R81. Alcoholic Beverage Control, Administration.
R81-2. State Stores.
R81-2-1. Special Orders of Liquor by Public.

(1) Purpose. A special order product is any product not listed on the department's product/price list. This rule outlines the procedures for accepting, processing, ordering and disbursing special orders.

(2) Application of Rule.

(a) Any state store may process special order requests.

(b) Any individual may place a special order at any state liquor store. Special orders may be placed by groups of individuals, organizations, or retail licensees either at a state liquor store or with the purchasing division of the department. A special order shall be processed as follows:

(i) A special order form must be filled out and signed by the customer for each special order product purchased. The state liquor store shall forward the form to the department's purchasing division.

(ii) Special orders may be ordered only by the case, not by the bottle. There is no handling fee on special orders.

(iii) Customers should be advised to allow at least two months between processing and delivery of a special order.

(iv) Special orders for beer will be subject to availability and according to the distributor's shipping criteria.

(v) If a group, organization, or retail licensee places a special order, they may designate a particular package agency or state store to which they want the special order items to be sent. They shall include the name and telephone number of the individual who will pick up and pay for the special order product at that location.

(vi) A special order must include the product name and distributor or shipper.

(vii) The department's special order buyer shall obtain a retail bottle price and call the customer and/or state liquor store for clearance to proceed with the order.

(viii) When the special order arrives, the package agency or state store to which the special order has been sent shall immediately notify the customer, and the customer shall pick up the order as soon as possible after notification. The customer shall pay for and pick up the entire special order. The package agency or state store is not allowed to warehouse special ordered products. All merchandise must be cleared from the system before a reorder on that special order item is allowed.

(ix) Special orders may only be placed by customers. State stores may not place a special order unrelated to a particular customer as a means to sell unlisted products to the general public.

(x) Special orders of beer, wine or spirits with lower prices than quoted to the department on products handled by or similar to products handled by the department will be allowed only on two conditions:

(A) the department has the opportunity to purchase the same product at the same price; or

(B) the individual, group of individuals, organization, or retail licensee name is part of the design of the front label found on the product.

R81-2-2. Liquor Returns, Refunds and Exchanges.

(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges.

(2) Application of Rule.

(a) Unsaleable Product. Unsaleable product includes product that is spoiled, leaking, contains foreign matter, or is otherwise defective. The department will accept for refund or exchange liquor merchandise that is unsaleable subject to the following conditions and restrictions:

(i) Returns of unsaleable merchandise are subject to approval by the store manager to verify that the product is indeed defective.

(ii) The product must be returned within a reasonable time of the date of purchase. Discontinued products may not be returned. Vintages of wine that are not currently being retailed by the department may not be returned.

(iii) All returned product must have the state stamp attached to each bottle.

(iv) No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation, or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.

(b) Saleable Product. Store managers are authorized to accept saleable returned merchandise from licensees, single event permit holders, convention groups, and individual customers, subject to the following conditions and restrictions:

(i) Returns of saleable merchandise are subject to approval by the store manager. The customer may receive a refund or exchange of product for the return. Large returns will be accepted from licensees, single event permittees, convention groups and other organizations only if prior arrangements have been made with the store manager.

(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition with a state stamp attached to every bottle. Returns of $50.00 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all purchases of $50.00 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.

(iii) Wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted back with caution. These products can only be returned if the store manager has personal knowledge of how they have been handled and stored.

(iv) If the total amount of the return is more than $500 the store manager shall fill out a AReturned Merchandise Acknowledgment Receipt@ (LQ-45), and submit a copy to the office. A refund check will be processed at the office and mailed to the customer. Customers need to be informed that it generally takes three to six weeks to process payment.

(v) If the total value of the returned merchandise is more than $1,000, a 10% restocking fee shall be charged on the total amount.

(c) Unreturnable Products. The following items may not be returned:

(i) All limited item wines - wines that are available in very limited quantities.

(ii) Any products that have been chilled, over-heated, or label-damaged.

(iii) Outdated (not listed on the department's product/price list) and discontinued products.

(iv) Merchandise purchased by catering services.

(d) A cash register return receipt shall be completed for each product return. The following information must be on the receipt: the customer's name, address, telephone number, driver's license number, and signature. The cashier must attach the receipt to the cash register closing report.

R81-2-3. Warning Sign.

All state stores shall display in a prominent place a "warning sign" as defined in these rules.

R81-2-4. Identification Guidelines to Purchase Liquor.

The department accepts only four forms of identification to establish proof of age for the purchase of liquor by customers:

(1) A current valid driver's license that includes date of

birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(2) A current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, Identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(3) A current valid military identification card that includes date of birth and has a picture affixed; or

(4) A current valid passport.

