will develop or approve procedures and forms for periodic needs assessments.

(2) Immediacy of need and severity of the mental illness are the two primary variables considered in developing the following priorities of treatment. It is to be understood that emphasis upon certain under-served age groups may be given as appropriately demonstrated through needs studies.

(a) Effective and responsive crisis intervention assessment, direct care, and referral program available to all citizens.

(b) Provision of the least restrictive and most appropriate treatment and settings for:

a. severely mentally ill children, youth, and adults;

b. acutely mentally ill children, youth, and adults.

(c) Provisions of services to emotionally disabled children, youth and aged citizens who are neither acutely nor severely mentally ill, but whose adjustment is critical for their future as well as for society in general.

(d) Provision of services to emotionally disabled adults who are neither acutely nor severely mentally ill, but whose adjustment is critical to their personal quality of life as well as for society in general.

(e) Provision of consultation, education and preventive mental health services targeted at high risk groups in particular.

R523-1-7. Collections Carryover.

(1) Local center programs may carry collections forward from one fiscal year to another.

(2) Centers receive two general types of revenues - appropriations and collections. These terms are defined as follows:

(a) Appropriations:

(i) State appropriated monies

(ii) Federal Block Grant dollars

(iii) County Match of at least 20%

(b) Collections:

(i) First and third party reimbursements

(ii) Any other source of income generated by the center.

R523-1-8. Consumers Rights.

(1) Each local mental health center shall have a written statement reflecting consumers rights. General areas for consideration should be:

(a) consumer involvement in treatment planning.

(b) consumer involvement in selection of their primary therapist.

(c) consumer access to their individual treatment records.

(d) informed consent regarding medication

(e) grievance procedures

(2) This statement should also indicate the Center's commitment to always treat mental health consumers with dignity and individuality in a positive, supportive and empowering manner. This document is to be shared with the consumer at the time of intake and a signed copy made part of their individual file. The State Division of Substance Abuse and Mental Health shall periodically review this process to assure appropriate content within the rights statement and proper application of the intent of this policy.

R523-1-9. Statewide Program Evaluation, Research, and Statistics.

(1) Responsibility for Statewide program evaluation, research, and statistics belongs to the Division of Substance Abuse and Mental Health. This responsibility includes data system leadership, coordination, implementation, and monitoring.

(2) The Division of Substance Abuse and Mental Health shall develop and maintain, in collaboration with local mental health providers, a set of data system principles that address at least the following topics: standardization of data variables and definitions; variable integration across data sets; procedures for requesting data from MHOs; procedures for data review and dissemination; MHC participation in planning new statistical reports and requests; cost-effective and practical data collection procedures; confidentiality and data security; accuracy and data quality control; updating regular reports; and procedures for reviewing and updating the principles.

(3) The Division of Substance Abuse and Mental Health, in collaboration with the local Mental Health Authorities and their providers, shall assess service effectiveness (outcomes) and efficiency (productivity) and report the results to the State Board of Substance Abuse and Mental Health in an annual report. This report or reports shall contain data results on effectiveness and efficiency for the previous year, and a plan for assessing these variables for the following year. Changes in procedures for data collection and analysis for the previous year, and changes in data system principles shall also be reported to the Board.

R523-1-10. Allocation of Utah State Hospital Bed Days to Local Mental Health Authorities.

1. Pursuant to UCA 62A-15-611(2)(a), the Board herein establishes, by rule, a formula to allocate to local mental health authorities adult beds for persons who meet the requirements of UCA 62A-15-610(2)(a).

2. The formula established provides for allocation based on (1) the percentage of the state's adult population located within a mental health catchment area: and (2) a differential to compensate for the additional demand for hospital beds in mental health catchment areas that are located within urban areas.

3. The Board hereby establishes a formula to determine adult bed allocation:

a. The most recent available population estimates are obtained from the Utah Population Estimates Committee.

b. The total adult population figures for the State are identified which includes general adults and geriatric populations. Adult means age 18 through age 64. Geriatric means age 65 and older.

c. Adult and Geriatric population numbers are identified for each county.

d. The urban counties are identified (county classifications are determined by the lieutenant governor's office pursuant to UCA 17-50-501 and 17-50-502 and the most recent classifications are used to determine which counties are defined as urban) and given a differential as follows:

i. The total number of adult beds available at the Utah State Hospital are determined, from which the total number of geriatric beds and adult beds are identified.

ii. 4.8% is subtracted from the total number of beds available for adults to be allocated as a differential.

iii. 4.8% is subtracted from the total number of beds available for geriatrics to be allocated as a differential.

e. The total number of available adult beds minus the differential is multiplied by the county's percentage of the state's total adult and geriatric populations to determine the number of allocated beds for each county.

f. Each catchments area's individual county numbers are added to determine the total number of beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.

g. The differential beds are then distributed to urban counties based on their respective percentage of urban counties as a whole.

h. At least one adult (18 - 64) bed is allocated to each community mental health center.

4. In accordance with UCA 62A-15-611(6), the Board shall periodically review and make changes in the formula as necessary to accurately reflect changes in population.

5. Applying the formula.

a. Adjustments of adult beds, as the formula is applied, shall become effective at the beginning of the next fiscal year.

b. The Division of Substance Abuse and Mental Health, as staff to the Board, is responsible to calculate adult bed allocation as directed by the Board or as required by statute.

c. Each local mental health authority will be notified of changes in adult bed allocation.

6. The number of allocated adult beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.

7. A local mental health authority may sell or loan its allocation of adult beds to another local mental health authority.

R523-1-11. Policies and Procedures Relating to Referrals, Admissions, and Transfers of Mental Health Consumers to the Utah State Hospital and Between Mental Health Center Catchment Areas.

(1) All consumers shall be referred into the public mental health system through admission to the local comprehensive community mental health center. For purposes of this document, whenever center is used, it means a local comprehensive community mental health center or agency that provides treatment and services to residents of a designated geographic area, operated by or under contract with a local mental health authority, in compliance with state standards for local comprehensive community mental health centers.

(2) In providing services to consumers from other catchment areas, including interstate transient consumers, the Center staff shall have the responsibility to assess the consumer's needs and to provide necessary emergency services consistent with the Center's current emergency procedures. Following such interventions, the Center staff shall assist the consumer in arranging for services from resources near the individual's place of residence.

(3) A Center shall utilize the services of the Utah State Hospital (hereinafter referred to as Hospital) when evaluation by the Center staff and the Hospital staff determine such services to be the treatment of choice. In every instance, continuity of consumer care will be a joint responsibility between the Center staff and the Hospital. The Center shall (1) provide information upon transfer to the Hospital; (2) participate in planning for transfer out of the Hospital; and (3) provide appropriate supportive services to the consumer upon their return to the community.

(4) The Hospital and the Centers are expected to provide services only within the state substance abuse and mental health systems' limited fiscal capacity.

(5) All consumers referred to the Utah State Hospital will have been seen, evaluated, and admitted to the local public mental health center. Prior to the consumer admission to the hospital, the center must follow the procedures specified via the Bed Allocation Policy. If the Hospital has reached maximum bed capacity, referred consumer's shall be placed on the Hospital waiting list.

(6) The Hospital, in consultation with the Centers, has the responsibility of prioritizing consumers ready for discharge. In the event of a consumer who is ready for discharge from the Hospital, but is from a different catchment area other than the referring center, the two centers will negotiate and coordinate services. Nevertheless, final discharge coordination remains the responsibility of the referring center. If a suitable placement cannot be achieved, the referring Center may appeal to the Chair of the Continuity of Care Committee for arbitration and resolution.

(7) If a consumer arrives at the Hospital without having been referred by a Center, the Hospital shall contact the appropriate Center to insure appropriate disposition. Should an emergency admission occur to the Hospital, the Center shall visit the consumer within three working days to coordinate services.

(8) Appropriate information pertaining to the consumer's evaluation, care, and treatment will follow the consumer to and from the Hospital.

(9) Each Center will designate a Hospital liaison(s). The Hospital will designate a Center liaison(s) for each of its programs. All consumer transfers between a Center and the Hospital will be managed through the identified Center liaisons.

(10) The emergency needs of transient consumers will be met by the Centers and will be consistent with the Centers' current emergency procedures. The Center providing emergency services will follow the appropriate procedures in coordinating the transfer of the consumer to his place of residence. Centers transferring transient consumers to the Hospital will comply with the consumer Continuity of Care procedures defined in this Policy.

(11) The Center liaison shall meet at least monthly with Hospital staff to discuss the treatment progress of the consumer and jointly plan with Hospital staff around discharge procedures.

(12) When it is agreed by the Hospital and the Center liaison that a consumer has received maximum hospital benefit, it will be the responsibility of the Center to find a satisfactory placement for the consumer within a 15-day period. Written documentation must be submitted to the Hospital when a satisfactory placement cannot be accomplished within 15 days.

(13) When resources are available only outside the consumer's catchment area, it will be the responsibility of the original referring Center to negotiate arrangements for an appropriate placement. Within seven days, the receiving center will provide verbal or written acceptance or denial of the consumer transfer. The receiving Center shall accept the consumer on a 30-day trial basis. If during the 30-day trial period, the placement is determined unsuccessful, the initiating Center will assume responsibility for the consumer's care. However, after 30 days, if the consumer's placement is successful, the receiving Center will assume responsibility for the consumer's care; and the consumer becomes a resident of that Center.

(14) When referrals involve the placement of consumers outside of a comprehensive community mental health center for time-limited treatment, the Center of origin remains responsible for the consumer's ongoing continuity of care. However, if the consumer wishes to reside in a new catchment area, the receiving center assumes responsibility for the consumer's ongoing continuity of care needs.

(15) In the event that either the referring or receiving Center perceive that procedures have not been adhered to, the Center liaisons from the two catchment areas will discuss the continuity of care concerns in an effort to bring about an acceptable resolution to both parties. If the liaisons cannot resolve their concerns, a written compliant may be submitted to the Chair of the Continuity of Care Committee for final arbitration.

(16) For the purposes of admitting and discharging children and youth to and from the State Hospital, all continuity of care procedures defined in this Rule will be adhered to.

(17) In addition, the following procedures shall apply for children and youth:

(a) The Center will document that less restrictive placement alternatives have been considered and are inadequate to meet the consumer's treatment needs.

(b) The Center and the Hospital both agree that restrictive intermediate care at the Hospital is in the best interest in meeting the treatment needs of the consumer.

(c) If an agency other than a local comprehensive community mental health center is seeking to admit a consumer to the hospital, both the referring agency and Center must agree at the time of referral to participate in the child's service plan. Within seven working days, the Center will notify the referring agency regard the status of the referral.

(d) If there is a custodial agency other than the Division of Substance Abuse and Mental Health, the agency agrees at admission to the hospital to retain custody of the consumer.

R523-1-12. Program Standards.

(1) The State Board of Substance Abuse and Mental Health has the power and the duty to establish by rule, minimum standards for community mental health programs (Section 62A-15-105).

(a) Each Community Mental Health Center shall have a current license issued by the Office of Licensing, Department of Human Services.

(b) Each Center shall have a comprehensive plan of service which shall be reviewed and updated at least annually to reflect changing needs. The plan shall:

(i) Be consistent with the "Comprehensive Mental Health Plan For Services To The Seriously Mentally Ill",

(ii) Designate the projected use of state and federal contracted dollars,

(iii) Define the Center's priorities for service and the population to be served.

(c) Each Center shall provide or arrange for the provision of services within the following continuum of care.

(i) Inpatient care and services (hospitalization),

(ii) Residential care and services,

(iii) Day treatment and Psycho-social rehabilitation,

(iv) Outpatient care and services,

(v) Twenty-four hour crisis care and services,

(vi) Outreach care and services,

(vii) Follow-up care and services,

(viii) Screening for referral services,

(ix) Consultation, education and preventive services,

(x) Case management.

(d) Each Center shall participate in a yearly on-site evaluation conducted by the Division.

(e) The local mental health authority shall be responsible for monitoring and evaluating all subcontracts to ensure:

(i) Services delivered to consumers commensurate with funds provided,

(ii) Progress is made toward accomplishing contract goals and objectives.

(f) The local mental health authority shall conduct a minimum of one site visit per year with each subcontractor. There shall be a written report to document the review activities and findings, a copy of which will be made available to the Division.

R523-1-13. Mental Health Officer Certification.

(1) A "Mental Health Officer" as an individual designated by the Division to interact with and transport persons to any mental health facility (62A-15-602(10) and 62A-15-105).

(a) The Division shall certify that a mental health officer is qualified by training and experience in the recognition and identification of mental illness and in the safe, adequate transportation of the mentally ill to designated mental health facilities with the appropriate assistance of a peace officer. Certification will require at least two years of experience in a mental health related field in addition to successful completion of training provided by the Division.

(b) Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application the Director will cause to occur a review and examination of the applicant's qualifications.

(c) The applicant must meet the following minimum standards in order to be certified.

(i) The applicant must be at least 21 years of age.

(i) The applicant must be at least a high school graduate or have passed equivalent examination.

(iii) The applicant must be a resident of the State of Utah.

(iv) The applicant must be employed by a public mental health agency that routinely acts as an agent for the Division.

(v) The applicant must possess a basic working knowledge of the most current Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, to be determined by training, experience, and written examination.

(vi) The applicant must demonstrate a basic understanding of abnormal psychology and abnormal behavior, to be determined by training, experience, and written examination.

(vii) The applicant must demonstrate a fundamental understanding of the mental health law, to be determined by examination.

(viii) The applicant must demonstrate a working knowledge of safe and acceptable methods and techniques in transporting the mentally ill, to be determined by training, experience and written examination.

(d) The Division Director will determine if experience and qualifications are satisfactory to meet the required standards. The Director will also determine if there are any training requirements that may be waived due to prior experience and training.

(e) Upon satisfactory completion of the required experience and training the Director will certify the qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a mental health officer and authorize the use of privileges and responsibilities as prescribed by law.

R523-1-14. Designated Examiners Certification.

(1) A "Designated Examiner" is a licensed physician or other licensed mental health professional designated by the Division as specially qualified by training or experience in the diagnosis of mental or related illness (62A-15-602(3) and 62A-15-606).

(a) The Division shall certify that a designated examiner is qualified by training and experience in the diagnosis of mental or related illness. Certification will require at least five years continual experience in the treatment of mental or related illness in addition to successful completion of training provided by the Division.

(b) Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application the Director will cause to occur a review and examination of the applicants qualifications.

(c) The applicant must meet the following minimum standards in order to be certified.

(i) The applicant must be a licensed mental health professional.

(ii) The applicant must be a resident of the State of Utah.

(iii) The applicant must demonstrate a complete and thorough understanding of abnormal psychology and abnormal behavior, to be determined by training, experience and written examination.

(iv) The applicant must demonstrate a fundamental and working knowledge of the mental health law. In particular, the applicant must demonstrate a thorough understanding of the conditions which must be met to warrant involuntary commitment, to be determined by training, experience and written examination.

(v) The applicant must be able to discriminate between

abnormal behavior due to mental illness which poses a substantial likelihood of serious harm to self or others from those forms of abnormal behavior which do not represent such a threat. Such knowledge will be determined by experience, training and written examination.

(vi) The applicant must be able to demonstrate a general knowledge of the court process and the conduct of commitment hearings. The applicant must demonstrate an ability to provide the court with a thorough and complete oral and written evaluation that addresses the standards and questions set forth in the law, to be determined by experience, training and written and oral examination.

(d) The Division Director will determine if experience and qualifications are satisfactory to meet the required standards. The Director will also determine if there are any training requirements that may be waived due to prior experience and training.

(e) Upon satisfactory completion of the required experience and training, the Director will certify the qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a designated examiner and authorize the use of privileges and responsibilities as prescribed by law.

R523-1-15. Funding Formula.

(1) The Board shall establish by rule a formula for the annual allocation of funds to local mental health authorities through contracts (Section 62A-12-105).

(2) The funding formula shall be applied annually to state and federal funds appropriated by the legislature to the Division and is intended for the annual equitable distribution of these funds to the state's local mental health authorities.

(a) Appropriated funds will be distributed annually on a per capita basis, according to the most current population data available from the Office of Planning and Budget. New funding and/or decreases in funding shall be processed and distributed through the funding formula.

(b) The funding formula shall utilize a rural differential to compensate for additional costs of providing services in a rural area which may consider: the total population of each county, the total population base served by the local mental health center and/or population density.

(c) In accordance with UCA Section 62A-12-105 the funding formula may utilize a determination of need other than population if the board establishes by valid and acceptable data, that other defined factors are relevant and reliable indicators of need.

(d) Each Local Mental Health Authorities shall provide funding equal to at least 20% of the state funds that it receives to fund services described in that local mental health authority's annual plan in accordance with, UCA Section 17A-3-602.

(e) Application of the formula for allocation of state and federal funds may be subject to a phase-in plan for FY 03 through FY 06. At the latest, appropriations for FY 06 shall be allocated in accordance with the funding formula without any phase-in provisions.

(f) The formula does not apply to:

(i) Funds that local mental health authorities receive from sources other than the Division.

(ii) Funds that local mental health authorities receive from the Division to operate a specific program within its jurisdiction that is available to all residents of the state.

(iii) Funds that local mental health authorities receive from the Division to meet a need that exists only within the jurisdiction of that local mental health authority.

(iv) Funds that local mental health authorities receive from the Division for research projects.

R523-1-16. Allocation of Utah State Hospital Pediatric Beds to Local Mental Health Authorities.

1. Pursuant to UCA 62A-15-612(2), the Board herein establishes, by rule, a formula to allocate to local mental health authorities pediatric beds for persons who meet the requirements of UCA 62A-15-610(2)(b).

2. The formula established provides for allocation based on the percentage of the state's population of persons under the age of 18 located within a mental health catchment area.

3. Each community mental health center shall be allocated at least one pediatric bed. (UCA 62A-15-612(3))

4. The board hereby establishes a formula to determined pediatric bed allocation:

a. The most recent available population estimates are obtained from the Governor's Office of Planning and Budget.

b. The total pediatric population figures for the State are identified. Pediatric means under the age of 18.

c. Pediatric population figures are identified for each county.

d. The total number of pediatric beds available is multiplied by the county's percentage of the state's total pediatric population. This will determine the number of allocated pediatric beds for each county.

e. Each catchment area's individual county numbers are added to determine the total number of pediatric beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.

5. In accordance with UCA 62A-15-612(6), the Board shall periodically review and make changes in the formula as necessary.

6. Applying the formula.

a. Adjustments of pediatric beds, as the formula is applied, shall become effective at the beginning of the new fiscal year.

b. The Division of Substance Abuse and Mental Health, as staff to the Board, is responsible to calculate pediatric bed allocation as directed by the Board or as required by statute.

c. Each local mental health authority will be notified of changes in pediatric bed allocation.

7. The number of allocated pediatric beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.

8. A local mental health authority may sell or loan its allocation of adult beds to another local mental health authority.

R523-1-17. Medication Procedures for Children, Legal Authority.

(1) The Division of Substance Abuse and Mental Health hereby establishes due process procedures for children prior to the administration of antipsychotic medication, pursuant to Section 62A-15-704(3)(a)(i).

(a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Substance Abuse and Mental Health.

(b) Antipsychotic medication means any antipsychotic agent usually and customarily prescribed and administered in the chemical treatment of psychosis.

(c) A legal custodian is one who has been appointed by the Juvenile Court and may include the Division of Child and Family Services, the Division of Juvenile Justice Services, and the Division of Substance Abuse and Mental Health.

(d) A legal guardian is one who is appointed by a testamentary appointment or by a court of law.

(e) A person under the age of 18 may be treated with antipsychotic medication when, as provided in this section, any one or more of the following exist:

(i) The child and parent/legal guardian/legal custodian give consent.

(ii) The child or the parent/legal guardian/legal custodian does not give consent, but a Neutral and Detached Fact Finder

determines that antipsychotic medication is an appropriate treatment.

(iii) The medication is necessary in order to control the child's dangerous behavior and it is administered for an exigent circumstance according to this rule.

(f) A local mental health authority has the obligation to provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with antipsychotic medications:

(i) The nature of the child's mental illness.

(ii) The recommended medication treatment, its purpose, the method of administration, and dosage recommendations.

(iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment.

(iv) The possible or probable mental health consequences to the child if recommended treatment is not administered.

(v) The possible side effects, if any of the recommended treatment.

(vi) The ability of the staff to recognize any side effects which may actually occur and the possibility of ameliorating or abating those side effects.

(vii) The possible, if any, alternative treatments available and whether those treatments are advisable.

(viii) The right to give or withhold consent for the proposed medication treatment.

(ix) When informing a child and his/her parent/legal guardian/legal custodian that they have the right to withhold consent the staff must inform them that the mental health authority has the right to initiate a medication hearing and have a designated examiner determine whether the proposed treatment is necessary.

(g) The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information under subsection F of this section, and that they consent to the proposed medication treatment.

(h) If either the child or parent/legal guardian/legal custodian refuses to give consent, the mental health authority may initiate a medication hearing in accordance with subsection J of this rule.

(i) Antipsychotic medication may be administered under the following exigent circumstances:

(i) A qualified physician has determined and certifies that he/she believes the child is likely to cause injury to him/herself or to others if not immediately treated. That certification shall be recorded in the Physician's Orders of the child's medical record and shall contain at least the following information:

(A) A statement by the physician that he/she believes the child is likely to cause injury to himself/herself or others if not immediately restrained and provided medication treatment.

(B) The basis for that belief (including a statement of the child's behaviors).

(C) The medication administered.

(D) The date and time the medication was begun.

(j) Involuntary treatment in exigent circumstances may be continued for 48 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall not be involuntarily treated unless a Notice to Convene a Medication Hearing has been prepared and provided to the child pursuant to the provision of subsection K of this section.

(k) If the child and/or parent/legal guardian/legal custodian refuse to give consent the treating staff may request a medication hearing be held to determine if medication treatment is appropriate.

(i) The treating physician shall document in the child's medical record, the child's diagnosis, the recommended treatment, the possible side effects of such treatment, the desired benefit of such treatment, and the prognosis.

(ii) The treating staff shall complete a Request to Convene a Medication Hearing form and submit it to the Director/Designee of the local mental health authority who will contact a Neutral and Detached Fact Finder and set a date and time for the hearing. The child and parent/legal guardian/legal custodian shall be provided notice of the medication hearing and the hearing shall be set as soon as reasonably possible after a request has been made, but no sooner than 24 hours of notification being provided to the child and parent/legal guardian/legal custodian.

(iii) Prior to the hearing, the Neutral and Detached Fact Finder is provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information.

(l) Medication hearings shall be conducted by a Neutral and Detached Fact Finder, shall be heard where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

(i) The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions. Other persons may attend the hearing if appropriate.

(ii) The Neutral and Detached Fact Finder shall begin each medication hearing by explaining the purpose and procedure of the hearing to the child, parent/legal guardian/legal custodian, and any other persons present.

(iii) The Neutral and Detached Fact Finder will review the child's current condition and recommended course of treatment.

(iv) The child, parent/legal guardian/legal custodian, and others present shall then be afforded an opportunity to comment on the issue of medication treatment.

(v) Following the review of the case and hearing of comments, the Neutral and Detached Fact Finder shall render a decision.

(vi) If needed the Neutral and Detached Fact Finder may ask everyone to leave the room to allow him/her time to deliberate.

(m) The Neutral and Detached Fact Finder may order medication treatment of a child if, after consideration of the record and deliberation, the Neutral and Detached Fact Finder finds that the following conditions exist:

(i) The child has a mental illness; and

(ii) The child is gravely disabled and in need of medication treatment for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or

(iii) Without medication treatment, the child poses a likelihood of serious harm to him/herself, others, or their property. Likelihood of serious harm means either (a) substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which placed another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

(iv) The proposed medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

(v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

(n) The basis for the decision is supported by adequate documentation. The Neutral and Detached Fact Finder shall complete and sign a Medication Hearing form at the end of the hearing. A copy shall be provided to the child and/or parent/legal guardian/legal custodian.

(o) A child and/or parent/legal guardian/legal custodian may appeal the decision of a Neutral and Detached Fact Finder according to the following process, by submitting a written appeal to the Director/Designee of the Local Mental Health Authority providing treatment to the child, within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

(i) Upon receipt of the appeal, a panel consisting of two physicians and a non-physician licensed professional (RN, LCSW, PhD, etc.) shall be assigned to hear the appeal.

(ii) The panel shall review the available documentation and make a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of the date of the appeal.

(iii) A written decision from the panel shall be provided to the child, the child's parent/legal guardian/legal custodian, the local mental health authority providing treatment to the child, and any other appropriate party.

(p) In the event that a significant medication change is proposed, the child and/or parent/legal guardian/legal custodian shall be provided an opportunity to give consent in accordance to subsection F of this section. If the child and parent/legal guardian/legal custodian refuse to give consent, a medication hearing may be initiated in according with subsection K of this section.

(q) Medication treatment ordered pursuant to subsection P of this section may continue after the initial hearing according to the following process:

(i) A Neutral and Detached Fact Finder shall review the case within 180 days of the initial hearing.

(ii) The Neutral and Detached Fact Finder shall review the medical record before rendering a decision to continue medication treatment.

(iii) The Neutral and Detached Fact Finder may order continued medication treatment if he/she finds the following conditions are met:

(A) The child is still mentally ill; and

(B) Absent continued medication treatment, the child will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in his/her ability to function in the least restrictive environment, thereby making him/her a substantial danger to him/herself or others, and

(C) The medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

(D) The medication treatment is in accordance with prevailing standards of accepted medical practice.

(iv) If the neutral and Detached Fact Finder approves continued medication treatment, he/she shall complete a Review of Continued Medication form, which shall be placed in the child's medical record. A copy shall be provided to the child and/or parent/legal guardian/legal custodian.

(v) At the end of 12 months, the case shall again be reviewed as outlined in this subsection (Q), and shall be reviewed every 6 months while the course of treatment is being administered.

R523-1-18. Psychosurgery and Electroshock Therapy Procedures for Children, Legal Authority.

(1) By this rule, the Division of Substance Abuse and Mental Health establishes the following due process procedure for children prior to their being administered psychosurgery or electroshock therapy as provided by Section 62A-15-704(3)(a)(ii).

(a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Substance Abuse and Mental Health. The following terms are herein defined:

(b) ECT means electroconvulsive therapy.

(c) A Legal Custodian means a person who is appointed by the juvenile court. Such a person may have been selected from the Division of Child and Family Services, the Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health.

(d) A Legal Guardian means a person who holds a testamentary appointment or is appointed by a court of law.

(e) Psychosurgery means a neurosurgical intervention to modify the brain to reduce the symptoms of a severely ill psychiatric patient.

(f) A local mental health authority has the obligation to provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with ECT or Psychosurgery:

(i) The nature of the child's mental illness;

(ii) The recommended ECT/Psychosurgery treatment, its purpose, the method of administration, and recommended length of time for treatment;

(iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment

(iv) The possible or probable mental health consequences to the child if recommended treatment is not administered

(v) The possible side effects, if any, of the recommended treatment

(vi) The ability of the staff to recognize any side effects, should any actually occur, and the possibility of ameliorating or abating those side effects

(vii) The possible, if any, alternative treatments available and whether those treatments are advisable

(viii) The right to give or withhold consent for the proposed ECT/psychosurgery.

(ix) When informing a child and his/her parent/legal guardian/legal custodian they have the right to withhold consent, the local mental health authority must inform them that regardless of whether they give or withhold consent, a due process procedure will be conducted before two designated examiners to determine the appropriateness of such treatment.

(g) The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information listed in subsection E of this section, and that they consent or do not consent to the proposed treatment.

(h) If the parent/legal guardian/legal custodian refuses to consent to ECT/psychosurgery, the local mental health authority shall consider a treatment team dispositional review to determine whether the child is appropriate for treatment through their services.

(i) Regardless of whether the child or parent/legal guardian/legal custodian agrees or disagrees with the proposed ECT/psychosurgery, a due process procedure shall be conducted before the treatment can be administered.

(j) A physician shall request ECT or psychosurgery for a child by completing a Request to Treat With ECT or Psychosurgery form and submitting to the Director/Designee of the Local Mental Health Authority providing treatment.

(k) Upon receipt of the request, the Director/Designee shall contact two Designated Examiners, one of which must be a physician, and set a date and time for an ECT/Psychosurgery Hearing.

(l) The child and parent/legal guardian/legal custodian shall be provided notice of the hearing.

(m) Prior to the hearing, the two designated examiners shall be provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information. The attending physician shall document his/her proposed course of treatment and reason(s) justifying the proposal in the medical record.

(n) ECT/psychosurgery hearings shall be conducted by two Designated Examiners, one of whom is a physician, Hearings shall be held where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

(i) The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions.

(ii) If the child or others become disruptive during the hearing, the Designated Examiners may request that those persons be removed. The hearing shall continue in that person's absence.

(iii) The hearing shall begin with the child, parent/legal guardian/legal custodian, and any others being informed of the purpose and procedure of the hearing.

(iv) The record shall be reviewed by the Designated Examiners and the proposed treatment shall be discussed.

(v) The child, parent/legal guardian/legal custodian, and others present shall be afforded an opportunity to comment on the issue of ECT or psychosurgery.

(vi) Following the review of the case and the hearing of comments, the Designated Examiners shall render a decision

(vii) If needed the Designated Examiners may ask everyone to leave the room to allow them time to deliberate.

(o) The Designated Examiners may order ECT or psychosurgery if, after consideration of the record and deliberation, they both find that the following conditions exist:

(i) The child has a mental illness as defined in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM); and

(ii) The child is gravely disabled and in need of ECT or Psychosurgery for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or

(iii) Without ECT or psychosurgery, the child poses a likelihood of serious harm to self, others, or property. Likelihood of serious harm means either

(A) substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or

(B) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which has placed another person or persons in reasonable fear of sustaining such harm, or

(C) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

(iv) The proposed treatment is an appropriate and accepted method of treatment for the patient's mental condition; and

(v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

(p) The basis for the decision shall be supported by adequate documentation. The Designated Examiners shall complete and sign an ECT or Psychosurgery form at the end of the hearing. A copy of the decision shall be provided to the child and/or parent/legal guardian/legal custodian.

(q) The child and/or parent/legal guardian/legal custodian may request a second opinion of a decision to treat with ECT or psychosurgery by filing a Request for a Second Opinion form with the Clinical Director/designee of the Division of Substance Abuse and Mental Health within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

(r) ECT or psychosurgery may be commenced within 48 hours of the decision by the Designated Examiners, if no request for a second opinion is made. If a request is made, treatment may be commenced as soon as the Clinical Director/designee physician renders his/her decision if he/she agrees with the decision.

(s) Upon receipt of a Request, the Clinical Director/designee will review the record, consult with whomever he/she believes is necessary, and render a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of receipt of the Request. The Clinical Director/designee shall sign a Second Opinion for Decision to Treat with ECT/Psychosurgery form which is placed in the child's record. A copy shall be provided to the child and the parent/legal guardian/legal custodian prior to the commencement of treatment.

(t) If a child has been receiving ECT treatment and requires further treatment than that outlined in the original ECT plan, the procedures set forth in subsections F through S of this section shall be followed before initiating further treatment.

R523-1-19. Prohibited Items and Devices on the Grounds of Public Mental Health Facilities.

(1) Pursuant to the requirements of Subsection 62A-12-202 (9), and Sections 76-10-523.5, 76-8-311.1, and 76-8-311.3, all facilities owned or operated by community mental health centers that have any contracts with local mental health authority and/or the Utah State Division of Substance Abuse and Mental Health are designated as secure areas. Accordingly all weapons, contraband, controlled substances, implements of escape, ammunition, explosives, spirituous or fermented liquors, firearms, or any other devices that are normally considered to be weapons are prohibited from entry into community mental health centers. There shall be a prominent visual notice of secure area designation. Law enforcement personnel are authorized to carry firearms while completing official duties on the grounds of those facilities.

R523-1-20. Family Involvement.

(1) Each mental heath authority shall annually prepare and submit to the Division of Substance Abuse and Mental Health a plan for mental health funding and service delivery (17A-3-602(4)(b), (62A-15-109). Included in the plan shall be a method to educate families concerning mental illness and to promote family involvement when appropriate, and with patient consent, in the treatment program of a family member.

(2) The State Division of Substance Abuse and Mental Health will monitor for compliance as part of the annual quality of care site visits (62A-15-1003).

R523-1-21. Declaration for Mental Health Treatment.

(1) The State Division of Substance Abuse and Mental Health will make available information concerning the declaration for mental health treatment (62A-15-1003). Included will be information concerning available assistance in completing the document.

(2) Each local mental health center shall have information concerning declarations for mental health treatment. Information will be distributed with consumer rights information at the time of intake. (R523-1-8)

(3) Utah State Hospital will provide information concerning the declaration for mental health treatment at the

time of admittance to the hospital.

(4) Consumers who choose to complete a declaration for mental health treatment may deliver a copy to their mental health therapist, to be included as part of their medical record.

KEY: bed allocations, due process, prohibited items and devices, fees
June 17, 2004 62A-12-102
Notice of Continuation December 11, 2002 62A-12-104
62A-12-209.6(2)
62A-12-283.1(3)(a)(i)
62A-12-283.1(3)(a)(ii)
62A-15-612(2)

R547. Human Services, Juvenile Justice Services.
R547-1. Residential and Nonresidential, Nonsecure Community Program Standards.
R547-1-1. Waiver Statement.

01. A residential or nonresidential alternative program shall comply with all (relevant) requirements unless a waiver for specific requirement(s) has been granted by the designated certifying officer of Juvenile Justice Services with specific approval of the Director of the Division. The certifying officer shall specify the particular requirement(s) to be waived, the duration of the waiver, and the terms under which the waiver is granted.

02. The Division will submit to the Board of Juvenile Justice Services at least annually a listing with expiration dates of programs receiving waivers.

A. Waiver of specific requirements shall be granted only when the specific program or facility has documented that the intent of the specific requirement(s) to be waived will be satisfactorily achieved in a manner other than that prescribed by the requirement(s).

B. The waiver shall contain provisions for a regular review of the waiver.

C. When a program fails to comply with the waiver specifications, the waiver shall be subject to immediate cancellation.

01. Administration A residential or nonresidential alternative program contracting with the Division of Juvenile Justice Services, shall not accept a youth in custody without the formal approval of the Division.

02. A residential or nonresidential alternative program shall allow Juvenile Justice Services to inspect all aspects of the program's functioning which impact on youth and to interview any staff member of the program or any youth in care of the program.

03. The residential or nonresidential alternative program shall make any information which the facility is required to have under these requirements and any information reasonably related to assessment of compliance with these requirements available to the Division of Juvenile Justice Services.

04. A residential or nonresidential alternative program shall assemble and make available upon request to Juvenile Justice Services the following information and documents:

A. Governing structure, including the charter, articles of incorporation;

B. By-laws or other legal basis for its existence;

C. Organizational structure of facility or program staff;

D. Job description of facility or program staff;

E. Names and positions of persons authorized to sign agreements, contracts and submit official documentation to Juvenile Justice Services;

F. Board structure and composition, with names and addresses and terms of memberships;

G. Existing purchase of service agreements;

H. Insurance coverage, required by contract;

I. Letters of compliance with existing sanitation, health and fire codes and reports of inspection and action taken;

J. Procedure for notifying interested parties of changes in the facility's policy and programs;

K. A master list of all social services providers which the facility uses; and

L. Financial and program audits and reviews.

05. A residential or nonresidential alternative program accepting any youth who resides in another state shall comply with the terms of the Interstate Compact on Juveniles, Section 55-12-1, and the Interstate Compact on the Placement of Children, Section 62A-4a-701.

06. A residential or nonresidential alternative program shall have a representative present at all judicial, educational or administrative hearings which address the status of a youth in care of the program, if notified by the division or the court.

07. A residential or nonresidential alternative program shall ensure that all entries in records are legible. All entries shall be signed, or initialed, by the person making the entry. All entries shall be accompanied by the date on which the entry was made.

08. A residential or nonresidential alternative program shall have a governing body which is responsible for and has authority over the policies and activities of the program.

09. The governing board shall have a set of by-laws or a constitution which describes its duties, responsibilities and authority. As a minimum, the agency by-laws include for the governing authority:

A. Memberships (types, qualifications, community representation, rights, duties) with one member not being an employee or officer but from the outside community;

B. Size of the governing body;

C. Method of selection;

D. Terms of office;

E. Duties and responsibilities of officers;

F. Times authority will meet;

G. Committees;

H. Quorums;

I. Parliamentary procedures;

J. Recording of minutes;

K. Method of amending the by-laws;

L. Conflict of interest provisions; and

M. Specification of the relationship of the chief executive to the governing body.

10. The governing authority of the agency shall hold meetings as prescribed in the by-laws.

11. The governing body of the program shall be responsible for ensuring the program's continual compliance and conformity with the provisions of the program's charter.

12. The governing body of a residential or nonresidential alternative program shall be responsible for ensuring the program's continual compliance and conformity with the terms of all leases, contracts or other legal agreements to which the program is a party.

13. The governing body of a residential or nonresidential alternative program shall be responsible for ensuring the program's continual compliance and conformity with all relevant laws and/or regulations, whether federal, state, local or municipal, governing the operations of the program.

14. The governing body of the program will abide by and show evidence of meeting the Civil Rights Act of 1964, Title 504, and Americans with Disabilities Act of 1990, 42 U. S. C. 12101.

15. The governing body of a residential or nonresidential alternative program shall designate a person to act as chief administrative officer of the program to whom all staff shall be responsible and shall delegate sufficient authority to such person as to implement policy and procedure and to manage the affairs of the program effectively.

16. The governing body of the residential or nonresidential alternative program shall regularly evaluate the performance of the chief administrative officer to ensure that this officer's conduct of the program's business conforms with the program's charter, all relevant laws and regulations, and policies defined by the governing body.

17. The governing body of the residential or nonresidential alternative program shall ensure that the program is housed, maintained, staffed, and equipped in such a manner as to implement the program effectively.

18. The governing body of the residential or nonresidential alternative program shall, in consultation with the chief administrative officer, formulate and periodically review and update written policies and procedures concerning:

A. The program policies, goals and current services;

B. Personnel practices and job descriptions;

C. Organizational chart which reflects the structure of authority, responsibility and accountability;

D. Fiscal management; and

E. This written administrative manual must be available to all staff as well as the general public and residents, if requested, unless protected trade secrets would be revealed.

19. The governing body of the residential or nonresidential alternative program shall ensure that the program has written policies and procedures to carry out ongoing internal evaluation of the services it offers and compiles a written report of such evaluation annually.

20. The governing body of the program shall have access to and use an organized system of information collection, retrieval and review. The agency shall participate in the establishment of information needs and establish guidelines regarding the security of all information about participants.

21. The governing body, in concert with the program administrator, shall use the findings of evaluation studies in decision-making and policy development.

22. The program director or designee of the residential or nonresidential alternative program shall consult with Juvenile Justice Services prior to making any substantial alteration in the program provided by the facility and shall meet with representatives of Juvenile Justice Services whenever required to do so.

23. The program director or designee cooperates with Juvenile Justice Services in evaluation of its operations in terms of written goals and objectives, program effectiveness, cost benefit analysis and statistical analysis of program data.

24. No employee or member of the immediate family of an employee of Juvenile Justice Services shall be a member of the governing body of the program.

25. The residential or nonresidential alternative program shall have written minutes of all meetings of the governing body of the program.

26. A publicly operated residential or nonresidential alternative program shall have an advisory board which includes representatives of the community in which the program is located and representatives of the parents of the type of youth served.

27. The members of the Advisory Board of a publicly operated residential or nonresidential alternative program shall be appointed for specific terms of office by the director of the agency operating the program.

28. The Advisory Board of the publicly-operated residential or nonresidential facility shall advise and assist the Administrative Officer.

A. The Advisory Board shall have a set of by-laws which describe its duties, responsibilities and authority.

B. The Advisory Board shall keep itself informed as to the operational policies and practices of the regional facility. The Advisory Board has the right and responsibility to consider all aspects of that facility's operations, and to make recommendations to the Administrative Officer. The Advisory Board shall make at least:

(1) Semi-annual visits to the residential or nonresidential alternative program.

(2) The Advisory Board shall at least annually provide the Administrative Officer with a report on the program. This report shall make recommendations for improving services provided by the program. The report shall be available to the public.

29. The Advisory Board of the publicly operated residential or nonresidential alternative program shall inform the Director in writing of any event or circumstance which the majority of the Advisory Board believes warrants correction.

30. In the event of serious unresolved disagreement between the Administrative Officer and the Advisory Board, the Advisory Board shall report to the Board of Juvenile Justice Services outlining the nature of the disagreement.

31. A residential or nonresidential alternative program shall have documents which identify the statutory basis for the existence of the program and the nature of the authorization of the program under existing laws.

A. A publicly-operated residential or nonresidential alternative program shall have documents which identify the statutory basis of its existence and the administrative framework of government within which it operates.

B. A privately-operated residential or nonresidential alternative program shall have documents which fully identify its ownership. A corporation, partnership, individual ownership, or association shall identify its officers and shall have, where applicable, the charter, partnership agreement, constitution; articles of association; and/or by-laws of the corporation, partnership, individual ownership, or association.

32. The privately-operated residential or nonresidential alternative program shall identify, document and publicize its tax status with the Internal Revenue Service.

33. The privately-operated residential or nonresidential alternative program shall have by-laws, approved by the governing authority, which are filed with the appropriate local, state, and/or federal body.

34. The Chief Executive Officer of a residential or nonresidential alternative program or a person designated by that officer and authorized to act, as necessary, in place of that officer shall be readily assessable to the staff of the program and/or the authorized representatives of Juvenile Justice Services.

35. A residential or nonresidential alternative program shall have a written statement specifying its philosophy, purposes, and program orientation and describing both short and long-term aims. The statement should identify the types of services provided and the characteristics of the youth to be served by the program. The statement of purpose shall be available to the public.

36. A residential or nonresidential alternative program shall have a written program plan which describes the services provided by the facility. The statement shall include a description of the facility's plan for the provision of services as well as the assessment and evaluation procedures used in treatment planning and delivery. The plan shall make clear which services are provided directly by the facility and which will be provided in cooperation with community resources. If the facility administers several programs at different geographical sites, appropriate resources shall be identified for each site. The program description shall be available to the public on request with protected trade secrets deleted.

R547-1-3. Fiscal Management.

01. The residential or nonresidential alternative program shall demonstrate that it is financially sound and manages its financial affairs prudently. All funds disbursed by the facility shall be expended in accordance with the program objectives as specified by the governing body and contractual agreements.

02. The program shall have a system of accountability which shall state funds allocated for each program function, funds spent for each, and specific cost of each service provided.

03. The program shall prepare an annual written budget of anticipated revenues and expenditures which is approved by the appropriate governing authority and included as part of the written contract.

04. The program director shall participate in budget reviews conducted by the governing board or parent governmental agency.

05. The program director shall present a budget request which is adequate to support the programs of the agency.

06. The agency shall have written policies which govern

revisions in the budget.

07. A residential or nonresidential alternative program shall demonstrate fiscal accountability through regular recording of all income, expenditures and the submission of an annual independent audit.

08. The program shall prepare and distribute to its governing authority and appropriate agencies and individuals the following documents, at a minimum: income and expenditure statements, funding source financial reports, and independent audit reports.

09. The program shall have written fiscal policies and procedures adopted by the governing authority which include, at a minimum: internal controls, petty cash, bonding, signature control on checks, resident funds, and employee expense reimbursement.

10. The program shall have a written policy for inventory control of all property and assets.

11. The program shall have a written policy for purchasing and requisitioning supplies and equipment.

12. The program shall use a method which documents and authorizes wage payment to employees and consultants. Amount paid is authorized by administrative officer; salary for administrative officer is set and approved by Board of Directors and reviewed annually.

13. A residential or nonresidential alternative program shall not permit public funds to be paid or committed to be paid to any corporation, firm, association, business or State agency or representative in which any members of the governing body of the program, the executive personnel of the program, or the members of the immediate families of members of the governing body or executive personnel have any direct or indirect financial interest, or in which one of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost and under terms favorable to the program. The program shall have a written disclosure of any financial transaction with the program in which a member of the Board or his/her immediate family is involved.

14. The program shall have a written policy to guard against conflicts of interest which adversely affect the program; this policy shall specifically state that no person connected with the program will use his or her official position to secure privileges or advantages for himself or herself.

15. The program shall have a written policy which ensures that it conforms to governmental statutes and regulations relating to campaigning, lobbying, and political practices.

16. A residential or nonresidential alternative program shall ensure that all purchase of service agreements involving professional services to youth in care are in writing and available to Juvenile Justice Services. The program shall abide by all State and Federal regulations and laws related to the governing of contracting bodies. Purchase of service agreements shall contain all terms and conditions required to define the clients to be served, the services to be provided, program budget, the procedures for payment, the payment plan, and terms of agreement.

17. A residential or nonresidential alternative program shall have copies of all leases into which the program has entered. These leases shall include the location of all property involved, the monthly or annual rent, the ownership of the property, the usable square footage and the terms of the lease.

18. If a member of the governing body of a residential or nonresidential alternative program, any staff member of the program or any member of the immediate family of either staff member or member of the governing body of the program, has any financial interest in any property rented by the program, the program shall have a report detailing the nature and extent of the financial interest and identifying the party or parties having the interest.

19. A residential facility or nonresidential alternative program which accepts payment of public funds, directly or indirectly, shall maintain adequate bonding. All persons delegated the authority to sign checks or manage funds shall be bonded at the program's expense.

20. A residential or nonresidential alternative program shall carry adequate insurance covering fire and liability as protection for youth in care and other insurance coverage as required by Juvenile Justice Services, and other federal, state and local statutes and regulations for contracts. In addition, the program shall have insurance which covers liability to third parties or youth in care arising through the use of any vehicle, whether owned or not owned by the program, used by any of the program's staff or agents on the program's business.

21. Provision should be made for indemnifying, bonding and insuring board members, trustees, officers, and employees of the residential or nonresidential alternative program against liability incurred while acting properly in behalf of the agency.

22. The insurance program of the program should be examined annually to assure adequate coverage.

23. A residential and nonresidential alternative program shall obtain the written informed consent of a youth, Juvenile Justice Services Case Manager, and the youth's parent(s) or guardian prior to involving the youth in any activity related to fund raising and/or publicity for the program.

24. A residential and nonresidential alternative program shall have written policies and procedures regarding the photographing and audio or audio-visual recording of youth in care.

25. The written consent of a youth and the youth's parent(s) or guardian shall be obtained before the youth is photographed or recorded for program publicity purposes.

26. All photographs and recordings shall be used in a manner which respects the dignity and confidentiality of the youth.

R547-1-4. Personnel/Volunteers.

01. A residential or nonresidential alternative program shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to carry out the responsibilities it undertakes and to adequately perform the following functions:

A. Administrative functions;

B. Fiscal functions;

C. Clerical functions;

D. Housekeeping, maintenance and food services functions (if residential);

E. Direct youth service functions;

F. Supervisory functions;

G. Record keeping and reporting functions;

H. Social service functions; and

I. Ancillary service functions.

02. A residential or nonresidential alternative program shall ensure that all staff members are properly certified and/or licensed as legally required.

03. Each program as applicable will have or contract for a director of clinical services who shall be properly certified or licensed and who shall be responsible for approval of all treatment or service plans.

04. A residential or nonresidential alternative program employing any person who does not possess usual qualifications for the position in which he/she is employed shall have a written statement justifying reasons for employing this person.

05. A residential or nonresidential alternative program shall have a description of all staff assignments. This description shall provide complete information on roles, functions, lines of authority, lines of responsibility and lines of communication. This description shall be provided to all staff members as part of the orientation procedure and, on request, to Juvenile Justice Services.

06. A residential or nonresidential alternative program

shall have a written description of personnel policies and procedures. This description shall be provided to all staff members.

07. The agency personnel policies include, at a minimum:

A. Organization chart;

B. Employment practices and procedures, including in-service training and staff development;

C. A code of conduct for all staff that defines acceptable and nonacceptable conduct both on and off duty;

D. Job qualifications and job descriptions;

E. Grievance and appeal procedures;

F. Employee evaluation;

G. Promotion;

H. Personnel records;

I. Benefits;

J. Holidays;

K. Leave;

L. Hours of work;

M. Salaries (or the base for determining salaries);

N. Disciplinary procedures;

O. Termination; and

P. Resignation.

08. The residential or nonresidential alternative program shall have a written policy which outlines experience and education substitutes if the agency permits such substitutions.

09. A residential or nonresidential alternative program shall actively recruit, and, when possible, employ, qualified personnel broadly representative of the racial and ethnic groups it services.

10. The program shall have a policy which does not deliberately exclude employment of ex-offenders but requires a criminal background check be conducted, by the division, prior to hiring.

11. A residential or nonresidential alternative program shall not hire, or continue to employ, any person whose health, educational achievement, emotional or psychological make-up impairs his/her ability to properly protect the health and safety of the youth or is such that it would endanger the physical or psychological well being of the youth.

12. The residential or nonresidential alternative program shall require written personal and prior work references or written telephone notes on such references prior to hiring and criminal background checks conducted by the Division consistent with its policy.

13. All program participants employed outside the program either full or part-time shall comply with all legal and regulatory requirements.

14. A residential or nonresidential alternative program shall have a written grievance procedure for employees which has been approved by Juvenile Justice Services.

15. A residential or nonresidential alternative program shall ensure that youth care staff have regularly scheduled hours of work. Work schedules shall be provided at least a week in advance.

16. A residential or nonresidential alternative program shall establish a written procedure, in accordance with applicable laws, regarding the discipline, suspension, lay-off or dismissal of its employees.

17. The program does not discriminate or exclude from employment women working in boys' programs or men working in girls' programs.

18. The residential or nonresidential alternative program shall have a personnel file for each employee which shall contain:

A. The application for employment and/or resume;

B. Reference letters from former employer(s) and personal references or phone notes on such references;

C. Any required medical examinations;

D. Applicable professional credentials/certification;

E. Periodic performance evaluations;

F. Personnel actions, other appropriate material, incident reports and notes, commendations relating to the individual's employment with the facility;

G. Wage and salary information; and

H. Employee's starting and termination dates.

19. The staff member shall have access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time.

20. A written procedure shall exist whereby the employee can challenge information in his or her personnel file and have it corrected or removed if it proves to be inaccurate.

21. Written policy and procedure shall ensure the confidentiality of the personnel record by restricting its availability only to the employee who is the subject of the record, Juvenile Justice Services and other agency employees who have a need for the record in the performance of their duties.

22. Records shall be kept locked to insure confidentiality. A residential or nonresidential alternative program shall not release a personnel file without the employee's permission except under court order or to an authorized representative of Juvenile Justice Services.

23. A residential or nonresidential alternative program shall maintain the personnel file of an employee who has been terminated for a period of five years.

24. A residential or nonresidential alternative program shall have a comprehensive written staff plan for the orientation, on-going training, development, supervision and evaluation of all staff members.

25. A residential or nonresidential alternative program shall ensure that each direct service staff member receives at least 40 hours of training activities during each full year of employment. Activities related to supervision of the staff member's routine tasks shall not be considered training activities for the purposes of this requirement.