If a person's age is still in question after presenting proof of age, the department may require the person to also sign a "statement of age" form as provided in 32A-1-303. The form shall be filed alphabetically by the close of the business day, and shall be maintained on file for a period of three years.

R81-2-5. Advertising.

The advertising or promotion of liquor products within state stores is prohibited. An employee may inform the customer as to the characteristics of a particular brand or type of liquor, provided the information is linked to a comparison with other brands or types.

R81-2-6. Refusal of Service.

An employee of the store may refuse to sell liquor to any person whom the employee has reason to believe is purchasing or attempting to purchase liquor in violation of Utah Alcoholic Beverage Control laws. The employee may also detain the person and hold the person's form of identification in a reasonable manner and for a reasonable length of time for the purpose of informing a peace officer of a suspected violation.

R81-2-7. Minors on Premises.

No person under the age of 21 years may enter a state liquor store unless accompanied by a parent, legal guardian, or spouse that is 21 years of age or older. Signs notifying the public of this rule shall be posted in a prominent place on the doors or windows of the state liquor store.

R81-2-8. Accepting Checks as Payment for Liquor.

(1) A state liquor store may accept a check as payment for liquor from an individual customer only under the following conditions:

(a) The check may be drawn only on a United States, Canadian, Puerto Rican, or U.S. Virgin Islands financial institution.

(b) The following must appear on the check:

(i) name (must be imprinted);

(ii) address (if post office box, the full address must be written in); and

(iii) telephone number (may be hand-written).

(c) The check must be made out to the Department of Alcoholic Beverage Control, or D.A.B.C. (no two-party checks).

(d) The check must be made out for the exact amount of the purchase, and all checks from the individual may not exceed $400 per day.

(e) An acceptable form of identification is required for any check written over $50.00, and may be required at the discretion of the cashier or store manager for any check written under $50.00. Acceptable forms of identification include those listed in R81-2-4.

(2) A state liquor store may accept a check as payment for liquor from a licensee only under the following conditions:

(a) The check must be imprinted with the name of the licensee's business, its business address, and its telephone number.

(b) The check must be made out to the Department of Alcoholic Beverage Control, or D.A.B.C. (no two-party checks).

(c) The check must be made out for the exact amount of the purchase.

(3) A state liquor store may accept a business or company check as payment for liquor only under the following conditions:

(a) The check may be drawn only on a United States, Canadian, Puerto Rican, or U.S. Virgin Islands financial institution.

(b) The check must be imprinted with the name of the business or company, its business address, and its telephone number.

(c) The check must be made out to the Department of Alcoholic Beverage Control, or D.A.B.C. (no two-party checks).

(d) The check must be made out for the exact amount of the purchase.

(e) Further identification is not required.

(f) The department may place a maximum limit on the total dollar amount in checks a business or company may tender to the department in a 24 hour period.

(4) A state liquor store may accept a traveler's check as payment for liquor under the following conditions:

(a) Traveler's checks shall be in "US Dollars".

(b) Each traveler's check shall have been previously signed by the holder of the check at the issuing bank or company. The check shall then be signed a second time in front of the DABC store employee that is handling the sale. The store employee shall compare the two signatures to verify that the signatures match, and shall otherwise examine the check to verify its validity.

(c) Traveler's checks shall be made out to the Department of Alcoholic Beverage Control or "D.A.B.C."

(d) When accepting a traveler's check for $50.00 or more, the store employee shall:

(i) call the issuing bank or company and receive an authorization, and authorization number; and

(ii) check the identification of the customer. Acceptable forms of identification include those listed in R81-2-4.

(e) On the upper, left hand corner of a traveler's check for $50.00 or more, the employee shall write:

(i) the authorization number from the issuing bank or company;

(ii) the type of identification used including expiration date and individual's identification number; and

(iii) the store employee's initials.

R81-2-9. Accepting Credit Cards as Payment for Liquor.

(1) Purpose. This rule explains the procedures to be followed by state liquor store employees in accepting credit cards for the purchase of alcoholic beverages.

(2) Application of Rule.

(a) The owner of the credit card must furnish the cashier with their actual credit card. No sale may be based on the customer merely furnishing a credit card number, or another person's credit card, including that of their spouse.

(b) The cashier shall examine the security features on the card such as signature, account number, expiration date, and hologram before accepting the card.

(c) The card must be signed by the card holder.

(d) If for any reason the credit card cannot be scanned, the cashier shall hand-key the credit card number into the cash register keyboard. If the transaction is approved, the cashier shall imprint a copy of the credit card, and have the card holder sign it.