26. A residential or nonresidential alternative program shall document that direct service staff members receive appropriate training in the following areas:

A. The facility's emergency and safety procedures on semi-annual basis;

B. The principles and practices of child care;

C. The facility's administrative procedures and overall program goals;

D. Acceptable behavior management techniques;

E. Crisis management;

F. First aid and CPR training; and

G. Passive physical restraint.

27. A residential or nonresidential alternative program shall have an introductory training and orientation to emergency and safety procedures, material in agency policy and procedures manual, and the responsibility of the staff member's job. This orientation should be prior to staff member assuming job responsibilities.

28. Inexperienced direct service staff shall be accompanied by experienced workers on initial tours of duty until such time as these staff are able to safeguard the health and safety of youth in care effectively.

29. A residential or nonresidential alternative program shall ensure that a minimum of one evaluation/planning conference per year for each staff is held, documented and signed by the staff person and his/her immediate supervisor. There must be an opportunity for the employee to express agreement or disagreement with the evaluation in writing. The staff person shall be given a copy of the evaluation.

30. Within the probationary period after employment, each new direct service or administrative employee shall have his/her first evaluation/planning conference with his/her supervisor for the purpose of evaluating performance and developing an

individual training plan.

31. The supervisor and the employee shall review strengths and weaknesses, set time-limited performance goals, devise training objectives to help meet the goal and establish a strategy that will allow achievement of these goals and objectives.

32. The program staff shall maintain membership and participate in professional associations and activities on the local and national levels, where appropriate.

33. A residential or nonresidential alternative program shall employ a staff of direct service workers sufficiently large and sufficiently qualified to implement the individual service plan of each youth in care with a minimum staffing ratio of 1 to 12 or as agreed upon by contract.

34. A residential or nonresidential alternative program shall have adequate staff coverage at all times as appropriate considering the time of day and the size and nature of the program.

35. The staff pattern of the facility shall concentrate staff when most participants are available to use facility resources.

36. There shall be at least one staff person who is readily available and responsive to resident needs on group home premises twenty-four hours a day in residential programs.

37. A residential or nonresidential alternative program shall establish procedures to assure adequate communications among staff to provide continuity of services to youth. This system of communication shall include:

A. A regular review of individual and aggregate problems of residents or clients including actions taken to resolve these procedures;

B. Sharing of daily information noting unusual circumstances and other information requiring continued action by staff;

C. Written reports maintained of all accidents, personal injuries and pertinent incidents related to implementation of youth's individual service plans, including notification to parents and Youth Correction worker.

38. Any employee of a residential or nonresidential alternative program working directly with youth in care shall have access to information from the youth's case records that is necessary for effective performance of the employee's assigned tasks.

39. A residential or nonresidential alternative program shall establish procedures which facilitate participation and feedback by staff members in policy-making planning and program development.

40. A residential or nonresidential alternative program shall obtain a professional service required for the implementation of the individual service plan of a youth that is not available from employees of the program.

41. The program shall ensure that a professional providing a direct service to a youth in care communicates with program staff as appropriate to the nature of the service.

42. A residential or nonresidential alternative program shall have documentary evidence that all professionals providing services to the program, whether working directly with youth in care or providing consultation to employees of the program, are appropriately qualified, certified and/or licensed as appropriate to the nature of the service.

43. A residential or nonresidential alternative program which utilizes volunteers on a regular basis, or utilizes volunteers to work directly with a particular youth or group of youth for an extended period of time, shall have a written plan for using such volunteers. This plan shall be given to all such volunteers. The plan shall indicate that all such volunteers shall:

A. Be directly supervised by a paid staff member;

B. Be oriented and trained in the philosophy of the program, and the needs of youth in care, and methods of meeting those needs; (There should be documentation of completion of orientation.)

C. Be subject to character and reference checks similar to those performed for employment applicants;

D. Be aware of any staff who have input into the service plans for youth they are working with directly and be briefed on any special needs or problems of these youth.

44. Volunteers shall be recruited from all cultural and socio-economic segments of the community.

45. The community residential or nonresidential program shall designate a staff member who serves as supervisor of volunteer services for residents.

46. The program shall have a written policy specifying that volunteers perform professional services only when certified or licensed to do so.

47. Written policy and procedure shall provide that the program director curtails, postpones or discontinues the services of a volunteer or volunteer organization when there are substantial reasons for doing so.

48. The program administration shall provide against liability or tort claims in the form of insurance, signed waivers or other legal provisions, valid in the jurisdiction in which the program is located.

49. A residential or nonresidential alternative program which accepts students for field placement shall have a written policy on student placements. Copies shall be provided to each student and his/her school. The policy shall include:

A. Statement of the purpose of a student's involvement with the program and the student's role and responsibility; and

B. A description of required qualifications for students, orientation and training procedures and supervision provided while the student is placed at the program.

50. A residential or nonresidential alternative program shall ensure that students meet all of the criteria established by the program for student placement service.

51. A residential or nonresidential alternative program shall ensure that students are supervised directly by an appropriate paid staff member who will act as a liaison between the program and the school making placements unless other appropriate arrangements are made.

52. Where paraprofessionals are employed, the program shall have written policies and procedures for their recruitment and established career lines for their advancement in the organization. There are written guidelines for staff regarding the supervision of paraprofessional personnel.

R547-1-5. Admission Policies and Procedures.

01. A residential or nonresidential alternative program shall have a written description of admissions policies and criteria which shall include the following information:

A. Policies and procedures related to intake;

B. The age and sex of youth in care;

C. The needs, problems, situations or patterns best addressed by the program;

D. Any other criteria for admission;

E. Criteria for discharge; and

F. Any preplacement requirements of the youth, the parent(s) or guardian and/or the placing agency.

02. The written description of admissions policies and criteria shall be provided to all placing agencies and shall be available to the parent(s) of any youth referred for placement.

03. A residential or nonresidential alternative program shall not refuse admission to any youth on the grounds of race or ethnic origin.

04. A residential or nonresidential alternative program shall not admit more youth into care than the number specified in the certification.

05. A residential or nonresidential alternative program shall not accept any youth for placement whose needs cannot be adequately met by the program.

06. When refusing admission to a youth, a program shall

provide a written statement of the reason for refusal of admission to the referring agency.

07. A residential or nonresidential alternative program shall ensure that the youth, his or her parent(s) or guardian, the placing agency and others, as appropriate, are provided reasonable opportunity to participate in the admission process and decisions and that due consideration is given to their concerns and feelings regarding the placement. Where such involvement of the youth's parent(s) or guardian is not possible, or not desirable, the reasons for their exclusion shall be recorded in the admission study.

08. A residential or nonresidential alternative program shall make its admission process as short in duration as possible.

09. The program shall, when applicable, have policies and procedures governing self-admission. Such policies and procedures shall include procedures for notification of parent(s) or guardian.

10. A residential or nonresidential sole contract program shall not consider a youth for care except that the youth is referred by the Juvenile Justice Services screening team, Youth Parole Authority or the juvenile court judges.

11. A residential or nonresidential program shall accept a youth into care only when a current comprehensive intake evaluation including social, health and family history, and if appropriate, psychological and developmental assessment has been completed, unless the admission is an emergency. This evaluation shall contain evidence that a determination has been made that the child cannot be maintained in a less restrictive (structured or highly supervised) environment within the community.

12. A residential or nonresidential alternative program shall, consistent with the youth's maturity and ability to understand, make clear its expectations and requirements for behavior, and provide the youth referred for placement with an explanation of the program's criteria for successful participation in and completion of the program.

13. A residential or nonresidential program shall ensure that a written placement agreement is completed. A copy of the placement agreement signed by all parties involved in its formulation shall be kept in the youth's case record and a copy shall be provided to each of the signing parties. The signing parties shall include: the placing agency, the residential or nonresidential program, the youth and the parent(s) or guardian.

14. The placement agreement shall include by reference or attachment at least the following:

A. The youth's and the parent(s) or guardian's expectations regarding family contact and involvement; the nature and goals of care; the religious orientations and practices of the youth; and anticipated discharge date and plan;

B. A delineation of the respective roles and responsibilities of all agencies and persons involved with the youth and his/her family;

C. Authorization to care for the youth;

D. Authorization to obtain medical care for the youth;

E. Arrangements regarding family visits, vacation, mail, gifts, and telephone calls;

F. Arrangements as to the nature of agreed upon reports and meetings involving the parent(s) or guardian and referral agency; and

G. Provision for notification of parent(s) or guardian and/or the placing agency in the event of unauthorized absences, medical or dental problems and any significant events regarding the youth.

15. A residential facility shall not admit a youth on emergency placement if the presence of the youth to be admitted will be damaging to the on-going functioning of the group and/or the youth already in care.

16. Each youth in care of a residential or nonresidential program shall be assigned a staff person who carries out the function of a prime worker in the program.

17. A residential or nonresidential program shall ensure that each youth, upon placement, shall be asked if she/he has any physical complaints. If yes, appropriate treatment shall be provided, the results including any treatment provided shall be documented and kept in the youth's record.

18. A residential program shall assign a staff member, preferably the youth's prime worker, to orient the youth and his/her parent(s) or guardian, if they are available, to life at the facility.

R547-1-6. Service Planning and Child Management.

01. A residential or nonresidential program shall have a written description of the methods of child management to be used at a program wide level. This description shall include:

A. Definition of appropriate and inappropriate behaviors;

B. Acceptable staff responses to inappropriate behaviors; and

C. The description shall be provided to all program staff.

02. There shall be a clear written list of rules and regulations governing conduct for youth in care of a residential program. These rules and regulations shall be posted in the facility and made available to each staff member, each youth in care, his/her parent(s) or guardian and placing agencies, as appropriate. Each participant should read, sign and date these rules.

03. Where a language or literacy problem exists which can lead to participant misunderstanding of agency rules and regulations, assistance shall be provided to the participant either by staff or by another qualified individual under the supervision of a staff member.

04. In co-educational programs, male and female participants shall have equal access to all agency programs and activities.

05. A residential or nonresidential alternative program shall have a written overall and treatment plan. Any significant change in this plan shall be submitted to Juvenile Justice Services and/or other involved agencies for review prior to implementation. The written plan shall include the following:

A. The name, position and qualifications of the person who has overall responsibility for the treatment program;

B. Staff responsibility for planning and implementation of the treatment procedures and techniques;

C. Staff competencies and qualifications;

D. The anticipated range and/or types of behavior or conditions for which such procedures and techniques are to be used;

E. The range of procedures and techniques to be used;

F. Restrictions on the use of stimuli that present significant risk of psychological or physical damage;

G. Assessment procedures for ensuring the appropriateness of the treatment for each youth;

H. Policies and procedures on involving and obtaining consent from the youth and parent(s) or guardian;

I. Requirements, where appropriate, for medical examination of a youth prior to implementation of the treatment on a regular basis;

J. Provisions for on-going monitoring and recording;

K. Provisions for regular and thorough review and analysis of the treatment data, the individualized treatment strategies and the overall treatment orientation;

L. Provisions for making appropriate adjustments in the treatment strategies and orientation; and

M. Policies and procedures encouraging termination of the treatment procedures at the earliest opportunity in the event of achievement of goals, or when the procedures are proving to be ineffective or detrimental for a particular youth.

06. Participant progress shall be reviewed at least every two weeks, either through staff meetings or by individual staff;

the outcome of each review is documented.

07. If a participant remains in a program for six months, a written report shall be submitted by his/her counselor to the program director and the committing authority stating the justification for keeping the juvenile in the program.

08. Agreed upon progress reports shall be made available to the parent or legal guardian of each participant and to the referring agency.

09. A residential or nonresidential facility shall have a statement describing the manner in which youth are arranged into groups within the facility and demonstrating that this manner of arranging youth into groups effectively addresses the needs of youth in care.

10. Within 30 days of admitting a youth in care, a residential or nonresidential alternative program shall conduct a comprehensive assessment of the youth and, on the basis of this assessment, shall develop a written, time-limited, goal-oriented individual treatment plan for the youth.

11. The assessment shall be conducted by a planning team. This team shall include persons responsible for implementing the service plan on a daily basis. At least one member of the team shall have an advanced degree in psychology, psychiatry, child care work, social work or related field and experience in providing direct services to youth and be certified and licensed in that area or supervised by a certified worker.

12. The planning team shall assess the needs and strengths of the child in the following areas:

A. Health care;

B. Education;

C. Personal/social development;

D. Family relationships;

E. Vocational training;

F. Recreation; and

G. Life skills development.

13. All methods and procedures used in this assessment shall be appropriate considering the youth's age, cultural background and dominant language or mode of communication.

14. A residential or nonresidential alternative program shall provide an opportunity for the following persons to participate in the planning process:

A. The youth, unless contraindicated;

B. His/her parent(s) or guardian, unless contraindicated;

C. Representative(s) of the placing agency;

D. School personnel;

E. Other persons significant in the youth's life; and

F. When any of the above persons do not participate in the planning, the program shall have a written statement documenting its efforts to involve the person(s). When the involvement of parent(s) or guardian or youth is contraindicated, the reasons for the contradiction shall be documented.

15. Unless it is not feasible to do so, a residential or nonresidential program shall ensure that the treatment plan and any subsequent revisions are explained to the youth in care and his/her parent(s) or guardian in language understandable to these persons.

16. A residential or nonresidential alternative program shall ensure that the treatment plan for each child includes the following components:

A. The findings of the assessment;

B. A statement of goals to be achieved or worked towards with and for the youth and his/her family;

C. Strategies for fostering positive family relationships for the youth with his/her family or guardian or for developing a permanent home for the youth;

D. Specification of the daily activities, including education and recreation, to be pursued by the program staff and the youth in order to attempt to achieve the stated goals;

E. Specification of any specialized services that will be provided directly or arranged for, and measures for ensuring their proper integration with the youth's on-going program activities;

F. Specification of time-limited targets in relation to overall goals and specific objectives and the methods to be used for evaluating the youth's progress;

G. Goals and preliminary plans for discharge and aftercare; and

H. Identification of all persons responsible for implementing or coordinating implementation of the plan;

17. The completed treatment plan shall be signed by the chief administrator of the program or a person designated by the administrator; a representative of the child placing agency; the youth, if indicated, and the youth's parent(s) or guardian unless clearly not feasible.

18. A residential or nonresidential alternative program shall review each treatment plan at least every six months and shall evaluate the degree to which the goals have been achieved. The treatment plan shall be revised as appropriate to the needs of the youth.

19. A residential or nonresidential alternative program shall have written, comprehensive policies and procedures regarding discipline and control, which shall be explained to all youth, families, and staff and placing agencies. These policies shall include positive responses to appropriate behavior.

20. A residential facility shall prohibit all cruel and unusual punishments including the following:

A. Punishments including any type of physical hitting or any type of physical punishment inflicted in any manner upon the body;

B. Physical exercises such as running laps or any performing of push-ups, when used solely as a means of punishment, except in accordance with a youth's service plan when such activities are approved by a physician and carefully supervised by the facility administration;

C. Requiring or forcing the youth to take an uncomfortable position, such as squatting or bending, or requiring or forcing the youth to repeat physical movements when used solely as a means of punishment;

D. Group punishments for misbehaviors of individuals except in accordance with the program's written policy;

E. Punishment which subjects the youth to verbal abuse, ridicule or humiliation;

F. Excessive denial of on-going program services or denial of any essential program service solely for disciplinary purposes;

G. Withholding of any meal;

H. Denial of visiting or communication privileges with family solely as a means of punishment;

I. Denial of sufficient sleep;

J. Requiring the youth to remain silent for long periods of time;

K. Denial of shelter, clothing or bedding;

L. Extensive withholding of emotional response or stimulation;

M. Chemical, mechanical or excessive physical restraint;

N. Exclusion of the youth from entry to the residence; and

O. Assignment of unduly physically strenuous or harsh work.

21. Youth in care of a residential or nonresidential program shall not punish other residents except as part of an organized therapeutic self-government program that is conducted in accordance with written policy and is supervised directly by staff.

22. A residential or nonresidential program shall ensure that all direct service staff members are trained in crisis management and the appropriate use of passive physical restraint methods.

23. A residential or nonresidential program shall not use any form of restraint other than passive physical restraint

without prior approval of Juvenile Justice Services.

24. All cases of physical force or restraint shall be reported in writing, dated and signed by the staff person reporting the incident; the report shall be placed in the participant's case record and reviewed by supervisory and higher authority.

25. A program shall only use time-out (placement in locked or secure room) procedures when these procedures are in accordance with written policies of the facility. These policies shall include procedures for recording each incident involving the use of time-out. The facility policies shall outline other less restrictive responses to be used prior to using time-out.

26. Each use of time-out procedures shall be directly supervised by supervisory staff.

27. The program's chief administrative officer, or designee, approved in writing shall approve any use of time-out procedures exceeding 30 minutes in duration.

28. Written policy and procedure shall ensure that prior to room restriction the youth has the reasons for the restriction explained to him/her, and has an opportunity to explain the behavior leading to the restriction.

29. During room restriction staff contact shall be made with the youth at least every fifteen minutes to ensure the well-being of the youth; the youth assists in the determination of the end of the restriction period.

30. Written policy and procedure shall ensure that prior to privilege suspension the youth has the reasons for restriction explained to him/her, and has an opportunity to explain the behavior leading to the suspension.

31. Written policy and procedure shall ensure that prior to facility restriction for up to 48 hours the youth has the reasons for the restriction explained to him/her, and has an opportunity to explain the behavior leading to the restriction. Facility restriction may include lack of participation in any activities outside the facility except school, church, health and exercise needs.

32. All instances of room restriction, privilege suspension and facility restriction shall be logged, dated and signed by staff implementing the discipline procedure; the log is reviewed by supervisory staff at least daily.

33. In compliance with applicable laws, the program shall maintain and make public written policies and procedures for conducting searches of residents and all areas of the facility as standard operating procedure to control contraband and locate missing or stolen property.

34. A written plan shall allow staff in residential or nonresidential alternative programs to monitor movement into and out of the facility, under circumstances specified in the plan.

35. The program shall maintain a system of accounting for the whereabouts of its participants at all times.

36. The program shall have written procedures for the detection and reporting of absconders to agency having jurisdiction, Juvenile Justice Services, and parents.

37. The residential program shall use work assignments within the facility only insofar as they provide a constructive experience for youth and not as unpaid substitution for adult staff.

38. Work assignments shall be in accordance with the age and ability of the youth and shall be scheduled so as not to conflict with other scheduled activities.

39. A facility shall comply with all child labor laws and regulations in making work assignments.

40. The residential or nonresidential program shall ensure that any youth who is legally not attending school is either gainfully employed or enrolled in a training program geared to the acquisition of suitable employment or necessary life skills.

41. A residential or nonresidential program shall have a written plan for ensuring that a range of indoor and outdoor recreational and leisure opportunities are provided for youth in care. Such opportunities shall be based on both the individual interests and needs of the youth and the composition of the living group.

42. A program shall ensure appropriate staff involvement in recreational and leisure activities.

43. A residential or nonresidential program shall utilize the recreational resources of the community whenever appropriate. The program shall arrange the transportation and supervision required for maximum usage of community resources.

44. A residential or nonresidential program which has recreation staff shall ensure that such staff are apprised of and, when appropriate, involved in the development and review of service plans.

R547-1-7. Records.

A residential or nonresidential alternative program shall maintain a written record for each youth which shall include administrative, treatment and educational data from the time of admission until the time the youth leaves the facility. A youth's case record shall include at least the following, if available.

A. Initial intake information form which shall include the following:

(1) The name, sex, race, religion, birth date of the child;

(2) The name, address, telephone number and marital status of the parent(s) or guardian of the child;

(3) Date of admission and source of referral;

(4) When the child was not living with his/her parent(s) prior to admission the name, address, telephone number and relationship to the child of the person with whom the child was living;

(5) Date of discharge, reason for discharge, and the name, telephone number and address of the person or agency to whom the child was discharged;

(6) The child's court status, if applicable;

(7) All documents related to the referral of the child to the facility;

(8) Documentation of the current custody and guardianship and legal authority to accept child;

(9) A copy of the child's birth certificate or a written statement of the child's birth date including the source of this information;

(10) Consent forms signed by the parent(s) or guardian prior to placement allowing the facility to authorize all necessary medical care, routine tests, immunizations and emergency medical or surgical treatment;

(11) Program rules and disciplinary procedures signed by participant;

(12) Cumulative health records;

(13) Education records and reports;

(14) Employment records;

(15) Treatment or clinical records and reports;

(16) Evaluation and progress reports;

(17) Records of special or critical incidents; including notification of parent and Juvenile Justice Services worker in case of medical emergency or AWOL of child; and

(18) Individual service plans and related materials which include referrals to other agencies, process recordings, financial disbursements such as allowance, clothing, holidays.

R547-1-8. Communications.

01. A residential or nonresidential alternative program shall have a written description of its overall approach to family involvement.

02. A residential or nonresidential alternative program shall make every possible effort to facilitate positive communication between a youth in care and his/her parents.

03. A residential program shall provide conditions of reasonable privacy for visits and telephone contacts between youth in care and their families.

04. Flexible visiting hours shall be provided for families who are unable to visit at the regular times.

05. Residential or nonresidential facilities shall strive to:

A. Maintain and develop youth-family relationships;

B. Enable parents and siblings to recognize and involve the youth as a continuing member of the family; and

C. Ensure that parents exercise their legal rights and responsibilities in a manner compatible with the youth's best interests.

06. Written policy provides, whenever possible and appropriate, that while a youth is in a residential facility, staff members shall counsel parents or guardians in preparation for the youth's return to their home or other placement; provision is made for trial visits prior to such decisions.

07. The program shall have written policies and procedures which provide increasing opportunities and privileges for resident involvement with family and in community activities prior to final release.

08. Residential or nonresidential facilities shall give consideration to the special needs of youth without families and youth for whom regular family contact is impossible.

09. A residential or nonresidential program shall have written policies and procedures with respect to:

A. The relationship between the program and community;

B. Involvement of youth in community activities;

C. Participation of the program in community planning to achieve coordinated programs and services for families and youth; and

D. Strategies for the optimum use of community resources.

10. In its use of community resources, the program shall maintain a periodic inventory and evaluation of functioning community agencies.

11. Staff shall use community resources, either through referrals for service or by contractual agreement, to provide residents with the services to become appropriately self-sufficient.

12. The program shall collaborate, whenever possible, with criminal justice and human services agencies in programs of information gathering, exchange and standardization.

13. A residential program shall have a written plan of basic daily routines which shall be available to all personnel. This plan shall be revised as necessary.

14. Youth shall participate in planning daily routines.

15. Daily routines shall not be allowed to conflict with the implementation of a youth's service plan.

16. The residential or nonresidential program shall have a written policy regarding visiting and other forms of youth's communication with family, friends and significant others.

17. Visiting and communication policy shall be developed with the goals of encouraging healthy family interaction, maximizing the youth's growth and development and protecting youth, staff and programs from unreasonable intrusions.

18. Visiting and communication policy shall be provided to youth, staff members, parent(s) or guardian and placing agencies.

19. The program shall provide opportunities for a youth in care to visit with parent(s) or guardian and siblings.

20. The program shall schedule or supervise visits in accordance with the youth's service plan.

21. A residential program shall have written procedures for overnight visits outside the facility including: procedures for recording the youth's location, the duration of the visit, the name and address of the person responsible for the youth while absent from the facility and the time of youth's return.

22. A residential or nonresidential program, shall have procedures established in cooperation with Juvenile Justice Services for determining and reporting the absence without leave of youth in care. These procedures must include notification of the youth's parent(s) or guardian, the placing agency and the appropriate law enforcement official.

23. A residential or nonresidential program shall permit a youth in care to receive and send mail. Program staff shall not read youth's mail; however, mail may be inspected for contraband in the presence of the receiving youth. Written program policies and practices concerning youth's mail shall conform with applicable federal laws.

A. If requested, the program shall provide postage for the mailing of a minimum of two letters per week for each resident.

24. A residential program shall be equipped with a sufficient number of telephones for the youth's use and shall have procedures for youth's use of these telephones.

25. When the right of a youth in care to communicate in any manner with a person outside the program must be curtailed, the program shall:

A. Inform the youth of the conditions of and reasons for restriction or termination of his right to communicate with the specific individual(s);

B. Inform the individuals over whom the restriction or termination of personal contact with the youth has been placed of the conditions of and reasons for that action; and

C. Place a written report summarizing the conditions of and reasons for restricting or termination of the youth's contact with the specified individual(s) into the youth's case record and forward a copy of this report to the Division of Juvenile Justice Services and review this decision at least weekly.

26. A residential or nonresidential program shall not bar a youth's attorney, clergyman or an authorized representative of the responsible placing agency from visiting, corresponding with or telephoning the youth.

R547-1-9. Education.

01. A program contracting to serve State or local agency youth shall abide by all standards developed by the State Board of Education for education of youth in custody.

02. A new program or facility will coordinate with the local school district on the number of youth to be educated and continue to coordinate on all new students.

03. A program shall ensure that every youth in its care attends an appropriate educational program in accordance with state law.

04. A program shall have a written description of its educational program which shall be provided to the youth and his/her parent(s) or guardian prior to the youth's admission.

05. A program shall not place a youth in care in an on-ground educational program unless such program is appropriate to the youth's needs.

06. A program shall ensure routine communication between the direct service team involved with a youth in care and any educational program in which the youth is placed.

07. A program shall provide appropriate space and supervision for quiet study after school hours. The program shall ensure that the youth has access to necessary reference materials.

08. A program shall ensure that educational, vocational preparation services and/or life skills training are available to a youth. Such training and services shall be appropriate to the age and abilities of the youth.

09. Every attempt shall be made to insure the continuity of educational programming for the youth.

10. Prior to the youth's admission to the program, the program shall attempt to secure the youth's previous educational records and shall create an appropriate educational program for the youth.

11. The program shall send the school of residence periodic reports of the youth's educational progress if it is likely that the youth will return to this school.

12. Prior to discharge, the program shall attempt to work with the youth's new school to ensure a smooth transition to the

new educational environment.

R547-1-10. Discharge and Aftercare.

01. At least three months, as soon as possible, prior to planned discharge of a youth the planning group (program worker and case worker) shall formulate an aftercare plan specifying the supports and resources to be provided to the youth. Aftercare plans are to be kept in the youth's case record.

02. Prior to discharge the planning group shall ensure that the youth is aware of and understands his/her aftercare plan.

03. When a youth is being placed in another program following discharge, representatives of the planning group shall, whenever possible, meet with representatives of that program prior to the youth's discharge to share information concerning the youth.

04. A program shall have a written policy concerning emergency discharge and/or all other discharges not in accordance with a youth's service plan. This policy shall ensure that emergency discharges take place only when the health and safety of a youth or other youth might be endangered by the youth's further placement at the program.

05. The program shall give at least 72 hours notice of discharge to the responsible agency, the parent(s) or guardian and the appropriate educational authorities.

06. Written policy and procedure shall require that all transfers from one community program to another allow for objections on the part of the youth involved; where such transfers are to a more restrictive environment, due process safeguards are provided.

07. When a youth in care is discharged, a residential or nonresidential program shall compile a complete written discharge summary within a month of the date of discharge, such summary to be included in the youth's case record and a copy sent to the referring agency. This summary shall include:

A. The name, address, telephone number and relationship of the person to whom the youth is discharged;

B. When the discharge date was in accordance with the youth's service plan;

C. A summary of services provided during care;

D. A summary of growth and accomplishments during care;

E. The assessed needs which remain to be met and alternate service possibilities which might meet those needs; and

F. A statement of an aftercare plan and identification of who is responsible for follow-up services and aftercare.

08. When the discharge date was not in accordance with the youth's service plan, the following items shall be added to the summary:

A. The circumstances leading to the unplanned discharge; and

B. The actions taken by the program and the reason for these actions.

R547-1-11. Confidentiality/Research.

01. A residential or nonresidential alternative program shall have written procedures for the maintenance and security of records specifying who shall supervise, who shall have custody of records, and to whom records may be released. Records shall be the property of Juvenile Justice Services and the program shall secure records against loss, tampering or unauthorized use.

02. Programs contracting with Juvenile Justice Services that use traveling files shall return them to the regional office within 30 days of the youth's release. Program shall not make duplicate copies of client records except by agreement with Juvenile Justice Services.

03. A residential or nonresidential alternative program shall maintain the confidentiality of all youths' case records. Employees of the program shall not disclose or knowingly permit the disclosures of any information concerning the youth or his/her family, directly or indirectly, to any unauthorized person. All case records shall be marked "confidential" and kept in locked files, which are also marked "confidential".

04. Without the voluntary, written consent of the parent(s) or guardian, a residential or nonresidential alternative program shall not release any information concerning a youth in care except to the youth, his parent(s) or guardian, their respective legal counsel, the court or an authorized public official in the performance of his/her mandated duties. Any releases of information will conform with the Utah Government Records Access and Management Act, Title 63, Chapter 2.

05. A residential or nonresidential alternative program shall, upon request, make available information in the case record of the youth, his parent(s) or guardian and their respective legal counsel if the information being released does not contain material which violates the right of privacy of another individual and/or material that should be withheld from release according to other laws, Title 63, Chapter 2, or by order of the court. If, in the professional judgment of administration of the program, it is felt that information contained in the record would be damaging to the youth, that information shall be withheld except under court order. Facilities which have on-grounds educational programs should comply with federal and state laws governing educational records.

06. The program shall provide that a "Release of Information Consent Form" will be signed by the participant and parent or guardian immediately before a release of information about the participant is completed, and that a copy of the consent form is maintained in the participant's record.

07. The "Release of Information Consent Form" shall include:

A. Name of person, agency or organization requesting information;

B. Name of person, agency or organization releasing information;

C. The specific information to be disclosed;

D. The purpose or need for the information;

E. Date consent form is signed;

F. Signature of the participant; and

G. Signature of individual witnessing participant signature.

08. A residential or nonresidential alternative program may use material from case records for teaching or research purposes, development of the governing body's understanding, knowledge of the program's services or similar educational purposes, provided that names are deleted and other identifying information is disguised or deleted.

09. A report shall be prepared at the termination of program participation, which reviews the person's performance in the program.

10. A residential or nonresidential alternative program shall have written policies regarding the participation of youth in research projects. The policies shall conform to the National Institute of Mental Health Standards on Protection of Human Subjects.

11. Policy shall prohibit participation in medical or pharmaceutical testing for experimental or research purposes.

12. Written policy and procedure shall govern voluntary participation in nonmedical and nonpharmaceutical research programs.

R547-1-12. Rules.

01. A residential or nonresidential program shall have a written description of its religious orientation, particular religious practices that are observed and any religious restrictions on admission. This description shall be provided to the youth, the parent(s) or guardian and the placing agency.

02. During the admission process the religious orientation

and policy of the program shall be discussed with the youth and his/her parent(s) or guardian. At this time, the program shall determine the wishes of the parent(s) or guardian and the youth regarding the youth's religious training.

03. Every youth shall have the opportunity to participate in religious activities and services in accordance with his/her own faith or that of the youth's parent(s) or guardian. The facility shall, when feasible, arrange transportation to services and activities in the community.

04. Youth may be encouraged to participate in religious activities but they shall not be coerced to do so.

05. The youth's family and Juvenile Justice Services shall be consulted on any change in religious affiliation made by the youth while he/she is in care.

06. A residential or nonresidential facility's program shall reflect consideration for and sensitivity to the racial, cultural, ethnic and/or religious backgrounds of youth in care.

07. The program shall involve a youth in cultural and/or ethnic activities, appropriate to his/her cultural and/or ethnic background.

08. A residential program shall have set routines for waking youth and putting them to bed.

09. A residential program shall ensure that each youth has ready access to a responsible staff member throughout the night.

10. When the needs of a youth so dictate, there shall be an awake staff member near his/her sleeping area.

11. A residential program shall ensure that the possessions and sleeping area of a youth are not disrupted or damaged during the youth's temporary absence from the facility.

12. A residential program shall ensure that no youth occupies a bedroom with a member of the opposite sex.

13. Juveniles and adults shall not share sleeping rooms.

14. A residential program shall ensure that each youth in care has adequate clean, well fitting, attractive and seasonable clothing as required for health, comfort and physical well-being and as appropriate to age, sex and individual needs.

15. A youth's clothing shall be identifiably his/her own and not shared in common.

16. A youth's clothing shall be kept clean and in good repair. The child shall be involved in the care and maintenance of his/her clothing. As appropriate, laundering, ironing and sewing facilities shall be accessible to the youth.

17. A residential program shall ensure that discharge plans make provisions for clothing needs at the time of discharge. All personal clothing shall go with a youth when he/she is discharged.

18. A residential program shall allow a youth in care to bring his/her personal belongings to the program and to acquire belongings of his/her own in accordance with the youth's service plan. However, the program shall, as necessary, limit or supervise the use of these items while the youth is in care. Where extraordinary limitations are imposed, the youth shall be informed by staff of the reasons, and the decisions and reasons shall be recorded in the youth's case record. Provisions shall be made for the storage for youth's property.

19. A residential program shall establish procedures to ensure that youth receive training in good habits of personal care, hygiene and grooming appropriate to their age, sex, race and culture.

20. The program shall insure personal supervision by staff for proper grooming and physical cleanliness of the youth.

21. The program shall ensure that youth are provided with all necessary toiletry items.

22. The program shall allow a youth freedom in selecting a style of wearing his/her hair that reflects the youth's personal taste.

23. A residential program shall permit and encourage a youth in care to possess his/her own money either by giving an allowance and/or by providing opportunities for paid work within the facility.

24. Money earned, received as a gift or received as allowance by a youth in care shall be deemed to be that youth's personal property.

25. Limitations may be placed on the amount of money a youth in care may possess or have unencumbered access to when such limitations are considered to be in the youth's best interests and are duly recorded in the youth's service plan.

26. A youth in care shall not normally be asked to assume expenses for his/her care and treatment. In accordance with his/her individual service plan, an older youth, employed or employable may be asked to pay some of his/her room and board and related expenses.

27. A residential program shall assist youth in care to assume responsibility for damage done by developing a restitution plan that may utilize earnings or allowance and is duly recorded in the youths individual service plan. The program shall assist the youth to pay court ordered restitution or fines by developing a payment schedule from earnings, if employed, or by referring the youth to a Division sponsored restitution project.

28. Written policy and procedure shall provide for establishment of personal fund accounts for residents and allow for maximum control by residents; any interest on personal funds over $500 should accrue to residents.

29. The program shall maintain a separate accounting system for youth's money.

30. A program shall have a written grievance and appeal policy and procedure for youth. This procedure shall be written in a clear and simple manner and shall allow youth to make complaints without fear of retaliation.

31. The grievance procedure shall be explained to the youth by a staff member. The staff member shall enter a note into the youth's file confirming that this explanation has taken place.

R547-1-13. Physical Environment.

01. Any individual or organization seeking certification of a residential or nonresidential alternative facility shall provide the following documentation to Juvenile Justice Services at the time of application:

A. Evidence that the proposed site location of the facility will be appropriate to youth to be served in terms of individual needs, program goals and access to service facilities; (ACA 6071)

B. Evidence that the proposed facility will meet zoning laws of the municipality in which the site is located and Department of Human Services regulations, including planning with local neighborhood counsels;

C. A copy of the site plan and a sketch of the floor plan of the proposed facility; and

D. A description of the way in which the facility will be physically harmonious with the neighborhood in which it is located considering such issues as scale, appearance, density and population.

02. Every building or part of a building used as residential facility or nonresidential alternative program shall be constructed, used, furnished, maintained and equipped in compliance with all standards, regulations and requirements established by federal, state, local and municipal regulatory bodies.

03. The governing authority shall designate who is permitted to live in the facility with concurrent authorization from the Division of Juvenile Justice Services.

04. A residential or nonresidential facility shall ensure that all structures on the grounds of the facility are maintained in good repair and are free from any dangers to health or safety.

05. A residential or nonresidential facility shall maintain the grounds of the facility in an acceptable manner and shall

ensure the grounds are free from any hazard to health or safety;

A. Garbage and rubbish which is stored outside shall be stored securely in noncombustible, covered containers and shall be removed on a regular basis not less than once a week;

B. Trash collection receptacles and incinerators shall be located as to avoid being a nuisance to neighbors;

C. Fences shall be in good repair;

D. 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 to protect youth; and

E. Recreational equipment shall be so located, installed and maintained as to ensure the safety of youth.

06. A residential or nonresidential facility shall have access to outdoor recreational space and suitable recreational equipment.

07. Shrubbery and lawns shall be properly tended and trimmed for safety and appearance.

08. Ground shall adequately drain either naturally or through installed drainage systems.

09. At a minimum each facility shall have nine square yards of available grounds space per child in care unless there is ready and safe access to other recreational areas.

10. Signs which might tend to identify children in care in a negative manner shall not be used.

11. A residential or nonresidential facility shall be structurally designed to accommodate the physical needs of each youth in care.

12. Each residential facility shall contain space for the free and informal use of youth in care. This space shall be constructed and equipped in a manner consonant with the programmatic goals of the facility.

13. Space to accommodate group meetings of the residents shall be provided in the facility.

14. A visiting area shall be provided in the facility.

15. The residential facility shall provide an appropriate variety of interior recreation spaces.

16. A residential facility shall provide a dining area which permit youth and staff to eat together.

17. The residential facility shall provide a dining area which is clean, well lighted, ventilated and attractively furnished.

18. A residential facility shall ensure that each bedroom space in the facility has a floor area, exclusive of closets, of at least 74 square feet for the initial occupant and an additional 50 square feet for each other occupant of this space.

19. A residential facility shall not use any room with a ceiling height of less than seven feet six inches as a youth's bedroom.

20. A residential facility shall not permit more than four youth to occupy a designated bedroom space. Beds must be placed at least three feet apart on all sides.

21. A residential facility shall not use any room which does not have a source of natural light and is properly ventilated as a bedroom space.

22. Each youth in care of a residential facility shall have his/her own bed. This bed shall be standard size and shall have a clean, comfortable, nontoxic, fire-retardant mattress equipped with mattress cover, sheets, pillow, pillow case and blankets:

A. Sheets and pillow cases shall be changed at least weekly but shall be changed more frequently if necessary.

23. A residential program shall provide each youth in care with their own solidly constructed bed. Cot or other portable beds will not be used.

24. A residential facility shall ensure that the uppermost mattress of any bunk bed in use shall be far enough from the ceiling to allow the occupant to sit up in bed.

25. A residential facility shall provide each youth with his/her own dresser or other adequate storage space for private use, and a designated space for hanging clothing in proximity to the bedroom occupied by the youth.

26. The decoration of sleeping areas in a residential facility shall allow some scope for the personal tastes and expressions of the youth.

27. A residential facility shall have a minimum of one wash basin, one bath or shower with an adequate supply of hot and cold potable water for every six youth in care.

A. Bathrooms shall be so placed as to allow access without disturbing other youth during sleeping hours;

B. Bathrooms shall not open directly into any room in which food, drink or utensils are handled or stored;

C. Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene unless youth are individually given such items and bath towels and wash cloths shall be changed weekly; and

D. Tubs and showers shall have slip-proof surfaces.

28. The residential facility shall provide toilets and baths or showers which allow for individual privacy unless youth in care require assistance.

29. A bathroom in a residential facility shall contain mirrors secured to the walls at convenient heights and other furnishings necessary to meet the youths basic hygienic needs.

30. Toilets, wash basins, and other plumbing or sanitary facilities in a residential facility shall, at all times, be maintained in good operating condition, and shall be kept free of any materials that might clog or otherwise impair their operation.

31. Kitchens used for meal preparation in a residential facility shall be provided with the necessary equipment for the preparation, storage, serving and clean up of all meals for all of the youth and staff regularly served by such kitchens. All equipment shall be maintained in working order.

32. Kitchen facilities and equipment shall conform to all health, sanitation and safety codes.

33. Programs that provide food service shall encourage youth to participate in the preparation, serving and clean up of meals and ensure that all food handlers comply with applicable State or local health laws and regulations.

34. When the program provides food service, all food service personnel shall have clean hands and fingernails, wear hairnets or caps and clean, washable garments, are in good health and free from communicable disease and open infected wounds, and practice hygienic food handling techniques.

35. When the program provides food service, all foods shall be properly stored at the completion of each meal.

36. A residential facility shall not use disposable dinnerware at meals on a regular basis unless the facility documents that such dinnerware is necessary to protect the health or safety of youth in care.

37. A facility shall ensure that all dishes, cups and glasses used by youth in care are free from chips, cracks or other defects.

38. Kitchen areas in a facility shall be so constructed to allow staff to limit youth's access to kitchen when necessary.

39. A residential facility utilizing live-in staff shall provide adequate separate living space for these staff.

40. A facility shall provide a space which is distinct from youth's living areas to serve as an administrative office for records, secretarial work and bookkeeping.

41. A residential or nonresidential facility shall have a designated space to allow private discussions and counseling sessions between individual youth and staff.

42. A facility shall have comfortable customary furniture as appropriate for all living areas. Furniture for the use of youth shall be appropriately designed to suit the size and capabilities of these youth.

43. There shall be evidence of routine maintenance and cleaning programs in all areas of the residential or nonresidential facilities.

44. A residential or nonresidential facility shall replace or repair broken, run-down or defective furnishings and equipment promptly.

A. Outside doors, windows and other features of the structure necessary for security and climate control shall be repaired within 24 hours of being found to be in a state of disrepair.

45. Any designated bedroom space in a facility, where the bedroom is not equipped with a mechanical ventilation system, shall be provided with windows which have an openable area at least 5% as large as the total floor area of the bedroom space.

46. A residential or nonresidential facility shall provide insect screening for all openable windows unless the facility is centrally air conditioned. This screening shall be readily removable in emergencies and shall be in good repair.

47. A residential facility shall ensure that all closets, bedrooms and bathrooms which have doors are provided with doors that can be readily opened from both sides.

48. A residential or nonresidential facility shall ensure that there are sufficient and appropriate storage facilities.

49. A residential or nonresidential facility shall have securely locked storage spaces for all potentially harmful materials. Keys to such storage spaces shall be available only to authorized staff members.

A. Poisonous, toxic, and flammable materials shall be stored in locked storage space that is not used for other purposes;

B. The facility shall have only those poisonous or toxic materials required to maintain the facility; and

C. Drugs, personnel files and case records shall be kept in locked storage spaces and access to drugs, personnel files and case records are to be carefully limited to authorized persons.

50. A residential or nonresidential facility shall ensure that all electrical equipment, wiring, switches, sockets and outlets are maintained in good order and safe conditions.

51. Any room, corridor or stairway within the residential or nonresidential facility shall be sufficiently illuminated.

52. Corridors within the residential facility's sleeping areas shall be illuminated at night.

53. A residential or nonresidential facility shall provide adequate lighting of exterior areas to ensure the safety of youth and staff during the night.

54. A residential or nonresidential facility shall take all reasonable precautions to ensure that heating elements, including hot water pipes, are insulated and installed in a manner that ensures the safety of youth.

55. A residential or nonresidential facility shall maintain the spaces used by youth at temperatures in accordance with federal, state and local laws.

56. Hot water accessible to youth in a facility shall be regulated to a temperature not in excess of 110 degrees F.

57. A residential facility using water from any source other than public water supply shall ensure that such water is annually tested by the local public health authority. The most recent test report shall be kept on file.

58. A residential or nonresidential facility shall not utilize any excessive rough surface or finish where this surface or finish may present a safety hazard to youth.

59. A facility shall not have walls or ceiling surfaces with materials containing asbestos.

60. A facility shall not use lead paint for any purpose within the facility or on the exterior or grounds of the facility nor shall the facility purchase any equipment, furnishings or decorations surfaced with lead paint.

61. A facility shall use durable materials and wall surfaces.

62. A facility shall, where appropriate, use carpeting to create a comfortable environment. Carpeting in use should be nontoxic and fire-retardant.

R547-1-14. General Safety.

01. The program shall have written procedures and a system that helps provide for staff and participant safety and privacy needs, and assists in protecting and preserving personal property.

03. Each residential facility shall have 24-hour telephone service. Emergency telephone numbers, including fire, police, physician, poison control, health agency and ambulance shall be conspicuously posted adjacent to the telephone.

04. A residential or nonresidential program shall notify Juvenile Justice Services immediately of a fire or other disaster which might endanger or require the removal of youth for reasons of health and safety.

05. All containers of poisonous, toxic and flammable materials kept in a facility shall be prominently and distinctly marked or labeled for easy identification as to contents and shall be used only in such manner and under such conditions as will not contaminate food or constitute hazards to the youth in care of staff.

06. Porches, elevated walkways and elevated play areas within a facility shall have barriers to prevent falls.

07. Every required exit, exit access and exit discharge in a facility shall be continuously maintained free of all obstructions or impediments to immediate use in the case of fire or other emergency.

08. The use of candles shall not be allowed in sleeping areas of a residential facility.

09. Power driven equipment used by the facility shall be kept in safe and good repair. Such equipment shall be used by youth only under the direct supervision of a staff member and according to the state law.

10. A facility shall have procedures to ensure the facility is protected from infestation by pests, rodents or other vermin.

11. Youth in care of a program shall swim only in areas considered by responsible staff as being safe. A certified individual shall be on duty when the youth are swimming. A certified individual is one who has a current water safety instructor certificate or senior lifesaving certificate from the Red Cross or its equivalent.

12. All on-grounds pools shall be enclosed with safety fences and shall be regularly tested to ensure that the pool is free of contamination.

13. On-ground pools shall comply with Department of Public Health requirements concerning swimming pools.

14. A residential or nonresidential facility shall have written policy and procedure specify the facility's fire prevention regulations and practices to ensure the safety of staff, participants and visitors. These include, but are not limited to: provision for an adequate fire protection service; a system of fire inspection and testing of equipment by a local fire official at least quarterly; smoke detectors; fire extinguishers, alarm systems and fire exits.

15. The facility shall comply with the regulations of the state or local fire safety authority, whichever has primary jurisdiction over the agency.

16. A residential or nonresidential facility shall have written procedures for staff and youth to follow in case of emergency or disaster. These procedures shall include provisions for the evacuation of buildings and assignment of staff during emergencies.

17. A residential or nonresidential facility shall train staff and youth to report fires and other emergencies appropriately. Youth and staff shall be trained in fire prevention.

18. A residential or nonresidential facility shall conduct emergency drills which shall include actual evacuation of youth to safe areas at least quarterly. The facility shall ensure that all personnel on all shifts are trained to perform assigned tasks during emergencies and ensure that all personnel on all shifts are familiar with the use of the fire-fighting equipment in the

facility:

A. A record of such emergency drills shall be maintained;

B. All persons in the building shall participate in emergency drills;

C. Emergency drills shall be held at unexpected times and under varying conditions to simulate the possible conditions in case of fire or other disasters;

D. The facility shall make special provisions for evacuation of any physically handicapped youth in the facility; and

E. The facility shall take special care to help emotionally disturbed or perceptually handicapped youth understand the nature of such drills.

19. A residential or nonresidential facility shall maintain an active safety program including investigation of all incidents and recommendations for prevention.

20. A residential facility or nonresidential alternative program shall ensure that each youth is provided with the transportation necessary for implementing the youth's service plan.

21. A residential facility or nonresidential alternative program shall have means of transporting youth in case of emergency.

22. Any vehicle used in transporting youth in care of the program shall be properly licensed and inspected in accordance with state law.

23. Any staff member of a residential or nonresidential alternative program or other person acting on behalf of the program operating a vehicle for the purpose of transporting youth shall be properly licensed to operate that class of vehicle according to state law.

24. A residential or nonresidential alternative program shall not allow the number of persons in any vehicle used to transport youth to exceed the number of available seats in the vehicle. Seat belts will be available for each seat and use is mandatory.

25. All vehicles used for the transportation of youth shall be maintained in a safe condition, be in conformity with all applicable motor vehicle laws, and be equipped in a fashion appropriate for the season.

26. A residential or nonresidential alternative program shall ensure that there is adequate supervision in any vehicle used by the facility to transport youth in care.

27. Identification of vehicles used to transport youth in care of a program shall not be of such nature as to embarrass or in any way produce notoriety for the youth.

28. A residential or nonresidential alternative program shall ensure that any vehicle used to transport youth has at least the minimum amount of liability insurance required by State law.

29. A residential or nonresidential alternative program shall ascertain the nature of any need or problem of a youth which might cause difficulties during transportation, such as seizures, a tendency towards motion sickness or a disability. The program shall communicate such information to the operator of any vehicle transporting youth in care.

30. Youth in the care of a program shall not engage in any potentially dangerous activity without adequate supervision and training by qualified adults.

R547-1-15. Food Service.

01. A residential or nonresidential program shall ensure that a youth is, on a daily basis, provided with food of such quality and of such quantity as to meet the recommended daily dietary allowances adjusted for age, gender and activity of the Food Nutrition Board of the National Research Council.

02. A person designated by the Chief Administrative Officer of a program shall be responsible for the total food service of the facility.

03. A person responsible for food service shall:

A. Maintain a current list of youth with special nutritional needs;

B. Have an effective method of recording and transmitting diet orders and changes;

C. Record in the youth's medical records information relating to special nutritional needs; and

D. Provide nutrition counseling to staff and youth.

04. When the program provides food service, food service staff shall develop advanced planned menus and substantially follow the schedule.

05. A residential program shall ensure that a child in care is provided at least three meals or their equivalent available daily at regular times with not more that 14 hours between evening meal and breakfast. Between meal snacks of nourishing quality shall be offered.

06. The program shall ensure that the food provided to a youth in care by the program is in accord with his/her religious beliefs.

07. No youth in care at a program shall be denied a meal for any reason except according to a doctor's order.

08. A program shall ensure that, at all meals served at the facility, staff members eat substantially the same food served to youth in care, unless special dietary requirements dictate differences in diet. Staff members shall be present to eat at youths' tables for the major meal of the day.

R547-1-16. Medical Care.

01. A residential program shall ensure the availability of a comprehensive or preventive, routine and emergency medical and dental care plan for all youth in care. The program shall have a written plan for providing such care. The plan shall include:

A. A periodic health screening of each youth;

B. Establishment of an on-going immunization program;

C. Approaches that ensure that any medical treatment administered will be explained to the youth in language suitable to his/her age and understanding;

D. An on-going relationship with a licensed physician and dentist to advise the program concerning medical and dental care as required by the youth;

E. Availability of a physician on a 24 hours a day, seven days a week basis; and

F. The program shall show evidence of access to the resources outlined in the plan.

02. A residential program which provides services for emotionally disturbed youth in an open setting shall have well established psychiatric resources available on both an on-going and emergency basis.

03. A residential or nonresidential program will establish policies and procedures for serving "Acquired Immune Deficiency Syndrome" AIDS victims and others with communicable diseases that are consistent with those standards by the Department of Human Services and follow public health guidelines.

04. A residential program shall arrange for a general medical examination by a physician for each youth in care within 30 days of admission unless the youth has received such an examination within six months before admission and the results of this examination are available to the facility.

05. The medical examination shall include:

A. An examination of the youth for physical injury and disease;

B. Vision and hearing tests; and

C. A current assessment of the youth's general health.

06. Whenever indicated, the youth shall be referred to an appropriate medical specialist for either further assessment or treatment.

07. A residential program shall arrange an annual physical

examination of all youth.