(e) After the cashier scans or hand-keys a credit card, the credit card company may approve or reject the transaction. A rejection may indicate that the card has been stolen, the customer's account is over-drawn, the card has expired, or some other problem. The cashier may receive several messages from the credit card company.

(i) If the message is "decline" or "card not accepted", the cashier should return the card to the customer, suggest another form of payment, and suggest that the customer contact the issuer of the card.

(ii) If the message is "call" or "call hold", the store employee should hold the card and either phone the credit card company's voice authorization center for more information, or enter a "code 10" request. The voice authorization center may instruct that the card be confiscated. The card should then be obtained only if it can be done by peaceful means, and if the card holder voluntarily agrees to surrender the card. The "code 10" request will result in the credit card company researching the status of the card and approving the transaction with a "yes" or rejecting the transaction with a "no" prompt. At no time should store employees put themselves at risk by confiscating a credit card against the desires of the cardholder. If the card can be willingly surrendered and confiscated, the store employee should destroy the card by cutting it in half lengthwise shortly after leaving the customer's presence. The card pieces should then be sent to the card owner's bank with a completed ABC Department LQ-55 form having been filled out by a store employee.

(f) Credit card receipts contain confidential information that must be safeguarded. Cashiers should not throw the receipts in the trash. State store managers and their employees should consult their regional manager concerning proper storage and disposal of receipts.

(g) Refunds, or exchanges of products of unequal value that were purchased with a credit card, shall be handled by crediting the customer's credit card account. The cash register must be balanced by doing a return at the register.

(h) Licensee purchases may not be paid by credit card. Licensee purchases may be only in cash or by check.

R81-2-10. State Store Hours.

(1) Sale or delivery of liquor may not be made on the premises of any state store, nor may any state store be kept open for the sale of liquor:

(a) on any day prohibited by 32A-2-103(6);

(b) on any other day before 10 a.m. or later than 10 p.m.

(2) Subject to the restrictions of subsection (1), the department may adjust the sales hours for each state store based on such factors as the locality of the store, tourist traffic, demographics, population to be served, and customer demand in the area.

R81-2-11. Industry Members in State Stores.

An industry member, as defined in 32A-12-601, shall be limited to the customer areas of a state store except as follows:

(1) An industry member may be allowed in the storage area of a state store with the approval of the store manager for the limited purpose of stocking the industry member's own products; and

(2) An industry member may be allowed in the office or other suitable area of a state store with the approval of the store manager for the purpose of discussing the industry member's products.

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R156. Commerce, Occupational and Professional Licensing.
R156-56. Utah Uniform Building Standard Act Rules.
R156-56-101. Title.

These rules are known as the "Utah Uniform Building Standard Act Rules".

R156-56-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 55 and 56, as used in Title 58, Chapter 56 or these rules:

(1) "Building permit" means, for the purpose of determining the building permit surcharge under Subsection 58-56-9(4), a warrant, license or authorization to build or construct a building or structure or any part thereof.

(2) "Building permit fee" means, for the purpose of determining the building permit surcharge under Subsection 58-56-9(4), fees assessed by an agency of the state or political subdivision of the state for the issuance of permits for construction, alteration, remodeling, and repair and installation including building, electrical, mechanical and plumbing components.

(3) "Employed by a local regulator, state regulator or compliance agency" means, with respect to Subsection 58-56-9(1), the hiring of services of a qualified inspector whether by an employer/employee relationship, an independent contractor relationship, a fee-for-service relationship or any other lawful arrangement under which the regulating agency purchases the services of a qualified inspector.

(4) "Inspector" means a person employed by a local regulator, state regulator or compliance agency for the purpose of inspecting building, electrical, plumbing or mechanical construction, alteration, remodeling, repair or installation in accordance with the codes adopted under these rules and taking appropriate action based upon the findings made during inspection.

(5) "Refuses to establish a method of appeal" means with respect to Subsection 58-56-8(3), that a compliance agency does not in fact adopt a formal written method of appealing uniform building standard matters in accordance with generally recognized standards of due process; or, that the compliance agency does not convene an appeals board and render a decision in the matter within ninety days from the date on which the appeal is properly filed with the compliance agency.

(6) "Uniform Building Standards" means the codes identified in Section R156-56-701 and as amended under these rules.

(7) "Unprofessional conduct" as defined in Title 58, Chapter 1 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-56-502.

R156-56-103. Authority.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 56.

R156-56-104. Organization - Relationship to Rule R156-1.

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

R156-56-105. Board of Appeals.

If the commission is required to act as an appeals board in accordance with the provisions of Subsection 58-56-8(3), the following shall regulate the convening and conduct of the special appeals board:

(1) If a compliance agency refuses to establish a method of appeal regarding a uniform building standard issue, the appealing party may petition the commission to act as the board of appeals.

(2) The person making the appeal shall file the request to convene the commission as an appeals board in accordance with the requirements for a request for agency action, as set forth in Subsection 63-46b-3(3)(a) and Section R151-46b-7. A request by other means shall not be considered. Any request received by the commission or division by any other means shall be returned to the appellant with appropriate instructions.

(3) A copy of the final written decision of the compliance agency interpreting or applying a code which is the subject of the dispute shall be submitted as an attachment to the request. If the person making the appeal requests, but does not timely receive a final written decision, the person shall submit an affidavit to this effect in lieu of the final written decision.

(4) The request shall be filed with the division no later than 30 days following the issuance of the disputed written decision by the compliance agency.

(5) The compliance agency shall file a written response to the request not later than 20 days after the filing of the request. The request and response shall be provided to the commission in advance of any hearing in order to properly frame the disputed issues.

(6) Except with regard to the time period specified in Subsection (7), the time periods specified in this section may, upon a showing of good cause, be modified by the presiding officer conducting the proceeding.

(7) The commission shall convene as an appeals board within 45 days after a request is properly filed.

(8) Upon the convening of the commission as an appeals board, the board members shall review the issue to be considered to determine if a member of the board has a conflict of interest which would preclude the member from fairly hearing and deciding the issue. If it is determined that a conflict does exist, the member shall be excused from participating in the proceedings.

(9) The hearing shall be a formal hearing held in accordance with the Utah Administrative Procedures Act, Title 63, Chapter 46b.

(10) Decisions relating to the application and interpretation of the code made by a compliance agency board of appeals shall be binding for the specific individual case and shall not require commission approval.

R156-56-106. Fees.

In accordance with Subsection 58-56-9(4), on April 30, July 31, October 31 and January 31 of each year, each agency of the state and each political subdivision of the state which assesses a building permit fee shall file with the division a report of building fees and surcharge for the immediately preceding calendar quarter; and, shall remit 80% of the amount of the surcharge to have been assessed to the division.

R156-56-201. Building Inspector Licensing Board.

In accordance with Section 58-56-8.5, the board shall be as follows:

(1) one member licensed as a Combination Inspector;

(2) one member licensed as an Inspector who is qualified in the electrical code;

(3) one member licensed as an Inspector who is qualified in the plumbing code;

(4) one member licensed as an Inspector who is qualified in the mechanical code; and

(5) one member shall be from the general public.

R156-56-202. Advisory Peer Committees Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(6) and 58-56-5(10)(e), the following committees as advisory peer committees to the Uniform Building Codes Commission:

(a) the Education Advisory Committee consisting of seven members;

(b) the Plumbing and Health Advisory Committee consisting of nine members;

(c) the Structural Advisory Committee consisting of seven members;

(d) the Architectural Advisory Committee consisting of seven members;

(e) the Fire Protection Advisory Committee consisting of five members;

(i) This committee shall join together with the Fire Advisory and Code Analysis Committee of the Utah Fire Prevention Board to form the Unified Code Analysis Council.

(ii) The Unified Code Analysis Council shall meet as directed by the Utah Fire Prevention Board or as directed by the Uniform Building Code Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

(iii) The Unified Code Analysis Council shall select one of its members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

(iv) The chair or vice chair shall report to the Utah Fire Prevention Board or Uniform Building Code Commission recommendations of the council with regard to the review of fire and building codes.

(f) the Mechanical Advisory Committee consisting of seven members; and

(g) the Electrical Advisory Committee consisting of seven members.

(2) The committees shall be appointed and serve in accordance with Section R156-1-205. The membership of each committee shall be made up of individuals who have direct knowledge or involvement in the area of code involved in the title of that committee.

(3) The duties and responsibilities of the committees shall include:

(a) review of requests for amendments to the adopted codes as assigned to each committee by the division with the collaboration of the commission;

(b) submission of recommendations concerning the requests for amendment; and

(c) the Education Advisory Committee shall review and make recommendations regarding funding requests which are submitted, and review and make recommendations regarding budget, revenue and expenses of the education fund established pursuant to Subsection 58-56-9(4).

R156-56-301. Reserved.

Reserved.

R156-56-302. Licensure of Inspectors.

In accordance with Subsection 58-56-9(1), the licensee classifications, scope of work, qualifications for licensure, and application for license are established as follows:

(1) License Classifications. Each inspector required to be licensed under Subsection 58-56-9(1) shall qualify for licensure and be licensed by the division in one of the following classifications:

(a) Combination Inspector; or

(b) Limited Inspector.

(2) Scope of Work. The scope of work permitted under each inspector classification is as follows:

(a) Combination Inspector.