08. A residential or nonresidential program shall ensure that youth receive timely, competent medical care when they are ill and that they continue to receive necessary follow-up medical care.

09. A residential program shall make every effort to maintain the youth in his/her normal environment during illness.

10. A residential program shall ensure that each youth has had a dental examination by a dentist within 60 days of the youth's admission unless the youth has been examined within 6 months prior to admission and the program has the results of that examination.

11. Each youth shall have dental examination as recommended by a dentist but shall not be less frequent than every 12 months.

12. The facility shall ensure that the youth receives any necessary dental work.

13. A residential program shall make every effort to ensure that a youth in care who needs glasses, a hearing aid, a prosthetic device or a corrective device is provided with the necessary equipment or device.

14. A residential program shall ensure that the youth has received all immunizations and booster shots which are required by the Department of Health within 30 days of his/her admission.

15. A program shall not require a youth in care to receive any medical treatment when the parent(s) or guardian of the youth or the youth objects to such treatment on the grounds that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent(s), guardian or youth is an adherent. In potentially life threatening situations, the problem shall be referred to appropriate medical and legal authorities.

16. A residential program shall maintain complete health records of a youth including: A complete record of all immunizations provided, a record of any medication, records of vision, physical or dental examinations and a complete record of any treatment provided for specific illnesses or medical emergencies.

17. Upon discharge, the program shall provide a copy or summary of the youth's health record to the person or agency responsible for the future planning and care of the youth.

18. A residential program shall make every effort to compile a complete past medical history on every youth. This history shall, whenever possible, include:

A. Allergies to medication;

B. Immunization history;

C. History of serious illness, serious injury or major surgery;

D. Developmental history;

E. Current use of prescribed medication; and

F. Medication history.

19. The program health care plan shall specify that only licensed physicians and dentists prescribe treatment for participants' medical and dental needs. Medical treatment by medical personnel other than a physician shall be performed pursuant to written standing or direct orders issued by the physician.

20. A residential or nonresidential program shall have written policies and procedures governing the use and administration of medication to youth. These policies and procedures shall be disseminated to all staff responsible for administering medication.

21. The written policies shall specify the conditions under which medications can be administered; who can administer medication; procedures for documenting the administration of medication and medication errors and drug reactions; and procedures for notification of the attending physician in cases of medication errors and/or drug reactions.

22. A residential or nonresidential program shall inform a youth and his/her parents(s) or guardian of the potential side effects of prescribed medications.

23. A residential or nonresidential program shall ensure that a youth is personally examined by the prescribing physician prior to receiving any medication. In cases of medical emergency, telephone orders for the administration of medication may only be placed by a licensed physician.

24. State licensure and certification requirements shall apply to health care personnel working in the program the same as those in the community.

25. A residential or nonresidential program shall maintain a cumulative record of all medication dispensed to youth including:

A. The name of the youth;

B. The type and usage of medication;

C. The reason for prescribing the medication;

D. The time and date medication is dispensed;

E. The name of the dispensing person; and

F. The name of the prescribing physician.

26. When a youth first comes into care, a residential or nonresidential program shall ascertain all medication the youth is currently taking. At this time the facility shall carefully review all medication the youth is using and make plans, in consultation with a licensed physician, to either continue the medication or to reconsider the medication needs of the youth considering the changed living circumstances.

27. A residential or nonresidential program shall have a written medication schedule for each youth to whom medication is prescribed. A youth's medication schedule shall contain the following information:

A. Name of youth;

B. Name of prescribing physician;

C. Telephone number at which prescribing physician may be reached in case of medical emergency;

D. Date on which medication was prescribed;

E. Generic and commercial name of medication prescribed;

F. Dosage level;

G. Time(s) of day when medication is to be administered;

H. Possible adverse side effects of prescribed medication; and

I. Date on which prescription will be reviewed.

28. A residential or nonresidential program shall provide a copy of a youth's medication schedule to all staff members responsible for administering the medication to the youth and such schedule shall subsequently be placed in the youth's case record.

29. When a urine surveillance program is in effect, the agency shall have a written policy for the collection of samples and interpretation of results.

30. A residential or nonresidential program shall not engage in the therapeutic use of psychotropic medications unless approval of such use by that program has been granted by Division of Juvenile Justice Services.

31. A program which uses psychotropic medications prescribed by an independent physician shall have a written policy governing the use of psychotropic drugs at the facility. This policy shall include the following:

A. Identification of doctors permitted to prescribe psychotropic drugs and their qualifications;

B. Identification of persons permitted to administer psychotropic drugs and their qualifications;

C. Criteria for the use of psychotropic medications;

D. A description of the program's medication counseling program;

E. Procedures for obtaining informed consent from the youth and the parent(s) or guardian where consent is required;

F. Procedures for monitoring and reviewing use of

psychotropic medication;

G. Procedures for staff training related to the monitoring of psychotropic medication;

H. Procedures for reporting the suspected presence of undesirable side effects; and

I. Record keeping procedures.

32. Psychotropic medication policy shall be disseminated to all direct service staff.

33. The program which uses psychotropic medications shall maintain a routine medication counseling program designed to inform youth to whom medications are being administered and their parent(s) or guardian of the projected benefits and potential side effects of such medication.

34. Unless there is a court order to the contrary, a facility shall ensure that the parent(s) or guardian of a youth for whom medication is prescribed give prior, informed, written consent to the use of that medication at a particular dosage.

35. When a youth is 14 years of age or older, the facility shall also obtain prior, informed, written consent from the youth except when the youth lacks the capacity for informed consent.

36. Either the youth and his/her parent(s) or guardian shall have the right to revoke medication consent at any time. When consent is revoked, administration of the medication shall cease immediately. The program shall inform the prescribing physician and may, if indicated, seek a court order to continue medication.

37. When medication consent is revoked by a youth, the program shall notify the parent(s) or guardian.

38. The program shall immediately file a statement describing the circumstances under which medication consent has been revoked. This statement shall be provided to the youth, the parent(s) or guardian, and the responsible agency.

39. A residential program which uses psychotropic medications shall ensure that a youth is personally examined by the prescribing physician prior to commencing administration of a psychotropic drug.

40. The prescribing physician shall provide a written initial report detailing the reasons for prescribing the particular medication, expected results of the medication and alerting facility staff to potential side effects.

41. Either the prescribing physician or another physician shall provide a written report on each youth receiving psychotropic medication at least every 30 days based on actual observation of the youth and review of the daily monitoring reports. This 30 day report shall detail the reasons medication is being continued, discontinued, increased in dosage, decreased in dosage or changed.

42. A program which uses psychotropic medications shall ensure that usages of medication are in accordance with the goals and objectives of the youth's service plan.

43. Psychotropic medications shall not be administered as a means of punishing or disciplining a youth.

44. Psychotropic medications shall not be used unless less restrictive alternatives have either been tried and failed or are diagnostically eliminated.

45. Licensed nurses or physicians shall supervise the administration of all psychotropic medications.

46. A program which uses psychotropic medications shall ensure that each youth who receives medication is the subject of a daily monitoring report completed by a facility staff member trained in the recognition of side effects of the medication prescribed. This report shall be submitted to the prescribing physician.

47. A program which uses psychotropic medications shall maintain the following information in the case record of each youth receiving the medication:

A. Medication history;

B. Documentation of all less restrictive alternatives either used or diagnostically eliminated prior to use of medication since entry into the program;

C. Description of any significant changes in the youth's appearance or behavior that may be related to the use of medication;

D. Any medication errors;

E. Monitoring reports; and

F. Medication review reports.

48. A program which uses psychotropic medications shall obtain an independent analysis of the facility's medication program at least annually.

49. A residential or nonresidential alternative program shall have written procedures for staff members to follow in case of medical emergency. These procedures shall both define the circumstances that constitute a medical emergency, and include instructions to staff regarding their conduct once the existence of a medical emergency is suspected or has been established.

50. A residential or nonresidential alternative program shall ensure that at all times, at least one staff member on duty is qualified to administer first aid.

51. The program shall maintain a list of first aid equipment and supplies to ensure sufficient availability of equipment and supplies at all times.

52. A first aid kit shall be available in a nonresidential facility and in each living unit of a residential facility, with type, size and contents to be determined according to the American Red Cross' current guidelines.

53. A program shall immediately notify the youth's parent(s) or guardian and Juvenile Justice Services of any serious illness, incident involving serious bodily injury or any severe psychiatric episode involving a youth.

54. In the event of the death of a youth, a program shall immediately notify the youth's parent(s) or guardian, the placing agency and Juvenile Justice Services. The agency shall cooperate in arrangement made for examination, autopsy or burial.

55. In the event of sudden death, a residential program shall notify the medical examiner or other appropriate authority, or law enforcement official, the placement agency, parent and Juvenile Justice Services.

R547-1-17. Child Abuse and Neglect.

01. A program shall require each staff member of the program or facility to read and sign a statement clearly defining child abuse and neglect and outlining the staff member's responsibility to report all incidents of child abuse or neglect according to state law, and the Department and Division Code of Conduct, and to report all incidents to the chief administrator of the program and to the Division of Juvenile Justice Services, Regional Administrator and Office of Quality Assurance.

02. A program shall have written policy and procedures for handling any suspected incident of child abuse including:

A. A procedure for ensuring that the staff member involved does not work directly with the youth involved or any other youth in the Juvenile Justice Services licensed and/or contracted, or Juvenile Justice Services operated program or facility until the investigation is completed or formal charges filed and adjudicated;

B. A procedure for disciplining any staff member found involved in an incident of child abuse or Code of Conduct Violation including termination of employment if found guilty of felony child abuse (misdemeanor guilty findings require Juvenile Justice Services Director approval for continued employment):

C. 57 A and B apply to staff members accused of abuse of children other than in a Juvenile Justice Services licensed and/or contracted program or facility.

D. Failure to implement and comply with Standard 16.57, A, B, and C may result in immediate suspension or revocation

of the program license as required by the Utah Code, 62A-7-119.

KEY: diversion programs, juvenile corrections, licensing, prohibited items and devices
April 30, 2002 62A-7-119
Notice of Continuation May 30, 2002

R547. Human Services, Juvenile Justice Services.
R547-3. Juvenile Jail Standards.
R547-3-1. Definitions and References.

(1) Definitions.

(a) "Low density population" means ten or less people per square mile.

(b) "Nonoffenders" means abused, neglected, or dependent youth.

(c) "Sight and sound separation" means that juvenile detainees must be located or arranged as to be completely separated from incarcerated adults by sight and sound barriers such that the adult inmates cannot see juvenile detainees and vice versa. Also, conversation is not possible between juvenile detainees and adult inmates.

(d) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(2) References.

(a) Standards from the Manual of Standards for Juvenile Detention Facilities and Services, also referred to as American Correctional Association (ACA) Standards, revision date of February 1979, were researched as background for the rules. This manual can be located at the Division of Juvenile Justice Services Administrative Office.

R547-3-2. Standards for Six Hour Juvenile Detention in Jail.

(1) Juveniles under the age of 18 shall not be confined in a county operated jail used for accused or convicted adult offenders except:

(a) when the juvenile is 14 years of age or older and, in a hearing before a magistrate, has been certified an adult, Section 78-3a-603 and Subsection 78-3a-502(3);

(b) when the juvenile is being held on a traffic offense, Subsection 78-3a-104(2), and the facility has been certified by the Division of Juvenile Justice Services to detain juveniles beyond six hours;

(c) when the juvenile is 16 years of age or older and is being held under a valid Juvenile Court order, Subsection 78-3a-114(8)(b), and the facility has been certified by the Division of Juvenile Justice Services to detain juveniles beyond six hours;

(d) in areas characterized by low density population. The state Juvenile Justice Services agency may promulgate regulations providing for specific approved juvenile holding accommodations within adult facilities which have acceptable sight and sound separation to be utilized for short-term holding purposes with a maximum confinement of six hours to allow adequate time to evaluate needs and circumstances regarding transportation, detention, or release of the juvenile in custody, Section 62A-7-201.

(2) The Division of Juvenile Justice Services may certify a jail to hold juveniles who are alleged to have committed a non-status offense or are accused of juvenile handgun possession for up to six hours if the following criteria are met:

(a) in areas characterized by low density population;

(b) no existing acceptable alternative placement exists which will protect the juvenile and the community;

(c) the county is not served by a local or regional certified juvenile detention facility;

(d) no juvenile under ten years of age will be held by holding authorities, as set forth in the following standards, for any length of time.

(3) Any jail or adult holding facility intended for use for juveniles must be certified by the State Division of Juvenile Justice Services.

(4) There shall be acceptable sight and sound separation from adult inmates. Written policy and procedure shall exist to assure supervision is maintained so that both visual contact and verbal communication between juvenile detainees and adult inmates is prohibited.

(5) The jail's juvenile detention room(s) shall conform to all applicable zoning laws.

(6) The jail's juvenile detention room(s) shall conform to all applicable local and state safety, fire, and building codes.

(7) The jail's juvenile detention room(s) shall conform to all applicable local and state health codes.

(8) The juvenile population shall not exceed the jail's certified capacity for juveniles.

(9) All juvenile housing and activity areas provide for, at a minimum:

(a) toilet and wash basin accessibility;

(b) hot and cold running water in wash basin and drinking water;

(c) adequate shelter, heat, light, and ventilation that does not compromise security or enable escape;

(d) seventy square feet of floor space per resident and in multiple bed room construction, a minimum of 40 square feet of floor space per resident;

(e) eight feet of clear floor to ceiling height for occupants;

(f) a bed at least two feet three inches wide and six feet four inches long in each room if the jail was designed after 1979. If there is more than one bed per room, there must be a minimum of 18 inches vertical clearance from all overhead obstructions.

(10) Whenever juveniles are detained, there shall be at a minimum:

(a) Removal of all property from the juvenile that could compromise the juvenile's safety, such as belts, shoelaces and suspenders, prior to placing a juvenile in a holding room;

(b) constant on-site supervision through visual or TV monitoring and audio two way communication;

(c) frequent personal checks to maintain communication with the juvenile and prevent panic and feelings of isolation;

(d) a written record of significant incidents and activities of the juvenile.

(11) The written policies and procedures providing for specific rules governing the supervision of inmates by jail staff of the opposite sex shall specifically provide for the following when the inmates are juveniles:

(a) An adult staff member of the same sex as the juvenile shall be present when a juvenile is securely held.

(b) Except in an emergency the staff member entering a juvenile's sleeping room shall be of the same sex. If there are two staff members entering the sleeping room, there may be one male and one female. When an emergency prevents the same sex staff member from entering the juvenile's room, then at least two opposite sex staff members must be present and a written report must be completed and kept on file justifying the necessity for the deviation from same sex supervision.

(c) When procedures require physical contact or examination, such as strip searches, these shall be done by a staff member of the same sex in private without TV monitoring. Procedures for body cavity searches shall conform to jail standards.

(d) A staff member of the same sex shall supervise the personal hygiene activities and care such as showers, toilet, and related activities.

(e) The use of restraints or physical force are restricted to instances of justifiable self-defense, protection of juveniles and others, protection of property and prevention of escapes, and only when it is necessary to control juveniles and in accordance with the principle of least restrictive action. In no event is physical force justifiable as punishment. A written report is prepared following all uses of force and is submitted to the facility administrator.

(12) Male and female residents shall not occupy the same sleeping room at the same time.

(13) There shall be no viewing devices, such as peep holes, mirrors, of which the juvenile is not aware.

(14) No inmate, juvenile or adult, shall be allowed to have authority or disciplinary control over, be permitted to supervise, or provide direct services of any nature to other detained juveniles.

(15) The juvenile's health and safety while jailed shall be safeguarded. The jail administration shall:

(a) have services available to provide 24 hours a day emergency medical care;

(b) provide for immediate examination and treatment, if necessary, of juveniles injured on the jail premises;

(c) not accept juveniles who are unconscious, obviously seriously injured, a suicide risk, obviously emotionally disturbed, or obviously under the influence of alcohol or drugs and are unable to care for themselves, until they have been examined by a qualified medical practitioner or have been taken to a medical facility for appropriate diagnosis and treatment and released back to the jail;

(d) train all jail staff members to recognize symptoms of mental illness or retardation;

(e) provide for the detoxification of a juvenile in the jail only when there is no community health facility to transfer the juvenile to for detoxification;

(f) require that any medical services provided while the juvenile is held be recorded.

(16) As long as classification standards are met, juvenile detainees may be housed together if age, compatibility, dangerousness, and other relevant factors are considered.

(17) Adult jails that are certified to hold juveniles for up to six hours must have written procedures which govern the acceptance of such juveniles. These procedures must include the following:

(a) When an officer or other person takes a juvenile into custody, the officer shall without unnecessary delay notify the parents, guardian, or custodian.

(b) The jail staff shall verify with the officer or other person taking the juvenile into custody that the juvenile's parents, guardian, or custodian have been notified of the juvenile's detention in jail. If notification did not occur, jail staff will contact the juvenile's parents, guardian, or custodian.

(c) The officer shall also promptly file with the detention or shelter facility a brief written report stating the facts which appear to bring the juvenile within the jurisdiction of the Juvenile Court and give the reason why the juvenile was not released.

(18) There must be written policy and procedures that require that the decision to detain the juvenile for up to six hours or to release the juvenile from jail be in accordance with the following principles:

(a) A juvenile shall not be detained by policy any longer than is reasonably necessary to obtain the juvenile's name, age, residence, and any other necessary information, and to contact the juvenile's parents, guardian, or custodian.

(b) The juvenile shall then be released to the care of the parent or other responsible adult unless the immediate welfare or the protection of the community requires that the juvenile be detained or that it is unsafe for the juvenile or the public to leave the juvenile in the care of the parents, guardian, or custodian. On release from jail, the parent or other person to whom the juvenile is released may be required to sign a written promise on forms supplied by the court to bring the juvenile to court at a time set, or to be set, by the court, Subsection 78-3a-113(3)(b).

(19) The written procedures for admitting juvenile detainees will include completion of an admission form on all juveniles that includes, as a minimum, the following information:

(a) date and time of admission and release;

(b) name, nicknames, and aliases;

(c) last known address;

(d) law enforcement jurisdiction, name, and title, of delivering officer;

(e) specific charge(s);

(f) sex;

(g) date of birth and place of birth;

(h) race or nationality;

(i) medical problems, if any;

(j) parents, guardian, or responsible person to notify in case of emergency, including addresses and telephone numbers;

(k) space for remarks, to include notation of any open wounds or sores requiring treatment, evidence of disease or body vermin, or tattoos;

(l) probation officer or caseworker assigned, if any;

(20) Juvenile processing procedures shall include written safeguards to prohibit nonoffenders from being detained in the facility and to ensure youth are held in accordance with R547-3-2.

(21) There must be a written procedure governing the transfer of a juvenile to an appropriate juvenile facility which includes the following:

(a) If the juvenile is to be transferred to a juvenile facility, the juvenile must be transported there without unnecessary delay, but in no case more than six hours after being taken into custody. A copy of the report stating the facts which appear to bring the juvenile within the jurisdiction of the court and giving the reason for not releasing the juvenile shall be transmitted with the juvenile when transported.

(b) A written record shall be retained on file of all juveniles released, stating as a minimum to whom they were released, the release date, time, and authority.

(c) Procedures for releasing juvenile detainees shall include at a minimum:

(i) verification of identity;

(ii) verification of release papers;

(iii) completion of release arrangements;

(iv) return of juvenile detainee's personal effects and funds;

(v) verification that no jail property or other resident property leaves the jail with the juvenile.

(22) The written procedures governing the stay of a juvenile shall include:

(a) A juvenile, while held in a certified jail, shall have the same legal and civil rights as an adult inmate.

(b) A juvenile, while held in a certified jail, shall have the right to the same number of telephone calls as an adult inmate held the same amount of time.

(c) Unless the juvenile is to be transferred to an approved detention facility, visits should be limited to the juvenile's attorney, clergyman, and officers of the court. If the juvenile is to be transferred, an effort shall be made to provide for visitation by the juvenile's parents, guardian, or custodian prior to the transfer.

(d) If a juvenile is held during daylight hours the juvenile should be allowed access to reading materials. Where feasible the juvenile should be provided access to physical exercise and recreation, such as radio and TV.

(23) A case record shall be maintained on each juvenile admitted to a certified jail. Policies and procedures concerning the case records and the information in them shall be established which meet the following as a minimum:

(a) The contents of case records shall be identified and separated according to an established format.

(b) Case records shall be safeguarded from unauthorized and improper disclosure, in accordance with written policies and in compliance with Rule 38 of the Juvenile Court Rules of Practice and Rule 7-201 of the Code of Judicial Administration.

(c) The facility shall assure that no information shall be entered into a case record that is incomplete, inaccurate, or unsubstantiated. At any point that it becomes apparent that this has occurred, the facility shall immediately make the necessary

correction.

(24) A case record shall be maintained on each juvenile, as appropriate, and kept in a secure place. It shall contain as a minimum the following information and documents:

(a) initial intake information form;

(b) documented legal authority to accept, detain, and release juveniles;

(c) current detention medical/health care record;

(d) consent for necessary medical or surgical care, signed by parent, person acting in loco parentis, Juvenile Court judge, or facility official;

(e) record of medication administered;

(f) record of incident reports;

(g) a record of cash and valuables held;

(h) visitors' names, if any, personal and professional, and dates of visits;

(i) final discharge or transfer report.

(25) The jail facility director shall submit to the state Division of Juvenile Justice Services agency a monthly accurate report of the numbers of juveniles confined during the preceding month and provide information on each juvenile in the categories indicated on the report form as provided by the State.

R547-3-3. Standards for Juveniles Detained in Jail beyond Six Hours.

(1) The following standards must be met in addition to the standards in Section R547-3-2 when a facility is certified under Section 62A-7-201 beyond a six hour hold. See Subsection R547-3-2(1)(b) and (c).

(2) There is a written statement that describes the philosophy, goals, or purposes of the facility, which is reviewed at least annually and updated if necessary.

(3) Written policy and procedure provide that all employees who have juvenile contact receive an additional 20 hours of specialized juvenile training during their first year of employment, and 40 hours integrated with training requirements for each subsequent year of employment provided or approved by Juvenile Justice Services.

(4) Single sleeping cells have at least 70 square feet of floor space, and juveniles are provided activities and services outside their rooms at least 14 hours a day, except in disciplinary cases. (ACA 2-8138)

(5) The total indoor activity area outside the cell area provides space of at least 100 square feet per juvenile. (ACA 2-8143)

(6) Educational space and instruction shall be provided in conformity with local or state educational requirements. (ACA 2-8146)

(7) Space is available for religious services. (ACA 2-8149)

(8) There is a day room for each cell cluster. The room has a minimum of 35 square feet of floor space per juvenile and is separate and distinct from the sleeping area, which is immediately adjacent and accessible. (ACA 2-8169)

(9) Written policy precludes the use of food as a disciplinary measure. (ACA 2-8225)

(10) Clean clothing is provided for juveniles--clean socks, underwear and towels on a daily basis, and other clothing at least twice a week. (ACA 2-8244)

(11) Written policy and procedure provide an approved shower schedule that allows daily showers and showers after strenuous exercise. (ACA 2-8246)

(12) A history of the juvenile's immunizations will be obtained within 30 days of admission and at the time the health appraisal data are collected. Immunizations are updated, as required, within legal constraints. (ACA 2-8266)

(13) Written policy and procedure provide for the prompt notification of the juvenile's parents/guardian, or legal custodian in case of serious illness, surgery, injury or death. (ACA 2-8271)

(14) Written policy and procedure ensure a special program for juveniles requiring close medical supervision. A physician develops a written medical treatment plan for each of these patients that includes directions to medical and nonmedical personnel regarding their roles in the care and supervision of these patients. (ACA 2-8277)

(15) Under no circumstances is a stimulant, tranquilizer or psychotropic drug to be administered for purposes of program management and control or for purposes of experimentation and research. (ACA 2-8282)

(16) Programs and training are provided residents as needed within 72 hours for the development of sound habits and practices regarding personal hygiene. (ACA 2-8285)

(17) Written policy and procedure provide that when a juvenile is in need of hospitalization, a staff member accompanies him or her and stays with the juvenile at least during admission. (ACA 2-8286)

(18) Written policy and procedure provide that all informed consent standards in the jurisdiction are observed and documented for medical care. The informed consent of parent, guardian or legal custodian applies when required by law. When health care is rendered against the patient's will, it is in accord with state and federal laws and regulations. (ACA 2-8287)

(19) Written policy and procedure grant juveniles access to recreational opportunities and equipment, including, when the climate permits, outdoor exercise if detained more than 24 hours. (ACA 2-8298)

(20) Written policy and procedure provide that juveniles are not subjected to corporal or unusual punishment, humiliation, mental abuse or punitive interference with the daily functions of living, such as eating or sleeping. (ACA 2-8301)

(21) Juveniles are not required to participate in uncompensated work assignments unless the work is related to housekeeping, maintenance of the facility or grounds, or personal hygienic needs, or the work is part of an approved vocational training program or court approved work. (ACA 2-8302)

(22) There are no restrictions on the right of juveniles to determine the length and style of their hair, except in individual cases where such restrictions are necessary for reasons of health and safety. (ACA 2-8306)

(23) Written policy and procedure authorize juveniles to keep facial hair, if desired, except in individual cases where such restrictions are necessary for reasons of health and safety. (ACA 2-8307)

(24) Written policy and procedure specify that cell restriction for minor misbehavior serves only a "cooling off" purpose, is short in time duration, with the time period--fifteen minutes to sixty minutes--specified at the time of assignment. (ACA 2-8314)

(25) During room restriction, personal contact or observation is made by staff with the juvenile at least every 15 minutes, depending on the juvenile's emotional state. The juvenile assists in determining the end of the restriction period. (ACA 2-8316)

(26) Whenever juveniles are removed from the regular program, they are seen by a counselor or probation officer as soon as possible, but not more than 24 hours after removal. (ACA 2-8319)

(27) Juveniles placed in confinement separate from their living unit are visually checked by staff at least every 15 minutes and visited at least once each day by personnel from administrative, clinical, social work, religious or medical units; a log is kept stating who authorized the confinement, persons visiting the juvenile, the person authorizing release from confinement, and the time of release. (ACA 2-8321)

(28) The facility provides or makes available the following

minimum services and programs to adjudicated and preadjudicated juveniles: (ACA 2-8354)

(a) visiting with parents/guardians;
(b) private communication with visitors and staff;
(c) counseling;
(d) continuous supervision of living units;
(e) medical services;
(f) food services;
(g) recreation and exercises;
(h) reading materials.

(29) Educational opportunities are available to all juveniles within 72 hours of admittance, excluding weekends and holidays. (ACA 2-8356)

(30) Educational programs in facilities are designed to assist detained juveniles in keeping up with their studies and are initiated within 72 hours. (ACA 2-8357)

(31) Written policy and procedure provide a recreation and leisure time plan that includes, at a minimum, at least one hour per day of large muscle activity and one hour of structured leisure time activities. (ACA 2-8363)

(32) The facility has a staff member or trained volunteer who coordinates and supervises the recreation program. (ACA 2-8364)

(33) Library services are available to all detained juveniles. (ACA 2-8366)

(34) Written policy defines the principles, purposes and criteria used in the selection and maintenance of library materials. (ACA 2-8367)

(35) There is a social services program that makes available a range of resources to meet the needs of juveniles, including individual and family counseling and community services. (ACA 2-8369)

(36) The social services program is administered and supervised by a person qualified and trained in the social or behavioral services. (ACA 2-8370)

(37) Each juvenile is assigned a counselor, jail or probation officer at intake. (ACA 2-8374)

(38) Work assignments do not conflict with education programs. (ACA 2-8378)

(39) Written policy and procedure provide for securing citizen involvement in programs, including roles as advisors and interpreters between the program and the public, direct services and cooperative endeavors with juveniles under supervision. (ACA 2-8408)

(40) Written policy and procedure provide for the screening and selection of volunteers, allowing for recruitment from cultural and socioeconomic segments of the community. (ACA 2-8411)

(41) Prior to assignment, each volunteer completes an orientation and training program appropriate to the nature of the assignment. (ACA 2-8412)

(42) Written policy and procedure ensure that consultants, contract personnel and volunteers who work with juveniles comply with the facility's policies on confidentiality of information. (ACA 2-8085)

(43) Service personnel other than facility staff perform work in the facility only under direct and continuous supervision of facility staff in those areas permitting contact with juveniles. (ACA 2-8007)

(44) There is a written description of the facility that specifies its mission within the context of the system of which it is a part. This description is reviewed at least annually and updated if necessary. (ACA 2-8008)

(45) Where statute permits, the juvenile work plan provides for juvenile work assignments in public works projects. (ACA 2-5360)

(46) Where statute permits, the juvenile work plan includes provision for juveniles to work in various nonprofit and community service projects. (ACA 2-5361)

(47) Where statute permits, written policy and procedure allow for juvenile participation in work or educational release programs. (ACA 2-5381)

(48) Temporary release programs are required to have the following elements: (ACA 2-5382)

(a) written operational procedures;
(b) careful screening and selection procedures;
(c) written rules of juvenile conduct;
(d) a system of supervision;
(e) a complete recordkeeping system;
(f) a system for evaluating program effectiveness;
(g) efforts to obtain community cooperation and support.

KEY: juvenile corrections
November 18, 2002 **62A-7-201**
Notice of Continuation May 31, 2002

R547. Human Services, Juvenile Justice Services.
R547-6. Youth Parole Authority Policies and Procedures.
R547-6-1. Definitions.

(1) Detainer is an order to hold a youth for another governmental agency.

R547-6-2. Administration and Organization.

Section 62A-7-109 establishes a Youth Parole Authority within the Division of Juvenile Justice Services which has responsibility for parole release, rescission, revocation, and termination of parole for youth offenders committed to the Division for secure confinement.

(1) The Authority is established as an autonomous organizational entity reporting directly to the Board of Juvenile Justice Services.

(2) The following criteria shall be utilized by the Board of Juvenile Justice Services in the selection and appointment of the Authority members:

(a) A member shall have training or experience in social work, law, juvenile or criminal justice, or related behavioral sciences.

(b) A member shall not be an employee of the Department of Human Services, other than in the capacity as a member of the Authority, and may not hold any public office during the tenure of the appointment. A member shall not hold a position in the State's juvenile justice system or be an employee, officer, advisor, policy board member, or subcontractor of any juvenile justice agency or its contractor during the tenure of the appointment.

(c) The membership shall represent, to the extent possible, a diversity of the population under the jurisdiction of the Division.

(d) The membership shall be composed of individuals with the capacity to conduct hearings in a professional manner, develop appropriate policies and procedures, be sensitive to both legal and treatment oriented issues and promote credibility in the parole release process.

(3) Youth Parole Authority members shall be appointed for terms of three years by the Board of Juvenile Justice Services.

(4)(a) The Board of Juvenile Justice Services shall elect the chairperson and vice-chairperson of the Authority by majority vote for terms of one year. A second vice-chairperson shall be designated by the Authority members present at hearings in which the chairperson and vice-chairperson are absent.

(b) The duties of the chairperson are as follows:

(i) to preside at meetings and hearings and in the chairperson's absence the first vice-chairperson shall act. In the absence of the chairperson and first vice-chairperson, the second vice-chairperson shall preside at the meeting or hearing.

(ii) to act as official spokesperson for the Authority with the concurrence of the Authority;

(iii) to work closely with the Administrative Officer in the administration of the Authority and in coordinating with the Division.

(5) Any member of the Authority may be removed from office by the Board of Juvenile Justice Services for cause.

(6) The Authority shall seek parity with salaries of other state officers performing similar and responsible duties.

(7) The Division Director shall ensure that time is available for Division members to participate in training and administrative meetings related to Authority and Division matters.

(8) The Authority has the power to require that general and specific conditions of parole be followed in the supervision of parolees.

(9) The Authority has the statutory power, Section 62A-7-112(4), to secure prompt and full information relating to youth offenders committed to the Division from the staffs of the secure facilities, regional offices, community placements, and the juvenile court.

(10) The Authority has statutory power, Section 62A-7-110, to cause the arrest of parolees and the power to revoke parole.

(11) The Authority has the designated power to terminate youthful offenders from parole.

(12) The Authority shall establish policies and procedures for its governance, meeting, hearings, the conduct of proceedings before it, the parole of youth offenders, and the general conditions under which parole may be granted, rescinded, revoked, modified, and terminated. The Authority's policies and procedures are subject to the approval of the Board of Juvenile Justice Services.

(13) The policy and procedures manual of the Authority will be readily available to youth in secure facilities, parolees, staff and the public.

(14) The Authority shall request any needed legal assistance from the Attorney General's Office.

(15) The position of an Administrative Officer shall be established to carry out day to day functions and to implement the policies and procedures of the Authority.

(16) Required staff shall be appointed to the Authority.

R547-6-3. Hearings.

A case file shall be maintained on each youth that comes before the Authority. Materials in the case files are clearly identified as to source, verification and confidentiality.

(1) For the proper operation of the Authority and protection of those furnishing information and for the best interests of youth offenders and society, all written documents, evaluations or medical reports, opinions, investigative reports which contain or are based upon information that is, either privileged by statute or court rule or order of the Authority, or of such confidential nature that the Authority concludes the rights and reputations of particular person or persons rending the order, decision, opinions or submitting the documents would be jeopardized or threatened, or the public interest would not be served, shall be classified as controlled and not be made available to the youth offender or his representative or for public inspection. Requests and reasons for any exceptions shall be submitted in a petition to the Authority, which may upon good cause grant the request.

(2) The Authority may order, when necessary, examinations and opinions by certified psychiatrists or psychologists. Certified members of the appropriate professions shall be available for such examinations and opinions.

(3) In order to have adequate time for case preparation, the Authority will be provided, in advance of hearings, with the necessary case materials and information to make appropriate decisions.

(4) A calendar shall be prepared in advance of all parole hearings.

(5) The number of full hearings scheduled for an Authority panel in a single day should be limited to 12 cases.

(6) Youth offenders shall be notified in writing at least 14 calendar days in advance of initial and parole review hearings and shall be specifically advised as to the purpose of the hearing.

(7) The Authority hearings are not open to the public; however, the Authority has the discretion to admit to the hearings any persons who may serve in the best interest of the youth.

(8) Hearings by the Authority shall be conducted in a secure environment and in private rooms appropriately furnished and of adequate size and comfort.

(9) Youth offenders may have assistance from qualified persons for an effective case presentation.

(10) Youth offenders shall have legal representation at parole revocation hearings. Legal representation shall not be permitted at initial, parole review, progress review, and rescission hearings. Legal representation shall be at the discretion of the hearing officer at preliminary hearings. Legal representation shall be at the discretion of the Authority at special hearings.

(11) It is the policy of the Authority that all youth offenders shall have a personal appearance before the Authority, which provides for ample opportunity for the expression of the youth's views, particularly in the situation where parole may be denied.

(12) A record shall be made of all proceedings and findings made by the Authority.

(13) The youth offender will be notified verbally of the Authority's decisions at the conclusion of each hearing. All decisions shall be supported in writing and forwarded to the youth within 14 days of the hearing date.

(14) The youth offender, parent, or legal guardian of the youth offender may appeal any decision of the Authority regarding parole release or revocation to the Executive Director of the Department of Human Services or designee.

(15)(a) The criteria employed by the Authority in its decision making process are available in written form in the administrative office of the Division of Juvenile Justice Services and are specific enough to permit consistent application to individual cases.

(b) Youth offenders committed to the Division for secure confinement may be released by the Authority earlier than their recommended guideline, when the Division's secure facilities are at maximum capacity.

(16) It is the policy of the Authority that all youth offenders shall be automatically scheduled for an initial hearing before the Authority within 90 days of commitment to a secure facility.

(17)(a) It is the policy of the Authority that a youth offender shall have a progress review hearing held 180 days from the date of the initial hearing, when a parole review hearing has not been scheduled due to lengthy guideline considerations.

(b) All youth offenders shall have a parole review hearing before the Authority prior to release. The parole review hearing shall be scheduled within 180 days of either the initial hearing or the progress review hearing. A date for parole release shall be established at the parole review hearing when appropriate.

(18) The parole release date established by the Authority shall remain in effect except upon findings by the Authority that cause exists for the rescission of said date.

(19) The youth can petition the Authority for reconsideration of an earlier decision, including release prior to the original parole date.

(20) Each parolee shall receive and sign a written copy of the parole agreement.

(21) The parole agreement can be amended upon approval by the Authority.

(22) The Authority does not accept the presence of a detainer as an automatic bar to release; rather, the Authority pursues the basis of any such detainer, and releases the youth per detainer where appropriate.

(23) The Authority has power to terminate youth offenders from parole supervision. Youth are not continued on active parole after one year without cause.

R547-6-4. Arrest and Revocation.

An Incident Report Form will be used to convey information to the Authority regarding parolees. The assigned parole officer is responsible to keep the Authority informed regarding all parole violations.

(1) Revocation proceedings will be initiated by the region office when there is probable cause that a parole violation(s) has occurred and that such proceedings are in the best interest of the youth or the community.

(2) A pre-revocation hearing may be held by the Administrative Officer or designee to determine whether there is probable cause to return a youth to a secure facility for a parole violation hearing.

(3) The Administrative Officer in behalf of the Authority may issue warrants of arrest.

(4) An alleged parole violator will have a revocation hearing within 21 days of the pre-revocation hearing. Legal representation is required at revocation hearings.

KEY: juvenile corrections, parole
1992 62A-7
Notice of Continuation June 4, 2002 63-2-303

R547. Human Services, Juvenile Justice Services.
R547-7. Juvenile Holding Room Standards.
R547-7-1. Definitions.

(1) "Nonoffenders" means abused, neglected, or dependent youth.

(2) "Sight and sound separation" means that juvenile detainees must be located or arranged as to be completely separated from incarcerated adults by sight and sound barriers such that the adult inmates cannot see juvenile detainees and vice versa. Also, conversation is not possible between juvenile detainees and adult inmates.

(3) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

R547-7-2. Standards for Two Hour Juvenile Detention in Local Law Enforcement Facilities.

(1) Criteria by which juveniles may be held:

(a) The maximum holding period will be two hours as provided for by Subsection 62A-7-201(4).

(b) Extensive efforts will be made by holding authorities during these two hours to contact the juvenile's parents, guardian, or other responsible adult and arrange for the juvenile's release.

(c) No juvenile under ten years of age will be held by holding authorities, as set forth in the following standards, for any length of time.

(d) Only juveniles who are alleged to have committed a non-status offense or are accused of juvenile handgun possession may be detained for identification or interrogation or while awaiting release to a parent or other responsible adult.

(e) Despite the authorization to hold a juvenile in a certified holding room for up to two hours, no juvenile shall be held in such a room unless there is no other alternative which will protect the juvenile and the community.

(2) Any holding facility intended for use for juveniles must be certified by the state Division of Juvenile Justice Services, Subsection 62A-7-201(4).

(3) There shall be acceptable sight and sound separation from adult inmates Subsection 62A-7-201(4). Written policy and procedure shall exist to assure supervision is maintained so that both visual contact and verbal communication between juvenile detainees and adult inmates is prohibited.

(4) The juvenile holding rooms and the building in which they are located shall conform to all applicable:

(a) zoning laws;

(b) local and state safety, fire, and building codes;

(c) local and state health codes.

(5) All two hour holding room areas provide for, at a minimum:

(a) access to a toilet and wash basin;

(b) adequate shelter, heat, light, and ventilation that does not compromise security or enable escape;

(c) access to a drinking fountain;

(d) adequate utilitarian furnishings, including suitable chairs or benches.

(6) Whenever juveniles are detained, there shall be at a minimum:

(a) Removal of all property from the juvenile that could compromise the juvenile's safety, such as belts, shoelaces, and suspenders, prior to placing a juvenile in a holding room;

(b) constant on-site supervision, through visual monitoring and audio two way communication, Subsection 62A-7-201(4);

(c) a P.O.S.T. certified or qualified staff must be available to intervene within 60 seconds should a problem or medical emergency arise with a juvenile;

(d) frequent personal checks must occur with the juvenile to maintain communication and prevent panic and feelings of isolation;

(e) a written record of significant incidents and activities of the juvenile.

(7) A staff member of the same sex shall supervise the personal hygiene activities and care such as toilet related activities.

(8) When procedures require physical contact or examination, such as strip searches, these shall be done by a staff member of the same sex in private without TV monitoring. Body cavity searches shall be performed only when there is probable cause to believe that weapons or contraband will be found. With the exception of the mouth, all body cavity searches performed visually will be done by two personnel of the same sex as the youth. Manually performed body cavity searches will be performed by medically trained personnel, at least one of which will be the same sex as the youth being examined.

(9) There shall be no viewing devices, such as peep holes or mirrors, of which the juvenile is not aware.

(10) No detainee, juvenile or adult, shall be allowed to have authority or disciplinary control over, be permitted to supervise, or provide services of any nature to other detained juveniles.

(11) The juvenile's health and safety while in the holding room shall be safeguarded by following standard elements on medical and health service. In order to assure this, the holding room administration shall:

(a) have services available to provide 24 hours a day emergency medical care;

(b) provide for immediate examination and treatment, if necessary, of juveniles injured on the holding room premises;

(c) not accept juveniles who are unconscious, obviously seriously injured, a suicide risk, obviously emotionally disturbed, or obviously under the influence of alcohol or drugs and are unable to care for themselves, until they have been examined by a qualified medical practitioner or have been taken to a medical facility for appropriate diagnosis and treatment and released back to the holding room;

(d) train all holding room staff members to recognize symptoms of mental illness or retardation;

(e) require that any medical services provided while the juvenile is held be recorded.

(12) As long as classification standards are met, juveniles may be detained together if age, compatibility, dangerousness, and other relevant factors are considered. Juveniles of opposite genders may not be detained together.

(13) There must be written procedures in holding rooms governing the acceptance of juveniles, which include the following:

(a) When an officer or other person takes a juvenile into custody, they shall without unnecessary delay notify the parents, guardian, or custodian.

(b) The holding room staff shall verify with the officer or other person taking the juvenile into custody that the juvenile's parents, guardian, or custodian have been notified of the juvenile's detention. If notification did not occur, agency staff will contact the juvenile's parents, guardian, or custodian.

(14) There must be written policy and procedure that require that the decision to detain the juvenile for up to two hours or release the juvenile be in accordance with the following principles: Sections 78-3a-113, 78-3a-114, and 62A-7-205

(a) A juvenile shall not be detained any longer than is reasonably necessary to obtain their name, age, residence and any other necessary information, and to contact the juvenile's parents, guardian, or custodian.

(b) The juvenile shall then be released to the care of the parent or other responsible adult unless the immediate welfare or the protection of the community requires that the juvenile be detained or that it is unsafe for the juvenile or the public to leave the juvenile in the care of the parents, guardian or custodian. If after interrogation it is found that the juvenile

should be detained, transfer to an appropriate juvenile facility shall occur without unnecessary delay.

(c) A release record must be maintained which includes:

(i) information regarding physical and emotional condition of juvenile;

(ii) relationship of adult assuming release responsibility to juvenile;

(iii) means of proof of adult identification;

(iv) signature of said adult assuming responsibility regarding juvenile's physical and emotional condition and understanding of reason for holding the juvenile in custody.

(15) An admission or referral form must be completed on each juvenile detained which includes, as a minimum, the following information:

(a) date and time of admission and release;

(b) name, nicknames, and aliases;

(c) last known address;

(d) law enforcement jurisdiction, name, and title, of delivering officer;

(e) specific charges;

(f) sex;

(g) date of birth and place of birth;

(h) race or nationality;

(i) medical problems, if any;

(j) parents, guardian, or responsible person to notify in case of emergency, including addresses and telephone numbers;

(k) space for remarks, to include notation of any open wounds or sores requiring treatment, evidence of disease or body vermin, or tattoos;

(l) probation officer or caseworker assigned, if any.

(16) The written procedures governing the stay of a juvenile shall include:

(a) A juvenile, while held in a certified holding room, shall have the same legal and civil rights as an adult detainee.

(b) A juvenile, while held in a certified holding room, shall have the right to the same number of telephone calls as an adult detainee held the same amount of time.

(17) A case record shall be maintained on each juvenile and shall be kept in a secure place. It shall contain, as a minimum, the following information and documents:

(a) initial intake information form;

(b) documented legal authority to accept, detain, and release youth;

(c) record of incident reports;

(d) a record of cash and valuables held;

(e) visitors' names, if any, personal and professional, and dates of visits;

(f) final release or transfer report.

(18) The holding room facility director shall submit to the state Division of Juvenile Justice Services a monthly accurate report of the numbers of juveniles confined during the preceding month and provide information on each juvenile in the categories indicated on the report form as provided by the state.

(19) Written policy and procedure provide that when a juvenile is in need of hospitalization, a staff member accompanies and stays with the juvenile until admission, if permitted by medical personnel, or until an adult family member or legal guardian arrives to remain with the juvenile.

(20) All informed consent standards in the jurisdiction are observed and documented for medical care. The informed consent of parent, guardian, or legal custodian applies when required by law. When health care is rendered against the patient's will, it is ordered by a standing magistrate or deemed an emergency as defined by Section 26A-1.

(21) Written policy and procedure provide that juveniles are not subjected to corporal or unusual punishment, humiliation, or mental abuse.

(22) Written policy and procedure restrict the use of restraints or physical force to instances of justifiable self-defense, protection of juveniles and others, protection of property and prevention of escapes, and only when it is necessary to control juveniles and in accordance with the principle of least restrictive action. In no event is physical force justifiable as punishment. A written report is prepared following all uses of force and is submitted to the facility administrator.

(23) At intake, each juvenile detained is informed of the steps in the detention process.

(24) Juvenile processing procedures shall include written safeguards to prohibit nonoffenders from being detained in the facility and to ensure youth are held in accordance with R547-7-2(1)(c)(d).

KEY: juvenile corrections, licensing
November 18, 2002 **62A-7-201**
Notice of Continuation May 31, 2002

R547. Human Services, Juvenile Justice Services.
R547-10. Ex-Offender Policy.
R547-10-1. Ex-Offender Policy.

The Division and its contracted providers shall not employ any ex-offender convicted of a felony or under the supervision of the criminal justice system, or any misdemeanor convictions for crimes against children under the age of 18. Potential employees with a documented history of drug or alcohol abuse, domestic violence, or sexual offense may also be excluded from employment with the Division.

KEY: ex-convicts, juvenile corrections
November 18, 2003 62A-7
Notice of Continuation October 29, 2002

R547. Human Services, Juvenile Justice Services.
R547-12. Division of Juvenile Justice Services Classification of Records.
R547-12-1. Division of Juvenile Justice Services Classification of Records.

(1) The following classification scheme applies to the youth records of the Division of Juvenile Justice Services:

(a) Medical, psychological, and psychiatric reports are classified as controlled information. Other records produced by the Division of Juvenile Justice Services or its contractors are controlled if the agency reasonably believes that releasing the information in the record would be detrimental to the subject's mental health or to the safety of any individual.

(b) Progress reports, quarterly reports, reports to the Court, Parole Board reports, and correspondence are classified as private information, as are all other records in the case file that originate with the Division.

(c) Police reports, juvenile court legal and social information, school reports, and all other documents generated by agencies other than Juvenile Justice Services shall retain the classification assigned to them by the agency from which they were received.

KEY: juvenile corrections
1992 62A-7
Notice of Continuation May 30, 2002 63-2

R547. Human Services, Juvenile Justice Services.
R547-13. Guidelines for Admission to Secure Youth Detention Facilities.
R547-13-1. Purpose, Authority and Scope.

(1) This rule establishes guidelines for admission to secure detention to meet the requirements of Sections 62A-7-104, 62A-7-205, 78-3a-113, and 78-3a-114.

(2) This rule shall be applied to youth candidates for placement in all secure detention facilities operated by the Division of Juvenile Justice Services.

R547-13-2. Definitions.

(1) Terms used in this rule are defined in Sections 62A-7-101 and 78-3a-103.

(2) "Holdable Offense List" is a list of criminal offenses for which a youth may be detained in a secure detention facility. See Section R547-13-14.

(3) "Non-status" offense means a delinquent act as defined in Subsection 62A-7-101(5).

(4) "Youth" means a person age 10 or over and under the age of 21.

R547-13-3. General Rules.

(1) A youth may be detained in a secure detention facility:

(a) if the alleged offense is on the Holdable Offense List, Section R547-13-14;

(b) if none of the offenses are on the Holdable Offense List but three or more non-status criminal offenses are currently alleged in a single criminal episode;

(c) if one or more of the following conditions exist:

(i) The youth is an escapee from a Juvenile Justice Services secure institution, or from a Juvenile Justice Services' observation and assessment unit.

(ii) The youth has been verified as a fugitive (absconder from probation or parole) or a runaway from another state and a formal request has been received (such as a TWX/National Crime Information Center (NCIC) or a telephone call/FAX from a law enforcement officer or a verified call/FAX from the institution) to hold pending return to the other jurisdiction, whether or not an offense is currently charged.

(d) If a youth is not detainable under any of the above criteria, but a non-status law violation has been alleged and one of the following documented conditions exist:

(i) The youth's record discloses two or more prior adjudicated offenses on the Holdable Offense List in which the offenses were found to be true in the past twelve months.

(ii) The youth, under continuing court jurisdiction (excluding those whose ONLY involvement is as a victim of abuse, neglect, abandonment, or dependency), has run from court-ordered placement, including his own home.

(iii) The youth has failed to appear at a court hearing within the past twelve months after receiving legal notice and officials have reason to believe that the youth is likely to abscond unless held.

(2) A youth not otherwise qualified for detention in a secure detention facility shall not be detained for any of the following:

(a) ungovernable or runaway behavior;

(b) neglect, abuse, abandonment, dependency, or other status requiring protection for any other reason;

(c) status offenses such as curfew, possession/consumption of alcohol, tobacco, minor-in-a-tavern, truancy;

(d) Attempted suicide.

(3) No youth under the age of ten years may be detained in a secure detention facility.

R547-13-4. Juvenile Justice Services' Cases.

A youth who is on parole or involved in a trial placement from a secure facility, and who is detained solely on a warrant from the Division of Juvenile Justice Services may be held in a secure detention facility up to 48 hours excluding weekends and legal holidays.

R547-13-5. DFS Cases.

A youth in the custody or under the supervision of the Division of Family Services (DFS) cannot be held in a secure detention facility unless he qualifies for detention under some section of this rule.

R547-13-6. Traffic Cases.

A youth brought to detention for traffic violation(s) cannot be held in a secure detention facility unless he qualifies for detention under some section of this rule.

R547-13-7. Transient Cases.

(1) Intrastate:

(a) A youth may be admitted to a secure detention facility when a court pickup order for detention has been issued.

(b) A youth may be admitted to a secure detention facility only if he is detainable under some section of this rule.

(2) Interstate:

(a) Youth who are escapees, absconders, and runaways shall be detained in accordance with the provisions of Subsection R547-13-3(1)(c).

(b) Youth who are out-of-state runaways who commit any non-status criminal offense(s) may be admitted to a secure detention facility.

(c) Non-runaways, when brought to a secure detention facility with an alleged criminal offense, may be detained or released based on the same criteria which applies to resident youth.

R547-13-8. Immigration Cases.

(1) A youth shall be detained at a secure detention facility when admission is requested by Immigration and Naturalization Services (INS) officials.