(i) Inspect the components of any building, structure or work for which a standard is provided in the specific edition of the codes adopted under these rules or amendments to these codes as included in these rules.

(ii) Determine whether the construction, alteration, remodeling, repair or installation of all components of any building, structure or work is in compliance with the adopted codes.

(iii) After determination of compliance or noncompliance with the adopted codes take appropriate action as is provided in the aforesaid codes.

(b) Limited Inspector.

(i) A Limited Inspector may only conduct activities under Subsections (ii), (iii) or (iv) for which the Limited Inspector has maintained current certificates under the adopted codes as provided under Subsections R156-56-302(3)(b) and R156-56-302(2)(c)(ii).

(ii) Subject to the limitations of Subsection (i), inspect the components of any building, structure or work for which a standard is provided in the specific edition of the codes adopted under these rules or amendments to these codes as included in these rules.

(iii) Subject to the limitations under Subsection (i), determine whether the construction, alteration, remodeling, repair or installation of components of any building, structure or work is in compliance with the adopted codes.

(iv) Subject to the limitations under Subsection (i), after determination of compliance or noncompliance with the adopted codes, take appropriate action as is provided in the adopted codes.

(c) Transitional Provisions.

(i) The state administered examinations upon which prior licenses were granted or upon which new limited inspector licenses may be granted shall be considered as current certification until March 1, 2004. Thereafter, licenses may not be granted or renewed unless the person has obtained current certificates issued by a national organization.

(3) Qualifications for Licensure. The qualifications for licensure for each inspector classification are as follows:

(a) Combination Inspector.

Has passed the examination for and maintained as current the following national certifications for codes adopted under these rules:

(i) the "Combination Inspector Certification" issued by the International Code Council; or

(ii) all of the following certifications:

(A) the "Building Inspector Certification" issued by the International Code Council or both the "Commercial Building Inspector Certification" and the "Residential Building Inspector Certification" issued by the International Code Council;

(B) the "Electrical Inspector Certification" issued by the International Code Council or the "General Electrical Certification" issued by the International Association of Electrical Inspectors, or both the "Commercial Electrical Inspector Certification" and the "Residential Electrical Inspector Certification" issued by the International Code Council;

(C) the "Plumbing Inspector Certification" issued by the International Code Council, or both the "Commercial Plumbing Inspector Certification" and the "Residential Plumbing Inspector Certification" issued by the International Code Council; and

(D) the "Mechanical Inspector Certification" issued by the International Code Council or both the "Commercial Mechanical Inspector Certification" and the "Residential Mechanical Inspector Certification" issued by the International Code Council.

(b) Limited Inspector.

Has passed the examination for and maintained as current one or more of the following national certifications for codes adopted under these rules:

(i) the "Building Inspector Certification" issued by the International Code Council;

(ii) the "Electrical Inspector Certification" issued by the International Code Council or the "General Electrical Certification" issued by the International Association of

Electrical Inspectors;

(iii) the "Plumbing Inspector Certification" issued by the International Code Council;

(iv) the "Mechanical Inspector Certification" issued by the International Code Council;

(v) the "Residential Combination Inspector Certification" issued by the International Code Council;

(vi) the "Commercial Combination Certification" issued by the International Code Council;

(vii) the "Commercial Building Inspector Certification" issued by the International Code Council;

(viii) the "Commercial Electrical Inspector Certification" issued by the International Code Council;

(ix) the "Commercial Plumbing Inspector Certification" issued by the International Code Council;

(x) the "Commercial Mechanical Inspector Certification issued by the International Code Council;

(xi) the "Residential Building Inspector Certification" issued by the International Code Council;

(xii) the "Residential Electrical Inspector Certification" issued by the International Code Council;

(xiii) the "Residential Plumbing Inspector Certification" issued by the International Code Council;

(xiv) the "Residential Mechanical Inspector Certification" issued by the International Code Council;

(xv) any other special or otherwise limited inspector certifications used by the International Code Council which certifications cover a part of the codes adopted under these rules including but not limited to each of the following: Reinforced Concrete Special Inspector, Prestressed Concrete Special Inspector, Residential Energy Inspector, Commercial Energy Inspector; or

(xvi) any combination certification which is based upon a combination of one or more of the above listed certifications.

(4) Application for License.

(a) An applicant for licensure shall:

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

(ii) pay a fee determined by the department pursuant to Section 63-38-3.2.

(5) Code transition provisions.

(a) If an inspector or applicant obtains a new, renewal or recertification or replacement national certificate after a new code or code edition is adopted, the inspector or applicant is required to obtain that certification under the currently adopted code or code edition.

(b) After a new code or new code edition is adopted under these rules, the inspector is required to re-certify their national certification to the new code or code edition at the next available renewal cycle of the national certification.

(c) If a licensed inspector fails to obtain the national certification as required in Subsection (a) or (b), their authority to inspect for the area covered by the national certification automatically expires at the expiration date of the national certification that was not obtained as required.

(d) If an inspector recertifies a national certificate on a newer edition of the codes adopted before that newer edition is adopted under these rules, such recertification shall be considered as a current national certification as required by these rules.

(e) If an inspector complies with these transition provisions, the inspector shall be considered to have a current national certification as required by these rules.

R156-56-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year cycle applicable to licenses under Title 58, Chapter 56 is established by rule in Section R156-1-308.

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

R156-56-501. Reserved.

Reserved.

R156-56-502. Unprofessional Conduct - Building Inspectors.

"Unprofessional conduct" includes:

(1) knowingly failing to inspect or issue correction notices for code violations which when left uncorrected would constitute a hazard to the public health and safety and knowingly failing to require that correction notices are complied with;

(2) the use of alcohol or the illegal use of drugs while performing duties as a building inspector or at any time to the extent that the inspector is physically or mentally impaired and unable to effectively perform the duties of an inspector;

(3) gross negligence in the performance of official duties as an inspector;

(4) the personal use of information or knowingly revealing information to unauthorized persons when that information has been obtained by the inspector as a result of their employment, work, or position as an inspector;

(5) unlawful acts or acts which are clearly unethical under generally recognized standards of conduct of an inspector;

(6) engaging in fraud or knowingly misrepresenting a fact relating to the performance of duties and responsibilities as an inspector;

(7) knowingly failing to require that all plans, specifications, drawings, documents and reports be stamped by architects, professional engineers or both as established by law;

(8) knowingly failing to report to the Division any act or omission of a licensee under Title 58, Chapter 55, which when left uncorrected constitutes a hazard to the public health and safety;

(9) knowingly failing to report to the Division unlicensed practice by persons performing services who are required by law to be licensed under Title 58, Chapter 55;

(10) approval of work which materially varies from approved documents that have been stamped by an architect, professional engineer or both unless authorized by the licensed architect, professional engineer or both; and

(11) failing to produce verification of current licensure and current certifications for the codes adopted under these rules upon the request of the Division, any compliance agency, or any contractor or property owner whose work is being inspected.

R156-56-601. Modular Unit Construction and Set-up.

Modular construction and set-up shall be as set forth in accordance with the following:

(1) Construction shall be in accordance with the building standards accepted by the state pursuant to Section 58-56-4.

(2) The inspection of the construction, modification of or set-up of a modular unit shall be the responsibility of the local regulator; however, nothing in these rules shall preclude the local regulator from entering into an agreement with another qualified person for the inspection of the unit(s) in the manufacturing facility.

R156-56-602. Factory Built Housing Dealer Bonds.

(1) Pursuant to the provisions of Subsection 58-56-16(2)(c), a factory built housing dealer shall provide a registration bond issued by a surety acceptable to the Division in the amount of $50,000. An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, current revision, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies".

(2) The coverage of the registration bond shall include

losses which may occur as the result of the factory built housing dealer's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 56.

R156-56-701. Specific Editions of Uniform Building Standards.

(1) In accordance with Subsection 58-56-4(3), and subject to the limitations contained in Subsection (6), (7), and (8), the following codes are hereby incorporated by reference and adopted as the construction standards to be applied to building construction, alteration, remodeling and repair and in the regulation of building construction, alteration, remodeling and repair in the state:

(a) the 2003 edition of the International Building Code (IBC), including Appendix J promulgated by the International Code Council, and amendments adopted under these rules together with standards incorporated into the IBC by reference, including but not limited to, the 2003 edition of the International Energy Conservation Code (IECC) promulgated by the International Code Council and the 2003 edition of the International Residential Code (IRC) promulgated by the International Code Council shall become effective on January 1, 2004;

(b) the 2002 edition of the National Electrical Code (NEC) promulgated by the National Fire Protection Association, to become effective January 1, 2003;

(c) the 2003 edition of the International Plumbing Code (IPC) promulgated by the International Code Council and amendments adopted under these rules in Section R156-56-707 shall become effective on January 1, 2004;

(d) the 2003 edition of the International Mechanical Code (IMC) together with all applicable standards set forth in the 2003 International Fuel Gas Code (IFGC) (formerly included as part of the IMC) and amendments adopted under these rules in Section R156-56-708 shall become effective on January 1, 2004;

(e) subject to the provisions of Subsection (4), the Federal Manufactured Housing Construction and Safety Standards Act (HUD Code) as promulgated by the Department of Housing and Urban Development and published in the Federal Register as set forth in 24 CFR parts 3280 and 3282 as revised April 1, 1990; and

(f) subject to the provisions of Subsection (4), the 1994 edition of NCSBCS A225.1 Manufactured Home Installations promulgated by the National Conference of States on Building Codes and Standards (NCSBCS).