(2) An unaccompanied, undocumented youth with an alleged criminal offense may be detained at a secure detention facility when admission is requested by any other law enforcement officer.

(3) Any unaccompanied, undocumented youth having no alleged criminal offense shall be referred to Youth Services when admission to a secure detention facility is requested by a law enforcement officer.

R547-13-9. AWOL Military Personnel.

Absent without leave (AWOL) military personnel shall be admitted to a secure detention facility.

R547-13-10. Home Detention Cases.

(1) If a home detention violation is alleged, the home detention counselor may cause the alleged violator to be brought to a secure detention facility. If the case involves a violator who is a runaway where a pickup order (Warrant for Custody) has not yet been issued, a law enforcement officer may bring the violator to a secure detention facility. The home detention counselor may then transfer the minor back to the status of home detention, if appropriate, or may authorize the youth to be held in secure detention for a re-hearing.

(2) A youth placed on home detention who is arrested by a law enforcement officer for an alleged criminal code violation(s) shall be admitted to a secure detention facility.

R547-13-11. Juvenile Court Warrants for Custody or Pickup Orders.

A youth shall be admitted to a secure detention facility when a juvenile court judge or commissioner has issued a warrant for custody.

R547-13-12. Probation Violation - Contempt of Court - Stayed Order for Detention.

A youth may be admitted to a secure detention facility for conditions such as: an alleged probation violation, contempt of court, or a stayed order for detention when it has been ordered by a judge. When it is not possible to get a written order, verbal authorization from a judge to detention is sufficient to hold a youth in a secure detention facility.

R547-13-13. Other Court Orders for Detention.

A youth brought to a secure detention facility pursuant to either federal or out-of-state court orders shall be admitted unless otherwise directed by a juvenile court judge.

R547-13-14. Holdable Offense List.

A youth charged with any of the following offenses, in accordance with Section R547-13-3, is eligible for placement in a secure detention facility.

(1) Absent Without Official Leave, Federal
(2) Aggravated Arson
(3) Aggravated Assault
(4) Aggravated Burglary (Armed with Weapon)
(5) Aggravated Burglary (Weapon/Injury)
(6) Aggravated Kidnapping
(7) Aggravated Murder
(8) Aggravated Robbery, First Degree Felony
(9) Aggravated Sexual Abuse, Victim Under 14
(10) Aggravated Sexual Assault
(11) Aiding in an Escape, Use of Deadly Weapon
(12) Arson, $1,000 to $5,000
(13) Arson, Value Exceeds $5,000
(14) Assault by a Prisoner
(15) Assault on a Police Officer
(16) Attempted Capital Felony
(17) Attempted First Degree Felony, Person
(18) Attempted Second Degree Felony, Person
(19) Attempted Third Degree Felony, Person
(20) Automobile Homicide in Criminally Negligent Manner
(21) Automobile Homicide in Negligent Manner
(22) Bombing, Person Injured
(23) Burglary, Dwelling, Second Degree Felony
(24) Burglary, Non-Dwelling, Third Degree
(25) Burglary, Research Facility, Second Degree Felony
(26) Car Theft, Second Degree Felony
(27) Carrying a Concealed Weapon
(28) Carrying a Loaded Weapon in a Vehicle or on a Street
(29) Catastrophe, Knowingly Causing, Injury to Person
(30) Conspiracy to Commit Capital Felony
(31) Conspiracy to Commit First Degree Felony
(32) Conspiracy to Commit Second Degree Felony
(33) Conspiracy to Commit Third Degree Felony
(34) Criminal Solicitation of Capital Felony
(35) Criminal Solicitation of First Degree Felony, Person
(36) Criminal Solicitation of Second Degree Felony, Person
(37) Criminal Solicitation of Third Degree Felony, Person
(38) Destruction of Property ($1,000 or More) / Criminal Mischief
(39) Destruction of Property (Life Endangering) / Criminal Mischief
(40) Distribute a Controlled/Counterfeit Substance (Class A)
(41) Distribute a Controlled/Counterfeit Substance (Felony First)
(42) Distribute a Controlled/Counterfeit Substance (Felony Second)
(43) Distribute a Controlled/Counterfeit Substance (Felony Third)
(44) Distribute Marijuana (No Prior Convictions)
(45) Distribute Marijuana (Second Conviction or First Conviction/Drug Free Zone)
(46) Distribute Marijuana, Drug Free Zone
(47) Distribution of Controlled/Counterfeit Substance (First Degree Against Public)
(48) Distribution of Controlled/Counterfeit Substance (Second Degree Against Public)
(49) Distribution of Controlled/Counterfeit Substance (Third Degree Against Public)
(50) Domestic Violence
(51) Effect Distribution of Marijuana in Drug Free Zone
(52) Effect Distribution of Marijuana (Second Conviction or First Conviction/Drug Free Zone)
(53) Effect Distribution of Marijuana (No Prior Convictions)
(54) Escape from Custody, Use of Force or Deadly Weapon
(55) Exhibiting a Dangerous Weapon
(56) Extortion, $101-$250, Persons
(57) Extortion, $251-$1,000, Person
(58) Extortion, over $1,000, Person
(59) Fleeing, Bodily Injury
(60) Fleeing, Felony, Excess Speed
(61) Fleeing, Felony, Property Damage
(62) Forcible Sexual Abuse, Victim 14 Years or Over
(63) Forcible Sexual Abuse, Indecent Liberties, Victim 14 Years or Over
(64) Forcible Sodomy, Victim 14 or Over
(65) Illegal Alien Status
(66) Incest
(67) Interstate Flight, Federal
(68) Kidnapping
(69) Kidnapping, Under Age 14
(70) Manslaughter
(71) Mayhem
(72) Motor Bike Theft, Second Degree Felony
(73) Murder
(74) Object Rape, Victim 14 or Over
(75) Object Rape, Victim Under 14
(76) Obstructing Justice
(77) Offer Sex Acts for Hire, Prostitution
(78) Offer Sex Acts for Hire, Second Offense
(79) Pickup Order
(80) Possess Dangerous Material in a Drug Free Zone
(81) Possession Controlled/Counterfeit Substance With Intent to Distribute
(82) Possession Controlled/Counterfeit Substance With Intent to Distribute (Second Conviction or First Conviction/Drug Free Zone)
(83) Possession Controlled/Counterfeit Substance With Intent to Distribute (No Prior Convictions)
(84) Possession Dangerous Weapon to Assault
(85) Possession of a Dangerous Weapon
(86) Possession of Marijuana With Intent to Distribute in Drug Free Zone
(87) Possession of Marijuana With Intent to Distribute (Second Conviction or First Conviction/Drug Free Zone)
(88) Possession of Marijuana With Intent to Distribute (No Prior Convictions)
(89) Possession of or Using a Dangerous Weapon in a Fight or Quarrel
(90) Possession of Stolen Vehicle
(91) Prohibition of Possession of Certain Weapons by Minors
(92) Providing a Handgun to a Minor
(93) Rape of Child Under 14
(94) Rape, Victim 14 or Over
(95) Receiving Stolen Property (Firearm)

(96) Reckless Burning, Life Endangering
(97) Riot Resulting in Injury or Loss
(98) Robbery, Federal
(99) Robbery, Second Degree Felony
(100) Sabotage
(101) Sales of Firearms to Juveniles
(102) Sexual Abuse, Indecent Liberties, Victim Under 14 Years
(103) Sexual Abuse, Victim Under 14 Years
(104) Shooting from a Vehicle or Near a Highway (Drive-by Shooting)
(105) Sodomy Upon Child, Victim Under 14
(106) Tampering With Witness
(107) Theft of a Firearm, Second Degree
(108) Theft Over $1,000, Second Degree Felony
(109) Threat to Life/Property, Prevent Occupancy, Third Degree Felony
(110) Unlawful Detention

KEY: juvenile corrections, juvenile detention

December 1, 1995	**62A-7-104(3)(a)**
Notice of Continuation June 4, 2002	**62A-7-205**
	78-3a-113
	78-3a-114

R547. Human Services, Juvenile Justice Services.
R547-14. Possession of Prohibited Items in Juvenile Detention Facilities.
R547-14-1. Definitions.

(1) "Juvenile detention facility" means a specific location that is operated directly or by contract by the Division of Juvenile Justice Services for delivery of services to youth, and in which:

(a) youth in the custody of the Division of Juvenile Justice Services are present; and

(b) public access is controlled.

(2) "Secure area" has the same meaning as provided in Section 76-8-311.1.

R547-14-2. Weapon Restrictions.

(1) No person, including a person licensed to carry a concealed firearm under Title 53, Chapter 5, Part 7, Concealed Weapons, shall be permitted to enter a secure area of any juvenile detention facility with any items prohibited by UCA 76-8-311.1 or 76-8-311.3.

(2) The director or administrator of each juvenile detention facility shall:

(a) establish secure areas within the facility;

(b) prominently display the following notice at each entrance of a secure area:

"This is a secure area as defined in UCA 76-8-311.1. No person, including a person licensed to carry a concealed firearm under Title 53, Chapter 5, Part 7, Concealed Weapons, shall be permitted to enter if that person has possession of any firearm, ammunition, dangerous weapon, explosive, or controlled substance. Violation of this prohibition is a third degree felony and violators are subject to prosecution. Firearms may be placed in secure weapons storage as provided by the facility."; and

(c) provide secure weapon storage at each entrance to a secure area facility.

KEY: prohibited items, prohibited devices, firearms, weapons
April 30, 2002

76-8-311.1
76-8-311.3
76-10-523.5
53-5-710

R590. Insurance, Administration.
R590-160. Administrative Proceedings.
R590-160-1. Authority.

This rule is promulgated by the Insurance Commissioner under the general authority granted under Subsection 31A-2-201(3)(a), and, Subsection 63-46b-1(6), Subsection 63-46b-5(1) and other applicable sections of Chapter 46b of Title 63 providing for rules governing adjudicative proceedings.

R590-160-2. Purpose and Scope.

This rule establishes rules governing the designation and conduct of adjudicative proceedings before the insurance commissioner or his designee. Public hearings under Section 63-46a-5 are not covered by this rule.

R590-160-3. Definitions.

(1) "Complainant" is the Utah Insurance Department in all actions against a licensee or other person who has been alleged to have committed any act or omission in violation of the Utah Insurance Code or Rules, or order of the commissioner.

(2) "Intervenor" means a person permitted to intervene in a proceeding before the commissioner.

(3) "Petitioner" is a person seeking agency action.

(4) "Person" is defined in Subsection 31A-1-301.

(5) "Respondent" means a person against whom an order or a proceeding is directed.

(6) "Staff" means the Insurance Department staff. The staff shall have the same rights as a party to the proceedings.

(7) "Presiding Officer" means the person designated by the commissioner to decide adjudicative proceedings before the commissioner, either generally or for a specific adjudicative proceeding.

(8) "Department Representative" means the person who will represent the interests of the Utah Insurance Department in any administrative action before the commissioner.

(9) "Existing Disability" means any suspension, revocation or limitation of a license or certificate of authority or any limitation on a right to apply to the department for a license or certificate of authority.

R590-160-4. Designations of Proceedings.

(1) All actions pursuant to initial determinations upon applications for a license or a certificate of authority, or any petition to remove an existing disability, or an order disapproving a rate or prohibiting the use of a form, are designated as informal adjudicative proceedings.

(2) A proceeding may be commenced as an informal proceeding by the department when it appears to the department that no disputed issues may exist or in matters of technical or minor violation of the code or rules.

(3) Any proceeding may be converted from a formal proceeding to an informal proceeding or from an informal proceeding to a formal proceeding upon motion of a party or sua sponte by the presiding officer, subject to the provisions of Subsection 63-46b-4(3).

R590-160-5. Rules Applicable to All Proceedings.

(1) Liberal Construction. These rules shall be liberally construed to secure just, speedy and economical determination of all issues presented to the commissioner.

(2) Deviation from Rules. The commissioner or presiding officer may permit a deviation from these rules insofar as he may find compliance to be impracticable or unnecessary or for other good cause.

(3) Computation of Time. The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last unless the last day is Saturday, Sunday or a legal holiday, and then it is excluded and the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(4) Parties.

(a) Parties to a proceeding before the commissioner may be:

(i) Any person, including the Insurance Department, who has a statutory right to be a party or any person who has a legally protected interest or right in the subject matter that may be affected by the proceeding.

(ii) Any person may become an intervening party when he has established to the satisfaction of the commissioner or presiding officer that he has a substantial interest in the subject matter of the proceeding and that intervention will be relevant and material to the issues before the commissioner;

(iii) The Insurance Department staff;

(iv) Other persons permitted by the commissioner or presiding officer to enter an appearance.

(b) Classification. Participants in a proceeding shall be styled "applicants", "petitioners", "complainants", "respondents", or "intervenors", according to the nature of the proceeding and the relation of the parties thereto.

(5) Appearances and Representation.

(a) Making an Appearance. A party enters his appearance by filing an initial request for agency action or an initial response to a notice of agency action at the beginning of the proceeding, giving his name, address, telephone number, and stating his position or interest in the proceeding.

(b) Representation of Parties. An attorney who is an active member of the Utah State Bar may represent any party. An individual who is a party to a proceeding may represent himself or herself. An officer duly authorized by corporate resolution may represent a corporation. A general partner may represent a partnership.

(c) An attorney or other authorized representative authorized in Subsection R590-160-6(5)(b) above, if previous appearance has not been entered, shall file a Notice of Appearance with the commissioner or presiding officer no later than five days before any hearing at which he shall appear.

(d) Insurance Department Staff. Members of the Insurance Department staff may appear either in support of or in opposition to any cause, or solely to discover and present facts pertinent to the issue.

(6) Pleadings.

(a) Pleadings Enumerated. Pleadings before the commissioner shall consist of petitions, complaints, responsive pleadings, motions, stipulations, affidavits, memoranda, orders, or other notices used by the commissioner in initiating a proceeding.

(b) Proceeding Number. Upon the filing of a pleading initiating a proceeding, the commissioner shall assign a number to the proceeding.

(c) Title. Pleadings before the commissioner shall be titled in substantially the following form:

(i) Centered, heading: BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF UTAH;

(ii) Left margin, identification of parties: (COMPLAINANT:, RESPONDENT:, PETITIONER:, etc.);

(iii) Right margin, identification of type of action: (NOTICE OF HEARING, ORDER TO SHOW CAUSE, etc.);

(iv) Right margin, proceeding number.

(d) Size and Content of Pleadings. Pleadings shall be typewritten, double-spaced on white 8-1/2 x 11-inch paper. They must identify the proceedings by title and proceeding number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate request for relief when relief is sought.

(e) Amendments to Pleadings. The presiding officer may allow pleadings to be amended or corrected. Amendments to pleadings shall be allowed in accordance with the Utah Rules of Civil Procedure.

(f) Signing of Pleadings. Pleadings shall be signed and dated by the party or by the party's attorney or other authorized representative and shall show the signer's address and telephone number. The signature shall be deemed to be a certificate by the signer that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there are good grounds in support of it.

(g) Petitions. All pleadings praying for affirmative relief (other than applications, complaints, notices of adjudicative proceedings, or responsive pleadings), including requests to intervene and requests for rehearing shall be styled "petitions."

(h) Motions.

(i) No proceeding before the commissioner may be initiated by a motion.

(ii) Motions, other than at a hearing, shall be in writing and submitted for ruling on either written or oral argument. The filing of affidavits in support of the motions or in opposition thereto may be permitted by the presiding officer. Oral motions may be allowed at a hearing at the discretion of the presiding officer.

(iii) Any motion directed toward a hearing shall be filed ten days prior to the date set for the hearing.

(7) Filing and Service.

(a) A document shall be deemed filed on the date it is delivered to and stamped received by the department.

(b) An original and one copy of any pleading shall be filed with the department and a copy served upon all other parties to the proceeding. The presiding officer may direct that a copy of all pleadings and other papers be made available by the party filing the same to any person requesting copies thereof who the presiding officer determines may be affected by the proceedings.

(c) Service may be made upon any party or other person by ordinary mail, by certified mail with return receipt requested, in accordance with the Utah Rules of Civil Procedure, or by any person specifically designated by the commissioner. Service upon licensees, if by mail, shall be to the business address or other address on file with the department.

(d) There shall appear on all documents required to be served a Certificate of Service or Certificate of Mailing in substantially the following form: I do hereby certify that on (date), I (served or mailed by regular mail or certified mail return receipt requested, postage prepaid) (the original/a true and correct copy) of the foregoing (document title) to (name and address), (signed).

(e) When any party has appeared by attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party.

(8) Presiding Officers - Disqualification for Bias.

(a) Any party to a proceeding may move for the disqualification of an assigned presiding officer by filing with the commissioner an Affidavit of Bias alleging facts sufficient to support disqualification.

(b) The commissioner shall determine the issue of disqualification as a part of the record of the case, and may request and receive any additional evidence or testimony as deemed necessary to make this determination. The hearing will not proceed until the commissioner makes this determination. No appeal shall be taken from the commissioner's Order on the determination of disqualification for bias except as part of an appeal of a final agency action.

(i) If the commissioner finds that a motion for disqualification was filed without a reasonable basis or good faith belief in the facts asserted, the commissioner may order that the offending party be subject to the appropriate sanctions as are authorized to be imposed by statute or these rules.

(ii) When a presiding officer is disqualified or it becomes impractical for the presiding officer to continue, the commissioner shall appoint another presiding officer.

(c) A presiding officer may at any time voluntarily disqualify himself or herself.

(9) Ex Parte Contacts Prohibited. Except as to matters that by law are subject to disposition on an ex parte basis, the commissioner and the presiding officer involved in a hearing shall not have ex parte contact with persons and parties, including staff members of the department appearing as parties to a proceeding, directly or indirectly involved in any matter that is the subject of a pending administrative proceeding unless all parties are given notice and an opportunity to participate.

(10) Standard of Proof. All issues of fact in administrative proceedings before the commissioner shall be decided upon the basis of a preponderance of the evidence standard.

R590-160-6. Rules Applicable to Formal Proceedings.

Hearings.

(1) Conduct of Hearing. All hearings shall be conducted pursuant to the provisions of Section 63-46b-8.

(2) Continuance. If application is made to the presiding officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties, the presiding officer may grant a motion for continuance or other change in the time and place of hearing, upon good cause shown. The presiding officer may also, for good cause, continue a hearing in process if such continuance will not substantially prejudice the rights of any party.

(3) Public Hearings. Unless ordered by the presiding officer for good cause, all hearings shall be open to the public.

(4) Telephonic Testimony. The presiding officer may, when the identity of a witness can be established with reasonable assurance, take testimony telephonically. Telephonic testimony shall be taken under conditions that permit all parties to hear the testimony and examine or cross-examine the witness. It shall be within the discretion of the presiding officer as to whether or not telephonic testimony shall be allowed.

(5) Record of Hearing.

(a) Transcript of Hearing. Upon two days' notice, any party may request that, at his own expense, a certified shorthand reporter be used to record the proceedings. If such a transcript is made, the original transcript of the proceeding shall be filed with the commissioner at no cost to the commissioner. Parties wanting a copy of the certified shorthand reporter's transcript may purchase it from the reporter at the parties' own expense.

(b) Recording Device. Unless otherwise ordered, the record of the proceedings shall be made by means of a tape recorder or other recording device. A duplicate copy of the tape, or other recording, will be provided by the commissioner at the request and expense of any party, providing that a copy of any transcription of any portion of the record is given at no cost to the commissioner within ten days of transcription.

(6) Subpoenas and Fees.

(a) Subpoenas. The commissioner or the presiding officer may issue subpoenas on his own motion or at the request of any party for the production of evidence or the attendance of any person in a formal adjudicative proceeding. Any subpoena so issued shall be served in accordance with the Utah Rules of Civil Procedure or by a person designated by the commissioner.

(b) Witness Fees. Each witness who appears before the commissioner or the presiding officer shall be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, to be paid by the party at whose request the witness is subpoenaed. Witnesses appearing at the request of the commissioner shall be entitled to payment from the funds appropriated for the use of the Insurance Department. Any witness subpoenaed at the request of a party other than the commissioner may, at the time of service of the subpoena,

demand one day's witness fee and mileage in advance and unless such fee is tendered, that witness shall not be required to appear.

(7) Discovery and Depositions. Discovery and motions thereupon shall be in accordance with the Utah Rules of Civil Procedure.

(8) At the close of the formal hearing, the presiding officer shall issue an order based upon evidence presented in the hearing. The order shall be final on the date the order is issued unless otherwise provided in the order.

R590-160-7. Rules Applicable to Informal Proceedings.

(1) An informal proceeding may be commenced by the department by issuing a Notice of Informal Proceeding and Order in cases when it appears to the department that there are no disputed issues exist or in matters of technical or minor violation of the code. The Order shall be based upon the information contained in the files of the department, or known to the commissioner, and shall constitute a "proposed order" that shall become final 15 days after delivery or mailing to the respondent unless a written request for a hearing is received in the offices of the department prior to the expiration of 15 days.

(2) Failure to request a hearing in an informal adjudicative proceeding will be considered a failure to exhaust administrative remedies.

(3) When a hearing is requested in an informal adjudicative proceeding, including a request for a hearing upon the denial of an application for a license or certificate of authority, or a petition to remove an existing disability, or an order disapproving a rate or prohibiting the use of a form, a Notice of Hearing shall be issued stating the matters to be decided and giving notice of the date, time and place of an informal hearing to be held.

(4) An informal hearing shall not be of record. At an informal hearing, the presiding officer may receive testimony, proffers of evidence, affidavits and arguments relating to the issues to be decided and may issue subpoenas requiring the attendance of witnesses or the production of necessary evidence.

(5) At the close of the informal hearing, the presiding officer shall issue an order based upon evidence in the department files and the evidence or proffers of evidence received at the informal hearing. The order shall be final on the date the order is issued unless otherwise provided in the order.

R590-160-8. Agency Review.

(1) Agency review of an administrative proceeding, except an informal proceeding that becomes final without a request for a hearing pursuant to subsection 7(2), shall be available to any party to such administrative proceeding by filing a petition for review with the commissioner within 30 days of the date the order is issued in that proceeding. Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(2) Petitions for Review shall be filed in accordance with Section 63-46b-12.

(3) Review shall be conducted by the commissioner or a person or persons he may designate, including members of department staff. If the review is conducted by other than the commissioner, the persons conducting the review shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order.

(4) Content of a Request for Agency Review.

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

(b)(i) A party requesting agency review shall set forth any factual or legal basis in support of that request; and

(ii) may include supporting arguments and citation to appropriate legal authority and:

(A) to the relevant portions of the record developed during the adjudicative proceeding if the administrative proceeding being reviewed is a formal proceeding; or

(B) to the relevant portions of the department's files if the administrative proceeding being reviewed is an informal proceeding.

(c) If a party challenges a finding of fact in the order subject to review, the party must demonstrate:

(i) based on the entire record, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is a formal proceeding; or

(ii) based on the department's files, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is an informal proceeding.

(d) A party challenging a legal conclusion must support its argument with citation to any relevant authority and also:

(i) cite to those portions of the record which are relevant to that issue if the administrative proceeding being reviewed is a formal proceeding; or

(ii) cite to those parts of the department's files which are relevant to that issue if the administrative proceeding being reviewed is an informal proceeding.

(e)(i) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall:

(A) order and cause a transcript of the record relevant to such finding or conclusion to be prepared if the administrative proceeding being reviewed is a formal proceeding. R590-160-6.(5)(b) shall govern as to acquisition of hearing tapes for preparation of such transcript; or

(B) reference in its request for agency review that no transcript or hearing tapes are available if the administrative proceeding being reviewed is an informal proceeding.

(ii) When a request for agency review is filed under the circumstances set forth under R590-160-8(4)(e)(i)(A), the party seeking review shall certify that a transcript has been ordered and shall notify the commissioner when the transcript will be available for filing with the department.

(iii) The party seeking agency review shall bear the cost of the transcript.

(iv) The commissioner may waive the requirement of preparation of a written transcript and permit citation to the electronic tape recording of such administrative proceeding upon appropriate motion and a showing of reasonableness where such citation would not be extensive and the costs and period of time in preparation of a written transcript would be unduly burdensome in relation thereto.

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

(5) Request of Stay.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review.

(b) The department may oppose the request for a stay in writing within 10 days from the date the stay is requested.

(c) In determining whether to grant a request for a stay, the commissioner shall review the request and any opposing memorandum, and the findings of fact, conclusions of law and order and determine whether a stay is in the best interest of the public. If the commissioner determines it is in the best interest of the public to issue a stay, the commissioner may:

(i) issue a stay, staying all or any part of the order pending agency review, or

(ii) issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(d) The commissioner may also enter an interim order granting a stay pending a final decision on the request for a stay.

(6) Memoranda.

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

(b)(i) When no transcript is available or if available has been deemed unnecessary and waived by the commissioner in accordance with R590-160-8(4)(e)(iv) to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request.

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

(c) Any response in opposition to a request for agency review and any memoranda supporting that response:

(i) shall be filed no later than 15 days from the filing of the request for agency review when no transcript is available or necessary to conduct agency review; or

(ii) shall be filed no later than 15 days from the filing of any subsequent memoranda supporting the request for agency review if a transcript is necessary to conduct agency review.

(d) Any final reply memoranda in support of the request for agency review shall be filed no later than 5 days after the filing of a response to the request for agency review and any memoranda supporting that response.

(7) Oral Argument.

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

(8) Standard of Review.

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

(9) Order on Review.

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

(b) An Order on Review may affirm, reverse or amend, in whole or in part, the previous order, or remand for further proceedings or hearing.

R590-160-9. Sanctions.

In the course of any proceeding the commissioner or presiding officer may, by order, impose sanctions upon any party, parties, or their counsel for contemptuous conduct in the hearing or for failure to comply with any lawful order of the presiding officer or the commissioner. Sanctions may include deferral or acceleration of proceedings, exclusion of persons who cause disturbance of the proceeding, or imposition of special conditions upon further participation, including levy and payment of any forfeiture, special costs or expenses incurred by the commissioner or by a party as a result of noncompliance with lawful orders that were necessary to effective conduct of a proceeding. In case of persistent and intentional disregard of or noncompliance with rulings or orders, sanctions may include resolution of designated issues against the position asserted by the offending party where the contemptuous conduct or noncompliance is found to have interfered with effective development of evidence bearing on those issues. If the conduct is by a representative of a party, sanctions may include the exclusion of that representative from matters before the commissioner.

R590-160-10. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule from the effective date of the rule

R590-160-11. Severability.

If any provision of this rule or the application thereof to any person or situation is held invalid, the remainder of the rule and the application of each provision to other persons or circumstances may not be affected thereby.

KEY: insurance

January 9, 2003	**31A-2-201**
Notice of Continuation November 25, 2003	**63-46b-1**
	63-46b-5

R590. Insurance, Administration.
R590-230. Senior Protection in Annuity Transactions.
R590-230-1. Authority.

This rule is promulgated pursuant to Section 31A-22-425 wherein the commissioner is to make rules to establish standards for recommendations and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

R590-230-2. Purpose.

(1) The purpose of this rule is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule.

R590-230-3. Scope.

(1) This rule shall apply to any recommendation to purchase or exchange an annuity made to a senior consumer by an insurance producer, or an insurer where no producer is involved, that results in the recommended purchase or exchange.

(2) Unless otherwise specifically included, this rule shall not apply to recommendations involving:

(a) direct response solicitations where there is no recommendation based on information collected from the senior consumer pursuant to this rule; and

(b) contracts used to fund:

(i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) a plan described by Internal Revenue Code (IRC) Sections 401(a), 401(k), 403(b), 408(k) or 408(p), as amended, if established or maintained by an employer;

(iii) a government or church plan defined in IRC Section 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under IRC Section 457;

(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) formal prepaid funeral contracts.

R590-230-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Annuity" means:

(a) an annuity as defined in Section 31A-1-301; and

(b) a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

(2) "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual senior consumer that results in a purchase or exchange of an annuity in accordance with that advice.

(3) "Senior consumer" means a person 65 years of age or older. In the event of a joint purchase by more than one party, the purchaser will be considered to be a senior consumer if any of the parties is age 65 or older.

R590-230-5. Duties of Insurers and of Insurance Producers.

(1) In recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

(2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

(a) the senior consumer's financial status;

(b) the senior consumer's tax status;

(c) the senior consumer's investment objectives; and

(d) such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the senior consumer.

(3)(a) Except as provided under Subsection (3)(b), neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a senior consumer under Subsection (1) related to any recommendation if a consumer:

(i) refuses to provide relevant information requested by the insurer or insurance producer;

(ii) decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

(iii) fails to provide complete or accurate information.

(b) An insurer or insurance producer's recommendation subject to Subsection (3)(a) shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

(4)(a) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this rule is established and maintained by complying with Subsections (4)(c) to (4)(e) or shall establish and maintain such a system, including:

(i) maintaining written procedures; and

(ii) conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this rule.

(b) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this rule, or shall establish and maintain such a system, including:

(i) maintaining written procedures; and

(ii) conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this rule.

(c) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Subsection (4)(a) with respect to insurance producers under contract with or employed by the third party.

(d) An insurer shall make reasonable inquiry to assure that the third party contracting under Subsection (4)(c) is performing the functions required under Subsection (4)(a) and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

(i) the insurer annually obtains from a third party's senior manager, who has responsibility for the delegated functions, a certification that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

(ii) the insurer, based on reasonable selection criteria, periodically selects third parties contracting under Subsection (4)(c) for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable

under the circumstances.

(e) An insurer that contracts with a third party pursuant to Subsection (4)(c) and that complies with the requirements to supervise in Subsection (4)(d) of this subsection shall have fulfilled its responsibilities under Subsection (1).

(f) An insurer, general agent or independent agency is not required by Subsection (4)(a) or (4)(b) to:

(i) review, or provide for review of all insurance producer solicited transactions; or

(ii) include in its system of supervision an insurance producer's recommendations to senior consumers of products other than the annuities offered by the insurer, general agent or independent agency.

(g) A general agent or independent agency contracting with an insurer pursuant to Subsection (4)(c), shall promptly, when requested by the insurer pursuant to Subsection (4)(d), give a certification as described in Subsection (4)(d) or give a clear statement that the third party is unable to meet the certification criteria.

(h) No person may provide a certification under Subsection (4)(d)(i) unless:

(i) the person is a senior manager with responsibility for the delegated functions; and

(ii) the person has a reasonable basis for making the certification.

(5) Compliance with the National Association of Securities Dealers (NASD) Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the commissioner's ability to enforce the provisions of this rule.

R590-230-6. Mitigation of Responsibility.

(1) The commissioner may order:

(a) an insurer to take reasonably appropriate corrective action for any senior consumer harmed by the insurer's, or by its insurance producer's, violation of this rule;

(b) an insurance producer to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this rule; and

(c) a general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to senior consumers, to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this rule.

(2) Any applicable penalty under 31A-2-308 for a violation of Subsection R590-230-5.(1), (2), or (3)(b) may be reduced or eliminated if corrective action for the senior consumer was taken promptly after a violation was discovered.

R590-230-7. Records.

Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions for the current calendar year plus three years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

R590-230-8. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule October 1, 2004.

R590-230-9. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected by it.

KEY: insurance, senior protection, annuities
June 3, 2004 **31A-2-201**
31A-22-425

R610. Labor Commission, Antidiscrimination and Labor, Labor.
R610-4. Employment Agency Licensing.
R610-4-1. Authority.

This rule is being enacted under authority of Section 34A-1-104.

R610-4-2. Definitions.

A. "Applicant" means that person making application to the Division for a license.

B. "Commission" means The Labor Commission.

C. "Division" means the Division of Antidiscrimination and Labor within the Commission and the personnel within the Division.

D. " Division of Adjudication" means the Division of Adjudication within the Commission and the personnel within the Division.

E. "Employment Agency" means all persons, firms, corporations or associations who operate for the purpose of procuring or obtaining for money or other valuable consideration, either directly or indirectly, any work or employment for persons seeking the same, or to otherwise engage in such business, or in any way to act as a broker or go-between between employers and persons seeking work.

F. "Hearing" means that part of agency action specified in Section 63-46b-5.

G. "Job Applicant" means that person who requests the service of an employment agency in seeking employment, training, counseling, resume service, or related services.

H. "License" means a license issued by the Division, as provided in Section 34-29-21.

I. "Licensee" means a person who holds a valid license defined in R610-4-2.H. and issued by the Division.

J. "Local License" means a license to carry on the business of an employment agency issued by a local licensing agency as provided in Sections 34-29-1 through 5.

K. "Person" means any individual, company, society, firm, partnership, association, corporation, manager, contractor, subcontractor, or their agents or employees.

L. "Presiding Officer" includes those defined by Section 63-46b-2(1)(h)(I).

R610-4-3. Labor Commission License a Prerequisite to Local License.

A local license shall not be issued until that license prescribed by Section 34-29-21 has been secured by applicant.

R610-4-4. Application for License.

A written application for an employment agency license shall be filed with the Division and shall include:

A. The name and address of the applicant. The names and addresses of each partner from applicant partnerships, and the name and address of principal officer or director, of applicant corporations.

B. The full address of the place where the business of the employment agency is to be conducted.

C. The business or occupation engaged in by each applicant, partner, principal officer or director for at least two years immediately preceding the filing of the application.

D. The proposed name of the agency. The Division may reject any proposed name which is the same, or similar to, the public employment agency or to a presently licensed employment agency. The applicant which is to be an enfranchised member of an employment agency system may, however, include in its application the name of the system.

E. In addition, two affidavits shall be submitted as to the character of applicants by persons who are residents of the city or county in which the agency is to be conducted, and who have known applicant for at least one year. Affidavit shall be completed as to the individual or to the partners, if a partnership and if a corporation, as to the principal officer or director.

F. A photo copy of the bond filed with the city or county as specified in Section 34-29-4.

G. The applicant's completed financial statement.

H. Other information as the Division may require.

R610-4-5. Eligibility Requirements for License.

A. In the opinion of the Division applicant shall be:

1. Of good character, and

2. Able to show financial responsibility for proper conduct of business.

B. The applicant shall be at least 21 years of age.

R610-4-6. Required Documents.

The following documents shall be filed for approval, together with the application for license.

A. Fee schedules as provided in Section 34-29-10.

1. Subsequent fee schedule changes may be made as provided in Section 34-29-10.

B. Employer job order form in duplicate.

C. Job applicant's contract if different from job order form.

R610-4-7. Denial, Suspension or Revocation of License.

The Division may deny, suspend or revoke a license when:

A. The application or the required documents are not in proper form when submitted. Applicant may re-submit in proper form within 30 days after notice by the Division. If proper submission is not completed during this period, license shall be denied;

B. Any information provided as a part of the application process is false or misleading; or

C. An applicant's license has been revoked for cause within three years from the date of application.

R610-4-8. Period of License.

A license to operate an employment agency is valid only for the person and place named in the license and is effective from the date specified therein to and including the next following December 31, unless suspended or revoked.

R610-4-9. Renewal of License.

A. Annually, at least 45 days prior to the expiration date of the license, the Division shall mail to each currently licensed employment agency a license renewal application form and may require specific documents to be submitted with the renewal form.

B. Each employment agency or their agent shall submit the completed license renewal form along with any requested documents at least 30 days prior to the expiration date of their current license.

R610-4-10. Advertising.

A. No employment agency shall publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement.

B. Advertising shall be factual.

C. Positions listed in the "Help Wanted" columns of newspapers or other media shall refer to bona fide openings available at the time copy is given to these publications for insertion.

R610-4-11. Ethical Practice and Conduct.

Every licensee shall deal openly, fairly, and honestly in the conduct of the employment agency business and comply with the following standards:

A. Relations with employers.

1. A candidate's personal record, employment record, qualifications, and salary requirements shall be stated by the

agency to the employer as accurately and fully as possible.

2. Candidates shall be referred to the employer for interview only with the prior authorization of the employer through a bona fide job order, which may be given verbally.

3. Confidential information relating to the business policy of employers, which is imparted as an aid to the effective handling of their job requirements, shall be treated accordingly.

4. Letters, bulletins, and resumes concerning applicants that are presented to employers shall represent bona fide candidates.

B. Service charges and collections.

1. No fee charge shall exceed the maximum amount applicable, as listed on the fee schedule filed with the Division, at the time of job referral resulting from a bona fide job order.

2. No job applicant shall be held obligated for a fee until an offer and acceptance have been made between employer and job applicant as a result of the agency's efforts resulting from a bona fide job order.

3. Adjustments and refunds of fees shall be made promptly.

4. Account collection methods shall conform to ethical business standards.

R610-4-12. Bona Fide Job Order.

A bona fide order for employment may be considered to have been given by an employer to an employment agency under the following conditions:

A. If the employer or his agent, in person, by telephone, by telegram, or in writing, registered a request that the agency recruit, or gave permission to the agency to refer, applicants for employment who meet stated job specifications and furnishes information as required by Section 34-29-13:

1. The order is valid for the referral of any qualified applicant until it is filled or canceled by the employer and may serve as the basis for agency advertising. The agency shall contact the employer after a reasonable length of time to insure that the position is still vacant prior to any additional advertising.

B. A bona fide order for employment valid for one specific applicant only (and not valid for advertising) shall be considered to have been given if, as the result of the agency's bringing the qualifications of the job applicant to the attention of an employer, the employer's interest in exploring the possibility of employing the applicant is evidenced by one or more of the following facts:

1. The employer agrees to interview the job applicant.

2. The employer requests that the agency furnish him with the job applicant's resume or other written history data.

3. The employer initiates direct contact with the job applicant as a result of information furnished by the agency.

C. The employment agency shall identify itself to employers as an agency and in all cases where the employer is to pay the fee, the agency shall obtain the employer's agreement from the personnel manager or other agent.

R610-4-13. Commencement of Agency Action and Hearings.

A. A dispute involving fees, as denoted in Section 34-29-10(3), shall be filed with the Division of Adjudication in writing, which filing shall constitute a request for agency action.

B. For purposes of Section 63-46b-4(1), the agency action requested in R610-4-13.A. is designated as an informal adjudicative proceeding conducted subject to the provisions of Section 63-46b-5. However, any proceeding may be converted to a formal adjudicative proceeding pursuant to Section 63-46b-4(3).

C. The Division of Adjudication may investigate any complaint of alleged violation of Sections 34-29-1 et seq. or R610-4 against an employment agency to determine the merits of the complaint, and attempt to resolve the dispute.

D. If an informal hearing is held, the presiding officer shall hear both sides and accept all relevant evidence.

1. A signed Order by the presiding officer shall be issued pursuant to Section 63-46b-5.

2. After issuance of the presiding officer's Order, the only agency review from an informal adjudicative proceeding available to any party is a request for reconsideration as specified in Section 63-46b-13. Reconsideration shall be based on the contents of the file. No new evidence shall be accepted. The Commission, or Division Director if so designated by the Commission, shall be the reviewer for the purpose of reviewing all matters where a request for reconsideration was properly filed and shall do so pursuant to Section 63-46b-13(3).

3. Judicial review of the final agency action resulting from an informal adjudicative proceeding shall be by the district court pursuant to Section 63-46b-15.

E. Any proceeding converted to a formal adjudicative proceeding by the presiding officer shall be conducted pursuant to Section 63-46b-8.

1. A signed Order issued by the presiding officer shall be pursuant to Section 63-46b-10.

2. After issuance of the presiding officer's Order resulting from a formal adjudicative proceeding, any party may seek review of the Order by the Commission, pursuant to Section 63-46b-12.

3. Judicial review of the final agency action resulting from a formal adjudicative proceeding shall be pursuant to Section 63-46b-16.

R610-4-14. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing shall be allowed.

KEY: employment agencies, licensing

July 2, 1999	**34-23-101 et seq.**
Notice of Continuation June 11, 2004	**34-28-1 et seq.**
	34-40-101 et seq.
	63-46b-1 et seq.

R622. Lieutenant Governor, Administration.
R622-2. Use of the Great Seal of the State of Utah.
R622-2-1. Purpose.

(A) The Great Seal of the State of Utah is a symbol of the sovereignty of this state, and its use denotes authenticity of official state government functions and authority. The Great Seal is a single mounted engraved plate, comprising form and content as described in Section 67-1a-8, Utah Code. The purpose of this rule is to define how the state will:

(1) manage the use and application of the Great Seal (the seal); and

(2) define criteria for its authorized application.

R622-2-2. Primary Function of the Seal.

(A) Since its conception, the seal has been employed for specific governmental applications within the state's Executive, Legislative and Judicial Branches. The seal will be administered consistent with state law and policy, and its principal application shall be to authenticate or attest to:

(1) official documents which are authorized and/or required by statute; and

(2) other state documents having historic, civic, commemorative or educational value or import.

(B) The seal's impression on a legal document shall require the Lieutenant Governor's signature to appear on the same page as, and in proximity thereto.

R622-2-3. Custody and Use.

Pursuant to Section 67-1a-2(4) of the Utah Code; the lieutenant governor shall ". . . keep custody of the Great Seal of the state of Utah; to keep a register of, and attest, the official acts of the governor; and to affix the Great Seal, with an attestation, to all official documents and instruments to which the official signature of the governor is required."

R622-4. General Permitted Uses of the Seal.

(A) The seal shall be permitted for use without the written authorization of the Lieutenant Governor, in the following circumstances:

(1) printings of replicas of the seal on official state letterhead, business cards, and stationery for agencies, entities, or officers of the state;

(2) application or display of replicas of the seal by state agencies and state political sub-divisions which delineate official state purposes, and by state elected officials in connection with their official state business. Officials of state entities/agencies shall describe and submit a list of intended uses with the lieutenant governor's office to assure uniformity and continuity of use;

(3) exhibition of permitted reproductions of the seal on state flags, and

(4) for educational and academic uses by schools, colleges and universities to convey information about official state functions. Such uses shall not attempt to endorse, authenticate, recognize or promote persons or roles, or be part of administrative or promotional functions. Each such use shall also be itemized, described and submitted to the lieutenant governor's office.

R622-2-5. Prohibited Usage.

(A) The seal, or replica, shall not be committed for general use, including:

(1) for personal financial gain;

(2) for, or in connection with, any advertising or promotion of any product, business, organization, service, or article whether offered for sale, for profit or without charge;

(3) in a political campaign, or in ways that may legitimize or assist to defeat another candidate for elective office; or

(4) to function as, or be construed to function in any way as an endorsement of any business, organization, product, service or article.

(B) No symbol shall be used that imitates or appears similar to the seal in a way that intends to deceive, or is displayed in a manner that conveys improper use of the official Great Seal itself.

(C) When the seal is used, no mark, insignia, letter, word, figure, design, picture, or drawing of any nature may be placed upon the seal, or any part of it.

(D) A state agency, or an elected official, other than the lieutenant governor, shall not have authority to permit an individual or entity associated with a state agency or state elected official, to use the seal or replica for a commercial purpose whereby items will be distributed for sale, even though such purpose may include the providing of goods or services to the state.

(E) The seal shall not be displayed in a manner which lessens or detracts from its dignity or impact.

R622-2-6. Application For Use.

(A) Persons or entities seeking permission to use the seal or replica, will complete and file a legible application with the Lt. Governor, on a form provided by that office, which shall include:

(1) a specific description of the intended usage involving the Great Seal of the State of Utah, or replica of the seal,

(2) the payment of an administrative filing fee in the amount of $ 5.00, (non-refundable) and

(3) a precise description and specification of the actual product or item to bear the seal, or replica, in the form of an architectural drawing, engineering draft-to-scale, brochure, or lucid photograph or computer-graphic. The application, and supporting documents shall become the property of the lieutenant governor's office.

(B) Upon approval of a complete application, the applicant shall be issued a certificate bearing an identification number, by the lieutenant governor, which shall be kept by the applicant on file for four years following use of the seal. State agencies and entities which use the state seal or replica for official state functions have no application or fee requirement.

(C) An application may be denied for (1) failure to comply with relevant statutes or this rule, (2) failure to include the required fee, or (3) if the intended use is found to be detrimental to the image of the state and not in its best interest.

R622-2-7. Revocation of Approved Applications.

The lieutenant governor may revoke any prior approved usage if it is determined that the seal is being used improperly, if the actual use differs from the intended use as described on the application, or if false or inaccurate information was used to gain approval.

R622-2-8. Enforcement.

(A) Pursuant to Section 67-1a-7, Utah Code, except as otherwise provided by law, only the lieutenant governor, or the lieutenant governor's designee, is authorized to use or affix the seal to a document in pursuance of law. If any person illegally uses the seal, or such seal when defaced, the state may refer such criminal violations to an appropriate prosecuting authority.

(B) Under the provisions of Section 76-6-501, Utah Code, the state may seek redress against a person, or persons, who impermissibly replicate the seal as a forgery. A person or entity employing the seal, or a replica, with the intent to defraud or imply that the presence of the seal or replica appeared by permission of the state, or whose presentation of the seal denigrates it's ability to authenticate by proper state authority, may be referred to an appropriate prosecuting authority.

KEY: great seal, lt. governor, state flag

June 22, 1999	67-1a-7
Notice of Continuation June 9, 2004	67-1a-8
	67-1a-2(4)
	76-6-501

R623. Lieutenant Governor, Elections.
R623-2. Uniform Ballot Counting Standards.
R623-2-1. Purpose.

The State of Utah is adopting uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted for each voting system used in the state.

R623-2-2. Authority.

This rule is authorized by Utah Code Section 67-1a-2(2)(a); 42 USC 15403(e); 42 USC 15481(a)(6); Utah Constitution Article VII Sections 1, 5 and 14.

R623-2-3. Definitions.

In addition to the terms defined in Utah Code Section 20A-1-102, the following definitions apply:

A. "Blank Ballot" means a ballot on which the voter has made no marks in any voting position, or has been marked with an unreadable marker, or is one which has been consistently marked outside of the "read" area of the scanner.

B. "Chad" means the small piece of paper or cardboard produced from a punch card ballot when a voter pierces a hole in a perforated, designated position on the ballot with a marking device to record the voter's candidate, question, or issue choice.

C. "Counter" means automatic tabulating equipment or other electronic voting equipment upon which ballots are counted.

D. "Damaged Ballot" means a ballot that has been torn, bent, or otherwise mutilated or rendered unreadable so that it cannot be processed by automatic tabulating equipment.

E. "Duplicate Ballot" means a ballot for which a duplicate is made in order to be properly processed and counted due to damage, improper marking or some other reason which would prevent a counter from accurately counting the ballot in accordance with the voter's intent.

F. "Overvote" means a race, question or issue which contains votes for more than the maximum number of candidates or responses for a ballot question or issue allowed.

G. "Optical Scan Ballot" means a paper ballot that contains blank ovals or arrows that are to be filled in by the voters using a readable marker.

H. "Punch Card Ballot" means a ballot card that contains small perforated designated positions that a marking device must pierce to form a hole that records a voter's candidate, question, or issue choice.

I. "Resolution Board" means election judges who inspect the optical scan ballots.

J. "Undervote" means a race, question or issue which contains no votes or when more than one choice is available, less than the maximum number of votes allowed.

K. "Zero tape" means a paper record that no votes have been cast or counted on any automatic tabulating equipment or voting machine.

R623-2-4. Uniform Counting Standards for Optical Scan Ballots.

A. A correctly voted optical scan ballot occurs when a voter, using a readable marker, fills in or connects at least one of the ovals/arrows per race, question, or issue, not to exceed the maximum allowable votes per race, question or issue, in accordance with the ballot marking instructions.

B. Optical scan equipment shall be set to consistent and uniform sensitivity standards for each system type.

C. Pre-election testing shall be performed by the designated election official in accordance with Utah Code Section 20A-4-104(1).

D. Election day count machine settings shall be set to sort blank ballots, overvotes, and write-in votes.

E. When a precinct optical scan counter is used in the precinct the procedure is as follows:

1. A zero tape shall be run indicating no votes cast or counted before the machine is used.

2. Voters whose ballots are rejected or sorted by the precinct counter as a blank, overvoted or undervoted ballot shall be given the opportunity to correct their ballot.

3. Ballots sorted to a write-in bin shall be tallied at the conclusion of the voting and delivered to the central counting center in a secure container.

F. When using a central count optical scan counter, the procedure is as follows:

1. A zero tape shall be run indicating no votes cast or counted before the counting begins.

2. Official ballots shall be processed through the optical scanner, with write in votes tallied. If there are no legally qualified write-in candidates, the write-in sort option shall not be utilized.

3. The optical scanner shall be tested again by tabulating the test deck at the conclusion of the count.

G. Resolution of optical scan ballots shall be as follows:

1. Damaged or defective ballots shall be repaired, if possible, to be accepted by the optical scan equipment. If the ballot is damaged beyond repair, the ballot shall be duplicated utilizing the ballot duplication procedures established in Utah Code Section 20A-4-104(3).

2. Blank ballots shall be examined by the resolution board to determine if the ballot is a true blank ballot or one that has been marked with a non-detected device. The resolution board may clarify a non-detected mark in such a manner that the original voter mark is preserved, such as making a detectable line through the non-detected mark, placing a removable label over the non-detected mark and marking with the proper device, or placing cellophane tape over the mark and a marked removable label to properly reflect the voter's intent. The election officer must initial the clarification in a non-readable area on the ballot next to the clarification. The election official may also choose to make a true duplicate copy of the ballot utilizing the ballot duplication procedures. If a ballot is truly blank, it shall be sent back for the resolution pass through the scanner, and the ballot tabulated with no races, issues or questions voted.

3. Overvoted ballots shall be inspected by the resolution board. Any marks that are clearly identified as unintentional but register as an overvote on the scanner may be clarified by the election officer by the placement of a removable adhesive sticker over the unintentional mark to properly reflect the voter's intent. The election officer must initial next to the clarification in a non-readable portion of the ballot. The election officer may also choose to make a true duplicate copy of the ballot utilizing the procedures for duplication of ballots.

4. Write-in votes sorted by the optical scan equipment on election day shall be designated for hand counting. In order to be counted, the oval must be darkened or the arrow connected according to the appropriate voting instructions.

H. Recount Procedures for Optical Scan.

1. Optical scan equipment shall be set to consistent sensitivity standards for each system type, shall be tested prior to the recount, and shall be programmed to sort undervotes for the individuals race(s), issue(s) or question(s) being recounted.

2. Recounts will include a visual inspection of all ballots cast for write-in candidates in the contested race(s) to determine voter intent.

R623-2-5. Uniform Counting Standards for Punch Card Voting Systems.

A. Prior to the counting of the ballots by automatic tabulating equipment, at least one team of election personnel shall inspect the ballots for loose chads, ballot damage, including holes that are too large, a ballot that is torn in the

mail, etc., written instructions and corrections, and write-in votes. The purpose of the inspection shall be to insure that all ballots are machine-readable and that the voter's intent will be recorded correctly and accurately. In some instances, duplication of the ballot may be necessary in order to count the ballot.

B. All loose chads shall be removed to insure that all of the voter's choices on the ballot are correctly and accurately reflected in the count.

1. A chad that is unattached on two or more corners represents a vote and shall be removed.

2. If a chad is attached to a punch card ballot by three or four corners, unless there is a complete hole in the chad made by the stylus, no vote shall be recorded for that candidate, issue or question at that particular ballot position, and the chad shall not be removed.

C. Dimpled mark or puncture. If the ballot has been marked according to instructions but there is a dimple mark located wholly on the non removed chad, that mark shall be considered a random mark, no vote shall be recorded for that candidate, issue or question at that particular ballot position, and the chad shall not be removed.

D. Damaged ballots. If the ballot has damage or defects that would cause problems in tallying, the ballot shall be duplicated to the extent possible in accordance with the voter's intent. If the voter's intent cannot be determined for a specific office, issue or question on the damaged ballot, that position shall be left blank on the duplicate ballot.

E. If other material is included with an absentee ballot or is attached to the secrecy envelope, the material shall be inspected to determine if it has a bearing on the voter's intent. If the material has a bearing on the voter's intent, the original ballot shall be duplicated as necessary and the original ballot, along with the material, shall be placed in an envelope marked "Duplicated Ballot". If the material has no bearing on the voter's intent, it shall be discarded.

KEY: elections, ballots, Help America Vote Act, voting
June 16, 2004 Article VII, Sections 1, 5, and 14
67-1a-2(2)
42 U.S.C. 15481(a)(6)

R623. Lieutenant Governor, Elections.
R623-3. Utah State Plan on Election Reform.
R623-3-1. Purpose.

The purpose of this rule is to incorporate by reference the policies and procedures of the Utah State Plan on Election Reform adopted by the State Plan Committee on September 25, 2003.

R623-3-2. Authority.

This rule is authorized by 42 USC 15404; 42 USC 15403(e); Utah Code Subsection 67-1a-2(2); and Utah Constitution Article VII, Sections 1, 5 and 14.

R623-3-3. Incorporation of the Utah State Plan on Election Reform.

The State Elections Office incorporates by reference the Utah State Plan on Election Reform adopted on September 25, 2003. The Utah State Plan on Election Reform was published in the Federal Register (69 FR14002) on March 24, 2004.

KEY: elections, state plan, federal election reform
June 16, 2004 **Article VII, Sections 1, 5, and 14**
67-1a-2(2)
42 U.S.C. 15404
42 U.S.C. 15403(e)

R652. Natural Resources; Forestry, Fire and State Lands.
R652-41. Rights of Entry.
R652-41-100. Authority.

This rule implements Section 65A-7-1 which authorizes the Division of Forestry, Fire and State Lands to establish criteria by rule for the sale, exchange, lease or other disposition or conveyance of sovereign lands including procedures for determining fair-market value of those lands.

R652-41-200. Rights of Entry on Sovereign Lands.

1. The division may issue non-exclusive right of entry permits on sovereign lands when the division deems it consistent with division rules.

2. Commercial use of sovereign lands: a right of entry permit shall be required for any person to use, occupy, or travel upon sovereign land in conjunction with any commercial enterprise without regard to the incidental nature of the use, occupancy, or travel, except that a right of entry permit shall not be necessary when the use, occupancy, or travel is across authorized public roads or permitted under some other land use authorization issued by the division and currently in effect.

3. Non-commercial use of sovereign land shall not require a permit provided that the use shall not exceed 15 consecutive days and shall not conflict with an applicable land use or with a management plan. At the conclusion of the 15-day period, any personal property, garbage, litter, and associated debris must be removed by the user. The use may not be relocated on any other sovereign land within a distance of at least two miles from the original site or be allowed to reestablish at the original site for 20 consecutive days. If, for any reason, a non-commercial, incidental user desires a document authorizing the use, the division may issue a Letter of Authorization upon payment of an administrative charge.

4. Non-commercial uses of sovereign land exceeding 15 consecutive days will require a right of entry permit.

R652-41-300. Rights of Entry Acquired by Application.

Rights of entry on sovereign lands may be acquired only by application and grant made in compliance with the rules and laws applicable thereto. All applications shall be made on division forms. The filing of an application form is deemed to constitute the applicant's offer to purchase a right-of-entry under the conditions contained in these rules.

R652-41-400. Valuable Consideration for Right of Entry Permits.

The consideration for any right of entry permit granted under these rules, including those granted to municipal or county governments or agencies of the state or federal government, shall be determined pursuant to R652-41-600.

R652-41-500. Division Contractors.

Any person doing work for the division under a contract or other permit may enter upon sovereign lands for the purpose and period of time authorized by the contract or other permit without obtaining a right of entry.

R652-41-600. Right of Entry Fees.

The division shall establish minimum fees for right of entry permits which may be based on the cost incurred by the division in administering the right of entry permit and the fair-market value of a proposed land use.

R652-41-700. Application Procedures.

1. Time of Filing. Applications for right of entry permits are received for filing in the office of the division during office hours. Except as provided, all applications received, whether by U.S. Mail or delivery over the counter, are immediately stamped with the exact date of filing.

2. Non-refundable Application Fees. All applications must be accompanied with a non-refundable application fee as specified in R652-4. After review of the application, the division shall notify the applicant of the fee pursuant to R652-41-600. Failure to pay the fee within 15 days of mailing of notification shall cause the denial of the application.

3. Refunds and Withdrawals of Applications

(a) If an application for a right of entry permit is rejected, all monies tendered by the applicant, except the application fee, will be refunded.

(b) Should an applicant desire to withdraw the application, the applicant must make a written request. If the request is received prior to the time that the application is approved, all monies tendered by the applicant, except the application fee, will be refunded. If the request for withdrawal is received after the application is approved, all monies tendered are forfeited to the division, unless otherwise ordered by the director for a good cause shown.

4. Application Review.

(a) Upon receipt of an application, the division shall review the application for completeness. The division shall allow all applicants submitting incomplete applications at least 15 days from the date of mailing of notice as evidenced by the certified mailing posting receipt (Postal Service form 3800), within which to cure any deficiencies. Incomplete applications not remedied within the designated time period may be denied.

(b) Application approval by the director constitutes acceptance of the applicant's offer.

R652-41-800. Term of Rights of Entry.

Rights of entry granted under these rules shall normally be for no greater than a one year term. Longer terms may be granted upon application based on a written finding that such a grant is in the best interest of the beneficiaries.

R652-41-900. Conveyance Documents.

Each right of entry shall contain provisions necessary to ensure responsible surface management, including the following provisions: the rights and responsibilities of the permittee, rights reserved to the permitter; the term of the right of entry; payment obligations; and protection of the state from liability for all action of the permittee.

R652-41-1000. Bonding Provisions.

1. Prior to the issuance of a right of entry, or for good cause shown at any time during the term of the right of entry, upon 15 days' written notice, the applicant or permittee may be required to post with the division a bond in the form and amount as may be determined by the division to assure compliance with all terms and conditions of the right of entry.

2. Bonds posted on rights of entry may be used for payment of all monies, rentals, royalties due to the permitter, reclamation costs, and for compliance with all other terms, conditions, and rules pertaining to the right of entry.

3. Bonds may be increased or decreased in reasonable amounts, at any time as the division may decide, provided the division first gives permittee 15 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the division:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, the state will not be responsible for any investment returns on cash deposits.

(c) Certificates of deposit in the name of "Utah Division of Forestry, Fire and State Lands and Permittee, c/o Permittee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be

automatically renewable, and be deposited with the division, the permittee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the permittee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the division.

(e) Due to the temporary nature of rights of entry, if the division imposes or increases the amount of a bond, a stop-work order may be issued by the division to insure the adequacy of the bond prior to the completion of work or activities authorized by the right of entry permit.

R652-41-1100. Conflicts of Use.

The division reserves the right to issue additional rights of entry or convey other interests in property on sovereign land encumbered by existing rights of entry without compensation to the permittee.

R652-41-1200. Amendments.

Any holder of an existing right of entry permit desiring to change any of the terms thereof, shall make application following the same procedure as is used to make an application for a new right of entry. An amendment fee pursuant to R652-4 must accompany the amendment request along with other appropriate fees.

R652-41-1300. Unauthorized Uses.

A right of entry permit does not authorize a permittee to cut any trees or remove or extract any natural, cultural, or historical resources unless authorized by the permit's specific terms.

R652-41-1400. Right of Entry Assignments.

1. A right of entry may be assigned to any person, firm, association, or corporation qualified under R652-3-200, provided that the assignments are approved by the division; and no assignment is effective until approval is given. Any assignment made without such approval is void.

2. An assignment shall take effect the day of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, and land involved, and the name and address of the assignee.

4. An assignment shall be executed according to division procedures.

R652-41-1500. Termination of Rights of Entry.

Any right of entry permit granted by the division on sovereign land may be terminated in whole or in part for failure to comply with any term or condition of the conveyance document or applicable laws or rules. Based on a written finding, the director shall issue an appropriate instrument when terminating the right of entry for cause.

KEY: natural resources, management, administrative procedures
June 4, 2003 65A-7-1
Notice of Continuation July 23, 2001

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-1. Administrative Procedures Pursuant to Utah Code Ann. Section 59-1-210.

A. Definitions as used in this rule:

1. "Agency" means the Tax Commission of the state of Utah.

2. "Agency head" means the Tax Commission of the state of Utah, or one or more tax commissioners.

3. "Appeal" means appeal from an order of the Commission to an appropriate judicial authority.

4. "Commission" means the Tax Commission of the state of Utah.

5. "Conference" means an informal meeting of a party or parties with division heads, officers, or employees designated by division heads and informal meetings between parties to an adjudicative proceeding and a presiding officer.

6. "Division" means any division of the Tax Commission, including but not restricted to the Auditing Division, Property Tax Division, Motor Vehicle Division, Motor Vehicle Business Administration Division, Data Processing Division, and the Operations Division.

7. "Hearing" means a proceeding, formal or informal, at which the parties may present evidence and arguments to the presiding officer in relation to a particular order or rule.

8. "Officer" means an employee of the Commission in a supervisory or responsible capacity.

9. "Order" means the final disposition by the Commission of any particular controversy or factual matter presented to it for its determination.

10. "Presiding officer" means one or more tax commissioners, administrative law judge, hearing officer, and other persons designated by the agency head to preside at hearings and adjudicative proceedings.

11. "Quorum" means three or more members of the Commission.

12. "Record" means that body of documents, transcripts, recordings, and exhibits from a hearing submitted for review on appeal.

13. "Rule" means an officially adopted Commission rule.

14. "Rulemaking Power" means the Commission's power to adopt rules and to administer the laws relating to the numerous divisions.

15. All definitions contained in the Administrative Procedures Act, Utah Code Ann. Section 63-46b-2 as amended, are hereby adopted and incorporated herein.

R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4.

A. Policy and Scope. In accordance with the responsibility placed upon it by law, the Commission shall enact appropriate rules. These rules shall prescribe practices and procedures for the Commission and other state and county officials and agencies over which the Commission has supervisory power and shall interpret laws the Commission is charged with administering when such interpretation is deemed necessary and in the public interest.

B. Preparation. In the preparation of rules the Commission may refer to appropriate materials and consult such parties as it deems advisable, whether or not such persons are employees of the Commission. Drafts of proposed rules may be submitted to the Office of the Attorney General for examination as to legality and form.

C. Notice and Hearing. The Commission may publish, by means of local communication, notice of its intent to exercise its rulemaking power in a particular area. Notice therein will be given of a scheduled hearing or hearings not sooner than 15 days after such notice, at which hearing or hearings any party who would be substantially affected by such exercise may present argument in support thereof or in objection thereto. Such notice and hearing or hearings will be instituted when the Commission deems them to be of substantial value and in the public interest or in accordance with Utah Code Ann. Section 63-46a-5. Such notice and hearing or hearings shall not be a prerequisite to the validity of any rule.

D. Adoption. Rules will be adopted by the Commission at formal meetings with a quorum present. Adopted rules will be written and entered into the official minutes of the Commission, which minutes are a public record available for examination by interested members of the public at the Commission offices. This proceeding and no other will be necessary for validity, unless otherwise required by the rulemaking procedures.

E. Effective Date. In accordance with Utah Code Ann. Section 63-46a-4.

F. Publication. Copies of adopted rules will be prepared and made available to interested parties requesting the same. Such rules may also be published periodically in booklets and bulletins. It shall be the policy of the Commission to provide for publication of all new rules at the time of each compilation of rules in the particular area. No rule, however, shall be deemed invalid by failure to prepare copies for distribution or to provide for publication in the manner herein described.

G. Petitions for Exercise of Rulemaking Power. The Commission may be petitioned to exercise its power to adopt a rule of general application. Such petition shall be submitted in writing by any party who would be substantially and directly affected by such rule. The Commission will have wide discretion in this area and will exercise this rulemaking power upon petition only when it deems that such exercise would be of substantial value to the citizens of Utah. If the Commission accepts such a petition, it may adopt such rule as it deems appropriate; however, the petitioning party may submit a proposed rule for the consideration of the Commission. If the Commission acts favorably upon such a petition, it will adopt and publish the rule in the manner hereinabove described, and in addition notify the petitioner of such adoption by mail at his last known address. If the Commission declines to act on such petition, it will so notify the petitioning party in the same manner.

H. Repeal and Amendment. The procedure above described for the enactment of rules shall also be followed for the amendment or repeal of existing rules.

R861-1A-3. Division and Prehearing Conferences Pursuant to Utah Code Ann. Section 59-1-210 and 63-46b-1.

A. Division Conferences. Any party directly affected by a Commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in relation to such action. Such request may be either oral or written, and such conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved. The party requesting such conference will be notified of the result of the same, either orally or in writing, in person or through counsel, at the conclusion of such conference or within a reasonable time thereafter. Such conference may be held at any time prior to a hearing, whether or not a petition for such hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

B. Prehearing Conferences. In any matter pending before the Tax Commission, the presiding officer may, after prior written notice, require the parties to appear for a prehearing conference. Such prehearing conferences may be by telephone if the presiding officer determines that it will be more expeditious and will not adversely affect the rights of any party. Prehearing conferences will be for the purposes of encouraging settlement, clarifying the issues, simplifying the evidence,

facilitating discovery, and expediting the proceedings. In furthering those purposes, the presiding officer may request that the parties make proffers of proof or written prehearing conference statements as to what they believe the evidence will show at the hearing. After hearing such proffers of proof and reviewing written statements, the presiding officer may then advise the parties how he views each side of the evidence and state how he believes the Commission may rule if evidence at the hearing is as proffered at the prehearing conference, and then invite the parties to see if a stipulation can be reached which would settle the matter. If a settlement is reached by way of stipulation, the presiding officer may sign and enter an order in the proceeding. If a settlement is not reached, the presiding officer shall enter an order on the prehearing conference which clarifies the issues, simplifies the evidence, facilitates and limits discovery, and expedites the proceedings to a reasonable extent.

R861-1A-9. Tax Commission as Board of Equalization Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

A. Equalization Responsibilities. The Commission will sit as the State Board of Equalization in discharge of the equalization responsibilities given it by law. The Commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

B. Proceedings. In all cases, appeals to the Commission shall be scheduled for hearing pursuant to Commission rules.

C. Appeals from county boards of equalization.

1. A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

2. If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the Commission, the procedures contained in this rule must be followed.

3. An appeal from a decision of a county board must be presented upon the same issues as were submitted to the county board in the first instance. The Commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

4. The county board of equalization or county hearing officer shall prepare minutes of hearings held before them on property tax appeals. The minutes shall constitute the record on appeal.

a) For appeals concerning property value, the record shall include:

(1) the name and address of the property owner;

(2) the identification number, location, and description of the property;

(3) the value placed on the property by the assessor;

(4) the basis stated in the taxpayer's appeal;

(5) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(6) the decision of the county board of equalization and the reasons for the decision.

b) Exempt Property. With respect to a decision affecting the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

5. Appeals from dismissal by the county boards of equalization.

a) Decisions by the county board of equalization are final orders on the merits, and appeals to the Commission shall be on the merits except for the following:

(1) dismissal for lack of jurisdiction;

(2) dismissal for lack of timeliness;

(3) dismissal for lack of evidence to support a claim for relief.

b) On an appeal from a dismissal by a county board for the exceptions under C.5.a), the only matter that will be reviewed by the Commission is the dismissal itself, not the merits of the appeal.

c) An appeal may be dismissed for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

6. An appeal filed with the Commission may be remanded to the county board of equalization for further proceedings if the Commission determines that:

a) dismissal under C.5.a)(1) or (3) was improper;

b) the taxpayer failed to exhaust all administrative remedies at the county level; or

c) in the interest of administrative efficiency, the matter can best be resolved by the county board.

7. An appeal filed with the Commission shall be remanded to the county board of equalization for further proceedings if the Commission determines that dismissal under C.5.a)(2) is improper under R884-24P-66.

8. To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

a) the name and address of the property owner;

b) the identification number, location, and description of the property;

c) the value placed on the property by the assessor;

d) the taxpayer's estimate of the fair market value of the property; and

e) a signed statement providing evidence or documentation that supports the taxpayer's claim for relief.

9. If no signed statement is attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

10. If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation under C.8.e), the county shall send the taxpayer a notice of intent to dismiss, and permit the taxpayer at least 20 calendar days to supply the evidence or documentation. If the taxpayer fails to provide the evidence or documentation within 20 days, the county board of equalization may dismiss the matter for lack of evidence to support a claim for relief.

11. If the minimum information required under C.8. is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under C.8.e), the county board of equalization shall render a decision on the merits of the case.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute

passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,

2. the revenue laws of the state of Utah, and

3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Section 59-1-210.

This rule outlines the policies and procedures of the Commission regarding the public disclosure of and access to documents, workpapers, decisions, and other information prepared by the Commission under provisions of Utah Code Ann. Section 59-1-210.

A. Property Tax Orders. Property tax orders signed by the Commission will be mailed to the appropriately named parties in accordance with the Commission's rules of procedure. Property tax orders may also be made available to persons other than the named parties upon written request to the Commission. Nonparty requests will be subject to the following limitations.

1. If, upon consultation with the taxpayer, the Commission determines that a particular property tax order contains information which, if disclosed, would constitute a significant competitive disadvantage to the taxpayer, the Commission may either prohibit the disclosure of the order or require that applicable information be removed from the order prior to it being made publicly available.

2. The limitation in subsection 1. does not apply if the taxpayer affirmatively waives protection against disclosure of the information.

B. Other Tax Orders. Written orders signed by the Commission relating to all tax appeals other than property tax matters will also be mailed to the appropriately named parties in accordance with the Commission rules of procedure. Copies of these orders or information about them will not be provided to any person other than the named parties except for the following circumstances:

1. if the Commission determines that the parties have affirmatively waived any claims to confidentiality; or

2. if the Commission determines that the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, or any other information attributable to a return filed with the Commission.

C. Imposition and Waiver of Penalty and Interest.

1. All facts surrounding the imposition of penalty and interest charges as well as requests for waiver of penalty and interest charges are considered confidential and will not be disclosed to any persons other than the parties specifically involved. These facts include the names of the involved parties, the amount of penalty and interest, type of tax involved, amount of the tax owed, reasons for the imposition of the penalty and interest, and any other information relating to imposition of the penalty and interest, except as follows:

(a) if the Commission affirmatively determines that a finding of fraud is involved and seeks the imposition of the appropriate fraud penalties, the Commission may make all pertinent facts available to the public once legal action against the parties has been commenced; or

(b) if the Commission determines that the parties have affirmatively waived their rights to confidentiality, the Commission will make all pertinent facts available to the public.

D. Commission Notes and Workpapers.

1. All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the Commission, are to be considered confidential, and access to the specific material is restricted to employees of the Commission and its legal counsel only. Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

2. Relevant workpapers of the property tax division prepared in connection with the assessment of property by the Commission, pursuant to the provisions of Utah Code Ann. Section 59-2-217, shall be provided to the owner of the property to which the assessment relates, at the owner's request.

E. Reciprocal Agreements. Pursuant to Utah Code Ann. Sections 59-7-537, 59-10-545 and 59-12-109, the Commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service, tax officials of other states, and representatives of local governments within the state of Utah; provided, however, that no information will be provided to any governmental entity if providing such information would violate any statute or any agreement with the Internal Revenue Service.

F. Other Agreements. Pursuant to Utah Code Ann. Section 59-12-109, the Commission may provide departments and political subdivisions of the state of Utah with copies of returns and other information required by Chapter 12 of Title 59. This information is available only in official matters and must be requested in writing by the head of the department or political subdivision. The request must specifically indicate the information being sought and how the information will be used. The Commission will respond in writing to the request and shall impose conditions of confidentiality on the use of the information disclosed.

G. Multistate Tax Commission. The Commission is

authorized to share specific tax information for audit purposes with the Multistate Tax Commission.

H. Statistical Information. The Commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be prepared by the various divisions of the Commission and made available after review and approval of the Commission.

I. Public Record Information. Pursuant to Utah Code Ann. 59-1-403(3)(c), the Commission may publicize the name and other appropriate information, as contained in the public record, concerning delinquent taxpayers, including their addresses, the amount of money owed by tax type, as well as any legal action taken by the Commission, including charges filed, property seized, etc. No information will be released which is not part of the existing public record.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63-46a-3(2), 28 CFR 35.107 1992 edition, and 42 USC 12201.

A. Disabled individuals may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

1. Requests shall be directed to:
Accommodations Coordinator
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

2. Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

3. Requests shall include the following information:

a) the individual's name and address;

b) a notation that the request is made in accordance with the Americans with Disabilities Act;

c) a description of the nature and extent of the individual's disability;

d) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

e) a description of the requested accommodation if an accommodation has been identified.

B. The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

1. The reply shall advise the individual that:

a) the requested accommodation is being supplied; or

b) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or

c) the request for accommodation is denied. A reason for the denial must be included; or

d) additional time is necessary to review the request. A projected response date must be included.

2. All denials of requests under Subsections (1)(b) and (1)(c) shall be approved by the executive director or designee.

3. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

C. Disabled individuals who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.

1. Requests for review shall be directed to:
Executive Director
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711

2. A request for review must be filed within 180 days of the accommodations coordinator's reply.

3. The request for review shall include:

a) the individual's name and address;

b) the nature and extent of the individual's disability;

c) a copy of the accommodation coordinator's reply;

d) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;

e) a description of the accommodation desired; and

f) the signature of the individual or the individual's legal representative.

D. The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

1. If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

2. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

E. The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63-2-304 until the executive director issues a decision.

F. Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63-2-302 or controlled under Section 63-2-303, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

G. Disabled individuals who are dissatisfied with the executive director's decision may appeal that decision to the Tax Commission in the manner provided in Sections 63-46b-1 through 63-46b-22.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

1. name;

2. home address;

3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

A. The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

B. The structure of the agency is as follows:

1. The Office of the Commission, including the commissioners and the following units that report to the commission:

a) Internal Audit;
b) Appeals;
c) Economic and Statistical; and
d) Public Information.

2. The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

a) Administration;
b) Taxpayer Services;
c) Motor Vehicle;
d) Auditing;
e) Property Tax;
f) Technology Management;
g) Processing; and
h) Motor Vehicle Enforcement.

C. The commission hereby delegates full authority for the following functions to the executive director:

1. general supervision and management of the day to day operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in B.2;

2. management of the day to day relationships with the customers of the agency;

3. all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in C.4. and D;

4. waivers of penalty and interest or offers in compromise agreements in amounts under $10,000, in conformance with standards established by the commission;

5. except as provided in D.7., voluntary disclosure agreements with companies, including multilevel marketers;

6. determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the Tax Commission;

7. human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

8. administration of Title 63, Chapter 2, Government Records Access and Management Act.

D. The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

1. the agency budget;
2. the strategic plan of the agency;
3. administrative rules and bulletins;
4. waivers of penalty and interest in amounts of $10,000 or more as per the waiver of penalty and interest policy;
5. offer in compromise agreements that abate tax, penalty and interest over $10,000 as per the offer in compromise policy;
6. stipulated or negotiated agreements that dispose of matters on appeal; and
7. voluntary disclosure agreements that meet the following criteria:

a) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

b) the agreement forgives a known past tax liability of $10,000 or more.

E. The commission shall retain authority for the following functions:

1. rulemaking;
2. adjudicative proceedings;
3. private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;
4. internal audit processes;
5. liaison with the governor's office;

a) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

b) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

6. liaison with the Legislature.

a) The commission will set legislative priorities and communicate those priorities to the executive director.

b) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

F. Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

G. The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

1. Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

2. The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

H. The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

1. The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

2. The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

3. When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission

shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-19. Definition of Bond Pursuant to Utah Code Ann. Section 59-1-505.

A. The bond that a taxpayer may deposit with the Tax Commission pursuant to Section 59-1-505 shall consist of one of the following:

1. a surety bond;
2. an assignment of savings account; or
3. an assignment of certificate of deposit.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63-46b-3, and 63-46b-14.

A. A request for a hearing to correct a property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

1. it is received in the Tax Commission offices on or before the close of business of the last day of the time frame provided by statute; or

2. the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

B. A petition for redetermination is deemed to be timely if:

1. the petition is received in the Tax Commission offices on or before the close of business of the last day of the time frame provided by statute; or

2. the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute.

C. Any party adversely affected by an order of the Commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the Commission and upon the Office of the Attorney General.

R861-1A-21. Rulings by the Commission Pursuant to Utah Code Ann. Section 59-1-205.

A. A quorum of the commission must participate in any order which constitutes final agency action on an adjudicative matter.

B. The party charged with the burden of proof or the burden of overcoming a statutory presumption shall prevail only if a majority of the participating commissioners rules in that party's favor.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63-46b-3.

A. Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

B. Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of Utah Code Ann. Section 63-46b-3, shall contain the following:

1. name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

2. a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

3. petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

4. particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

5. if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

6. in the case of property tax cases, the assessed value sought.

C. Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63-46b-4.

A. All matters shall be designated as formal proceedings and set for a prehearing conference, an initial hearing, or a scheduling conference pursuant to R861-1A-26.

B. A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63-46b-8, and 63-46b-10.

A. At a formal proceeding, an administrative law judge appointed by the commission or a commissioner may preside.

1. Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

2. Once assigned, the presiding officer will preside at all steps of the formal proceeding except as otherwise indicated in these rules or as internal staffing requirements dictate.

B. Unless waived by the petitioner, a formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, and may also involve a formal hearing on the record.

1. Initial Hearing.

a) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

b) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute at the conclusion of the initial hearing. As to those matters, a party must pursue a formal hearing and final agency action before pursuing judicial review of unsettled matters.

2. Formal Hearing on the Record.

a) Formal hearings on the record shall be conducted by a presiding officer under 2.b) or by the commission sitting as panel under 2.c).

b) Except as provided in 2.c., all formal hearings will be heard by the presiding officer.

(1) Within the time period specified by statute, the presiding officer shall sign a decision and order in accordance with Section 63-46b-10 and forward the decision to the Commission for automatic agency review.

(2) A quorum of the commission shall review the decision. If a majority of the participating commissioners concur with the decision, a statement affirming the decision shall be affixed to the decision and signed by the concurring commissioners to indicate that the decision represents final agency action. The order is subject to petition for reconsideration or to judicial review.

(3) If, on agency review, a majority of the commissioners disagree with the decision, the case may be remanded to the presiding officer for further action, amended or reversed. If the presiding officer's decision is amended or reversed, the commission shall issue its decision and order, and that decision and order shall represent final agency action on the matter.

c) The commission, on its own motion, upon petition by a party to the appeal, or upon recommendation of the presiding officer, may sit as a panel at the formal hearing on the record if the case involves an important issue of first impression, complex testimony and evidence, or testimony requiring a prolonged hearing.

(1) A panel of the commission shall consist of two or more commissioners

(2) An order issued from a hearing before a panel of commissioners shall constitute final agency action, and it is subject to petition for reconsideration or to judicial review.

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63-46b-6 through 63-46b-11.

A. Prehearing and Scheduling Conference.

1. At the conference, the parties and the presiding officer shall:

a) establish ground rules for discovery;

b) discuss scheduling;

c) clarify other issues;

d) determine whether to divert the action to a mediation process; and

e) determine whether the initial hearing will be waived and whether the commission will preside as a panel at the formal hearing on the record pursuant to R861-1A-24.

2. The prehearing and scheduling conference may be converted to an initial hearing upon agreement of the parties.

B. Notice of Hearing. At least ten days prior to a hearing date, the Commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

C. Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

D. Representation.

1. A party may pursue a petition without assistance of counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

a) Legal counsel must enter an appearance.

b) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action.

c) All documents will be directed to the party's representative. Documents may be transmitted by facsimile number, e-mail address or other electronic means if such transmission does not breach confidentiality. Otherwise, documents will be mailed to or served upon the representative's street address as shown in the petition for agency action.

2. Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office.

E. Subpoena Power.

1. The presiding officer may issue subpoenas to secure the attendance of witnesses or the production of evidence.

a) The party requesting the subpoena must prepare it and submit it to the presiding officer for signature.

b) Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

F. Motions.

1. Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

2. Continuance. A continuance may be granted at the discretion of the presiding officer.

3. Default. The presiding officer may enter an order of default against a party in accordance with Section 63-46b-11.

a) The default order shall include a statement of the grounds for default and shall be delivered to all parties by electronic means or, if electronic transmission is unavailable, by U.S. mail.

b) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

4. Ruling on Procedural Motions. Procedural motions may be made during the hearing or by written motion.

a) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

b) Upon the filing of any motion, the presiding officer may:

(1) grant or deny the motion; or

(2) set the matter for briefing, hearing, or further proceedings.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63-46b-7.

A. Discovery procedures in formal proceedings shall be established during the prehearing and scheduling conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

B. The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 76-8-502, 76-8-503, 63-46b-8.

A. Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

B. Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

1. The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

2. The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

3. If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

C. At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

1. Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

2. Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

3. The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

4. If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

D. The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

E. Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

F. Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Agency Review and Reconsideration Pursuant to Utah Code Ann. Section 63-46b-13.

A. Agency Review.

1. All written decisions and orders shall be submitted by the presiding officer to the commission for agency review before the decision or order is issued. Agency review is automatic, and no petition is required.

B. Reconsideration. Within 20 days after the date that an order is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

1. The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied.

(a) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(b) For purposes of calculating the 30 day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

2. If no petition for reconsideration is made, the 30 day limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63-46b-5 and 63-46b-8.

A. No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

B. No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

C. A presiding officer may receive aid from staff assistants if:

1. the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

2. in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

D. Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63-46b-21.

A. A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute. A party with standing may petition for a declaratory order to challenge:

1. the commission's interpretation of statutory language as stated in an administrative rule; or

2. the commission's grant of authority under a statute.

B. The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

C. The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

D. A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code Section 63- 46b-1.

A. Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

1. The parties may agree to pursue mediation any time before the formal hearing on the record.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

B. If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

1. The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

2. The settlement agreement shall be adopted by the commission if it is not contrary to law.

3. If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

4. If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1- 502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in

combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged

in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

A. "TaxExpress" means the filing of tax returns and tax payment information by telephone and Internet web site.

B. Taxpayers who file tax return information, other than electronic funds transfers, through the Tax Commission's TaxExpress system shall use the Tax Commission assigned personal identification number as their signature for all tax return information filed through that system.

C. Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

D. Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

E. Taxpayers who file an individual income tax return electronically and who met the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements
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41-1a-209
59-1-205
59-1-207
59-1-210
59-1-301
59-1-403
59-1-501
59-1-502.5
59-1-505
59-1-602
59-1-705
59-1-1004
59-10-512
59-10-532
59-10-533
59-10-535
59-12-107
59-13-206
59-13-210
59-13-307
59-10-544
59-14-404
59-2-212
59-2-701
59-2-705
59-2-1003
59-2-1004
59-2-1006
59-2-1007
59-2-704
59-2-924
59-7-517
63-46a-4
63-46b-1
76-8-502
76-8-503
59-2-701
63-46b-3
63-46b-4
63-46b-5
63-46b-6
63-46b-7 through 63-46b-11
63-46b-13
63-46b-14
63-46b-21
63-46a-3(2)
42 USC 12201
28 CFR 25.107 1992 Edition

R865. Tax Commission, Auditing.
R865-9I. Income Tax.
R865-9I-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Section 59-10-103.

A. Domicile.

1. Domicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.

2. For purposes of establishing domicile, an individual's intent will not be determined by the individual's statement, or the occurrence of any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation.

a) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.

b) Domicile applies equally to a permanent home within and without the United States.

3. A domicile, once established, is not lost until there is a concurrence of the following three elements:

a) a specific intent to abandon the former domicile;

b) the actual physical presence in a new domicile; and

c) the intent to remain in the new domicile permanently.

4. An individual who has not severed all ties with the previous place of residence may nonetheless satisfy the requirement of abandoning the previous domicile if the facts and circumstances surrounding the situation, including the actions of the individual, demonstrate that the individual no longer intends the previous domicile to be the individual's permanent home, and place to which he intends to return after being absent.

B. Permanent place of abode does not include a dwelling place maintained only during a temporary stay for the accomplishment of a particular purpose. For purposes of this provision, temporary may mean years.

C. Determination of resident individual status for military servicepersons.

1. The status of a military serviceperson as a resident individual or a nonresident individual is determined as follows, based on the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. 574.

a) A resident individual in active military service does not lose his status as a resident individual if the resident individual's absence from the state is a result of military orders.

b) A nonresident individual in active military service who is stationed in Utah does not become a resident individual for income tax purposes if the nonresident individual's presence in Utah is due solely to military orders.

2. Subject to federal law, an individual in active military service may change from a resident individual to a nonresident individual or from a nonresident individual to a resident individual if he establishes that he satisfies the conditions of A.3.

3. A nonresident individual serviceperson is exempt from Utah income tax only on his active service pay. All other Utah source income received by the nonresident individual serviceperson is subject to Utah income tax as provided by Section 59-10-116.

4. The spouse of an individual in active military service generally is considered to have the same residency status as that individual for purposes of Utah income tax.

R865-9I-3. Credit for Income Tax Paid by an Individual to Another State Pursuant to Utah Code Ann. Section 59-10-106.

A. A Utah resident taxpayer is required to report his entire state taxable income pursuant to Section 59-10-106 even though part of the income may be from sources outside this state.

B. Except to the extent allowed in D., a resident taxpayer may claim the credit provided in Section 59-10-106 by:

1. filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state;

2. completing form TC-40A, Schedule A, Credit For Tax Paid To Another State, for each state for which a credit is claimed; and

3. attaching any schedule completed under B.2. to the individual income tax return.

C. A part-year resident taxpayer may claim credit on that portion of income subject to both Utah tax and tax in another state. The credit is claimed in the same manner as claimed by a full-year resident, but only for that portion of the year that the nonresident taxpayer was living in Utah. Form TC-40A, Schedule A, Credit For Tax Paid To Another State, must be completed and attached to the individual income tax return for each state for which a credit is claimed.

D. For only those states in which a resident professional athlete has participated in his team's composite return or simplified withholding, a resident professional athlete may claim the credit provided in Section 59-10-106 by:

1. filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state; and

2. attaching a summary, prepared by the team or the team's authorized representative, indicating both the amount of the athlete's income allocated to all other states in which the athlete has participated in his team's composite return or simplified withholding, and the amount of income tax paid by the athlete to those states.

E. The credit allowable on the Utah return for taxes paid to any other state shall be the smaller of the following:

1. the amount of tax paid to the other state; or

2. a percentage of the total Utah tax. This percentage is determined by dividing the total federal adjusted gross income into the amount of the federal adjusted gross income taxed in the other state.

F. A taxpayer claiming a credit under Section 59-10-106 shall retain records to support the credit claimed.

R865-9I-4. Equitable Adjustments Pursuant to Utah Code Ann. Section 59-10-115.

A. Every taxpayer shall report and the Tax Commission shall make or allow such adjustments to the taxpayer's state taxable income as are necessary to prevent the inclusion or deduction for a second time on his Utah income tax return of items involved in determining his federal taxable income. Such adjustments shall be made or allowed in an equitable manner as defined in Utah Code Ann. 59-10-115 or as determined by the Tax Commission consistent with provisions of the Individual Income Tax Act.

B. In computing the Utah portion of a nonresident's federal adjusted gross income; any capital losses, net long-term capital gains, and net operating losses shall be included only to the extent that these items were not taken into account in computing the taxable income of the taxpayer for state income tax purposes for any taxable year prior to January 2, 1973.

R865-9I-6. Returns by Husband and Wife When One is a Resident and the Other is a Nonresident Pursuant to Utah Code Ann. Section 59-10-119.

A. Except as provided in B., a husband and wife, one being a nonresident and the other a resident, who file a joint federal income tax return, but separate state income tax returns shall determine their separate state taxable income as follows:

1. First, the amount of the total federal adjusted gross income ("FAGI") pertaining to each spouse shall be determined. Any adjustments that apply to both spouses shall be divided between the spouses in proportion to the respective incomes of

the spouses.

2. Next, each spouse is allocated a portion of each deduction and add back item.

a) To determine this allocation, each spouse shall:

(1) divide his or her own FAGI by the combined FAGI of both spouses and round the resulting percentage to four decimal places; and

(2) multiply the resulting percentage by the deductions and add back items.

b) The deductions and add back items allowed are as follows:

(1) state income tax deducted as an itemized deduction on federal Schedule A;

(2) other items that must be added back to FAGI on the state income tax return;

(3) itemized or standard deduction;

(4) state exemption for dependents;

(5) one-half of the federal tax liability;

(6) state income tax refund included on line 10 of the federal income tax return; and

(7) other state deductions.

3. Each spouse shall claim his or her full state personal exemption.

4. Each spouse shall determine his or her separate tax using the Utah tax rate schedules applicable to a husband and wife filing separate returns.

B. A husband and wife, one being a nonresident and the other a resident, may use an alternate method of calculating their separate state taxable incomes than the method provided in A. if they can demonstrate to the satisfaction of the Tax Commission that the alternate method more accurately reflects their separate state taxable incomes.

R865-9I-7. Change of Status As Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120.

A. Definitions.

1. "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.

2. "FAGI" means federal adjusted gross income, as defined by Section 62, Internal Revenue Code.

B. The state taxable income of a part-year resident shall be a percentage of the amount that would have been state taxable income if the taxpayer had been a full-year resident as determined under Section 59-10-112. This percentage is the Utah portion of FAGI divided by the total FAGI, not to exceed 100 percent.

C. The Utah portion of a part-year resident's FAGI shall be determined as follows:

1. Income from wages, salaries, tips and other compensation earned while in a resident status and included in the total FAGI shall be included in the Utah portion of the FAGI.

2. Dividends actually or constructively received while in resident status shall be included in the Utah portion of FAGI. Any dividend exclusion shall be deducted from the Utah portion of FAGI using the percentage of excludable dividends received while in resident status, compared to the total excludable dividends.

3. All interest actually or constructively received while in resident status shall be included in the Utah portion of the FAGI.

4. All FAGI derived from Utah sources while in a nonresident status, as determined under Section 59-10-117, shall be included in the Utah portion of FAGI.

D. Income or loss from businesses, rents, royalties, partnerships, estates or trusts, small business corporations as defined by Internal Revenue Code Section 1371(b), and farming shall be included in the Utah portion of FAGI:

1. if the activities involved were concluded, or the taxpayer's connection with them terminated before or at the time of change from resident to nonresident status; or

2. if the activities were commenced or the taxpayer joined them at the time or after the change from nonresident to resident status.

Otherwise, such income or loss shall be included in the Utah portion of FAGI only to the extent derived from Utah sources as determined under Section 59-10-117.

E. Moving expenses deducted on the federal return may be deducted from the Utah portion of FAGI only to the extent that they are for moving into Utah and within Utah.

F. Employee business expenses may be deducted from the Utah portion of FAGI only to the extent that they pertain to the production of income included in the Utah portion of FAGI.

G. Payments by a self-employed person to a retirement plan that reduce the total FAGI may be deducted from the Utah portion of FAGI in the same proportion that the related self-employment income is included in the Utah portion of FAGI.

H. Other income, losses or adjustments applicable in determining total FAGI may be allowed or included in the Utah portion of his FAGI only when the allowance or inclusion is fair, equitable, and would be consistent with other requirements of the act or these rules as determined by the Tax Commission.

R865-9I-8. Proration When Two Returns Are Required Pursuant to Utah Code Ann. Section 59-10-121.

A. Two returns are not required when an individual changes status as resident or nonresident. Ordinarily, the total of the taxable income that would be reported on two returns will be included in one return.

B. Only in unusual circumstances as determined by the Tax Commission will the preparation of two returns be allowed or required. In this event, the returns shall be prepared in a fair and equitable manner as approved or prescribed by the Tax Commission consistent with Utah Code Ann. Section 59-10-121 and other pertinent provisions.

R865-9I-9. Taxable Year Pursuant to Utah Code Ann. Section 59-10-122.

A. If a taxpayer's taxable year is changed to a taxable period of less than 12 months as required by Utah Code Ann. Section 59-10-122 and if he is required to convert his income for the period to an annual basis for federal income tax purposes, the taxpayer shall convert his income for the period of less than a year to an annual basis for computing his state income tax.

B. Unless the Tax Commission determines a different method consistent with requirements of the act is necessary or appropriate, the income tax of the taxpayer for the period of less than 12 months shall be computed as follows:

1. determine the state taxable income applicable to the fractional part of the year and multiply this amount by 12;

2. divide the product by the number of months in the period to arrive at the state taxable income on an annualized basis;

3. compute the tax applicable to the state taxable income as annualized;

4. divide the tax as computed on the annualized state taxable income by 12; and

5. multiply the result by the number of months in the period involved.

R865-9I-10. Adjustments Between Taxable Years After Change in Accounting Methods Pursuant to Utah Code Ann. Section 59-10-124.

A. If a taxpayer's state taxable income for any taxable year is computed under a method of accounting different from the method under which such income was computed for the

previous year, the taxpayer shall attach a statement to his return setting forth all differences. This statement shall specify the amounts duplicated or omitted in full or in part as a result of such change. The Tax Commission shall make or allow any necessary adjustments to prevent double inclusion or exclusion of an item of gross income, or double allowance or disallowance of an item of deduction or credit.

R865-9I-11. Share of A Nonresident Estate or Trust, or Its Beneficiaries In State Taxable Income Pursuant to Utah Code Ann. Section 59-10-207.

A. In determining the respective shares of the beneficiaries and of the estate or trust referred to in Utah Code Ann. Section 59-10-207, consideration shall be given to the net amount of the modifications described in Utah Code Ann. Sections 59-10-114 and 59-10-115. This is particularly true for those that relate to items of income, gain, loss, and deduction and that also enter into the definition of distributable net income. Otherwise, any methods different from those prescribed in Utah Code Ann. Section 59-10-207 of the act shall be used only if approved or directed by the Tax Commission as being necessary to prevent a substantial inequity in the allocation of such shares.

R865-9I-12. Fiduciary Adjustment Pursuant to Utah Code Ann. Section 59-10-210.

A. The net amount of the modifications described in Utah Code Ann. Sections 59-10-114 and 59-10-115 that relate to items of income or deduction of an estate or trust may be determined and used as the fiduciary adjustment. Otherwise, any methods different from those prescribed in Utah Code Ann. Section 59-10-210 shall be used only if approved or directed by the Tax Commission as being more appropriate and equitable in specific cases.

R865-9I-13. Nonresident's Share of Partnership or Limited Liability Company Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, and 59-10-303.

A. Nonresident partners and nonresident members shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

B. Partnerships and limited liability companies may file form TC-65, Utah Partnership/Limited Liability Company Return of Income, as a composite return on behalf of nonresident partners or nonresident members that meet all of the following conditions:

1. Nonresident partners or nonresident members included on the return may not have other income from Utah sources. Resident partners and resident members may not be included on the composite return.

2. A schedule shall be included with the return listing all nonresident partners or nonresident members included in the composite filing. The schedule shall list all of the following information for each nonresident partner or nonresident member:

a) name;

b) address;

c) social security number;

d) percentage of partnership or limited liability company income;

e) Utah income attributable to that partner or member.

3. Nonresident partners or nonresident members that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Nonresident or Part-year Resident Form Individual Income Tax Return.

C. The tax due on the composite return shall be computed as follows:

1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident partners or nonresident members included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah sources.

D. The partnership's or limited liability company's federal identification number shall be used on the form TC-65 in place of a social security number.

R865-9I-14. Requirement of Withholding Pursuant to Utah Code Ann. Sections 59-10-401, 59-10-402, and 59-10-403.

A. Except as otherwise provided in statute or this rule, every employer shall withhold Utah income taxes from all wages paid:

1. to a nonresident employee for services performed within Utah,

2. to a resident employee for all services performed, even though such services may be performed partially or wholly without the state.

B. If the services performed by a resident employee are performed in another state of the United States, the District of Columbia, or a possession of the United States that requires withholding on wages earned, the withholding tax for Utah shall be the Utah tax required to be withheld less the tax required to be withheld under the laws, rules, and regulations of that other state, District of Columbia, or possession of the United States.

C. If the duties of a nonresident employee involve work both within and without the state, tax is withheld from that portion of the total wages that is properly allocable to Utah. The method of allocation is subject to review by the Tax Commission and may be subject to change if it is determined to be improper.

D. Income tax treatment of rail carrier and motor carrier employees is governed by 49 U.S.C. Section 14503.

E. Withholding required under Section 59-10-402 is required for all wages that are:

1. subject to withholding for federal income tax purposes;

2. paid to individuals who are deemed employees as determined by the Tax Commission, using Internal Revenue Service guidelines.

F. The number of exemptions claimed for federal withholding shall be the number of exemptions claimed for state withholding purposes.

G. Employers should use Utah income tax withholding schedules or tables published by the Tax Commission in computing the amount of state income tax withheld from their employees.

R865-9I-15. Employees Incurring No Income Tax Liability Pursuant to Utah Code Ann. Section 59-10-403.

A. With reference to Utah Code Ann. Section 59-10-403, an employer shall not be required to deduct and withhold Utah income taxes from wages paid to an employee who has filed a Federal Withholding Certificate, Form W-4E.

R865-9I-16. Collection and Payment of Withholding Pursuant to Utah Code Ann. Section 59-10-406.

A. Legible copies of the federal Form W-2 must contain the following information:

1. the name and address of the employee and employer;

2. the employer's Utah withholding tax account number;

3. the amount of compensation;

4. the amounts of federal and Utah state income tax withheld;

5. the social security number of the employee;

6. the word "Utah" either printed or stamped thereon in such a way as to clearly indicate the tax withheld was for Utah in accordance with Utah law, as distinguished from any other state or jurisdiction; and

7. other information required by the commission.

B. Sufficient copies of the W-2 form must be furnished to each employee to enable attachment of a legible copy to the state income tax return.

C. If a tax required under Section 59-10-402 is not withheld by an employer, but is later paid by the employee:

1. the tax required to be withheld under Section 59-10-402 shall not be collected from the employer; and

2. the employer shall remain subject to penalties and interest on the total amount of taxes that the employer should have withheld under Section 59-10-402.

R865-9I-17. Time for Filing Withholding Tax Returns and Payment of Withholding Taxes Pursuant to Utah Code Ann. Sections 59-10-406 and 59-10-407.

A. This rule provides exceptions to the statutory requirement that an employer shall file withholding tax returns and pay withholding taxes quarterly.

B. An employer may elect to file withholding tax returns and pay withholding taxes on an annual basis for a calendar year in which the employer:

1. files a federal Schedule H; or

2. withholds less than $1,000.

C. The annual withholding return and payment under B. are due by January 31 of the year succeeding the year for which the payment and return apply.

D. An employer withholding an average of $1,000 or more per month shall file withholding tax returns and pay withholding taxes on a monthly basis.

E. The monthly withholding return and payment under D. are due as prescribed in Section 59-10-407.

R865-9I-18. Taxpayer Records, Statements, and Special Returns Pursuant to Utah Code Ann. Section 59-10-501.

A. Every taxpayer shall keep adequate records for income tax purposes of a type which clearly reflect income and expense, gain or loss, and all transactions necessary in the conduct of business activities.

B. Records of all transactions affecting income or expense, or gain or loss, and of all transactions for which deductions may be claimed, should be preserved by the taxpayer to enable preparation of returns correctly and to substantiate claims. All such records shall be made available to an authorized agent of the Tax Commission when requested, for review or audit.

R865-9I-19. Returns By Husband and Wife Pursuant to Utah Code Ann. Section 59-10-503.

A. In the year a married person dies, the surviving spouse may file a joint Utah return if a joint federal return was filed except in cases where one spouse was a resident and the other a nonresident. In these cases, separate returns may be required (see Section 59-10-503(1)(b) and Rule R865-9I-6).

R865-9I-20. Returns Made By Fiduciaries and Receivers Pursuant to Utah Code Ann. Section 59-10-504.

A. Returns by fiduciaries and receivers shall be made in accordance with forms and instructions provided by the Tax Commission. The fiduciary of any resident estate or trust or of any nonresident estate or trust having income derived from Utah sources and who is required to make a return for federal income tax purposes shall make and file a corresponding return for state income tax purposes.

1. Each return shall include a listing of the beneficiaries and their distributable shares of the state taxable income.

2. In the case of a nonresident estate or trust, the return shall include detailed information showing how the amount of income derived from or connected with Utah sources was determined.

B. The fiduciary is required to pay the taxes on the income taxable to the estate or trust. Liability for payment of the tax attaches to the executor or administrator up to his discharge. If the executor or administrator failed to file a return as required by law or failed to exercise due diligence in determining and satisfying the tax liability, the liability is not extinguished until the return is filed and paid.

C. Liability for the tax also follows the estate itself. If by reason of the distribution of the estate and the discharge of the executor or administrator, it appears that collection of tax cannot be made from the executor or administrator, each legatee or distributee must account for his proportionate share of the tax due and unpaid to the extent of the distributive share received by him.

R865-9I-21. Return By Partnership Pursuant to Utah Code Ann. Section 59-10-507.

A. Every partnership having a resident partner or having any income derived from sources in this state (determined in accordance with Utah Code Ann. Section 59-10-303 and Rule R865-9I-13) shall file a return in accordance with forms and instructions provided by the Tax Commission.

B. If the partnership has income derived from or connected with sources both inside and outside Utah and if any partner was not a resident of Utah, the portion derived from or connected with sources in this state must be determined and shown.

1. They must be determined and shown for each item of the partnership's, and each nonresident partner's, distributive shares of income, credits, deductions, etc., shown on Schedules K and K-1 of the federal return.

2. The Utah portion may be shown alongside the total for each item on the federal schedules K and K-1, or they may be shown on an attachment to the Utah return.

R865-9I-22. Signing of Returns and Other Documents Pursuant to Utah Code Ann. Section 59-10-512.

A. Any return, statement, or other document shall be signed as required by specific provisions of the act or as prescribed by forms or instructions furnished by the Tax Commission.

B. All returns filed with the Tax Commission must be signed by the taxpayer or his duly authorized agent as provided by law. Unsigned returns are not valid returns for income tax purposes and if unsigned, the benefits of proper filing may be denied the taxpayer.

C. Returns may be filed on forms prescribed and furnished by the Tax Commission, or in lieu thereof, on reproduced or facsimile copies, provided that the same information required on the printed form for the same year is provided and the paper used for such substitute return is equal in durability and weight to 20 lb. bond. Paper more brittle or lighter in weight than that specified is not acceptable as a replacement for the regular reporting forms. The use of paper of lesser quality for supporting schedules is permitted, providing the schedules are clear and legible.

R865-9I-23. Extension of Time to File Returns Pursuant to Utah Code Ann. Section 59-10-516.