(2) In accordance with Subsection 58-56-4(4), and subject to the limitations contained in Subsection 58-56-4(5), the following codes are hereby incorporated by reference and approved for use and adoption by a compliance agency as the construction standards which may be applied to existing buildings in the regulation of building alteration, remodeling, repair, removal and rehabilitation in the state:

(a) the 1997 edition of the Uniform Code for the Abatement of Dangerous Buildings (UCADB) promulgated by the International Code Council;

(b) the 1997 edition of the Uniform Code for Building Conservation (UCBC) promulgated by the International Code Council;

(c) Guidelines for the Seismic Retrofit of Existing Buildings (GSREB) promulgated by the International Code Council;

(d) Guidelines for the Rehabilitation of Existing Buildings (GREB) promulgated by the International Code Council.

(3) Amendments adopted by rule to prior editions of the Uniform Building Standards shall remain in effect until specifically amended or repealed.

(4) In accordance with Subsection 58-56-4(2), the following is hereby adopted as the installation standard for manufactured housing:

(a) The manufacturer's installation instruction for the model being installed;

(b) The NCSBCS/ANSI 225.1-1994, Manufactured Home Installations, promulgated by the National Conference of States on Building Codes and Standards;

(c) The manufacturer, dealer or homeowner shall be permitted to design for unusual installation of a manufactured home not provided for in the manufacturer's standard installation instruction or NCSBCS/ANSI 225.1, Manufactured Home Installations, provided the design is approved in writing by a professional engineer or architect licensed in Utah; and

(d) Guidelines for Manufactured Housing Installation as promulgated by the International Code Council may be used as a reference guide.

(5) Pursuant to the Federal Manufactured Home Construction and Safety Standards Section 604(d), a manufactured home may be installed in the state of Utah which does not meet the local snow load requirements as specified in Subsection R156-56-704; however all such homes which fail to meet the standards of Subsection R156-56-704 shall have a protective structure built over the home which meets the International Building Code and the snow load requirements under Subsection R156-56-704.

(6) To the extent that the building codes adopted under Subsection (1) establish local administrative functions or establish a method of appeal which pursuant to Section 58-56-8 are designated to be established by the compliance agency, such provisions are not included in the codes adopted hereunder but authority over such provisions are reserved to the compliance agency to establish such provisions.

(7) To the extent that the building codes adopted under Subsection (1) establish provisions, standards or references to other codes which by state statutes are designated to be established or administered by other state agencies or local city, town or county jurisdictions, such provisions are not included in the codes adopted herein but authority over such provisions are reserved to the agency or local government having authority over such provisions. Provisions excluded under this Subsection include but are not limited to:

(a) the International Property Maintenance Code;

(b) the International Private Sewage Disposal Code, authority over which would be reserved to the Department of Health and the Department of Environmental Quality;

(c) the International Fire Code which pursuant to Section 58-3-7 authority is reserved to the Utah Fire Prevention Board; and

(d) day care provisions which are in conflict with the Child Care Licensing Act, authority over which is designated to the Utah Department of Health.

(8) To the extent that the codes adopted under Subsection (1) establish provisions that exceed the authority granted to the Division, under the Utah Uniform Building Standards Act, to adopt codes or amendments to such codes by rulemaking procedures, such provisions, to the extent such authority is exceeded, are not included in the codes adopted.

R156-56-702. Commission Override of the Division.

(1) In the event that the director of the division rules contrary to the recommendation of the commission with respect to the provisions of Subsection 58-56-7(8), the director shall present his action and the basis for that action at the commission's next meeting or at a special meeting called by either the division or the commission.

(2) The commission may override the division's action by a two-thirds vote which equals eight votes.

(3) In the event of a vacancy on the commission, a vote of a minimum of two-thirds of the existing commissioners must be obtained to override the division.

R156-56-703. Code Amendments.

In accordance with Subsection 58-56-7(1), the procedure and manner under which requests for amendments to codes shall be filed with the division and recommended or declined for adoption are as follows:

(1) All requests for amendments to any of the uniform building standards shall be submitted to the division on forms specifically prepared by the division for that purpose.

(2) The processing of requests for code amendments shall be in accordance with division policies and procedures.

R156-56-704. Statewide Amendments to the IBC.

The following are adopted as amendments to the IBC to be applicable statewide:

(1) All references to the International Electrical Code are deleted and replaced with the National Electrical Code adopted under Subsection R156-56-701(1)(b).