A. A completed form TC-546, Prepayment of Income Tax, must accompany the prepayment amount required by Section 59-10-516, if the prepayment is not in the form of withholding, payments applied from previous year refunds, or credit carryforwards.

B. Interest shall be charged on any additional tax due shown on the return in accordance with Section 59-1-402.

Interest is calculated from the original due date of the return to the date the tax is paid and applies even when an extension of time to file the return exists.

C. Utah residents in military service, stationed outside the United States, shall be granted an extension of time to file to the 15th day of the fourth month after their return to the United States, or their discharge date, whichever is earlier.

R865-9I-24. Timely Mailing Treated As Timely Filing Pursuant to Utah Code Ann. Section 59-10-517.

A. With reference to Section 59-10-517(3)(b), the provisions of that statute that apply to registered mail shall also apply in ordinary circumstances to certified mail.

R865-9I-30. Limitations on Assessment and Collection Pursuant to Utah Code Ann. Section 59-10-536.

A. If a taxpayer elects to defer a determination as to applicability of the presumption that the activity is being engaged in for profit as set forth in I.R.C. Section 183(d), he shall notify the Tax Commission in writing of such election. He must also consent to assessment of tax pertaining to such activity at any time within the five- or seven-year period plus a reasonable additional period.

1. In addition, the taxpayer shall immediately furnish to the Tax Commission a copy of every waiver of the running of the statute of limitations that he may give to the Internal Revenue Service, and he shall at the same time give his consent in writing that the waiver shall also apply to the time allowed for assessment of tax by the Tax Commission.

2. The taxpayer must notify the Tax Commission of any audit actions or determinations made by the Internal Revenue Service with respect to such activity.

R865-9I-32. Confidentiality of Return Information, Penalties, and Exchange of Information With The Internal Revenue Service or Governmental Units Pursuant to Utah Code Ann. Section 59-10-545.

A. The amount of income and other particulars disclosed by a taxpayer on his return or report required under the act is strictly confidential and except in accordance with proper judicial order, or as otherwise provided by law, may not be divulged.

B. A taxpayer, properly identified, may inspect his own return. He may also authorize to the satisfaction of the Tax Commission, an agent to represent him and inspect his returns. Such authorization must be in writing and may be limited or of a continuing nature as specified. A fee may be charged for furnishing copies of returns or reports by the Tax Commission.

C. Officers of the United States Internal Revenue Service, upon being properly identified as such, may be granted permission to inspect the returns or reports on file under this chapter for the purpose of administering the federal tax law. All information, so obtained, must be used in the strictest confidence for tax administration only.

R865-9I-33. Reporting Miscellaneous Income Pursuant to Utah Code Ann. Section 59-10-501.

A. Legible copies of the federal Form 1099 or other special forms for reporting rents, royalties, interest, remuneration, etc., from Utah sources not subject to federal withholding must be open to inspection and gathering of information by authorized representatives of the Tax Commission or submitted to the Tax Commission upon request. These forms must show the name, address, social security number, and other pertinent information pertaining to each taxpayer, resident or nonresident of Utah, the amount and purpose of the distribution clearly shown.

R865-9I-34. Property Tax Relief For Individuals Pursuant to Utah Code Ann. Sections 59-2-1201 through 59-2-1220.

A. "Household" is determined as follows:

1. For purposes of the homeowner's credit under Section 59-2-1208, household shall be determined as of January 1 of the year in which the claim under that section is filed.

2. For purposes of the renter's credit under Section 59-2-1209, household shall be determined as of January 1 of the year for which the claim is filed under that section.

B. "Nontaxable income" includes:

1. the amount of a federal child tax credit received under Section 24 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability; and

2. the amount of a federal earned income credit received under Section 32 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability.

C. "Nontaxable income" does not include:

1. federal tax refunds;

2. the amount of a federal child tax credit received under Internal Revenue Code Section 24 that did not exceed the taxpayer's federal tax liability;

3. the amount of a federal earned income credit received under Internal Revenue Code Section 32 that did not exceed the taxpayer's federal tax liability;

4. payments received under a reverse mortgage;

5. payments or reimbursements to senior program volunteers under United States Code Title 42, Section 5058; and

6. gifts and bequests.

D. "Property taxes accrued" does not mean that taxes can be accumulated for two or more years and then claimed in one year.

E. A claimant who pays property taxes on a mobile home and pays rent on the land on which the mobile home is situated shall be eligible for a homeowner's credit for the property tax paid on the mobile home and a renter's credit for the rent paid on the land.

F. State welfare assistance is not considered as public funds for the payment of rent, and will not preclude a rebate. However, assistance payments must be included in income.

G. Where housing assistance payments are involved under the Housing and Community Development Act, Title II, Section 8:

1. only that portion of the rent paid by the tenant may be claimed under the terms of the Circuit Breaker Act; and

2. that portion of the rent paid by the federal government to the landlord will not be considered as part of the household income since it is not subject to a claim for rebate.

H. Persons claiming a property tax exemption under Title 59, Chapter 2, Part 11 are not precluded from claiming a homeowner's or renter's credit.

R865-9I-37. Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 9-2-401 through 9-2-414.

A. Definitions:

1. "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

2. "Construction work" does not include facility maintenance or repair work.

3. "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

4. "Public utilities business" means a public utility under Section 54-2-1.

5. "Transfer" pursuant to Section 9-2-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

B. For purposes of the investment tax credit, an investment is a qualifying investment if:

1. The plant, equipment, or other depreciable property for

which the credit is taken is located within the boundaries of the enterprise zone.

2. The plant, equipment, or other depreciable property for which the investment tax credit is taken is in a business that is operational within the enterprise zone.

C. The calculation of the number of full-time positions for purposes of the credits allowed under Section 9-2-413(1)(a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.

D. To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for the tax year for which an enterprise zone credit is sought.

E. A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section 9-2-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.

F. An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.

G. Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

H. If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

R865-9I-39. Subtraction from Federal Taxable Income for a Dependent Child With a Disability or an Adult With a Disability Pursuant to Utah Code Ann. Sections 59-10-114 and 59-10-501.

A. A taxpayer that claims the deduction from income for a dependent child with a disability or an adult with a disability allowed under Section 59-10-114 shall complete form TC-40D, Disabled Exemption Verification, as evidence that the taxpayer qualifies for the deduction.

B. The form described under A. shall be:

1. completed for each year for which the taxpayer claims the deduction; and

2. retained by the taxpayer.

R865-9I-41. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-10-108.5.

A. Definitions

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-10-108.5 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the $10,000 expenditure threshold required by Section 59-10-108.5 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's standards for Rehabilitation.

E. Upon issuing a certification number under D., the State Historic Preservation Office shall provide the taxpayer an authorization form containing that certification number.

F. Credit amounts shall be applied against Utah individual income tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah individual income tax due in a tax year shall be carried forward to the extent provided by Section 59-10-108.5.

H. Carryforward historic preservation tax credits shall be applied against Utah individual income tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-9I-42. Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6- 102, 59-13-202, and Title 59, Chapter 10.

A. Taxpayers shall deduct credits authorized by Sections 9-2- 413, 59-6-102, 59-13-202, and Title 59, Chapter 10 against Utah individual income tax due in the following order:

1. nonrefundable credits;

2. nonrefundable credits with a carryforward;

3. refundable credits.

R865-9I-44. Compensation Received by Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118.

A. The Utah source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

B. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.

C. Definitions.

1. "Professional athletic team" includes any professional baseball, basketball, football, soccer, or hockey team.

2. "Member of a professional athletic team" shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes coaches, managers, and

trainers.

3. "Duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

a) Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in 3., for example, participation in instructional leagues, the Pro Bowl, or other promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

b) Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

c) Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.

d) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

e) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

4. "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:

a) from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and

b) during the taxable year on a date that does not fall within the period in 4.a), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

5. "Total compensation" includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

a) Total compensation shall not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

b) For purposes of this rule, "bonuses" subject to the allocation procedures described in A. are:

(1) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(2) bonuses paid for signing a contract, unless all of the following conditions are met:

(a) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(b) the signing bonus is payable separately from the salary and any other compensation; and

c) the signing bonus is nonrefundable.

D. The purpose of this rule is to apportion to the state, in a fair and equitable manner, a nonresident member of a professional athletic team's total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the provisions of this rule will result in a fair and equitable apportionment of that compensation. Where it is demonstrated that the method provided under this rule does not fairly and equitably apportion that compensation, the commission may require the member of a professional athletic team to apportion that compensation under a method the commission prescribes, as long as the prescribed method results in a fair and equitable apportionment.

1. If a nonresident member of a professional athletic team demonstrates that the method provided under this rule does not fairly and equitably apportion compensation, that member may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully explained in the nonresident member of a professional athletic team's nonresident personal income tax return for the state.

E. Nonresident professional athletes shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

F. Professional athletic teams shall file a composite return, on a form prescribed by the commission, on behalf of nonresident professional athletes that meet all of the following conditions.

1. Nonresident professional athletes included on the return may not have other income from Utah sources. Resident professional athletes may not be included on a composite return.

2. A schedule shall be included with the return, listing all nonresident professional athletes included in the composite filing. The schedule shall list all of the following information for each nonresident professional athlete:

a) name;

b) address;

c) social security number;

d) Utah income attributable to that nonresident professional athlete.

3. Nonresident professional athletes that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Non or Part-year Resident Individual Income Tax Return.

4. Participating team members must acknowledge through their election that the composite return constitutes an irrevocable filing and that they may not file an individual income tax return in the taxing state for that year.

G. The tax due on the composite return shall be computed as follows.

1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident professional athletes included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah sources.

H. The professional athletic team's federal identification number shall be used on the composite form in place of a social security number.

I. This rule has retrospective application to January 1, 1995.

R865-9I-46. Medical Savings Account Tax Deduction Pursuant to Utah Code Ann. Sections 31A-32a-106 and 59-10-114.

A. Account administrators required to withhold penalties from withdrawals pursuant to Section 31A-32a-105 shall hold those penalties in trust for the state and shall submit those withheld penalties to the commission along with form TC-97M, Utah Medical Savings Account Reconciliation.

B. In addition to the requirements of A., account administrators shall file a form TC- 675M, Statement of

Withholding for Medical Savings Account, with the commission, for each account holder. The TC-675M shall contain the following information for the calendar year:

1. the beginning balance in the account;
2. the amount contributed to the account;
3. the account's earnings;
4. distributions for qualified medical expenses;
5. distributions for non-medical expenses not subject to penalty;
6. distributions for non-medical expenses subject to penalty;
7. the amount of penalty required to be withheld and remitted to the state;
8. the account administrator's administrative fee charged to the account; and
9. the ending balance in the account.

C. The account administrator shall file forms TC-97M and TC-675M with the commission on or before January 31 of the year following the calendar year on which the forms are based.

D. The account administrator shall provide each account holder with a copy of the form TC-675M on or before January 31 of the year following the calendar year on which the TC-675M is based.

E. The account administrator shall maintain original records supporting the amounts listed on the TC-675M for the current year filing and the three previous year filings.

R865-9I-47. Withholding and Payment of Income Tax for Members of the Armed Services Receiving Combat Pay Pursuant to Utah Code Ann. Sections 59-10-408 and 59-10-522.

A. Income excluded from federal adjusted gross income as combat pay shall be exempt from the withholding requirements of Sections 59-10-401 through 59-10-407.

B. Utah residents receiving combat pay qualify for an extension of time to pay income taxes for a period not to exceed the extension for filing returns provided in Tax Commission rule R865-9I-23(C).

R865-9I-48. Adoption Expenses Deduction Pursuant to Utah Code Ann. Section 59-10-114.

A. For purposes of the deduction for adoption expenses under Section 59-10-114, adoption expenses include:

1. medical expenses associated with prenatal care, childbirth, and neonatal care;
2. fees paid to reimburse the state under Section 35A-3-308;
3. fees paid to an attorney or placement service for arranging the adoption;
4. all actual travel costs incurred exclusively for the purpose of completing adoption arrangements; and
5. living expenses of the birth mother if paid by the adoptive parents as part of their adoption expenses and if in conformance with Section 76-7-203.

B. Adoption expenses do not include:

1. food, clothing, or other routine expenses associated with the child's care, other than necessary medical expenses, that arise before the adoption is final;
2. foster care expenses incurred prior to the application for adoption; or
3. legal expenses arising from custody actions subsequent to the finalization of the adoption.

C. Qualified adoption expenses may be deducted regardless of whether the adoption process is terminated.

D. The income tax deduction under Section 59-10-114 applies to the actual qualified adoption expenses of the birth mother, the legal guardian of the birth mother or another individual acting on behalf of the birth mother, or the adoptive parents.

E. Reimbursed adoption expenses for which a taxpayer has taken the state income tax deduction, must be added to the taxpayer's gross income in the tax year in which the expenses are reimbursed.

R865-9I-49. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112 and 59-10-114.

A. "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

B. The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust participant. The TC-675H shall contain the following information for the calendar year:

1. the amount contributed to the trust by the participant;
2. the income earned on the participant's contributions to the trust; and
3. the amount refunded to the participant pursuant to Section 53B-8a-109.

C. The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

D. The trustee of the trust shall provide each trust participant with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

E. The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-9I-50. Addition to Federal Taxable Income for Interest Earned on Bonds, Notes, and Other Evidences of Indebtedness Pursuant to Utah Code Ann. Section 59-10-114.

The addition to federal taxable income required under Section 59-10-114 for interest earned on bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003 applies to:

A. interest on individual bonds, notes, or other evidences of indebtedness purchased by a resident or nonresident individual on or after January 1, 2003; and

B. for bonds, notes, and other evidences of indebtedness held in a bond fund owned by a resident or nonresident individual, the portion of interest attributable to individual bonds, notes, and other evidences of indebtedness purchased by the bond fund on or after January 1, 2003.

KEY: historic preservation, income tax, tax returns, enterprise zones
June 29, 2004
Notice of Continuation April 22, 2002

9-2-401 through 9-2-414
31A-32A-106
53B-8a-112
59-2-1201 through 59-2-1220
59-6-102
59-7-3
59-10
59-10-103
59-10-106
59-10-108 through 59-10-122
59-10-108.5
59-10-114
59-10-124

59-10-127
59-10-128
59-10-129
59-10-130
59-10-207
59-10-210
59-10-303
59-10-401
through
59-10-403
59-10-406
through
59-10-408
59-10-501
59-10-503
59-10-504
59-10-507
59-10-512
59-10-516
59-10-517
59-10-522
59-10-533
59-10-536
59-10-545
59-10-602
59-10-603
59-13-202
59-13-302

R865. Tax Commission, Auditing.
R865-12L. Local Sales and Use Tax.
R865-12L-1. Local Sales and Use Tax Rules Pursuant to Utah Code Ann. Section 59-12-205.

A. All rules made pursuant to Title 59, Chapter 12, Part 1, state sales and use taxes, shall apply to the local sales and use tax.

R865-12L-3. Tax Collection Schedule Pursuant to Utah Code Ann. Section 59-12-204.

A. A vendor responsible for collecting local sales or use tax in addition to the state tax may use a schedule furnished by the Tax Commission to determine the amount of tax to be collected.

B. For amounts not shown on the schedule, tax may be computed to the nearest cent.

C. The bracket schedule is designed to under collect the tax on some sales within a given bracket and over collect the tax on other sales, in order that the vendor can be reimbursed for the approximate amount of tax that is required to be remitted to the Tax Commission.

R865-12L-4. Filing of Returns Pursuant to Utah Code Ann. Section 59-12-204.

A. Every person responsible for the collection of local sales and use tax is required to make a combined state and local sales and use tax return to the Tax Commission.

B. All provisions pertaining to filing returns for state sales and use tax also apply to filing returns for local sales and use tax.

R865-12L-5. Place of Sale Pursuant to Utah Code Ann. Section 59-12-207.

A. All retail sales shall be deemed to occur at the place of business of the retailer.

B. It is immaterial that delivery of the tangible personal property is made in a county or municipality other than that in which the retailer's place of business is located. There is no exemption from local sales or use tax on the basis of residence of or use by the purchaser in a county other than that in which the sale is made.

C. If a seller has more than one place of business in Utah, and if two or more of such locations participate in the sale, the sale occurs at the place of business where the tangible personal property is located or the place from which it is shipped or delivered.

R865-12L-6. Place of Transaction Pursuant to Utah Code Ann. Section 59-12-207.

A. The sale of merchandise shipped from outside Utah direct to a consumer in any county in Utah that has adopted the Uniform Local Sales and Use Tax Law is subject to local use tax, regardless of where the order was taken.

B. If a vendor sells merchandise that is shipped from outside Utah direct to a consumer in a county in Utah that has adopted the uniform local tax law, and if the vendor engages in solicitation or representation in that county or has a place of business or property located in that county, then the vendor is required to collect and remit local use tax in addition to the state use tax.

C. Vendors who sell merchandise that is shipped from outside Utah direct to a consumer in any county in Utah that has adopted the uniform local tax law but who are not required to collect the local use tax under the criteria in the preceding paragraph are nevertheless requested to collect and remit local use tax in addition to state use tax on a voluntary basis in the same manner as though they were required to do so.

D. If a vendor who is not required to collect local use tax on shipments into counties that have adopted the uniform local tax law does not collect local tax but collects the state tax only, then the consumer remains liable for the local use tax and must remit the local use tax direct to the Tax Commission even though the state tax has been collected by the vendor.

E. Purchases subject to use tax are defined as those purchases made by ultimate consumers for their own storage, use, or consumption in Utah when the merchandise is shipped from outside Utah direct to the purchaser in Utah and on which the vendor did not charge Utah use tax. Local use tax applies to purchases subject to use tax, as defined above, that are stored, used, or consumed in a county that has adopted the uniform local tax law.

F. Taxpayers having one or more places of business in Utah shall report all purchases subject to use tax, as defined above, according to the location of the place of business at which the tangible personal property is initially delivered. If initially delivered within a county that has adopted the uniform local tax law, local use tax applies, regardless of whether the goods are later transferred to a different location.

R865-12L-9. Determination of Point of Sale or Use for Sellers and Purchasers Who Make Sales or Purchases From a Location Other Than a Fixed Place of Business in Utah Pursuant to Utah Code Ann. Section 59-12-207.

A. "Combined sales tax rate" means the sales tax rate that is the sum of the state sales and use tax rate provided under Title 59, Chapter 12, Part 1, the local sales and use tax rate provided under Title 59, Chapter 12, Part 2, and the rates of any of the following county or municipal taxes that have been imposed in the locality:

1. Title 59, Chapter 12, Part 5, Public Transit Tax;

2. Title 59, Chapter 12, Part 7, County Option Funding for Botanical, Cultural, and Zoological Organizations;

3. Title 59, Chapter 12, Part 8, Funding for Rural County Hospitals;

4. Title 59, Chapter 12, Part 10, Highways Tax; and

5. Title 59, Chapter 12, Part 11, County Option Sales and Use Tax.

B. The following transactions shall be reported on Tax Commission form TC-71, Schedule B/D ("Schedule B/D"):

1. sales of goods from vending machines if the vending machines are situated at multiple locations;

2. sales made from a location in Utah other than a fixed place of business in Utah;

3. sales of tangible personal property shipped into the state by vendors that have established Utah sales tax nexus;

4. purchases of tangible personal property for storage, use, or consumption by a purchaser that is required to file a Utah sales and use tax return but only if:

a) the initial delivery of the tangible personal property is from an inventory located outside the state and the storage, use, or consumption of the tangible personal property occurs at a location other than at a fixed place of business in Utah; and

b) Utah use tax was not collected on the purchase of the tangible personal property described in 4.a).

C. A vendor that makes sales from a fixed location in Utah as well as sales that must be filed on Schedule B/D pursuant to B., may not include on the Schedule B/D those sales the vendor makes from a fixed place of business in Utah.

D. Sales or purchases required to be included on Schedule B/D pursuant to B. shall be reported on the basis of:

1. the county in which they are made, but only if none of the cities within that county has a combined sales tax rate that differs from the county combined sales tax rate; or

2. the city in which they are made, but only if that city has a combined sales tax rate that differs from the county combined sales tax rate.

E. Revenues reported to the Tax Commission on Schedule B/D pursuant to B. shall be allocated to points of sale or use

within the reported county based on the proportion of taxable sales or uses attributable to fixed places of business within a particular locality in the county compared to the taxable sales or uses attributable to fixed places of business throughout the county.

F. Revenues allocated to points of sale or use under E. shall be distributed to counties, cities, and towns within the state according to the provisions of Title 59, Chapter 12, Sales and Use Tax Act.

R865-12L-11. Isolated or Occasional Sale of a Vehicle Pursuant to Utah Code Ann. Section 59-12-204.

A. The sale of any vehicle subject to the registration laws of this state by anyone other than a licensed dealer shall be subject to the local sales or use tax if the purchaser's address is within any county or municipality which has in effect a local sales and use tax law. The purchaser shall be liable for payment of state and local taxes at the time of registration of the vehicle.

B. The foregoing provision in no way applies to sales of vehicles made by licensed dealers in Utah. All sales of vehicles made by dealers shall be subject to the same laws as sales by any other retailers.

R865-12L-12. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-204.

A. Local sales tax applies to all lease and rental charges where the tangible personal property leased or rented is delivered from a lessor's place of business that is located in a county that has adopted The Uniform Local Sales and Use Tax Law. The local sales tax accrues to the county or city from which the property was delivered, regardless of where in Utah such property is used. The lessor is required to collect and remit both local and state sales tax.

B. Lessors who lease or rent tangible personal property that is shipped from outside Utah direct to a lessee in Utah are required to collect local use tax on lease charges for tangible personal property used in a county that has adopted the uniform local tax law, regardless of whether the lessor has a place of business in that county or in Utah. The presence of the lessor's property in a county that has adopted the uniform local tax law imposes the liability upon the lessor to collect and remit local use tax in addition to state use tax. The local use tax on rental and lease charges accrues to the county in which the tangible personal property is being used. With motor vehicles leased in Utah by a lessor who has no place of business in Utah, the local tax will apply according to the Utah address of the lessee, and the tax is to be collected by the lessor and reported on that basis.

R865-12L-13. Repairmen and Servicemen Pursuant to Utah Code Ann. Section 59-12-204.

A. Charges for repairs, renovations, or other taxable services to tangible personal property are assigned to the office or place of business out of which the repairman or serviceman works.

B. If a repairman or serviceman works out of a place of business located in a county that has adopted The Uniform Local Sales and Use Tax Law, the total charge for taxable services to tangible personal property is subject to both state and local sales tax, regardless of where in Utah the service or labor is performed.

Reference: ARM File No. 46.

R865-12L-14. Quarterly List of Local Sales and Use Tax Distributions Pursuant to Utah Code Ann. Section 59-12-109.

A. Upon receipt of a written request from the head of a political subdivision of the state of Utah, the Tax Commission shall periodically furnish the governing body quarterly listings of local sales/use taxes remitted by businesses located within the political subdivision.

1. After receiving each listing, the governing body of the political subdivision shall advise the Tax Commission within 90 days:

(a) that the listing is correct, or alternatively

(b) make corrections regarding firms omitted from the list or firms listed but not doing business in their taxing jurisdiction.

2. Once the Tax Commission receives notification from a political subdivision that the listing is correct, or corrects any errors disclosed on the list, subsequent distributions will be based on that listing as verified or adjusted.

3. If the governing body of the political subdivision fails to notify the Tax Commission of any omitted businesses within the ninety-day period, the political subdivision is precluded from making any claims based upon such omission and the Tax Commission shall not be held liable for any such omissions.

B. The information furnished is confidential data. No official or employee of a municipality or county shall use this local sales and use tax information for other than tax or license purposes. The written request for informational listings must acknowledge these confidentiality provisions and accept responsibility for safeguarding the listings.

R865-12L-16. Notification to Tax Commission Upon Change in the Election to Collect County or Municipality Imposed Transient Room Taxes Pursuant to Utah Code Ann. Sections 59-12-301 and 59-12-355.

A. If a county or municipality that has imposed a transient room tax elects to change the responsibility for collecting the transient room tax from the local government entity to the Tax Commission, or from the Tax Commission to the local government entity, the change in the collection shall take place:

1. on the first day of a calendar quarter; and

2. after a 90-day period beginning on the date the Tax Commission receives notice from the local government entity.

B. Notices required under A. should be directed to the Revenue and Distribution Director, Administration Division, Utah State Tax Commission, 210 North 1950 West, Salt Lake City, Utah 84134.

R865-12L-17. Procedures for Administration of the Tourism, Recreation, Cultural, and Convention Facilities Tax Pursuant to Utah Code Ann. Sections 59-12-602 and 59-12-603.

A. Definitions

1. "Primary business" means the source of more than 50 percent of the revenues of the retail establishment. In the case of a retail establishment with more than two lines of business, primary business means the line of business which generates the highest revenues when compared with the other lines of business.

2. "Retail establishment" means a single outlet, whether or not at a fixed location, operated by a seller. Retail establishment includes the preparation facilities of caterers, outlets that deliver the foods or beverages they prepare, and other similar sellers. A single seller engaged in multiple lines of business at one location may be deemed to be operating multiple retail establishments if the lines of business are not commonly regarded as a single retail establishment or if there are other factors indicating that the lines of business should be treated separately. The operation of concession stands by stadium owners, performers, promoters, or others with a financial interest in ticket sales or admission charges to any event shall be considered a separate line of business constituting a retail establishment.

3. "Theater" means an indoor or outdoor location for the presentation of movies, plays, or musicals.

B. If an establishment that is a restaurant under Section 59-12-602 sells prepackaged foods as incidental items with the sale of prepared foods, a tax imposed under Section 59-12-

603(1)(b) applies to the prepackaged food as well.

C. For purposes of collecting the tax imposed on the sale of prepared foods and beverages, the tax will attach in the county in which the food or beverage is served.

D. A seller that sells foods or beverages prepared for immediate consumption and is uncertain whether it is a restaurant shall make application, in letter form, for exemption with the Tax Commission indicating the circumstances that may qualify it for an exemption. A single application may be filed by a seller for multiple retail establishments if the operations of all of the retail establishments are similar.

R865-12L-18. Participation of Counties, Cities, and Towns in Determination, Administration, Operation, and Enforcement of Local Option Sales and Use Tax Pursuant to Utah Code Ann. Sections 59-1-403, 59-12-202, 59-12-204, and 59-12-205.

A. The Tax Commission has exclusive authority, subject to the provisions of B. to determine taxpayer liability for the local option sales and use tax, and to administer, operate, and enforce the provisions of Title 59, Chapter 12, Utah Code Ann., including the provisions of Section 59-12-201, et seq. The Tax Commission shall:

1. ascertain, assess, and collect any sales and use tax imposed pursuant to Title 59, Chapter 12;

2. determine taxpayer liability for the sales and use tax;

3. represent the counties', cities', and towns' interests in all administrative proceedings commenced pursuant to Title 63, Chapter 46b, or otherwise, involving the state or local option sales and use tax;

4. adjudicate all administrative proceedings commenced pursuant to Title 63, Chapter 46b, or otherwise, involving the state or local option sales and use tax.

B. Counties, cities, and towns shall have access to records and information on file with the Tax Commission, and have notice and such rights to intervene in or to appeal from a proposed final agency action of the Tax Commission as follows:

1. In any case in which the Tax Commission, following a formal adjudicative proceeding commenced pursuant to Title 63, Chapter 46b, Utah Code Ann., takes final agency action that would reduce the amount of sales and use tax liability alleged in the notice of deficiency, the Tax Commission will provide notice of a proposed agency action to all qualified counties, cities, and towns.

a) A county, city, or town is a qualified county, city, or town for purposes of B.1. above if the proposed final agency action reduces the local option sales and use tax distributable to that individual county, city, or town by more than $10,000 below the amount of that tax that would have been distributable to that county, city, or town had the notice of deficiency not been reduced.

2. Upon notification from the Tax Commission of proposed final agency action, the authorized representative of the qualified county, city, or town has the right to review the record of the formal hearing and all Tax Commission records relating to the proposed final agency action in accordance with the provisions of Part F of this rule.

3. Within ten days following receipt of notice of a proposed final agency action, a qualified county, city, or town may intervene in the Tax Commission proceeding by filing a notice of intervention with the Tax Commission.

4. Within 20 days after filing a notice of intervention, if a qualified county, city, or town objects to the proposed final agency action in whole or in part, it will file with the Tax Commission a petition for reconsideration setting out all facts, arguments and authorities in support of its contention that the proposed final agency action is erroneous and shall serve copies of the petition on the taxpayer and the appropriate Tax Commission division.

5. The taxpayer and the appropriate Tax Commission division may each file a response to the petition for reconsideration filed by a qualified county, city, or town within 20 days of receipt of the petition for reconsideration.

6. After consideration of the petition for reconsideration and any response, and any further proceedings it deems appropriate, the Tax Commission may affirm, modify, or amend its proposed final agency action. The taxpayer and any qualified county, city, or town that has filed a petition for reconsideration may appeal the final agency action in accordance with applicable statutes and rules.

C. Counties, cities, and towns shall only have such notice of and such rights to intervene in or to appeal from a proposed final agency action of the Tax Commission in sales and use tax cases as are provided herein.

D. Counties, cities, and towns are subject to the confidentiality provisions of Section 59-1-403(1) and (5) and standards as set forth in Section 59-2-206 concerning all Tax Commission taxpayer sales and use tax records to which they are granted access.

E. Counties, cities, and towns shall be provided such information regarding sales and use tax collections as is necessary to verify that the local sales and use tax revenues collected by the Tax Commission are distributed to each county, city, and town in accordance with Sections 59-12-205 and 59-12-206, including access to the Tax Commission's reports of vendor sales, sales tax distribution reports and breakdown of local revenues.

F. When a county, city, or town objects to a proposed final agency action of the Tax Commission pursuant to the provisions of Part A, of this rule, the authorized representative of a county, city, or town shall, subject to the confidentiality provisions of Part D, have access to such Tax Commission sales and use tax records as is necessary for the county, city, or town to contest the Tax Commission's final agency action.

KEY: taxation, sales tax, restaurants, collections

June 29, 2004	**59-12-118**
Notice of Continuation April 16, 2002	**59-12-205**
	59-12-301
	59-12-355
	59-12-501
	59-12-502
	59-12-602
	59-12-603
	59-12-703
	59-12-802
	59-12-804

R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax.
R865-19S-1. Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. Section 59-12-103.

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or

2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

R865-19S-2. Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103.

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. An invoice or receipt issued by a vendor shall show the sales tax collected as a separate item on the invoice or receipt.

B. If an invoice or receipt issued by a vendor does not show the sales tax collected as required in A., sales tax will be assessed on the vendor based on the amount of the invoice or receipt.

C. A vendor that collects an excess amount of sales or use tax must either refund the excess to the purchasers from whom the vendor collected the excess or remit the excess to the Commission.

1. A vendor may offset an undercollection of tax on sales against any excess tax collected in the same reporting period.

2. A vendor may not offset an underpayment of tax on the vendor's purchases against an excess of tax collected.

R865-19S-6. Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.

A. The vendor shall collect sales or use tax at the rate set by law. Rule R865-19S-30 defines sales price.

B. The Tax Commission furnishes tables that may be used to determine the proper amount of tax on each transaction. These tables reflect the appropriate amount, including applicable local taxes, for the various taxing jurisdictions.

R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.

A. A separate license must be obtained for each place of business, but where more than one place of business is operated by the same person, one application may be filed giving the required information about each place of business. Each license must be posted in a conspicuous place in the place of business for which it is issued.

B. Any person required to collect sales tax must notify the Tax Commission of any change of address or character of business, or if the business is discontinued.

R865-19S-8. Bonds and Securities Pursuant to Utah Code Ann. Section 59-12-107.

A. Factors the commission will consider in determining whether a vendor must post security to ensure compliance with the provisions of Title 59, Chapter 12, include:

1. failure to file returns;

2. failure to make payments;

3. filing of returns that are improper; and

4. payment of sales tax with a check that is not honored.

B. The Tax Commission may accept as security a valid corporate surety bond, United States treasury bond, or other negotiable security it deems adequate.

C. The bond will be released only upon written request and after a review of all circumstances or upon cessation of business if no liability exists.

R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-118.

A. Every person responsible for the collection of the tax under the act shall file a return with the Tax Commission whether or not sales tax is due.

B. If the due date for a return falls on a Saturday, Sunday, or legal holiday, the return will be considered timely filed if it is received on the next business day.

C. If a return is transmitted through the United States mail, a legible cancellation mark on the envelope, or the date of registration of certification thereof by a United States post office, is considered the date the return is filed.

D. Sales and use tax returns shall be filed and paid monthly or quarterly with the following exceptions:

1. New businesses that expect annual sales and use tax liability less than $1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

2.a) Businesses currently assigned a quarterly filing status, in good standing and reporting less than $1,000 in tax for the preceding calendar year may be changed to annual filing status.

b) The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

3.a) Businesses assigned an annual filing status reporting in excess of $1,000 for a calendar year, will be changed to quarterly filing status.

b) The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

E. Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of $1,000 or as a result of delinquent payment history.

R865-19S-13. Confidential Nature of Returns Pursuant to Utah Code Ann. Section 59-12-109.

A. The returns filed are confidential and the information contained therein will not be divulged by the Tax Commission, its agents, clerks, or employees except in accordance with judicial order or upon proper application of a federal, state, or local agency. The returns will not be produced in any court proceeding except where such proceeding directly involves provisions of the sales tax act.

B. However, any person or his duly authorized representative who files returns under this act may obtain copies of the same upon proper application and presentation of proper picture identification.

R865-19S-16. Failure to Remit Excess Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.

A. The amount paid by any vendor to the Tax Commission with each return is the greater of:

1. the actual tax collections for the reporting period, or

2. the amount computed at the rates imposed by law against the total taxable sales for that period.

B. Space is available on the return forms for inserting figures and the words "excess collections," if needed.

R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales made during the period of the returns, and the tax must be reported and paid upon that basis.

C. Justified adjustments may be made and credit allowed for cash discounts, returned goods, bad debts, and repossessions that result from sales upon which the tax has been reported and paid in full by retailers to the Tax Commission.

1. Adjustments and credits will be allowed only if the retailer has not reimbursed himself in the full amount of the tax except as noted in C.6.a) and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off, or the repossession occurs.

3. Any refund or credit given to the purchaser must include the related sales tax.

4. Sales tax credits for bad debts are allowable only on accounts determined to be worthless and actually charged off for income tax purposes. Recoveries made on bad debts and repossessions for which credit has been claimed must be reported and the tax paid.

5. Sales tax credit for repossessions is allowable on the basis of the original amount subject to tax, less down payment. This amount is multiplied by the ratio of the number of monthly payments not made, divided by the total number of monthly payments required by the contract.

a) For example: the credit allowed on a taxable $30,000 car sale with a $5,000 down payment financed on a 60-month contract and repossessed after 20 full payments were made would be $16,667 as computed and shown below. The number of unpaid full payments is determined by dividing the total received on the contract by the monthly payment amount.

TABLE

Example:		
(1)	Original amount subject to tax	$30,000
(2)	Down payment	(5,000)
(3)	Balance of taxable base financed	25,000
(4)	Number of full payments unpaid at the time of repossession	40
(5)	Total contract period (no. of months)	60

Line 4 divided by line 5 times taxable base financed equals repossession credit

(40/60) x $25,000 = $16,667

b) In cases where a contract assignment creates a partial (part of the loan amount) recourse obligation to the seller, any repossession credit must be calculated in the same manner as shown above.

c) The credit for repossession shall be reported on the dealer's or vendor's sales tax return with an attached schedule showing computations and appropriate adjustments for any tax rate changes between the date of sale and the date of repossession.

6. Credit for tax on repossessions is allowed only to the selling dealer or vendor.

a) This does not preclude arrangements between the dealer or vendor and third party financial institutions wherein sales tax credits for repossessions by financial institutions may be taken by the dealer or vendor who will in turn reimburse the financial institution.

b) In the event the applicable vehicle dealer is no longer in business, and there are no outstanding delinquent taxes, the third party financial institution may apply directly to the Tax Commission for a refund of the tax in the amount that would have been credited to the dealer.

D. Adjustments in sales price, such as allowable discounts or rebates, cannot be anticipated. The tax must be based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.

E. If a sales tax rate change takes place prior to the reporting period when the credit is claimed, the tax credit must be determined and deducted rather than deducting the sales price adjustments.

F. Commissions to agents are not deductible under any conditions for purposes of tax computation.

R865-19S-22. Sales and Use Tax Records Pursuant to Utah Code Ann. Section 59-12-111.

A. Every retailer, lessor, lessee, and person doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer, shall keep and preserve complete and adequate records as may be necessary to determine the amount of sales and use tax for which such person or entity is liable. Unless the Tax Commission authorizes in writing an alternative method of record keeping, these records shall:

1. show gross receipts from sales, or rental payments from leases, of tangible personal property or services performed in connection with tangible personal property made in this state, irrespective of whether the retailer regards the receipts to be taxable or nontaxable;

2. show all deductions allowed by law and claimed in filing returns;

3. show bills, invoices or similar evidence of all tangible personal property purchased for sale, consumption, or lease in this state; and

4. include the normal books of account maintained by an ordinarily prudent business person engaged in such business, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in connection with the preparation of tax returns must also be maintained.

B. Records may be microfilmed or microfiched. However, microfilm reproductions of general books of account--such as cash books, journals, voucher registers, ledgers, and like documents--are not acceptable as original records. Where microfilm or microfiche reproductions of supporting records are maintained--such as sales invoices, purchase invoices, credit memoranda and like documents--the following conditions must be met:

1. appropriate facilities must be provided for preservation of the films or fiche for the periods required and open to examination,

2. microfilm rolls and microfiche must be systematically filed, indexed, cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included,

3. upon request of the Tax Commission, the taxpayer shall provide transcriptions of any information contained on microfilm or microfiche which may be required for verification of tax liability,

4. proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records,

5. a posting reference must appear on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in such order so as to relate to exempt transactions claimed.

C. Any automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

1. ADP records shall provide an opportunity to trace any

transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

2. A general ledger with source references should be prepared to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be prepared periodically.

3. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Tax Commission upon request. The system should be so designed that supporting documents--such as sales invoices, purchase invoices, credit memoranda, and like documents--are readily available.

4. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

(a) the application being performed;

(b) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and

(c) the controls used to insure accurate and reliable processing and important changes, together with their effective dates, in order to preserve an accurate chronological record.

D. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three years.

E. All of the foregoing records shall be made available for examination on request by the Tax Commission or its authorized representatives.

F. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the Tax Commission may:

1. Prohibit the taxpayer from introducing in any protest or refund claim proceeding those microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

2. Dismiss any protest or refund claim proceeding in which the taxpayer bases its claim upon any microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

3. Enter such other order necessary to obtain compliance with this rule in the future.

4. Revoke taxpayer's license upon evidence of continued failure to comply with the requirements of this rule.

R865-19S-23. Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104.

A. Taxpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales.

B. The Tax Commission will furnish samples of acceptable exemption certificate forms on request. Stock quantities are not furnished, but taxpayers may reproduce samples as needed in whole or in part.

C. A seller may retain a copy of a purchase order, check, or voucher in place of the exemption certificate as evidence of exemption for a federal, state, or local government entity, including public schools.

D. If a purchaser is unable to segregate tangible personal property or services purchased for resale from tangible personal property or services purchased for the purchaser's own consumption, everything should be purchased tax-free. The purchaser must then report and pay the tax on the cost of goods or services purchased tax-free for resale that the purchaser uses or consumes.

E. A seller may provide evidence of a sales and use tax exemption electronically if the seller uses the standard sales and use tax exemption form adopted by the governing board of the agreement.

F. A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurs.

R865-19S-25. Sale of Business Pursuant to Utah Code Ann. Section 59-12-112.

A. Every sales tax license holder who discontinues business, is required to notify the Tax Commission immediately and return the sales tax license for cancellation.

B. Every person discontinuing business shall retain records for a period of three years unless a release from such provision is obtained from the Tax Commission.

R865-19S-27. Retail Sales Defined Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103(1)(g).

A. The term retail sale has a broader meaning than the sale of tangible personal property. It includes any transfers, exchanges, or barter whether conditional or for a consideration by a person doing business in such commodity or service, either as a regularly organized principal endeavor or as an adjunct thereto. The price of the service or tangible personal property, the quantity sold, or the extent of the clientele are not factors which determine whether or not it is a retail sale.

B. Retail sale also includes certain leases and rentals of tangible personal property as defined in Rule R865-19S-32, accommodations as defined in Rule R865-19S-79, services performed on tangible personal property as defined in Rules R865-19S-51 and R865-19S-78, services that are part of a sale or repair, admissions as defined in Rules R865-19S-33 and R865-19S-34, sales of meals as defined in Rules R865-19S-61 and R865-19S-62, and sales of certain public utility services.

C. A particular retail sale or portion of the selling price may not be subject to a sales or use tax. The status of the exemption is governed by the circumstances in each case. See other rules for specific and general exemption definitions, Rule R865-19S-30 for definition of sales price and Rule R865-19S-72 covering trade-ins.

R865-19S-29. Wholesale Sale Defined Pursuant to Utah Code Ann. Section 59-12-102.

A. "Wholesale sale" means any sale by a wholesaler, retailer, or any other person, of tangible personal property or services to a retailer, jobber, dealer, or another wholesaler for resale.

1. All sales of tangible personal property or services which enter into and become an integral or component part of tangible personal property or product which is further manufactured or compounded for sale, or the container or the shipping case thereof, are wholesale sales.

2. All sales of poultry, dairy, or other livestock feed and the components thereof and all seeds and seedlings are deemed to be wholesale sales where the eggs, milk, meat, or other livestock products, plants, or plant products are produced for resale.

3. Sprays and insecticides used in the control of insect pests, diseases, and weeds for the commercial production of fruit, vegetables, feeds, seeds, and animal products shall be wholesale sales. Also baling ties and twine for baling hay and straw and fuel sold to farmers and agriculture producers for use in heating orchards and providing power in off-highway type farm machinery shall be wholesale sales.

B. Tangible personal property or services which are purchased by a manufacturer or compounder which do not become and remain an integral part of the article being

manufactured or compounded are subject to sales or use tax.

1. For example, sales to a knitting factory of machinery, lubricating oil, pattern paper, office supplies and equipment, laundry service, and repair labor are for consumption and are taxable. These services and tangible personal property do not become component parts of the manufactured products. On the other hand, sales of wool, thread, buttons, linings, and yarns, to such a manufacturer that do become component parts of the products manufactured are not taxable.

C. The price of tangible personal property or services sold or the quantity sold are not factors which determine whether or not the sale is a wholesale sale.

D. All vendors who make wholesale sales are required to obtain an exemption certificate from the purchaser as evidence of the nature of the sale, as required by Rule R865-19S-23.

R865-19S-30. Sale of a Vehicle or Vessel by a Person Not Regularly Engaged in Business Pursuant to Utah Code Ann. Section 59-12-104.

A. This rule provides guidance on the sale of a vehicle or vessel by a person not regularly engaged in business for purposes of Subsections 59-12-104(13) and (18).

B. For purposes of calculating sales and use tax on the sale of a vehicle where no trade in was involved, the bill of sale or other written evidence of value shall contain the names and addresses of the purchaser and the seller, and the sales price and vehicle identification number of the vehicle.

C. For purposes of calculating sales and use tax on the sale of a vehicle when the seller has received a trade-in vehicle as payment or partial payment, the bill of sale or other written evidence of value shall contain all of the following:

1. the names and addresses of the buyer and the seller;

2. the purchase price of the vehicle;

3. the value allowed for the trade-in vehicle;

4. the net difference between the vehicle traded and the vehicle purchased;

5. the signature of the seller; and

6. the vehicle identification numbers of the vehicle traded in and the vehicle purchased.

D. In the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel shall be determined by industry accepted vehicle pricing guides.

R865-19S-31. Time and Place of Sale Pursuant to Utah Code Ann. Section 59-12-102.

A. Ordinarily, the time and place of a sale are determined by the contract of sale between the seller and buyer. The intent of the parties is the governing factor in determining both time and place of sale subject to the general law of contracts. If the contract of sale requires the seller to deliver or ship goods to a buyer, title to the property passes upon delivery to the place agreed upon unless the contract of sale provides otherwise.

R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.

A. The lessor shall compute sales or use tax on all amounts received or charged in connection with a lease or rental.

B. When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement. The tax applies when situs of the property is in Utah or if the lessee takes possession in Utah. However, if the leased property is used exclusively outside Utah and an affidavit is furnished to the lessor to this effect, the tax does not apply. Examples of taxable leases include neon signs and custom made signs on the premises of the lessee, automobiles, and construction equipment leased for use in Utah.

C. Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.

D. Persons who furnish an operator with the rental equipment and charge for the use of the equipment and personnel are regarded as the consumers of the property leased or rented. An example of this type of rental is the furnishing of a crane and its operating personnel to a building erector. Sales or use tax then applies to the purchase of the equipment by the lessor rather than to the rental revenue.

E. Rentals to be applied on a future sale or purchase are subject to sales or use tax.

F. A lessee may, at its option, treat a conditional sale lease as either a sale or lease for sales or use tax purposes.

A conditional sale lease is a lease in which:

1. the consideration the lessee is to pay the lessor for the right to possession and use of the property is an obligation for the term of the lease not subject to termination by the lessee, and

2. the total consideration to be paid by the lessee is fixed at the time the lease is executed and cannot be modified by use, condition, or market value, and either:

a. the lessee is bound to become the owner of the property; or

b. the lessee has an option to become the owner of the property for no additional consideration or nominal additional consideration upon compliance with the lease agreement. Nominal consideration in this sense means ten percent or less of the original lease amount.

G. If the lessee treats a conditional sale lease as a sale, and if the lessor is also the vendor of the property, the sales price for sales tax purposes must be at least equal to the average sales price of similar property.

H. If the lessee treats a conditional sale lease as a sale, the sales tax must be collected by the lessor on the full purchase price of the property at the time of the purchase.

R865-19S-33. Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. "Admission" means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment. Admission also includes the right to use a table at a night club, hotel, or roof garden whether such charge is designated as a cover charge, minimum charge, or any such similar charge.

1. This applies whether the charge made for the use of the seat, table, or similar accommodation is combined with an admission charge to form a single charge, or is separate and distinct from an admission charge, or is the sole charge.

B. "Annual membership dues paid to a private organization" includes only those dues paid by members who, directly or indirectly, establish the level of the dues.

C. "Season passes" include amounts paid to participate in specific activities, once annual membership dues have been paid.

D. If the original admission charge carries the right to remain in a place, or to use a seat or table, or other similar accommodation for a limited time only, and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the law. Where a person or organization acquires the sole right to use any place or the right to dispose of all of the admissions to any place for one or more occasions, the amount paid is not subject to the tax on admissions. Such a transaction constitutes a rental of the entire place and if the person or organization in turn sells admissions, sales tax applies to amounts paid for such

admissions.

E. Annual membership dues may be paid in installments during the year.

F. Amounts paid for the following activities are not admissions or user fees:

1. lessons, public or private;

2. sign up for amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, the primary purpose of which, as stated in the corporation's or organization's articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;

3. sign up for participation in school activities. Sign up for participation in school activities excludes attendance as a spectator at school activities.

G. If amounts charged for activities listed in F. are billed along with admissions or user fees, the amounts not subject to the sales tax must be listed separately on the invoice in order to remain untaxed.

R865-19S-34. Admission to Places of Amusement Pursuant to Utah Code Ann. Section 59-12-103.

A. The phrase "place of amusement, entertainment, or recreation" is broad in meaning but conveys the basic idea of a definite location.

B. The amount paid for admission to such a place is subject to the tax, even though such charge includes the right of the purchaser to participate in some activity within the place. For example, the sale of a ticket for a ride upon a mechanical or self-operated device is an admission to a place of amusement.

C. Charges for admissions to swimming pools, skating rinks, and other places of amusement are subject to tax. Charges for towel rentals, swimming suit rentals, skate rentals, etc., are also subject to tax. Locker rental fees are subject to sales tax if the lockers are tangible personal property.

R865-19S-35. Residential or Commercial Use of Gas, Electricity, Heat, Coal, Fuel Oils or Other Fuels Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. "Residential use" is as defined in Section 59-12-102, and includes use in nursing homes or other similar establishments that serve as the permanent residence for a majority of the patients because they are unable to live independently.

B. Explosives or material used as active ingredients in explosive devices are not fuels.

C. If a firm has activities that are commercial and industrial and all fuels are furnished at given locations through single meters, the predominant use of the fuels shall determine taxable status of the fuels.

D. Fuel oil and other fuels must be used in a combustion process in order to qualify for the exemption from sales tax for industrial use of fuels pursuant to Section 59-12-104.

R865-19S-37. Exempt Sales of Commercials, Audio Tapes, and Video Tapes by or to Motion Pictures Exhibitors and Distributors Pursuant to Utah Code Ann. Section 59-12-104.

A. The purpose of this rule is to clarify the sales tax exemption for sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster.

B. Definitions.

1. "Commercials," "audio tapes," and "video tapes" mean tapes, films, or discs used by television or radio stations in regular broadcasting activities but do not include blank tapes purchased for newscasts or other similar uses by radio and television stations.

2. "Motion picture exhibitor" means any person engaged in the business of operating a theater or establishment in which motion pictures are regularly exhibited to the public for a charge.

3. "Distributor" means any person who purchases or sells motion picture films and video tapes that are used by a commercial television broadcaster or a motion picture exhibitor.

C. The sales tax exemption will be administered according to the provisions of Section 59-12-104 and this rule.

R865-19S-38. Isolated and Occasional Sales Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made by officers of a court, pursuant to court orders, are occasional sales, with the exception of sales made by trustees, receivers, assignees and the like, in connection with the liquidation or conduct of a regularly established place of business. Examples of casual sales are those made by sheriffs in foreclosing proceedings and sales of confiscated property.

B. If a sale is an integral part of a business whose primary function is not the sale of tangible personal property, then such sale is not isolated or occasional. For example, the sale of repossessed radios, refrigerators, etc., by a finance company is not isolated or occasional.

C. Sales of vehicles required to be titled or registered under the laws of this state are not isolated or occasional sales, except that any transfer of a vehicle in a business reorganization where the ownership of the transferee organization is substantially the same as the ownership of the transferor organization shall be considered an isolated or occasional sale.

D. Isolated or occasional sales made by persons not regularly engaged in business are not subject to the tax. The word "business" refers to an enterprise engaged in selling tangible personal property or taxable services notwithstanding the fact that the sales may be few or infrequent. Any sale of an entire business to a single buyer is an isolated or occasional sale and no tax applies to the sale of any assets made part of such a sale (with the exception of vehicles subject to registration).

E. The sale of used fixtures, machinery, and equipment items is not an exempt occasional sale if the sale is one of a series of sales sufficient in number, amount, and character to indicate the seller deals in the sale of such items.

F. Sales of items at public auctions do not qualify as exempt isolated or occasional sales.

G. Wholesalers, manufacturers, and processors who primarily sell at other than retail are not making isolated or occasional sales when they sell such tangible personal property for use or consumption.

R865-19S-40. Exchange of Agricultural Produce For Processed Agricultural Products Pursuant to Utah Code Ann. Section 59-12-102.

A. When a raiser or grower of agricultural products exchanges his produce for a more finished product capable of being made from the produce exchanged with the processor, the more finished product is not subject to the tax within limitations of the value of the raised produce exchanged.

R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106.

A. Sales to the United States government are exempt if federal law or the United States Constitution prohibits the collection of sales or use tax.

B. If the United States government pays for merchandise or services with funds held in trust for nonexempt individuals or organizations, sales tax must be charged.

C. Sales made directly to the United States government or any authorized instrumentality thereof are not taxable, provided the sale is paid for directly by the federal government. If an employee of the federal government pays for the purchase with

his own funds and is reimbursed by the federal government, that sale is not made to the federal government and does not qualify for the exemption.

D. Vendors making exempt sales to the federal government are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-42. Sales to The State of Utah and Its Subdivisions Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made to the state of Utah, its departments and institutions, or to its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts are exempt from tax if the purchase is for use in the exercise of an essential governmental function.

B. A sale is considered made to the state, its departments and institutions, or to its political subdivisions if the purchase is paid for directly by the purchasing state or local entity. If an employee of a state or local entity pays for a purchase with his own funds and is reimbursed by the state or local entity, that sale is not made to the state or local entity and does not qualify for the exemption.

C. Vendors making exempt sales to the state, its departments and institutions, or to its political subdivisions are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-43. Sales to or by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.

A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

B. Religious and charitable institutions must collect sales tax on any sales income arising from unrelated trades or businesses and report that sales tax to the Tax Commission unless the sales are otherwise exempted by law.

1. The definition of the phrase "unrelated trades or businesses" shall be the definition of that phrase in 26 U.S.C.A. Section 513 (West Supp. 1993), which is adopted and incorporated by reference.

C. Every institution claiming exemption from sales tax under this rule must submit form TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission for its determination. Vendors making sales to institutions exempt from sales tax are subject to the requirements of Rule R865-19S-23.

R865-19S-44. Sales In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made in interstate commerce are not subject to the sales tax imposed. However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce. When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax.

B. Before a sale qualifies as a sale made in interstate commerce, the following must be complied with:

1. the transaction must involve actual and physical movement of the property sold across the state line;

2. such movement must be an essential and not an incidental part of the sale;

3. the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary line to the buyer;

C. Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

D. If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

R865-19S-48. Sales Tax Exemption For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales of containers, labels, bags, shipping cases, and casings are taxable when:

1. sold to the final user or consumer;

2. sold to a manufacturer, processor, wholesaler, or retailer for use as a returnable container that is ordinarily returned to and reused by the manufacturer, processor, wholesaler, or retailer for storing or transporting their product; or

3. sold for internal transportation or accounting control purposes.

B. Returnable containers may include water bottles, carboys, drums, beer kegs for draft beer, dairy product containers, and gas cylinders.

1. Labels used for accounting, pricing, or other control purposes are also subject to tax.

C. For the purpose of this rule, soft drink bottles and similar containers that are ultimately destroyed or retained by the final user or consumer are not considered returnable and are exempt from the tax when purchased by the processor.

D. When tangible personal property sold in containers, for example soft drinks, is assessed a deposit or other container charge, that charge is subject to the tax. Upon refund of this charge, the retailer may take credit on a sales tax return if the tax is refunded to the customer.

R865-19S-49. Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104.

A. The purchase of feed, medicine, and veterinary supplies by a farmer or other agricultural producer qualify for the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations if the feed, medicine, or veterinary supplies are used:

1. to produce or care for agricultural products that are for sale;

2. to feed or care for working dogs and working horses in agricultural use;

3. to feed or care for animals that are marketed.

B. Fur-bearing animals that are kept for breeding or for their products are agricultural products.

C. The sales and use tax exemption for sales of tangible personal property used or consumed primarily and directly in farming operations applies only to commercial farming operations, as evidenced by the filing of a federal Farm Income and Expenses Statement (Schedule F) or other similar evidence that the farm is operated as a commercial venture.

D. A vendor making sales to a farmer or other agricultural producer is liable for the tax unless that vendor obtains from the purchaser a certificate as set forth in Rule R865-19S-23.

E. Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold by a producer during the harvest season.

R865-19S-50. Florists Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Flowers, trees, bouquets, plants, and other similar items

of tangible personal property are agricultural products and are, therefore, subject to the rules concerning the sale of those products as set forth in Rule R865-19S-49.

B. Where florists conduct transactions through a florist telegraphic delivery association, the following rules apply in computation of tax liability:

1. the florist must collect tax from the customer if the flower order is telegraphed to a second florist in Utah;

2. if a Utah florist receives an order pursuant to which he gives telegraphic instructions outside Utah, the Utah florist must collect tax from his customer upon the total charges;

3. if a Utah florist receives telegraphic instructions from a florist either within or outside of Utah for the delivery of flowers, the receiving vendor is not liable for the tax. In this instance, if the order originated in Utah, the tax is due from and payable by the Utah florist who first received the order.

R865-19S-51. Fabrication and Installation Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.

A. The amount charged for fabrication or installation which is part of the process of creating a finished article of tangible personal property must be included in the amount upon which tax is collected. This type of labor and service charge may not be deducted from the selling price used for taxation purposes even though billed separately to the consumer and regardless of whether the articles are commonly carried in stock or made up on special order.

B. Casting, forging, cutting, drilling, heat treating, surfacing, machining, constructing, and assembling are examples of steps in the process resulting in the creation or production of a finished article.

C. Charges for labor to install personal property in connection with other personal property are taxable (see Rule R865-19S-78) whether material is furnished by seller or not.

D. Labor to install tangible personal property to real property is exempt, whether the personal property becomes part of the realty or not. See Rule R865-19S-58, dealing with improvements to or construction of real property, to determine the applicable tax on personal property which becomes a part of real property.

E. Tangible personal property which is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, and installation charges are exempt if separately stated. If the retailer does not segregate the selling price and installation charges, the sales tax applies to the entire sales price, including installation charges.

F. This rule primarily covers manufacturing and assembling labor. Other rules deal with other types of labor and should be referred to whenever necessary.

R865-19S-52. Federal, State and Local Taxes Pursuant to Utah Code Ann. Section 59-12-102.

A. Federal excise tax involved in a transaction which is subject to sales or use tax is exempt from sales and use tax provided the federal tax is separately stated on the invoice or sales ticket and collected from the purchaser.

B. State and local taxes are taxable as a part of the sales price of an article if the tax is levied on the manufacturer or the seller.

R865-19S-53. Sale by Finance Companies Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales of tangible personal property acquired by repossession or foreclosure are subject to tax. Persons making such sales must secure a license and collect and remit tax on the sales made.

R865-19S-54. Governmental Exemption Pursuant to Utah Code Ann. Section 59-12-104.

A. Tax does not apply to sales to the state of Utah, or to any political subdivision of the state, where such property is for use in the exercise of an essential governmental function. Also, certain sales are not taxed because of federal law or the United States Constitution.

B. Sales to the following state and federal agencies, institutions, and instrumentalities are exempt:

1. federal agencies and instrumentalities
2. state institutions and departments
3. counties
4. municipalities
5. school districts, public schools
6. special taxing districts
7. federal land banks
8. federal reserve banks
9. activity funds within the armed services
10. post exchanges
11. Federally chartered credit unions

C. The following are taxable:

1. national banks
2. federal building and loan associations
3. joint stock land banks
4. state banks (whether or not members of the Federal Reserve System)
5. state building and loan associations
6. private irrigation companies
7. rural electrification projects
8. sales to officers or employees of exempt instrumentalities

D. No sales tax immunity exists solely by virtue of the fact that the sale was made on federal property.

E. Sales made by governmental units are subject to sales tax.

R865-19S-56. Sales by Employers to Employees Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales to employees are subject to tax on the amount charged for goods and taxable services. If tangible personal property is given to employees with no charge, the employer is deemed to be the consumer and must pay tax on his cost of the merchandise. Examples of this type of transaction are meals furnished to waitresses and other employees, contest prizes given to salesmen, merchandise bonuses given to clerks, and similar items given away.

R865-19S-57. Ice Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable. Sales to restaurants, taverns, or the like to be placed in drinks consumed by customers at the place of business are sales for resale and are not taxable.

B. Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services is allowed.

R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.

1. "Construction materials" include items of tangible personal property such as lumber, bricks, nails and cement that

are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal property once incorporated into the real property.

2. Fixtures or other items of tangible personal property such as furnaces, built-in air conditioning systems, built-in appliances, or other items that are appurtenant to or incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.

B. The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

1. The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

2. Except as otherwise provided in B.4, the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

3. Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

4. Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

a) the religious or charitable institution makes payment for the materials directly to the vendor; or

b) the materials are purchased on behalf of the religious or charitable institution.

(i) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

5. Purchases not made pursuant to B.4. are assumed to have been made by the contractor and are subject to sales tax.

C. If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property.

1. If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

2. The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

D. This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:

1. moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

2. manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery; and

3. items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself.

R865-19S-59. Sales of Materials and Services to Repairmen Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tangible personal property and services to persons engaged in repairing or renovating tangible personal property are for resale, provided the tangible personal property or service becomes a component part of the repair or renovation sold. For example, paint sold to a body and fender shop and used to paint an automobile is exempt from sales tax since it becomes a component part of the repair work.

1. Sandpaper, masking tape, and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job. These items shall be taxed at the time of sale if it is known that they are to be consumed. However, if this is not determinable at the time of sale, these items should be purchased tax free, as set forth in Rule R865-19S-23 and sales tax reported on the repairman's sales tax return covering the period during which consumption takes place.

R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103.

A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.

B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.

C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.

1. Trade fixtures are items of tangible personal property used for the benefit of the business conducted on the property.

2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building, and the building itself is readily adaptable to multiple uses.

3. Examples of trade fixtures include cases, shelves and racks used to store or display merchandise.

D. Sales tax treatment or charges for installing trade fixtures to real property are dealt with in R865-19S-78.

E. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.

R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. The following definitions apply to the sales and use tax exemption authorized under Section 59-12-104 for inpatient meals provided at a medical facility or nursing facility.

1. "Medical facility" means a facility:

a) described in SIC codes 8062 through 8069 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

2. "Nursing facility" means a facility:

a) described in SIC codes 8051 through 8059 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

B. The following definition applies to the sales and use tax exemption authorized under Section 59-12-104 for sales of meals served by an institution of higher education.

1. "Student meal plan" means an arrangement:

a) between an institution of higher education and a student;

b) available only to a student;

c) whose duration is the entire term, semester, or similar unit of study;

d) paid in advance of the term, semester, or similar unit of study; and

e) providing for specified meals at eating facilities of the institution of higher education.

C. Except as provided in Section 59-12-104, sales and use tax is imposed upon the amount paid for meals furnished by any restaurant, cafeteria, eating house, hotel, drug store, diner, private club, boarding house, or other place, regardless of whether meals are regularly served to the public.

D. Ingredients that become a component part of meals subject to tax are construed to be purchased for resale, and as such the purchase of those ingredients is exempt from sales and use tax.

E. Where a meal is given away on a complementary basis, the provider of the meal is considered to be the consumer of the items used in preparing the meal.

F. Meals served by religious or charitable institutions and institutions of higher education are not available to the general public if:

1. access to the restaurant, cafeteria, or other facility is restricted to:

a) in the case of a religious or charitable institution:

(1) employees of the institution;

(2) volunteers of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; or

b) in the case of an institution of higher education:

(1) students of the institution;

(2) employees of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; and

2. the restricted access is enforced.

G. Sales of meals at occasional church or charity bazaars or fund raisers, and other similar functions are considered isolated and occasional sales and therefore exempt from sales and use tax.

R865-19S-62. Meal Tickets, Coupon Books, and Merchandise Cards Pursuant to Utah Code Ann. Section 59-12-103.

A. Meal tickets, coupon books, or merchandise cards sold by persons engaged in selling taxable commodities or services are taxable, and the tax shall be billed or collected on the selling price at the time the tickets, books, or cards are sold. Tax is to be added at the subsequent selection and delivery of the merchandise or services if an additional charge is made.

R865-19S-63. Sales of Memorial Markers Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tombstones and grave markers, which are embedded in sod or a concrete foundation, are considered to be improvements to real property. If the seller furnishes and installs the marker, tax applies to his cost of the marker and to his cost of installation material. If the seller does not install the marker, the transaction is a sale of tangible personal property and the seller must collect tax on the full selling price, including cutting, shaping, lettering, and polishing.

R865-19S-64. Morticians, Undertakers and Funeral Directors Pursuant to Utah Code Ann. Section 59-12-103.

A. Morticians, undertakers, and funeral directors make taxable sales of caskets, vaults, clothing, etc. They also render nontaxable services to their patrons. Their purchase of antiseptics, cosmetics, embalming fluids, and other chemicals used in rendering professional services is taxable.

B. If the books are kept in such a manner as to reflect the sales of tangible personal property separate from the services rendered, the tax attaches only to the sale of tangible personal property. If no separation is made of the tangible personal property and the services rendered, the sales tax is collected upon one-half of the total price of a standard funeral service. This includes the casket, professional services, care of remains, funeral coach, floral car, use of funeral car, use of funeral chapel, and the securing of permits.

1. Clothing, an outside grave vault, and other tangible personal property furnished in addition to the casket must be billed separately and the sales tax collected thereon.

R865-19S-65. Newspapers Pursuant to Utah Code Ann. Section 59-12-103.

A. "Newspaper" means a publication that appears to be a newspaper in the general or common sense. In addition, the publication:

1. must be published at short intervals, daily, or weekly;

2. must not, when its successive issues are put together, constitute a book;

3. must be intended for circulation among the general public; and

4. must contain matters of general interest and report on current events.

B. Purchases of tangible personal property by a newspaper publisher are subject to sales and use tax if the property will be used or consumed in the printing or distribution of the newspaper.

C. A newspaper publisher may purchase tax free for resale any tangible personal property that becomes a component part of the newspaper.

1. Examples of tangible personal property that becomes a component part of the newspaper include newsprint, ink, staples, plastic or paper protective coverings, and rubber bands distributed with the newspaper.

D. Purchases of advertising inserts that will be distributed with a newspaper are exempt from sales and use tax if the inserts are identified with the name and date of distribution of the newspaper. The identification may include a multiple listing of all newspapers that will carry the insert and the corresponding distribution dates.

1. Advertising inserts that are not identified as provided in D. are exempt from sales and use tax if the newspaper maintains a log at its place of business that lists by date and name the inserts included in each publication. The log may reflect all inserts or only the inserts not otherwise identified with the newspaper in accordance with D.

R865-19S-66. Optometrists, Opticians, and Ophthalmologists Pursuant to Utah Code Ann. Section 59-12-103.

A. Optometrists and ophthalmologists are deemed to be persons engaged primarily in rendering personal services. These services consist of the examination and treatment of eyes. Glasses, contact lenses, or other tangible personal property such as sunglasses, or cleaning solutions sold by optometrists and ophthalmologists are taxable and tax must be collected from the patient or buyer. Invoices or receipts must show the charges for personal services separate from the charges for tangible personal property and the sales tax thereon. If an optometrist or ophthalmologist does not provide separate charges for personal services and sales of tangible personal property, sales tax shall be charged on the entire amount.

B. All sales of tangible personal property to optometrists or ophthalmologists for use or consumption in connection with their services are subject to sales or use tax.

C. Opticians are makers of or dealers in optical items and instruments and fill prescriptions written by optometrists and ophthalmologists. Opticians are engaged in the business of selling tangible personal property and personal services

rendered by them are considered as merely incidental thereto. Opticians are required to collect the sales tax on all their sales of tangible personal property.

R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. Donors of articles of tangible personal property, which are given away as premiums or otherwise, are regarded as the users or consumers thereof and the sale to them is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations who would qualify for exemption under R865-19S-43 or R865-19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

B. When a retailer making a retail sale of tangible personal property which is subject to tax gives a premium together with the tangible personal property sold, the transaction is regarded as a sale of both articles to the purchaser, provided the delivery of such premium is certain and does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property which is not subject to tax and furnishes a premium with the property sold, the retailer is the consumer of the premium furnished.

D. If a retailer accepts a coupon for part or total payment for a taxable product and is reimbursed by a manufacturer or another party, the total sales value, including the coupon amount, is subject to sales tax.

E. A coupon for which no reimbursement is received is considered to be a discount and the taxable amount is the net amount paid by the customer after deducting the value of the coupon.

F. Manufacturer rebates on sales of tangible personal property are considered as a discount and the taxable amount is the net amount paid by the customer after deducting the rebate. If the manufacturer's rebate is certain at the time of sale, tax should be charged only on the net amount of the sale; otherwise, tax is charged on the total before the rebate credit, and then later refunded to the customer when proof of rebate is given to the dealer for his file.

1. If the rebate is applied as part of the down payment, it must be segregated on the buyer's order, invoice, or other sales document from any cash down payment. Since the tax base for collection is reduced by the amount of the rebate, the rebate must be shown separately and identified for sales tax computation and subsequent audit verification. Care must be taken to avoid a double deduction if the gross sales price on the sales document has already been reduced by the rebate amount.

G. If a retailer agrees to furnish a free item in conjunction with the sale of an item, the sales tax applies only to the net amount due. If sales tax is computed on both items and only the sales value of the free item is deducted from the bill, excess collection of sales tax results. The vendor is then required to follow the procedure outlined in R865-19S-16 and remit any excess sales tax collected.

H. Any coupon with a fixed price limit must be deducted from the total bill and sales tax computed on the difference. For example, if a coupon is redeemed for two $6 meals, but the value of the free meal is limited to $5, the $12 is rung up and the $5 deducted, resulting in a taxable sale of $7.

R865-19S-70. Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Persons engaged in occupations and professions that primarily involve the rendition of services upon the client's person and incidentally dispense items of tangible personal property are regarded as the consumers of the tangible personal property dispensed with the services.

B. Physicians, dentists, beauticians, and barbers are examples of persons described in A.

R865-19S-71. Transportation Charges in Connection With the Sale of Tangible Personal Property Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. To qualify for the sales tax exemption for movements of freight by common carrier, transportation charges must satisfy all of the following conditions:

1. Shipment must take place by means of common carrier.

2. Charges must be segregated and listed separately.

3. Charges must reflect the actual cost of shipping the particular tangible personal property by common carrier.

4. Shipment of the tangible personal property must take place after passage of title.

a) Shipment of the tangible personal property takes place after passage of title if the terms of the sale or lease are F.O. B. origin or F.O.B. shipping point.

b) If the invoice does not indicate an F.O.B. point, and a common carrier is used, it is assumed the terms are F.O.B. origin.

c) In all other cases, the shipment of tangible personal property takes place before passage of title.

B. If shipment of the tangible personal property occurs before the passage of title, shipping costs, to the extent included in the sales price of the item, and regardless of whether they are segregated on the invoice, shall be included in the sales and use tax base.

R865-19S-72. Trade-ins and Exchanges Pursuant to Utah Code Ann. Section 59-12-102.

A. An even exchange of tangible personal property for tangible personal property is exempt from tax. When a person takes tangible personal property as part payment on a sale of tangible personal property, sales or use tax applies only to any consideration valued in money which changes hands.

B. For example, if a car is sold for $8,500 and a credit of $6,500 is allowed for a used car taken in trade, the sales or use tax applies to the difference, or $2,000 in this example. Subsequently, when the used car is sold, tax applies to the selling price less any trade-in at that time.

C. An actual exchange of tangible personal properties between two persons must be made before the exemption applies. For example, there is no exchange if a person sells his car to a dealer and the dealer holds the credit to apply on a purchase at a later date; there are two separate transactions, and tax applies to the full amount of the subsequent purchase if and when it takes place.

R865-19S-73. Trustees, Receivers, Executors, Administrators, Etc. Pursuant to Utah Code Ann. Section 59-12-103.

A. Trustees, receivers, assignees, executors, and administrators, who -- by virtue of their appointment -- operate, manage, or control a business making taxable sales or leases of tangible personal property, or performing taxable services, must collect and remit sales tax on the total taxable sales even though such sales are made in liquidation.

R865-19S-74. Vending Machines Pursuant to Utah Code Ann. Section 59-12-104.

A. Persons operating vending machines are deemed to be retailers and selling articles of tangible personal property. The total sales from vending machine operations are considered the total selling price of the tangible personal property distributed in connection with their operations and must be reported as the amount of sales subject to tax.

B. Persons operating vending machines selling food, beverages, and dairy products in which the proceeds of each sale do not exceed $1, and who do not report an amount equal to 150% of the cost of items as goods consumed, are subject to the requirements of A.

C. For purposes of the 150% of cost formula in Section 59-12-104(3), "cost" is defined as follows.

1. In the case of retailers, cost is the total purchase price paid for products, including any packaging and incoming freight.

2. In the case of a manufacturer, cost includes the following items:

a) acquisition costs of materials and packaging, including freight;

b) direct manufacturing labor; and

c) utility expenses, if a sales tax exemption has been granted on utility purchases.

D. Operators of vending machines, if they so desire, may divide the tax out and sell items at fractional parts of a cent, providing their records so indicate.

E. Where machines vending taxable items are owned by persons other than the proprietor of a place of business in which the machine is placed and the person owning the machine has control over the sales made by the machine, evidenced by collection of the money, the owner is required to secure a sales tax license. One license is sufficient for all such machines. A statement in substantially the following form must be conspicuously affixed upon each vending machine:

"This machine is operated under Utah Sales Tax License No. "

R865-19S-75. Sales by Photographers, Photo Finishers, and Photostat Producers and Engravers Pursuant to Utah Code Ann. Section 59-12-103.

A. Photographers, photofinishers, and photostat producers are engaged in selling tangible personal property and rendering services such as developing, retouching, tinting, or coloring photographs belonging to others.

1. Persons described in this rule must collect tax on all of the above services and on all sales of tangible personal property, such as films, frames, cameras, prints, etc.

B. Sales of tangible personal property by photoengravers, electrotypers, and wood engravers to printers, advertisers, or other persons who do not resell such property but use or consume it in the process of producing printed matter are taxable sales. The value or worth of the services or processing which go into their production is of no moment, and it is immaterial that each sale is upon a special order for a particular customer.

1. Electrotypes and engravings are manufactured articles of merchandise and are sold as such and not as a service. No deduction is allowed on account of the cost of the property sold, labor, service, or any other expense.

R865-19S-76. Painters, Polishers, Car Washers, Etc. Pursuant to Utah Code Ann. Section 59-12-103 and 59-12-104.

A. Charges for painting, polishing, washing, cleaning, and waxing tangible personal property are subject to tax, and no deduction is allowed for the service involved.

B. Sales of paint, wax, or other material which becomes a part of the customer's tangible personal property, to persons engaged in the business of painting and polishing of tangible personal property are exempt as sales for resale. However, the vendor of these items must be given a resale certificate as provided for in Rule R865-19S-23.

C. Sales of soap, washing mitts, polishing cloths, spray equipment, sand paper, and similar items to painters, polishers, car washes, etc., are sales to the final consumer and are subject to tax.

R865-19S-78. Charges for Labor to Repair, Renovate, and Install Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.

A. Charges for installation labor.

1. Amounts paid or charged for labor for installing tangible personal property in connection with other tangible personal property are subject to tax.

2. Separately stated charges for labor to install personal property to real property are not subject to tax, regardless of whether the personal property becomes part of the real property. On-site assembly that does not involve affixing the tangible personal property to real property is not installation within the meaning of this rule.

B. Charges for labor to repair, renovate, wash, or clean.

1. Charges for labor to repair, renovate, wash, or clean tangible personal property are subject to sales tax. Parts or materials used to repair, renovate, wash, or clean tangible personal property that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge for labor and parts is taxable.

a) Labor for cleaning and blocking hats is taxable under the provisions of the act imposing a tax on dry cleaning services.

b) Motor vehicles, trailers, contractors' equipment, drilling equipment, commercial equipment, railroad cars and engines, radio and television sets, watches, jewelry, clothing and accessories, shoes, tires and tubes, office equipment, furniture, bicycles, sporting equipment, boats and household appliances not permanently attached to a house or building are examples of tangible personal property upon which the sales or use tax applies when repaired, washed, cleaned, renovated, or installed in connection with other tangible personal property.

c) Labor charges for cleaning and washing tangible personal property held in resale inventory are not taxable. An example is the cleaning, washing, or detailing of a new or used car in a dealer's inventory.

2. Charges for labor to service, repair or renovate real property, improvements, or items of personal property that are attached to real property so as to be considered real property are not subject to sales tax. The determination of whether parts, materials or other items are sold or used in the service, repair, or renovation of real property shall be made in accordance with R865-19S-58. Exempt labor charges must be separately stated on the invoice or the entire charge for labor and parts is taxable.

a) For purposes of B., fixtures, trade fixtures, equipment, or machinery permanently attached to real property shall be treated as real property while so attached, but shall revert to personal property when severed from the real property.

b) Mere physical attachment is not enough to indicate permanent attachment. Portable or movable items that are attached merely for convenience, stability or for an obvious temporary purpose are considered personal property, even when attached to real property.

c) An item is considered permanently attached if:

(i) attachment is essential to the operation or use of the item and the manner of attachment suggests that the item will remain affixed in the same place over the useful life of the item; or

(ii) removal would cause substantial damage to the item itself or require substantial alteration or repair of the structure to which it is affixed.

d) If an item is attached to real property so that it is treated as real property for purposes of this rule, its accessories are also treated as real property if the accessories are essential to the operation of the item and installed solely to serve the operation of the item.

e) An item or part of an item may be temporarily detached from real property for on-site repairs without losing its real

property status, but an item that is detached from the premises and removed from the site temporarily or permanently reverts to personal property.

C. Charges made for lubrication of motor vehicles are taxable as sales of tangible personal property.

D. Sales of extended warranty agreements.

1. Sales of extended warranty agreements or service plans are taxable, and tax must be collected at the time of the sale of the agreement. The payment is considered to be for future repair, which would be taxable. If the extended warranty agreement covers parts as well as labor, any parts that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge under the extended warranty agreement is taxable. Repairs made under an extended warranty plan are exempt from tax, even if the plan was sold in another state.

a) Repair parts provided and services rendered under the warranty agreements or service plans are not taxable because the tax is considered prepaid as a result of taxing the sale of the warranty or service plan when it was sold.

b) If the customer is required to pay for any parts or labor at the time of warranty service, sales tax must be collected on the amount charged to the customer. Sales tax must also be collected on any deductibles charged to customers for their share of the repair work done under the warranty agreement. Parts or materials that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge for labor and parts is taxable.

2. Extended warranties on items of tangible personal property that are converted to real property are not taxable. However, the taxable nature of parts and other items of tangible personal property provided in conjunction with labor under an extended warranty service shall be determined in accordance with R865-19S-58.

R865-19S-79. Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah Code Ann. Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.

2. "Trailer court" means any place having trailers or space to park a trailer for rent by the day, week, or month.

3. "Trailer" means house trailer, travel trailer, and tent trailer.

4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

R865-19S-80. Printers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

A. Definitions.

1.a) "Pre-press materials" means materials that:

(1) are reusable;

(2) are used in the production of printed matter;

(3) do not become part of the final printed matter; and

(4) are sold to the customer.

b) Pre-press materials include film, magnetic media, compact disks, typesetting paper, and printing plates.

2.a) "Printer" means a person that reproduces multiple copies of images, regardless of the process employed or the name by which that person is designated.

b) A printer includes a person that employs the processes of letterpress, offset, lithography, gravure, engraving, duplicating, silk screen, bindery, or lettership.

B. Purchases by a printer.

1. Purchases of tangible personal property by a printer are subject to sales and use tax if the property will be used or consumed by the printer.

a) Examples of tangible personal property used or consumed by the printer include conditioners, solvents, developers, and cleaning agents.

2. A printer may purchase tax free for resale any tangible personal property that becomes a component part of the finished goods for resale.

a) Examples of tangible personal property that becomes a component part of the finished goods for resale include glue, stitcher wire, paper, and ink.

3. A printer may purchase pre-press materials tax free if the printer's invoice, or other written material provided to the purchaser, states that reusable pre-press materials are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of the pre-press materials.

4. The tax treatment of a printer's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

C. Sales by a printer.

1. Except as provided in this Subsection C., a printer shall collect sales and use tax on the following:

a) charges for printed material, even though the paper may be furnished by the customer;

b) charges for envelopes;

c) charges for services performed in connection with the printing or the sale of printed matter, such as cutting, folding, binding, addressing, and mailing;

d) charges for pre-press materials purchased tax exempt by the printer; and

e) charges for reprints and proofs.

2. Charges for postage are not subject to sales and use tax.

3. Sales by a printer are exempt from sales and use tax if:

a) the sale qualifies for exemption under Section 59-12-104; and

b) the printer obtains from the purchaser a certificate as set forth in rule R865-19S-23.

4. If the printer's customer is purchasing printed material for resale, but will not resell the pre-press materials, the printer must collect sales and use tax on the pre-press materials.

5. If printed material is shipped outside of the state, charges for pre-press materials are exempt from sales tax as a sale of goods sold in interstate commerce only if the pre-press materials are physically shipped out of state with the printed material. If pre-press materials are retained in the state by the printer for any reason, the pre-press materials do not qualify for the sales tax exemption for goods sold in interstate commerce, and as such, the printer must collect sales tax on the part of the transaction relating to the pre-press materials.

D. If a sale by a printer consists of items that are subject to sales and use tax as well as items or services that are not taxable, the nontaxable items or services must be separately stated on the invoice or the entire sale is subject to sales and use tax.

R865-19S-81. Sale of Art Pursuant to Utah Code Ann. Section 59-12-103.

A. Art dealers and artists selling paintings, drawings, etchings, statues, figurines, etc., to final consumers must collect tax, whether an object is sold from an inventory or is created upon special order. The value or worth of the services to produce the art object are an integral part of the value of the tangible personal property upon completion and no deduction

for such services may be made in determining the amount which is subject to tax.

B. Paints, canvases, frames, sculpture ingredients, and items becoming part of the finished product may be purchased tax-free if used in a painting or other work of art for resale.

1. Brushes, easels, tools, and similar items are consumed by the artist, and tax must be paid on the purchase of these items.

R865-19S-82. Demonstration, Display, and Trial Pursuant to Utah Code Ann. Section 59-12-104.

A. Tangible personal property purchased by a wholesaler or a retailer and held for display, demonstration or trial in the regular course of business is not subject to tax.

Examples of this are a desk bought by an office supply firm and placed in a window display, or an automobile purchased by an auto dealer and assigned to a salesman as a demonstrator. Sales tax applies to any rental charges made to the salesman for use of a demonstrator.

B. Sales tax applies to these charges even though all or part of the charge may be waived if such waiver is dependent upon the salesman performing certain services or reaching a certain sales quota or some similar contingency.

C. Sales tax applies to items purchased primarily for company or personal use and only casually used for demonstration purposes.

1. For example, wreckers or service trucks used by a parts department, are subject to tax even though they are demonstrated occasionally. Also, automobiles assigned to nonsales personnel such as a service manager, an office manager, an accountant, an officer's spouse, or a lawyer are subject to tax.

a. For motor vehicle dealers using certain vehicles withdrawn from inventory for periods not exceeding one year, the tax liability is deemed satisfied if the dealer remits sales or use tax on each such vehicle based on its lease value while so used.

(1) Only motor vehicles provided or assigned to company personnel or to exempt entities qualify for this treatment. For vehicles donated to religious, charitable, or government institutions, see Rule R865-19S-68.

(2) The monthly lease value is the manufacturer's invoice price to the dealer, divided by 60.

(3) Records must be maintained to show when each vehicle is placed in use, to whom assigned or provided, lease value computation, tax remitted, when removed from service and when returned to inventory for resale.

(4) Vehicles used for periods exceeding one year are subject to tax on the dealer's acquisition cost.

2. An exception is an item held for resale in the regular course of business and used for demonstration a substantial amount of time. Records must be maintained to show the manner of demonstration involved if exemption is claimed.

D. Normally, vehicles will not be allowed as demonstrators if they are used beyond the new model year by a new-car dealer or if used for more than six months by a used-car dealer.

1. Tax will apply if these conditions are not met, unless it is shown that these guidelines are not applicable in a given instance. In this case consideration will be given to the circumstances surrounding the need for a demonstrator for a longer period of time.

R865-19S-83. Pollution Control Facilities Pursuant to Utah Code Ann. Section 59-12-104.

A. Since certification of a pollution control facility may not occur until a firm contract has been entered into or construction has begun, tax should be paid on all purchases of tangible personal property or taxable services that become part of a pollution control facility until the facility is certified, and invoices and records should be retained to show the amount of tax paid. Upon verification of the amount of tax paid for pollution control facilities and verification that a certificate has been obtained, the Tax Commission will refund the taxes paid on these purchases.

1. Claims for refund of tax paid prior to certification must be filed within 180 days after certification of a facility. Refund claims filed within this time period will have interest added at the rate prescribed in Section 59-1-402 from the date of the overpayment.

2. If claims for refund are not filed within 180 days after certification of a facility, it is assumed the delay was for investment purposes, and interest shall be added at the rate prescribed in Section 59-1-402 however, interest will not begin to accrue until 30 days after receipt of the refund request.

B. After the facility is certified, qualifying purchases should be made without paying tax by providing an exemption certificate to the vendor.

1. If sales tax is paid on qualifying purchases for certified pollution control facilities, it will be deemed that the overpayment was made for the purpose of investment. Accordingly, interest, at the rate prescribed in Section 59-1-402, will not begin to accrue until 30 days after receipt of the refund request.

C. In the event part of the pollution control facility is constructed under a real property contract by someone other than the owner, the owner should obtain a statement from the contractor certifying the amount of Utah sales and use tax paid by the contractor and the location of the vendors to whom tax was paid, and the owner will then be entitled to a refund of the tax paid and included in the contract.

D. The owner shall apply to the Tax Commission for a refund using forms furnished by the Tax Commission. The claim for refund must contain sufficient information to support the amount claimed for credit and show that the tax has in fact been paid.

E. The owner shall retain records to support the claim that the project is qualified for the exemption.

R865-19S-85. Sales and Use Tax Exemptions for New or Expanding Operations and Normal Operating Replacements Pursuant to Utah Code Ann. Section 59-12-104.

A. Definitions:

1. "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

2. "Machinery and equipment" means:

a) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

b) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(i) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(ii) gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

3. "Manufacturer" means a person who functions within a

manufacturing facility.

4a) "New or expanding operations" means:

(i) the creation of a new manufacturing operation in this state; or

(ii) the expansion of an existing Utah manufacturing operation if the expanded operation increases production capacity or is substantially different in nature, character, or purpose from that manufacturer's existing Utah manufacturing operation.

b) The definition of new or expanding operations is subject to limitations on normal operating replacements.

c) A manufacturer who closes operations at one location in this state and reopens the same operation at a new location does not qualify for the new or expanding operations sales and use tax exemption without demonstrating that the move meets the conditions set forth in A.4.a). Acquisitions of machinery and equipment for the new location may qualify for the normal operating replacements sales and use tax exemption if they meet the definition of normal operating replacements in A.5.

5. "Normal operating replacements" includes:

a) new machinery and equipment or parts, whether purchased or leased, that have the same or similar purpose as machinery or equipment retired from service due to wear, damage, destruction, or any other cause within 12 months before or after the purchase date, even if they improve efficiency or increase capacity.

b) if existing machinery and equipment or parts are kept for backup or infrequent use, any new, similar machinery and equipment or parts purchased and used for the same or similar function.

B. The sales and use tax exemptions for new or expanding operations and normal operating replacements apply only to purchases or leases of tangible personal property used in the actual manufacturing process.

1. The exemptions do not apply to purchases of real property or items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

2. Purchases of qualifying machinery and equipment or normal operating replacements are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

C. Machinery and equipment or normal operating replacements used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment or normal operating replacements are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:

1. research and development;

2. refrigerated or other storage of raw materials, component parts, or finished product; or

3. shipment of the finished product.

D. Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment or normal operating replacements purchased for use in the manufacturing operation are eligible for the sales and use tax exemption for new or expanding operations or for normal operating replacements if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

1. Each activity is treated as a separate and distinct establishment if:

a) no single SIC code includes those activities combined; or

b) each activity comprises a separate legal entity.

2. Machinery and equipment or normal operating replacements used in both manufacturing activities and nonmanufacturing activities qualify for the exemption for new or expanding operations or for normal operating replacements only if the machinery and equipment or normal operating replacements are primarily used in manufacturing activities.

E. Charges for labor to repair, renovate, or install tangible personal property shall be taxable or tax exempt as provided in R865-19S-78.

F. The manufacturer shall retain records to support the claim that the machinery and equipment or normal operating replacements are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

G. Vendors are required to obtain a tax exemption certificate upon which the purchaser certifies that the use of the machinery and equipment or normal operating replacements qualifies for exemption under Title 59, Chapter 12. Vendors must obtain a separate tax exemption certificate, or a purchase order that incorporates the appropriate language, including authorized signature, date and title, of the tax exemption certificate, from the purchaser for each purchase of exempt machinery and equipment, at the time of purchase.

H. If a purchase consists of items that are exempt from sales and use tax under this rule and Section 59-12-104, and items that are subject to tax, the tax exempt items must be separately stated on the invoice or the entire purchase will be subject to tax.

R865-19S-86. Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108.

A. Definitions:

1. "Cash equivalent" means either:

a) cash;

b) wire transfer; or

c) cashier's check drawn on the bank in which the Tax Commission deposits sales tax receipts.

2. "Fiscal year" means the year commencing on July 1 and ending the following June 30.

3. "Mandatory filer" means a seller that meets the threshold requirements for monthly filing and remittance of sales taxes or for electronic funds transfer (EFT) remittance of sales taxes.

4. For purposes of the monthly filing and the electronic remittance of sales taxes, the term "tax liability for the previous year" means the tax liability for the previous calendar year.

B. The determination that a seller is a mandatory filer shall be made by the Tax Commission at the end of each calendar year and shall be effective for the fiscal year.

C. A seller that meets the qualifications for a mandatory filer but does not receive notification from the Tax Commission to that effect, is not excused from the requirements of monthly filing and remittance or EFT remittance.

D. Mandatory filers shall also file and remit any waste tire fees and transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes to the commission on a monthly basis or by EFT, respectively.

E. Sellers that are not mandatory filers may elect to file and remit their sales taxes to the commission on a monthly basis, or remit sales taxes by EFT, or both.

1. The election to file and remit sales taxes on a monthly basis or to remit sales taxes by EFT is effective for the immediate fiscal year and every fiscal year thereafter unless the Tax Commission receives written notification prior to the commencement of a fiscal year that the seller no longer elects to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, respectively.

2. Sellers that elect to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, are subject to the same requirements and penalties as mandatory filers.

F. Sellers that are mandatory filers may request deletion of their mandatory filer designation if they do not expect to accumulate a $50,000 sales tax liability for the current calendar year.

1. The request must be accompanied by documentation clearly evidencing that the business that led to the $50,000 tax

liability for the previous year will not recur.

2. The request must be made prior to the commencement of a fiscal year.

3. If a seller's request is approved and the seller does accumulate a $50,000 sales tax liability, a similar request by that seller the following year shall be denied.

G. Sellers that are required to remit sales tax by EFT may, following approval by the Tax Commission, remit a cash equivalent in lieu of the EFT.

1. Approval for remittance by cash equivalent shall be limited to those sellers that are able to establish that remittance by EFT would cause a hardship to their organization.

2. Requests for approval shall be directed to the Deputy Executive Director of the Tax Commission.

3. Sellers that receive approval to remit their sales taxes by cash equivalent shall ensure that the cash equivalent is received at the Tax Commission's main office no later than three working days prior to the due date of the sales tax.

H. Sellers that are required to remit sales taxes by EFT, but remit these taxes by some means other than EFT or a Tax Commission approved cash equivalent, are not entitled to reimbursement for the cost of collecting and remitting sales taxes and are subject to penalties.

I. Prior to remittance of sales taxes by EFT, a vendor shall complete an EFT agreement with the Tax Commission. The EFT Agreement shall indicate that all EFT payments shall be made in one of the following manners.

1. Except as provided in I.2., sellers shall remit their EFT payment by an ACH-debit transaction through the National Automated Clearing House Association (NACHA) system CCD application.

2. If an organization's bylaws prohibit third party access to its bank account or extenuating circumstances exist, a seller may remit its EFT payment by an ACH-credit with tax payment addendum transaction through the NACHA system CCD Plus application.

J. In unusual circumstances, a particular EFT payment may be accomplished in a manner other than that specified in I. Use of any manner of remittance other than that specified in I. must be approved by the Tax Commission prior to its use.

K. If a seller that is required to remit sales taxes by EFT is unable to remit a payment of sales taxes by EFT because the system for remitting payments by EFT fails, the seller may remit its sales taxes by cash equivalent. A seller shall notify the Waivers Unit of the Tax Commission if this condition arises.

R865-19S-87. Government-Owned Tooling and Equipment Exemption Pursuant to Utah Code Ann. Section 59-12-104.

A. As used in Utah Code Ann. Section 59-12-104(6), and for the purpose of this rule:

1. "Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, other equipment, and other similar manufacturing aids generally available as stock items.

2. "Special Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and all components of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services.

3. "Support equipment" means implements or devices that are required to inspect, test, service, adjust, calibrate, appraise, transport, safeguard, record, gauge, measure, repair, overhaul, assemble, disassemble, handle, store, actuate or otherwise maintain the intended functional operation status of an aerospace electronic system.

4. "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. These testing units may be electrical, electronic, hydraulic, pneumatic, or mechanical. Or they may be items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar supplies or services.

B. The effective date of this rule is July 1, 1986.

R865-19S-90. Telephone Service Pursuant to Utah Code Ann. Section 59-12-103.

A. Definitions.

1. "Interstate" means a transmission that originates in this state but terminates in another state, or a transmission that originates in another state but terminates in this state.

2. "Intrastate" means a transmission that originates and terminates in this state, even if the route of the transmission signal itself leaves and reenters the state. Prepaid telephone services or service contracts are presumed to be used for intrastate telephone services unless the service contract is sold exclusively for use in interstate communications.

3. "Two-way transmission" includes any services provided over a public switched network.

B. Taxable telephone service charges include:

1. subscriber access fees;

2. charges for optional telephone features, such as call waiting, caller ID, and call forwarding; and

3. nonrecurring charges that are ordinarily charged to subscribers only once or only under exceptional circumstances, including charges to:

a) establish, change, or disconnect telephone service or optional features; and

b) install or repair telephone equipment that retains its character as tangible personal property under R865-19S-58 and R865-19S-78.

C. Nontaxable charges include:

1. refundable subscriber deposits, interest, and late payment penalties;

2. charges for interstate long distance or toll calls;

3. telephone answering services received or relayed by a human operator;

4. charges to install or repair subscriber equipment that is regarded as real property under R865-19S-58 and R865-19S-78;

5. charges levied on subscribers to fund or subsidize special telephone services, including 911 service, special communications services for the deaf, and special telephone service for low income subscribers;

6. contributions in aid of construction, land development fees, payments in lieu of land development fees, and special plant construction and relocation charges; and

7. charges for one-way pager services.

R865-19S-91. Sales of Tangible Personal Property to Government Project Managers and Supply Contractors Pursuant to Utah Code Ann. Sections 59-12-102, 59-12-103, and 59-12-104.

A. Sales of tangible personal property or services as defined in Sections 59-12-102 and 59-12-103 to federal, state, or municipal government facilities managers or supply contractors, who are not employees or agents of that government entity, are subject to sales or use tax if the manager or contractor uses or consumes the property. Tax is due even though a contract vests title in the government.

B. A person qualifies as an agent for purchasing on behalf of a government entity if the person and the government entity enter into a contract that includes the following conditions:

1. The person is officially designated as the government entity's purchasing agent by resolution of the government entity;

2. The person identifies himself as a purchasing agent for

the government entity;

3. The purchase is made on purchase orders that indicate the purchase is made by or on behalf of the government entity and the government entity is responsible for the purchase price;

4. The transaction is approved by the government entity; and

5. Title passes directly to the government entity upon purchase.

C. If the government entity makes a direct payment to the vendor for the tangible personal property or services, the sale is made to the government entity and not to the facilities manager or the supply contractor. In that case, the sale is not subject to sales tax.

D. Certain purchases made by aerospace or electronic industry contractors dealing with the United States are exempted by Section 59-12-104(15) and further covered by R865-19S-87. Therefore, these industry purchases are not covered by this rule.

R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Section 59-12-103.

A. "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

B. The sale, rental or lease of prewritten computer software constitutes a sale of tangible personal property and is subject to the sales or use tax regardless of the form in which the software is purchased or transferred.

C. The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

D. The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

R865-19S-93. Waste Tire Recycling Fee Pursuant to Utah Code Ann. Section 19-6-808.

A. The waste tire recycling fee shall be paid by the retailer to the State Tax Commission at the same time and in the same manner as sales and use tax returns are filed. The sales tax account number will also be the recycling fee account number. A separate return form will be provided.

1. The tire recycling fee will be imposed at the same time the sales tax is imposed. For example, if tires are purchased for resale either as part of a vehicle sale or to be sold separately by a vehicle dealer, the recycling fee and the sales tax would be collected by the dealer at the time the vehicle is sold. If sales tax is paid to a tire retailer by a vehicle dealer when tires are purchased, the recycling fee will also be paid by the vehicle dealer to the tire retailer.

2. Where tires are sold to entities exempt from sales tax, the exempt entity must still pay the recycling fee.

B. The recycling fee is not considered part of the sales price of the tire and is not subject to sales or use tax.

C. Wholesalers purchasing tires for resale are not subject to the fee.

D. Tires sold and delivered out of state are not subject to the fee.

E. Tires purchased from out of state vendors are subject to the fee. The fee must be reported and paid directly to the Tax Commission in conjunction with the use tax.

R865-19S-94. Tips, Gratuities and Cover Charges Pursuant to Utah Code Ann. Section 59-12-103.

A. Restaurants, cafes, clubs, private clubs, and similar businesses must collect sales tax on tips or gratuities included on a patron's bill and which are required to be paid, unless the total amount of the gratuity or tip is passed on to the waiter or waitress who served the customer. Tax on the required gratuity is due from private clubs, even though the club is not open to the public. Voluntary tips left on the table or added to a credit card charge slip are not subject to sales tax.

B. Cover charges to enter a restaurant, tavern, club or similar facility are taxable as an admission to a place of recreation, amusement or entertainment.

R865-19S-96. Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301.

A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(1)(i).

B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home, campground, mobile home park, recreational vehicle park or similar business where the rental period is less than 30 consecutive days.

C. The transient room tax is not subject to sales tax.

R865-19S-98. Sales to Nonresidents of Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Sales to Nonresidents of Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.

A. "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.

B. In order to qualify as a nonresident for the purpose of exempting vehicles from sales tax under Subsections 59-12-104(9) and 59-12-104(31), a person may not:

1. be a resident of this state. The fact that a person leaves the state temporarily is not sufficient to terminate residency;

2. be engaged in intrastate business within this state;

3. maintain a vehicle with this state designated as the home state;

4. except in the case of a tourist temporarily within this state, own, lease, or rent a residence or a place of business within this state, or occupy or permit to be occupied a Utah residence or place of business;

5. except in the case of an employee who can clearly demonstrate that the use of the vehicle in this state is to commute to work from another state, be engaged in a trade, profession, or occupation or accept gainful employment in this state;

6. allow the purchased vehicle to be kept or used by a resident of this state; or

7. declare residency in Utah to obtain privileges not ordinarily extended to nonresidents, such as attending school or placing children in school without paying nonresident tuition or fees, or maintaining a Utah driver's license.

C. A nonresident owner of a vehicle described in Section 59-12-104(9) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is infrequent, occasional, and nonbusiness in nature.

D. A nonresident owner of a vehicle described in Subsection 59-12-104(31) may continue to qualify for the exemption provided by that section if use of the vehicle in this state does not exceed 14 days in any calendar year and is nonbusiness in nature.

E. Vehicles are deemed not used in this state beyond the necessity of transporting them to the borders of this state if purchased by:

1. a nonresident student who will be permanently leaving the state within 30 days of the date of purchase; or

2. a nonresident member of the military stationed in Utah, but with orders to leave the state permanently within 30 days of the date of purchase.

F. Each purchaser, both buyer and co-buyer, claiming this

exemption must complete a nonresident affidavit. False, misleading, or incomplete responses shall invalidate the affidavit and subject the purchaser to tax, penalties, and interest.

G. A dealer of vehicles who accepts an incomplete affidavit, may be held liable for the appropriate tax, interest, and penalties.

H. A dealer of vehicles who accepts an affidavit with information that the dealer knows or should have known is false, misleading or inappropriate may be held liable for the appropriate tax, interest, and penalties.

R865-19S-99. Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104(26), (28).

A. No sales or use tax is due on vehicles purchased in another state by a resident of that state and transferred into this state if all sales or use taxes required by the prior state for the purchase of the vehicle have been paid. A valid, nontemporary registration card shall serve as evidence of such payment.

R865-19S-100. Procedures for Exemption from and Refund of Sales and Use Taxes Paid by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.1.

A. For purposes of Section 59-12-104.1(2)(b)(iii), "contract" does not include a purchase order.

B. Religious and charitable institutions may apply to the Tax Commission for a refund of Utah sales and use taxes paid no more often than on a monthly basis. Refund applications should be returned to the Tax Commission by the tenth day of the month for a timely refund.

C. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

D. Religious and charitable institutions shall substantiate requests for refunds of sales and use taxes paid by retaining a copy of a receipt or invoice indicating the amount of sales or use taxes paid for each purchase for which a refund of taxes paid is claimed.

E. All supporting receipts required by D. must be provided to the Tax Commission upon request.

F. Original records supporting the refund claim must be maintained for three years following the date of refund.

G. Failure to pay any penalties and interest assessed by the Tax Commission may subject the institution to a deduction from future refunds of amounts owed, or revocation of the institution's exempt status as a religious or charitable institution, or both.

R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.

A. Document preparation fees assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax if they satisfy both of the following conditions:

1. Fees must be separately identified and segregated.

2. Fees may not be included in the total sale price upon which sales tax is calculated and collected.

B. State-mandated fees and taxes assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax and must be separately identified and segregated on the invoice as required by Tax Commission rule R877-23V-14.

R865-19S-102. Calculation of Qualifying Exempt Electricity Sales to Ski Resorts Pursuant to Utah Code Ann. Section 59-12-104.

A. When the sale of exempt electricity to a ski resort is not separately metered and accounted for in utility billings, the ski resort shall identify a methodology for the calculation of exempt electricity purchases, and shall submit that methodology to Internal Customer Support, Customer Service Division, of the Tax Commission for approval prior to its use.

B. When exempt electricity is not separately metered and accounted for in utility billings, a ski resort shall pay sales tax on all electricity at the time of purchase. The ski resort may then take a credit on its sales tax return for taxes paid on electricity that is determined to be exempt under this rule.

C. The provisions of this rule shall be retrospective to July 1, 1996.

R865-19S-103. Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307.

A. Definitions.

1. "Gas" means natural gas in which those hydrocarbons, other than oil and natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir are produced and removed at the wellhead in gaseous form.

2. "Supplying taxable energy" means the selling of taxable energy to the user of the taxable energy.

B. Except as provided in C., the delivered value of taxable energy for purposes of Title 10, Chapter 1, Part 3, shall be the arm's length sales price for that taxable energy.

C. If the arm's length sales price does not include all components of delivered value, any component of the delivered value that is not included in the sales price shall be determined with reference to the most applicable tariffed price of the gas corporation or electrical corporation in closest proximity to the taxpayer.

D. The point of sale or use of the taxable energy shall normally be the location of the taxpayer's meter unless the taxpayer demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.

E. An energy supplier shall collect the municipal energy sales and use tax on all component parts of the delivered value of the taxable energy for which the energy supplier bills the user of the taxable energy.

F. A user of taxable energy is liable for the municipal energy sales and use tax on any component of the delivered value of the taxable energy for which the energy supplier does not collect the municipal energy sales and use tax.

G. A user of taxable energy who is required to pay the municipal energy sales and use tax on any component of the delivered value of taxable energy shall remit that tax to the Tax Commission:

1. on forms provided by the Tax Commission, and

2. at the time and in the manner sales and use tax is remitted to the Tax Commission.

H. A person that delivers taxable energy to the point of sale or use of the taxable energy shall provide the following information to the Tax Commission for each user for whom the person does not supply taxable energy, but provides only the transportation component of the taxable energy's delivered value:

1. the name and address of the user of the taxable energy;

2. the volume of taxable energy delivered to the user; and

3. the entity from which the taxable energy was purchased.

I. The information required under H. shall be provided to the Tax Commission:

1. on or before the last day of the month following each calendar quarter; and

2. for each user for whom, during the preceding calendar quarter, the person did not supply taxable energy, but provided only the transportation component of the taxable energy's delivered value.

R865-19S-104. County Option Sales Tax Distribution Pursuant to Utah Code Ann. Section 59-12-1102.

A. The $75,000 minimum annual distribution required

under Section 59-12-1102 shall be based on sales tax amounts collected by the counties from January 1 through December 31.

B. Any adjustments made to ensure the required minimum distribution shall be reflected in the February distribution immediately following the end of the calendar year.

R865-19S-105. Procedures for Refund of Sales and Use Taxes Paid on Food Donated to a Qualified Emergency Food Agency Pursuant to Utah Code Ann. Section 59-12-902.

A. A qualified emergency food agency may apply to the Tax Commission for a refund of Utah sales and use taxes paid on food donated to that entity no more often than on a monthly basis. Refund applications should be submitted to the Tax Commission by the tenth day of the month for a timely refund.

B. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

C. Original records supporting the refund claim must be maintained by the qualified emergency food agency for three years following the date of refund.

D. Failure to pay any penalties and interest assessed by the Tax Commission may subject the qualified emergency food agency to a deduction from future refunds of amounts owed.

R865-19S-107. Reporting of Exempt Sales or Purchases Pursuant to Utah Code Ann. Section 59-12-105.

The amount of purchases or uses exempt under Sections 59-12-104(14) and 59-12-104(51) shall be reported to the commission by the person that purchases the items exempt from sales or use tax under those subsections.

R865-19S-108. User Fee Defined Pursuant to Utah Code Ann. Section 59-12-103.

A. For purposes of administering the sales or use tax on admission or user fees provided for in Section 59-12-103, "user fees" includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:

1. video or video game;
2. television program; or
3. cable or satellite broadcast.

B. The provisions of this rule are effective for transactions occurring on or after October 1, 1999.

R865-19S-109. Sales Tax Nature of Veterinarians' Purchases and Sales Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Purchases of tangible personal property by a veterinarian are exempt from sales and use tax if the property will be resold by the veterinarian.

1. Except as provided in E., a veterinarian must collect sales tax on tangible personal property that the veterinarian resells.

B. Purchases of tangible personal property by a veterinarian are subject to sales and use tax if the property will be used or consumed in the veterinarian's practice.

C. The determination of whether a veterinarian's purchase of food, medicine, or vitamins is a sale for resale or a purchase that will be used or consumed in the veterinarian's practice shall be made by the veterinarian.

1. For food, medicine, or vitamins that the veterinarian will resell, the veterinarian shall comply with A.

2. For food, medicine, or vitamins that the veterinarian will use or consume in the veterinarian's practice, the veterinarian shall comply with B.

D. A veterinarian is not required to collect sales and use tax on:

1. medical services;
2. boarding services; or
3. grooming services required in connection with a medical procedure.

E. Sales of tangible personal property by a veterinarian are exempt from sales and use tax if:

1. the sales are exempt from sales and use tax under Section 59-12-104; and

2. the veterinarian obtains from the purchaser a certificate as set forth in rule R865-19S-23.

F. If a sale by a veterinarian consists of items that are subject to sales and use tax as well as items or services that are not taxable, the nontaxable items or services must be separately stated on the invoice or the entire sale is subject to sales and use tax.

R865-19S-110. Advertisers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

A. "Advertiser" means a person that places advertisements in a publication, broadcast, or electronic medium, regardless of the name by which that person is designated.

1. A person is an advertiser only with respect to items actually placed in a publication, broadcast, or electronic medium.

B. All purchases of tangible personal property by an advertiser are subject to sales and use tax as property used or consumed by the advertiser.

C. The tax treatment of an advertiser's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

D. An advertiser's charges for placement of advertisements are not subject to sales and use tax.

R865-19S-111. Graphic Design Services Pursuant to Utah Code Ann. Section 59-12-103.

A. Graphic design services are not subject to sales and use tax:

1. if the graphic design is the object of the transaction; and

2. even though a representation of the design is incorporated into a sample or template that is itself tangible personal property.

B. Except as provided in C., if a vendor provides both graphic design services and tangible personal property that incorporates the graphic design:

1. there is a rebuttable presumption that the tangible personal property is the object of the transaction; and

2. the vendor must collect sales and use tax on the graphic design services and the tangible personal property.

C. A vendor that provides both graphic design services and tangible personal property that incorporates the graphic design is not required to collect sales tax on the graphic design services if the vendor subcontracts the production of the tangible personal property to an independent third party.

D. A vendor that provides nontaxable graphic design services and taxable tangible personal property under C. must separately state the nontaxable graphic design services or the entire sale is subject to sales and use tax.

R865-19S-112. Confirmation of Purchase of Admission or User Fee Relating to the Olympic Winter Games of 2002 Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. For purposes of the sales and use tax exemption for amounts paid or charged as admission or user fees relating to the Olympic Winter Games of 2002:

1. Except as provided in 2., the Salt Lake Organizing Committee (SLOC), or a person designated by SLOC, is deemed to have sent a purchaser confirmation of the purchase of an admission or user fee relating to the Olympic Winter Games of 2002 at the time SLOC or its designee receives a payment for the purchase.

2. In the case of a purchase of tickets designated as lottery

tickets by SLOC, SLOC or its designee are deemed to have sent confirmation of the purchase at the time the purchaser accepts the tickets available to him or her through that process.

R865-19S-113. Sales Tax Obligations of Jeep, Snowmobile, and Boat Tour Operators, River Runners, Outfitters, and Other Sellers Providing Similar Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-107.

A. The provisions of this rule apply to jeep, snowmobile, and boat tour operators, river runners, outfitters, and other sellers providing similar services.

B. If payment for a service provided by a seller described in A. occurs in Utah and the service originates or terminates in Utah, the seller shall collect Utah sales and use tax on the entire amount of the transaction.

C. If payment for a service provided by a seller described in A. occurs outside Utah and the entire service occurs in Utah, the seller shall collect Utah sales and use tax on the entire amount of the transaction.

D. If payment for a service provided by a seller described in A. occurs outside Utah and the service originates or terminates outside Utah, the seller is not required to collect Utah sales and use tax on the transaction.

E. Payment occurs in Utah if the purchaser:

1. while at a business location of the seller in the state, presents payment to the seller; or

2. does not meet the criteria under E.1. and is billed for the service at an address within the state.

F. For purposes of this rule, there is a rebuttable presumption that payment for a service provided by a seller described in A. occurs in Utah.

R865-19S-114. Items that Constitute Clothing Pursuant to Utah Code Ann. Section 59-12-102.

A. "Clothing" includes:

1. aprons for use in a household or shop;
2. athletic supporters;
3. baby receiving blankets;
4. bathing suits and caps;
5. beach capes and coats;
6. belts and suspenders;
7. boots;
8. coats and jackets;
9. costumes;
10. diapers, including disposable diapers, for children and adults;
11. ear muffs;
12. footlets;
13. formal wear;
14. garters and garter belts;
15. girdles;
16. gloves and mittens for general use;
17. hats and caps;
18. hosiery;
19. insoles for shoes;
20. lab coats;
21. neckties;
22. overshoes;
23. pantyhose;
24. rainwear;
25. rubber pants;
26. sandals;
27. scarves;
28. shoes and shoe laces;
29. slippers;
30. sneakers;
31. socks and stockings;
32. steel toed shoes;
33. underwear;
34. uniforms, both athletic and non-athletic; and
35. wearing apparel.

B. "Clothing" does not include:

1. belt buckles sold separately;
2. costume masks sold separately;
3. patches and emblems sold separately;
4. sewing equipment and supplies, including:
a) knitting needles;
b) patterns;
c) pins;
d) scissors;
e) sewing machines;
f) sewing needles;
g) tape measures; and
h) thimbles; and
5. sewing materials that become part of clothing, including:
a) buttons;
b) fabric;
c) lace;
d) thread;
e) yarn; and
f) zippers.

R865-19S-115. Items that Constitute Protective Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Protective equipment" includes:

A. breathing masks;
B. clean room apparel and equipment;
C. ear and hearing protectors;
D. face shields;
E. hard hats;
F. helmets;
G. paint or dust respirators;
H. protective gloves;
I. safety glasses and goggles;
J. safety belts;
K. tool belts; and
L. welders gloves and masks.

R865-19S-116. Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Sports or recreational equipment" includes:

A. ballet and tap shoes;
B. cleated or spiked athletic shoes;
C. gloves, including:
(i) baseball gloves;
(ii) bowling gloves;
(iii) boxing gloves;
(iv) hockey gloves; and
(v) golf gloves;
D. goggles;
E. hand and elbow guards;
F. life preservers and vests;
G. mouth guards;
H. roller skates and ice skates;
I. shin guards;
J. shoulder pads;
K. ski boots;
L. waders; and
M. wetsuits and fins.

R865-19S-117. Use of Rounding in Determining Sales and Use Tax Liability Pursuant to Utah Code Ann. Section 59-12-118.

A. The computation of sales and use tax must be:

1. carried to the third place; and
2. rounded to a whole cent pursuant to B.

B. The tax shall be rounded up to the next cent whenever

the third decimal place of the tax liability calculated under A. is greater than four.

C. Sellers may compute the tax due on a transaction on an:

1. item basis; or

2. invoice basis.

D. The rounding required under this rule may be applied to aggregated state and local taxes.

R865-19S-118. Collection of Municipal Telecommunications License Tax Pursuant to Utah Code Ann. Section 10-1-405.

A. The commission shall transmit monies collected under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act:

1. monthly; and

2. by electronic funds transfer to the municipality that imposes the tax.

B. The commission shall conduct audits of the municipal telecommunications license tax with the same frequency and diligence as it does with the state sales and use tax.

C. The commission shall charge a municipality for the commission's services in an amount:

1. sufficient to reimburse the commission for the commission's cost of administering, collecting, and enforcing the municipal telecommunications license tax; and

2. not to exceed an amount equal to 1.5 percent of the municipal telecommunications license tax imposed by the ordinance of the municipality.

D. The commission shall collect, enforce, and administer the municipal telecommunications license tax pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection 10-1-405(1)(a).

KEY: charities, tax exemptions, religious activities, sales tax
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9-2-1702
9-2-1703
10-1-303
10-1-306
10-1-307
10-1-405
19-6-808
26-32a-101 through 26-32a-113
59-1-210
59-12
59-12-102
59-12-103
59-12-104
59-12-105
59-12-107
59-12-108
59-12-118
59-12-301
59-12-352
59-12-353

R865. Tax Commission, Auditing.
R865-21U. Use Tax.
R865-21U-1. Nature of Use Tax Pursuant to Utah Code Ann. Section 59-12-103.

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or

2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

R865-21U-2. Rules Common to Both Sales and Use Taxes Pursuant to Utah Code Ann. Section 59-12-118.

A. The use tax is a complement to the sales tax and the rules promulgated are common to both taxes.

R865-21U-3. Liability of Retailers Pursuant to Utah Code Ann. Section 59-12-107.

A. Retailers, as defined by the act, are responsible for the collection of the tax from the purchaser and should give the purchaser a receipt thereof.

B. An example of a retailer would include a manufacturer's representative or a magazine-subscription solicitor located within this state and obtaining orders which are in turn shipped by the manufacturer or publisher to the customer in Utah.

C. A retailer is engaged in business in this state if any activity is conducted by him or his agents, as defined above, with the object of gain, benefit, or advantage--either direct or indirect--whether qualified or admitted to do business or not.

D. When tangible personal property is sold in interstate commerce for use or consumption in this state and the seller is engaged in the business of selling such tangible personal property in this state for use or consumption and delivery is made in this state, the sale is subject to use tax. The sale is taxable regardless of the fact that the purchaser's order may specify that the goods are to be manufactured or produced by the seller at a point outside this state and shipped directly to the purchaser from the point of origin. The seller is required to report all such transactions and collect and remit to this state the use tax on all taxable sales. If these conditions are met, it is immaterial that the contract of sale is closed by acceptance outside the state or that the contract is made before the property is brought into the state.

E. Delivery takes place in this state when physical possession of the tangible personal property is actually transferred to the buyer within this state. Also, when the tangible personal property is placed in the mail at a point outside this state and directed to the buyer in this state or placed on board a carrier at a point outside this state (or otherwise) and directed to the buyer in this state, delivery takes place in Utah.

R865-21U-6. Liability of Purchasers and Receipt For Payment to Retailers Pursuant to Utah Code Ann. Section 59-12-107.

A. Purchasers of tangible personal property--the storage, use, or other consumption of which is subject to tax--must account for the tax liability by paying the tax:

1. to the retailer from whom the property was purchased if such retailer holds a certificate of registration under the use tax act. When property is purchased from a registered retailer, the purchaser is not relieved from the tax liability unless a receipt is obtained from such retailer. This receipt need not be in any particular form but must show the name and registration number of the retailer, the name of the purchaser, the date of the sale, description of the property or reference to the sales invoice, the purchase price, and amount of tax. A sales invoice containing the above information, together with evidence of payment of such invoice, will constitute a receipt. Payment of the tax to a registered retailer under these conditions relieves the purchaser of any further liability.

2. directly to the Tax Commission if the retailer from whom the property was purchased does not hold a certificate of registration. Under these circumstances, one of the following procedures must be followed:

(a) if the purchases are made by a business required by Section 59-12-106 to hold or obtain a sales tax license or a use tax certificate of registration, the tax is paid on a sales and use tax return;

(b) if the purchases are made by any person as defined in Utah Code Ann. Section 59-12-102, who has no sales tax collection responsibility, and if the annual taxes due may be reasonably expected to exceed $400, such person must apply for registration as a consumer and pay the tax using a quarterly use tax return; or

(c) if the purchases are made by an individual who has no sales tax collection responsibility and the annual use tax liability is less than $400, the tax is remitted using the individual income tax return filed each year. The tax is computed by using the rates provided in the income tax instructions for the address of the consumer as shown on the individual income tax form. If a consumer files as a part-year resident, the latest address in Utah is the basis for the use tax rate to report purchases subject to use tax made during the Utah residency period. If the purchaser does not meet individual income tax filing requirements, the purchaser obtains an income tax filing form and reports and pays the use tax on this form. A statement to the effect that no income tax is due and that the return is submitted for payment of use tax only shall be included with this form. An individual required to report use tax under this subsection satisfies all Tax Commission filing requirements by reporting and remitting the tax due within the time allowed to timely file his individual income tax return.

R865-21U-15. Automobiles, Construction Equipment, and Other Merchandise Purchased From Out-Of-State Vendors Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-107.

A. Automobiles, construction equipment, and other merchandise purchased by Utah residents from out-of-state dealers are subject to Utah use tax even if incidental first use occurs outside the state. For example, a salesman whose residence is in Utah has a territory which extends into other states. He purchases a car while out of state and continues his itinerary. Upon return to Utah, the car is subject to the registration laws of this state, together with a use tax, if applicable, to be paid at time of registration. If tax was paid in another state, credit shall be allowed for the tax paid in accordance with Utah Code Ann. Section 59-12-104.

R865-21U-16. Property Sold or Used In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-107.

A. The fact that tangible personal property is purchased in interstate or foreign commerce does not exempt the property from the tax if the property is stored, used, or otherwise consumed within this state after the shipment in interstate or foreign commerce has ended.

B. The fact that tangible personal property is used in this state in interstate or foreign commerce following its storage in this state does not exempt the storage of the property from the tax. The fact that tangible personal property is used in this state in interstate or foreign commerce does not exempt the use of the property from the tax.

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59-12-104
59-12-118

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children age 13 to 18 years if the child is:

(i) physically or mentally incapable of self-care as determined by a medical doctor, doctor of osteopathy or licensed or certified psychologist; and/or

(ii) under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" means a child identified by the Department of Human Services, Division of Services to People with Disabilities or other entity as determined by the Department, as having a physical or mental disability requiring special child care services.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) Neither the Department nor the state of Utah are liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(10) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(11) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the re-certification forms are signed and returned to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) In addition to the requirements for reporting other material changes that might affect eligibility, outlined in R986-100-113, a client is responsible for reporting a change in the client's need for child care, a change in the client's child care provider, and a change in the amount a provider charges for child care, to the Department within 10 days of the change.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) Any client receiving any type of CC who is not receiving full court or ORS ordered child support must cooperate with ORS in obtaining child support from the absent parent. Child support payments received by the client count as unearned income even if the payments are more than the court or ORS ordered child support. If a client's case was closed for failure to cooperate with ORS it cannot be reopened until ORS notifies the Department that the client is cooperating or it is determined on appeal that the client is cooperating. The requirements of this section will be satisfied if the client is cooperating with the appropriate agency in another state and can provide the Department with verification of the client's continuing cooperation with the other state. If the other state agency has not been successful in collecting child support, the Department may require that the client request that the client's case be closed in the other state and that the client cooperate with ORS.

(9) All clients receiving CC must cooperate in good faith with the Department in establishing paternity unless there is good cause for not cooperating.

(10) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform the provider that further information is needed before payment can be determined.

(11) The Department may also release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) information contained on the Form 980;

(c) the date the child care subsidy was issued;

(d) the subsidy amount for that provider;

(e) the subsidy deduction amount;

(f) the date a two party check was mailed to the client; and

(g) a copy of the two party check on a need to know basis.

(12) If child care funds are issued on the Horizon Card (electronic benefit transfer) unused child care funds will be removed from the Horizon Card 60 days after the last child care transaction/transfer occurred ("aged off") and will no longer be available to the client.

R986-700-704. Establishment of Paternity.

(1) If ORS notifies the Department that a client is not cooperating with the establishment of paternity, the client may appeal to a Department ALJ by following the procedures for hearings set forth in R986-100.

(2) The ALJ will make a determination on the question of whether or not the client is making a good faith effort to cooperate based on the same criteria ORS uses in FEP cases.

(3) The procedure and rules for establishing good cause for not cooperating in the establishment of paternity are the same as in R986-200. If the client appeals both a good faith determination and alleges good cause for not cooperating, the ALJ will join the two issues together and make a decision on the questions of good faith and good cause at the same hearing.

(4) The provisions of R986-200-208(12) do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

(a) licensed and accredited providers:

(i) licensed homes;

(ii) licensed family group homes; and

(iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers; or

(ii) related to the client and/or the child. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand, great, great-great, or great-great-great or persons who meet any of the above relationships even if the marriage has been terminated.

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) All clients who were receiving child care prior to January 1, 2001, will be granted a grace period in which to find an eligible provider. The length of the grace period will be determined by the Department but in no event will it extend later than June 30, 2001.

(3) If a new client has a provider who is providing child care at the time the client applies for child care assistance or has provided child care in the past and has an established relationship with the child(ren), but the provider is not currently eligible, the client may receive child care assistance for a period not to exceed three months if the provider is willing to become an eligible provider and actively pursues eligibility.

(4) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides; or

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care; or

(d) if the provider lives in an area where the Department of Health lacks jurisdiction, which includes tribal lands, to provide licensing or certification; or

(5) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(6) If an exception is granted under paragraph (4) or (5) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(7) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and physically and mentally capable of providing care to children;

(b) the provider's home is equipped with hot and cold running water, toilet facilities, and is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors and fire extinguishers on all floors of the house where children are provided care;

(d) there are no individuals residing in the home who have a conviction for a misdemeanor which is an offense against a person, or any felony conviction, or have been subject to a supported finding of child abuse or neglect by the Utah Department of Human Services, Division of Child and Family Services or a court;

(e) there is a telephone in operating condition with a list of emergency numbers located next to the phone which includes the phone numbers for poison control and for the parents of each child in care;

(f) food will be provided to the child in care of sufficient amount and nutritional value to provide the average daily nutrient intake required. Food supplies will be maintained to prevent spoilage or contamination. Any allergies will be noted and care given to ensure that the child in care is protected from exposure to those items; and

(g) the child in care will be immunized as required by the Utah Immunization Act and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(8) The following providers are not eligible for receipt of a CC payment:

(a) a member of household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state; and

(h) a provider who has committed fraud as a provider, as determined by the Department or by a court.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the State of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a

CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records.

(4) The provider is entitled to know the date on which payment for CC was made to the parent and the amount of the payment.

(5) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider. A provider cannot require that a client give the provider the client's Horizon card and/or the client's PIN or otherwise obtain the card and/or PIN.

(6) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.

(7) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received. Provider case records will be maintained according to Office of Licensing standards.

R986-700-707. Subsidy Deduction.

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent must pay the amount of the subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

R986-700-708. FEP, and Diversion CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

(3) Diversion CC is available for clients who have received a diversion payment from FEP. There is no subsidy deduction for the months covered by the FEP diversion payment.

(4) If the client is working a minimum of 15 hours per week and meets all employment support criteria in the three months immediately following the period covered by the diversion payment or if the client's FEP or FEPTP assistance was terminated as "transitional", the client is not subject to a subsidy deduction until the fourth month after the period covered by the diversion payment. A new application is not required during this transitional period.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC or Diversion CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100 percent disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. If the prevailing community standard is below minimum wage, the employed parent client must make at least the prevailing community standard. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage or, if the prevailing community standard is below minimum wage, the parent must establish that he or she is likely to make at least the prevailing community standard. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) The stipend received by Americorps*Vista volunteers meets the prevailing community standard test for this section even though the stipend is not counted as income. The activities of Americorps*Vista volunteers are considered to be work and not training. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) If a parent was receiving FEP or FEPTP, and their financial assistance was terminated due to increased income, and the parent is otherwise eligible for ES CC, the subsidy deduction will not be taken for the two months immediately following the termination of FEP or FEPTP, provided the client works a minimum of 15 hours per week. The third month following termination of FEP or FEPTP CC is subject to the subsidy deduction.

(7) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a Social Security Number if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income and Asset Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income and assets must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP

household as defined by policy. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income and assets of the specified relatives in the household must be counted. The income and assets of some household members in multi-generational households is counted in full instead of being deemed as in FEP or FEPTP;

(b) what is counted as income and assets except:

(i) one automobile is exempt for each household member participating in work and/or training if it is needed for employment, used for transportation to and from that work and/or training or if the client is living in the automobile;

(ii) the asset limit for ES CC is $8,000 after allowable deductions;

(iii) the earned income of an minor child who is not a parent is not counted;

(iv) child support, including in kind child support payments are counted as unearned income if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted.;

(v) the value of the lot on which the exempt home, referenced in R996-200-231, stands is exempt even if it exceeds the average size of residential lots for the community in which it is located;

(vi) all irrevocable burial plans are exempt. A revocable burial plan is exempt up to $1500 per household member; and

(vii) real and personal income producing property, including rental property, is exempt as an asset if the property produces a reasonable return for its fair market value.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24 month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24 month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24 month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

(9) In a two-parent family receiving CC for education or training activities, the monthly CC subsidy cannot exceed the established monthly local market rates.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship, income, and asset eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

(5) When a homeless family presents a referral from a recognized agency, the Department will, if possible, schedule the application interview within three working days of the date of the application.

R986-700-713. Amount of CC Payment.

(1) CC will be paid at the lower of the following levels:

(a) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(b) the rate established by the provider for services; or

(c) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

(2) An enhanced CC payment is available to clients who are participating more than 172 hours per month. The enhanced subsidy cannot exceed $100 more than the maximum monthly local market rate for the type of provider used by the client and in no event can an enhanced subsidy payment exceed the accredited center rate for infant care. A two-parent family receiving CC for education or training activities is not eligible for the enhanced CC subsidy.

R986-700-714. CC Payment Method.

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name, except as noted in paragraph (2) below. The check is mailed to the client. In the event of an emergency, a payment up to a maximum of $125 can be made on the Horizon card. Emergency payments can only be made where a parent is in danger of not being able to obtain necessary child care if the parent is required to wait until the two party check can be issued.

(2) CC payments will be made by electronic benefit transfer (EBT) either through a point of sale (POS) machine or interactive voice recording (IVR) system to authorized provider types as determined by the Department. The provider may elect which option of EBT to use. The provider must sign an agreement with the Department's contractor in order to be eligible to receive CC payments. If the provider elects to use the POS method of payment, the provider must lease a POS machine at the provider's own expense.

(3) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice to the client if:

(a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected. If the eligibility criteria is cooperation with ORS and the client is not in compliance, through no fault of her own, even if the client refuses to cooperate at the time the mistake is discovered, payments made prior to the discovery of the mistake are not considered to have been an overpayment.

(2) If the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be disqualified from further receipt of CC:

(a) for a period of one year for the first occurrence of fraud;

(b) for a period of two years for the second occurrence of fraud; and

(c) for life for the third occurrence of fraud.

(3) If a client receives an overpayment but was not at fault in creating the overpayment, the client will be responsible for repayment but there is no disqualification or ineligibility period even if the client is considered by ORS to be not cooperating in repayment.

(4) If the client was at fault in the creation of an overpayment for any reason other than fraud in paragraph (2) above, the client will be given an opportunity to repay the overpayment without a disqualification or ineligibility period for the first occurrence. If there is a second fault overpayment for reasons other than fraud in (3) above and the first overpayment has not been paid off, the client will be ineligible for CC until both overpayments have been satisfied. If the second overpayment occurred after the first overpayment was repaid in full, the second overpayment will not result in disqualification or ineligibility.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate and collect alleged overpayments.

(6) These disqualification and ineligibility periods are in lieu of, and not in addition to, the disqualification periods found in R986-100-117.

(7) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled. For example: A client enrolled for 10 hours of classes each week may not receive more than 10 hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

(6) On a case-by-case basis, the Department may fund child care for children with disabilities at a higher rate if the needs of the child and provider necessitate. To qualify for the

higher rate DSPD or another Department approved entity must first determine that the child care provider has additional ongoing costs in caring for the child. The Department may set different income eligibility criteria for clients with children determined to need consideration under this paragraph. The income eligibility rate is available at all Employment Centers.

KEY: child care
July 1, 2004 **35A-3-310**

R994. Workforce Services, Workforce Information and Payment Services.
R994-508. Appeal Procedures.
R994-508-101. Right to Appeal an Initial Department Determination.

(1) An interested party has the right to appeal an initial Department determination on unemployment benefits or unemployment tax liability (contributions) by filing an appeal with the Appeals Unit or at any DWS Employment Center.

(2) The appeal must be in writing and either sent through the U.S. Mail, faxed, or delivered to the Appeals Unit, or submitted electronically through the Department's website.

(3) The appeal must be signed by an interested party unless it can be shown that the interested party has conveyed, in writing, the authority to another person or is physically or mentally incapable of acting on his or her own behalf. Providing the correct Personal Identification Number (PIN) when filing an appeal through the Department's website will be considered a signed appeal.

(4) The appeal should give the date of the determination being appealed, the social security number of any claimant involved, the employer number, a statement of the reason for the appeal, and any and all information which supports the appeal. The failure of an appellant to provide the information in this subsection will not preclude the acceptance of an appeal.

(5) The scope of the appeal is not limited to the issues stated in the appeal.

(6) If the claimant is receiving benefits at the time the appeal is filed, payments will continue pending the written decision of the ALJ even if the claimant is willing to waive payment. If benefits are denied as a result of the appeal, an overpayment will be established.

R994-508-102. Time Limits for Filing an Appeal from an Initial Department Determination.

(1) If the initial Department determination was delivered to the party, the time permitted for an appeal is ten calendar days. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. If the determination was sent through the U.S. Mail, an additional five calendar days will be added to the time allowed for an appeal from the initial Department determination. Therefore, the amount of time permitted for filing an appeal from any initial Department determination sent through the U.S. Mail is fifteen calendar days unless otherwise specified on the decision.

(2) In computing the period of time allowed for filing an appeal, the date as it appears in the determination is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when Department offices are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when Department offices are open.

(3) An appeal sent through the U.S. Mail is considered filed on the date shown by the postmark. If the postmark date cannot be established because it is illegible, erroneous, or omitted, the appeal will be considered filed on the date it was mailed if the sender can establish that date by competent evidence and can show that it was mailed prior to the date of actual receipt. If the date of mailing cannot be established by competent evidence, the appeal will be considered filed on the date it is actually received by the Appeals Unit as shown by the Appeals Unit's date stamp on the document or other credible evidence such as a written notation of the date of receipt. "Mailed" in this subsection means taken to the post office or placed in a receptacle which is designated for pick up by an employee who has the responsibility of delivering it to the post office.

R994-508-103. Untimely Appeal.

If it appears that an appeal was not filed in a timely manner, the appellant will be notified and given an opportunity to show that the appeal was timely or that it was delayed for good cause. If it is found that the appeal was not timely and the delay was without good cause, the ALJ or the Board will not have jurisdiction to consider the merits unless jurisdiction is established in accordance with provisions of Subsection 35A-4-406(2). Any decision with regard to jurisdictional issues will be issued in writing and delivered or mailed to all interested parties with a clear statement of the right of further appeal or judicial review.

R994-508-104. Good Cause for Not Filing Within Time Limitations.

A late appeal may be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause is limited to circumstances where it is shown that:

(1) the appellant received the decision after the expiration of the time limit for filing the appeal, the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect;

(2) the delay in filing the appeal was due to circumstances beyond the appellant's control; or

(3) the appellant delayed filing the appeal for circumstances which were compelling and reasonable.

R994-508-105. Response to an Appeal.

A respondent is not required to file a written response to an appeal. A respondent may file a response if it does not delay the proceedings.

R994-508-106. Notice of the Hearing.

(1) All interested parties will be notified by mail, at least seven days prior to the hearing, of:

(a) the time and place of the hearing;

(b) the right to be represented at the hearing;

(c) the right to request an in-person hearing;

(d) the legal issues to be considered at the hearing;

(e) the procedure for submitting written documents;

(f) the consequences of not participating;

(g) the procedures and limitations for requesting a continuance or rescheduling; and

(h) the procedure for requesting an interpreter for the hearing, if necessary.

(2) When a new issue arises during the hearing, advance written notice may be waived by the parties after a full explanation by the ALJ of the issues and potential consequences.

(3) It is the responsibility of a party to notify and make arrangements for the participation of the party's representative and/or witnesses, if any.

(4) If a party has designated a person or professional organization as its agent, notice will be sent to the agent which will satisfy the requirement to give notice to the party.

R994-508-107. Department to Provide Documents.

The Appeals Unit will obtain the information which the Department used to make its initial determination and the reasoning upon which that decision was based and will send all of the Department's relevant documentary information to the parties with the notice of hearing.

R994-508-108. Discovery.

(1) Discovery is a legal process to obtain information which is necessary to prepare for a hearing. In most unemployment insurance hearings, informal methods of discovery are sufficient. Informal discovery is the voluntary exchange of information regarding evidence to be presented at

the hearing, and witnesses who will testify at the hearing. Usually a telephone call to the other party requesting the needed information is adequate. Parties are encouraged to cooperate in providing information. If this information is not provided voluntarily, the party requesting the information may request that the ALJ compel a party to produce the information through a verbal or written order or issuance of a subpoena. In considering the requests, the ALJ will balance the need for the information with the burden the requests place upon the opposing party and the need to promptly decide the appeal.

(2) The use of formal discovery procedures in unemployment insurance appeals proceedings are rarely necessary and tend to increase costs while delaying decisions. Formal discovery may be allowed for unemployment insurance hearings only if so directed by the ALJ and when each of the following elements is present:

(a) informal discovery is inadequate to obtain the information required;

(b) there is no other available alternative that would be less costly or less intimidating;

(c) it is not unduly burdensome;

(d) it is necessary for the parties to properly prepare for the hearing; and

(e) it does not cause unreasonable delays.

(3) Formal discovery includes requests for admissions, interrogatories, and other methods of discovery as provided by the Utah Rules of Civil Procedure.

R994-508-109. Hearing Procedure.

(1) All hearings will be conducted before an ALJ in such manner as to provide due process and protect the rights of the parties.

(2) The hearing will be recorded.

(3) The ALJ will regulate the course of the hearing to obtain full disclosure of relevant facts and to afford the parties a reasonable opportunity to present their positions.

(4) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(5) All testimony of the parties and witnesses will be given under oath or affirmation.

(6) All parties will be given the opportunity to provide testimony, present relevant evidence which has probative value, cross-examine any other party and/or other party's witnesses, examine or be provided with a copy of all exhibits, respond, argue, submit rebuttal evidence and/or provide statements orally or in writing, and/or comment on the issues.

(7) The evidentiary standard for ALJ decisions is a preponderance of the evidence. Preponderance means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

(8) The ALJ will direct the order of testimony and rule on the admissibility of evidence. The ALJ may, on the ALJ's own motion or the motion of a party, exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(9) Oral or written evidence of any nature, whether or not conforming to the rules of evidence, may be accepted and will be given its proper weight. A party has the responsibility to present all relevant evidence in its possession. When a party is in possession of evidence but fails to introduce the evidence, an inference may be drawn that the evidence does not support the party's position.

(10) Official Department records, including reports submitted in connection with the administration of the Employment Security Act, may be considered at any time in the appeals process including after the hearing.

(11) Parties may introduce relevant documents into evidence. Parties must mail, fax, or deliver copies of those documents to the ALJ assigned to hear the case and all other interested parties so that the documents are received prior to the hearing. Failure to prefile documents may result in a delay of the proceedings. If a party has good cause for not submitting the documents prior to the hearing or if a party does not receive the documents sent by the Appeals Unit or another party prior to the hearing, the documents will be admitted after provisions are made to insure due process is satisfied. At his or her discretion, the ALJ can either:

(a) reschedule the hearing to another time;

(b) allow the parties time to review the documents at an in-person hearing;

(c) request that the documents be faxed during the hearing, if possible, or read the material into the record in case of telephone hearing; or

(d) leave the record of the hearing open, send the documents to the party or parties who did not receive them, and give the party or parties an opportunity to submit additional evidence after they are received and reviewed.

(12) The ALJ may, on his or her own motion, take additional evidence as is deemed necessary.

(13) With the consent of the ALJ, the parties to an appeal may stipulate to the facts involved. The ALJ may decide the appeal on the basis of those facts, or may set the matter for hearing and take further evidence as deemed necessary to decide the appeal.

(14) The ALJ may require portions of the testimony be transcribed as necessary for rendering a decision.

(15) All initial determinations made by the Department are exempt from the provisions of the Utah Administrative Procedures Act (UAPA). Appeals from initial determinations will be conducted as formal adjudicative proceedings under UAPA.

R994-508-110. Telephone Hearings.

(1) Hearings are usually scheduled as telephonic hearings. Every party wishing to participate in the telephone hearing must call the Appeals Unit before the hearing and provide a telephone number where the party can be reached at the time of the hearing.

(2) If a party prefers an in-person hearing, the party must contact the ALJ assigned to hear the case and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the office of the Appeals Unit unless the ALJ determines that another location is more appropriate. The Department is not responsible for any travel costs incurred by attending an in-person hearing.

(3) The Appeals Unit will permit collect calls from parties and their witnesses participating in telephone hearings; however, professional representatives not at the physical location of their client must pay their own telephone charges.

R994-508-111. Evidence, Including Hearsay Evidence.

(1) The failure of one party to provide information either to the Department initially or at the appeals hearing severely limits the facts available upon which to base a good decision. Therefore, it is necessary for all parties to actively participate in the hearing by providing accurate and complete information in a timely manner to assure the protection of the interests of each party and preserve the integrity of the unemployment insurance system.

(2) Hearsay, which is information provided by a source whose credibility cannot be tested through cross-examination,

has inherent infirmities which make it unreliable.

(3) Evidence will not be excluded solely because it is hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements will be considered, but greater weight will be given to credible sworn testimony from a party or a witness with personal knowledge of the facts.

(4) Findings of fact cannot be based exclusively on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence. All findings must be supported by a residuum of legal evidence competent in a court of law.

R994-508-112. Procedure For Use of an Interpreter at the Hearing.

(1) If a party notifies the Appeals Unit that an interpreter is needed, the Unit will arrange for an interpreter at no cost to the party.

(2) The ALJ must be assured that the interpreter understands the English language and understands the language of the person for whom the interpreter will interpret.

(3) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

R994-508-113. Department a Party to Proceedings.

As a party to the hearing, the Department or its representatives have the same rights and responsibilities as other interested parties to present evidence, bring witnesses, cross-examine witnesses, give rebuttal evidence, and appeal decisions. The ALJ cannot act as the agent for the Department and therefore is limited to including in the record only that relevant evidence which is in the Department files, including electronically kept records or records submitted by Department representatives. The ALJ will, on his or her own motion, call witnesses for the Department when the testimony is necessary and the need for such witnesses or evidence could not have been reasonably anticipated by the Department prior to the hearing. If the witness is not available, the ALJ will, on his or her own motion, continue the hearing until the witness is available.

R994-508-114. Ex Parte Communications.

Parties are not permitted to discuss the merits or facts of any pending case with the ALJ assigned to that case or with a member of the Board prior to the issuance of the decision, unless all other parties to the case have been given notice and opportunity to be present. Any ex parte discussions between a party and the ALJ or a Board member will be reported to the parties at the time of the hearing and made a part of the record. Discussions with Department employees who are not designated to represent the Department on the issue and are not expected to participate in the hearing of the case are not ex parte communications and do not need to be made a part of the record.

R994-508-115. Requests for Removal of an ALJ from a Case.

A party may request that an ALJ be removed from a case on the basis of partiality, interest, or prejudice. The request for removal must be made to the ALJ assigned to hear the case. The request must be made prior to the hearing unless the reason for the request was not, or could not have been known prior to the hearing. The request must state specific facts which are alleged to establish cause for removal. If the ALJ agrees to the removal, the case will be assigned to a different ALJ. If the ALJ finds no legitimate grounds for the removal, the request will be denied and the ALJ will explain the reasons for the denial during the hearing. Appeals pertaining to the partiality, interest, or prejudice of the ALJ may be filed consistent with the time limitations for appealing any other decision.

R994-508-116. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue, or reopen a hearing on the ALJ's own motion or on the motion of a party.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must provide evidence of cause for the request.

(3) Unless compelling reasons exist, a party will not normally be granted more than one request for a continuance.

R994-508-117. Failure to Participate in the Hearing and Reopening the Hearing After the Hearing Has Been Concluded.

(1) If a party fails to appear for or participate in the hearing, either personally or through a representative, the ALJ may take evidence from participating parties and will issue a decision based on the best available evidence.

(2) Any party failing to participate, personally or through a representative, may request that the hearing be reopened.

(3) The request must be in writing, must set forth the reason for the request, and must be mailed, faxed, or delivered to the Appeals Unit within ten days of the issuance of the decision issued under Subsection (1). If the request is made after the expiration of the ten-day time limit, the party requesting reopening must show good cause for not making the request within ten days. If no decision has yet been issued, the request should be made without unnecessary delay.

(4) If a request to reopen is not granted, the ALJ will issue a decision denying the request. A party may appeal a denial of the request to reopen to the Board within 30 days of the date of issuance of the decision. The appeal must be in writing and set forth the reason or reasons for the appeal. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case.

(5) The ALJ may reopen a hearing on his or her own motion if it appears necessary to take continuing jurisdiction or if the failure to reopen would be an affront to fairness.

(6) If the request to reopen is made more than 30 days after the issuance of the ALJ's decision, the ALJ may consider the request or refer it to the Board to be treated as an appeal to the Board.

R994-508-118. What Constitutes Grounds to Reopen a Hearing.

(1) The request to reopen will be granted if the party was prevented from appearing at the hearing due to circumstances beyond the party's control.

(2) The request may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(a) the danger that the party not requesting reopening will be harmed by reopening;

(b) the length of the delay caused by the party's failure to participate including the length of time to request reopening;

(c) the reason for the request including whether it was

within the reasonable control of the party requesting reopening;

(d) whether the party requesting reopening acted in good faith;

(e) whether the party was represented at the time of the hearing. Attorneys and professional representatives are expected to have greater knowledge of Department procedures and rules and are therefore held to a higher standard; and

(f) whether based on the evidence of record and the parties' arguments or statements, taking additional evidence might effect the outcome of the case.

(3) Requests to reopen are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

(4) Excusable neglect is not limited to cases where the failure to act was due to circumstances beyond the party's control.

(5) The ALJ has the discretion to schedule a hearing to determine if a party requesting reopening satisfied the requirements of this rule or may, after giving the other parties an opportunity to respond to the request, grant or deny the request on the basis of the record in the case.

R994-508-119. Withdrawal of Appeal.

A party who has filed an appeal with the Appeals Unit may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal and be made to the ALJ assigned to hear the case, or the supervising ALJ if no ALJ has yet been assigned. The ALJ may deny the request if the withdrawal of the appeal would jeopardize the due process rights of any party. If the ALJ grants the request, the ALJ will issue a decision dismissing the appeal and the initial Department determination will remain in effect. The decision will inform the parties of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal must be made within ten calendar days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

R994-508-120. Prompt Notification of Decision.

Any decision by an ALJ or the Board which affects the rights of any party with regard to benefits, tax liability, or jurisdictional issues will be mailed to the last known address of the parties or delivered in person. Each decision issued will be in writing with a complete statement of the findings of fact, reasoning and conclusions of law, and will include or be accompanied by a notice specifying the further appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for filing an appeal from the decision and the period within which a timely appeal may be filed.

R994-508-121. Correction of Error and Augmentation of the Record.

A party may request correction of an ALJ decision if the request is made in writing and filed within 30 calendar days of the date of the decision. The ALJ retains jurisdiction to reopen the hearing, amend or correct any decision which is not final, or exercise continuing jurisdiction as provided by the rules pertaining to Utah Code Subsections 35A-4-406(2) and 35A-4-406(3) unless the Board has accepted an appeal. If the ALJ agrees to grant the request for correction, a new decision will be issued and new appeal rights to the Board will be established. If the ALJ denies the request, the request will be treated as an appeal to the Board.

R994-508-122. Finality of Decision.

The ALJ's decision is binding on all parties and is the final decision of the Department unless appealed within 30 days of date the decision was issued.

R994-508-201. Attorney Fees.

(1) An attorney or other authorized representative may not charge or receive a fee for representing a claimant in an action before the Department without prior approval by an ALJ or the Board. The Department is not responsible for the payment of the fee, only the regulation and approval of the fee. The Department does not regulate fees charged to employers.

(2) Fees will not be approved in excess of 25 percent of the claimant's maximum potential regular benefit entitlement unless such a limitation would preclude the claimant from pursuing an appeal to the Court of Appeals and/or the Supreme Court or would deprive the client of the right to representation.

R994-508-202. Petition for Approval of Fee.

(1) If a fee is to be charged, a written petition for approval must be submitted by the claimant's representative to the ALJ before whom the representative appeared, or to the supervising ALJ if no hearing was scheduled. An approval form can be obtained through the Appeals Unit. Prior to approving the fee, a copy of the petition will be sent to the claimant and the claimant will be allowed ten days from the date of mailing to object to the fee. At the discretion of the ALJ, the fee may be approved as requested, adjusted to a lower amount, or disallowed in its entirety.

(2) If the case is appealed to the Board level, the claimant's representative must file a new petition with the Board if additional fees are requested.

R994-508-203. Criteria for Evaluation of Fee Petition.

The appropriateness of the fee will be determined using the following criteria:

(1) the complexity of the issues involved;

(2) the amount of time actually spent in;

(a) preparation of the case;

(b) attending the hearing;

(c) preparation of a brief, if required. Unless an appeal is taken to the Court of Appeals, fees charged for preparation of briefs or memoranda will not ordinarily be approved unless the ALJ requested or preapproved the filing of the brief or memoranda; and

(d) further appeal to the Board, the Court of Appeals, and/or the Supreme Court.

(3) The quality of service rendered including:

(a) preparedness of the representative;

(b) organization and presentation of the case;

(c) avoidance of undue delays. An attorney or representative should make every effort to go forward with the hearing when it is originally scheduled to avoid leaving the claimant without income or an unnecessary overpayment; and,

(d) the necessity of representation. If the ALJ or the Board determines that the claimant was not in need of representation because of the simplicity of the case or the lack of preparation on the part of the representative, only a minimal fee may be approved or, in unusual circumstances, a fee may be disallowed.

(4) The prevailing fee in the community. The prevailing fee is the rate charged by peers for the same type of service. In determining the prevailing fee for the service rendered, the Department may consider information obtained from the Utah State Bar Association, Lawyer's Referral Service, or other similar organizations as well as similar cases before the Appeals Unit.

R994-508-204. Appeal of Attorney's Fee.

The claimant or the authorized representative may appeal the fee award to the Board within 30 days of the date of issuance of the ALJ's decision. The appeal must be in writing and set forth the reason or reasons for the appeal.

R994-508-301. Appeal From a Decision of an ALJ.

If the ALJ's decision did not affirm the initial Department determination, the Board will accept a timely appeal from that decision if filed by an interested party. If the decision of the ALJ affirmed the initial Department determination, the Board has the discretion to refuse to accept the appeal or request a review of the record by an individual designated by the Board. If the Board refuses to accept the appeal or requests a review of the record as provided in statute, the Board will issue a written decision declining the appeal and containing appeal rights.

R994-508-302. Time Limit for Filing an Appeal to the Board.

(1) The appeal from a decision of an ALJ must be filed within 30 calendar days from the date the decision was issued by the ALJ. This time limit applies regardless of whether the decision of the ALJ was sent through the U.S. Mail or personally delivered to the party. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. No additional time for mailing is allowed.

(2) In computing the period of time allowed for filing a timely appeal, the date as it appears in the ALJ's decision is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when the offices of the Department are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when the Department offices are open.

(3) The date of receipt of an appeal to the Board is the date the appeal is actually received by the Board, as shown by the Department's date stamp on the document or other credible evidence such as a written or electronic notation of the date of receipt, and not the post mark date from the post office. If the appeal is faxed to the Board, the date of receipt is the date recorded on the fax.

(4) Appeals to the Board which appear to be untimely will be handled in the same way as untimely appeals to the ALJ in rules R994-508-103 and R994-508-104.

R994-508-303. Procedure for Filing an Appeal to the Board.

(1) An appeal to the Board from a decision of an ALJ must be in writing and include:

(a) the name and signature of the party filing the appeal. Accessing the Department's website for the purpose of filing an appeal and providing a correct PIN will be considered a signed appeal;

(b) the name and social security number of the claimant in cases involving claims for unemployment benefits;

(c) the grounds for appeal; and

(d) the date when the appeal was mailed or sent to the Board.

(2) The appeal must be mailed, faxed, delivered to, or filed electronically with the Board.

(3) An appeal which does not state adequate grounds, or specify alleged errors in the decision of the ALJ, may be summarily dismissed.

R994-508-304. Response to an Appeal to the Board.

Interested parties will receive notice that an appeal has been filed and a copy of the appeal and will be given 15 days from the date the appeal was mailed to the party to file a response. Parties are not required to file a response. A party filing a response should mail a copy to all other parties and the Board.

R994-508-305. Decisions of the Board.

(1) The Board has the discretion to consider and render a decision on any issue in the case even if it was not presented at the hearing or raised by the parties on appeal.

(2) Absent a showing of unusual or extraordinary circumstances, the Board will not consider new evidence on appeal if the evidence was reasonably available and accessible at the time of the hearing before the ALJ.

(3) The Board has the authority to request additional information or evidence, if necessary.

(4) The Board my remand the case to the Department or the ALJ when appropriate. (5) A copy of the decision of the Board, including an explanation of the right to judicial review, will be delivered or mailed to the interested parties.

R994-508-306. Reconsideration of a Decision of the Board.

A party may request reconsideration of a decision of the Board in accordance with Utah Code Subsection 63-46b-13.

R994-508-307. Withdrawal of Appeal to the Board.

A party who has filed an appeal from a decision of an ALJ may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal by making a written statement to the Board explaining the reasons for the withdrawal. The Board may deny such a request if the withdrawal of the appeal jeopardizes the due process rights of any party. If the Board grants the request, a decision dismissing the appeal will be issued and the underlying decision will remain in effect. The decision will inform the party of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal under this subsection must be made within 30 days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

R994-508-401. Jurisdiction and Reconsideration of Decisions.

(1) An initial Department determination or a decision of an ALJ or the Board is not final until the time permitted for the filing of an appeal has elapsed. There are no limitations on the review of decisions until the appeal time has elapsed.

(2) After a determination or decision has become final, the Department may, on its own initiative or upon the request of any interested party, review a determination or decision and issue a new decision or determination, if appropriate, if there has been a change of conditions or a mistake as to facts. The reconsideration must be made at, or with the approval of, the level where the last decision on the case was made or is currently pending.

(a) A change in conditions may include a change in the law which would make reconsideration necessary in fairness to the parties who were adversely affected by the law change. A change in conditions may also include an unforeseeable change in the personal circumstances of the claimant or employer which would have made it reasonable not to file a timely appeal.

(b) A mistake as to facts is limited to material information which was the basis for the decision. A mistake as to facts may include information which is misunderstood or misinterpreted, but does not include an error in the application of the act or the rules provided the decision is made under the correct section of the act. A mistake as to facts can only be found if it was inadvertent. If the party alleging the mistake intentionally provided the wrong information or intentionally withheld information, the Department will not exercise jurisdiction under this paragraph.

(3) The Department is not required to take jurisdiction in all cases where there is a change in conditions or a mistake as to facts. The Department will weigh the administrative burden of making a redetermination against the requirements of fairness and the opportunities of the parties affected to file an appeal. The Department may decline to take jurisdiction if the

redetermination would have little or no effect.

(4) Any time a decision or determination is reconsidered, all interested parties will be notified of the new information and provided with an opportunity to participate in the hearing, if any, held in conjunction with the review. All interested parties will receive notification of the redetermination and be given the right to appeal.

(5) A review cannot be made after one year from the date of the original determination except in cases of fraud or claimant fault. In cases of fault or fraud, the Department has continuing jurisdiction as to overpayments. In cases of fraud, the Department only has jurisdiction to assess the penalty provided in Utah Code Subsection 35A-4-406 for a period of one year after the discovery of the fraud.

KEY: unemployment compensation, appellate procedures

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