(2) All references to the International Existing Building Code are deleted and replaced with the codes approved under Subsection R156-56-701(2).

(3) Section 101.4.1 is deleted and replaced with the following:

101.4.1 Electrical. The provisions of the National Electrical Code (NEC) shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

(4) In Section 109, a new section is added as follows:

109.3.5 Weather-resistive barrier and flashing. An inspection shall be made of the weather-resistive barrier as required by Section 1403.2 and flashing as required by Section 1405.3 to prevent water from entering the weather-resistant exterior wall envelope.

The remaining sections will be renumbered as follows:

109.3.6 Lath or gypsum board inspection

109.3.7 Fire-resistant penetrations

109.3.8 Energy efficiency inspections

109.3.9 Other inspections

109.3.10 Special inspections

109.3.11 Final inspection.

(5) Section 114.1 is deleted and replaced with the following:

114.1 Authority. Whenever the building official finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or other pertinent laws or ordinances or dangerous or unsafe, the building official is authorized to stop work.

(6) In Section 202, the following definition is added:

ASSISTED LIVING FACILITY. See Section 308.1.1.

(7) Section 305.2 is deleted and replaced with the following:

305.2 Day care. The building or structure, or portion thereof, for educational, supervision, child day care centers, or personal care services of more than four children shall be classified as a Group E occupancy. See Section 419 for special requirements for Group E child day care centers.

Exception: Areas used for child day care purposes with a Residential Certificate, Family License or Family Group License may be located in a Group R-2 or R-3 occupancy as provided in Section 310.1 or shall comply with the International Residential Code in accordance with Section 101.2.

Child day care centers providing care for more than 100 children 2 1/2 years or less of age shall be classified as Group I-4.

(8) In Section 308 the following definitions are added:

308.1.1 Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

TYPE 1 ASSISTED LIVING FACILITY. A residential facility that provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

TYPE 2 ASSISTED LIVING FACILITY. A residential facility that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent.

SEMI-INDEPENDENT. A person who is:

A. Physically disabled but able to direct his or her own care; or

B. Cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

(9) Section 308.2 is deleted and replaced with the following:

308.2 Group I-1. This occupancy shall include buildings, structures, or parts thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following: residential board and care facilities, type 1 assisted living facilities, half-way houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug centers and convalescent facilities. A facility such as the above with five or fewer persons shall be classified as a Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2. A facility such as above, housing at least six and not more than 16 persons, shall be classified as a Group R-4.

(10) Section 308.3 is deleted and replaced with the following:

308.3 Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of more than three persons who are not capable of self-preservation. This group shall include, but not be limited to the following: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals, detoxification facilities, ambulatory surgical centers with two or more operating rooms where care is less than 24 hours, outpatient medical care facilities for ambulatory patients (accommodating more than five such patients in each tenant space) which may render the patient incapable of unassisted self-preservation, and type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities as defined in 308.1.1 with at least six and not more than sixteen residents shall be classified as a Group I-1 facility.

(11) Section 308.3.1 is deleted and replaced with the following:

308.3.1 Child care facility. A child care facility that provides care on a 24 hour basis to more than four children 2 1/2 years of age or less shall be classified as Group I-2.

(12) Section 308.5 is deleted and replaced with the following:

308.5 Group I-4, day care facilities. This group shall include buildings and structures occupied by persons of any age who receive custodial care less than 24 hours by individuals other than parents or guardians, relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for. A facility such as the above with four or fewer persons shall be classified as an R-3 or shall comply with the International Residential Code in accordance with Section 101.2. Places of worship during religious functions and Group E child day care centers are not included.

(13) Section 308.5.2 is deleted and replaced with the following:

308.5.2 Child care facility. A facility that provides supervision and personal care on less than a 24 hour basis for more than 100 children 2 1/2 years of age or less shall be classified as Group I-4.

(14) Section 310.1 is deleted and replaced with the following:

310.1 Residential Group "R". Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classed as an Institutional Group I. Residential occupancies shall include the following:

R-1: Residential occupancies where the occupants are primarily transient in nature (less than 30 days) including: Boarding Houses (transient), Hotels (transient), and Motels (transient).

Exception: Boarding houses accommodating 10 persons or less shall be classified as a Residential Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2.

R-2: Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including: Apartment Houses, Boarding houses (not transient), Convents, Dormitories, Fraternities and Sororities, Monasteries, Vacation timeshare properties, Hotels (non transient), and Motels (non transient).

Exception: Boarding houses accommodating 10 persons or less shall be classified as a Residential Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2.

R-3: Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4 or I and where buildings do not contain more than two dwelling units, as applicable in Section 101.2, or adult and child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours. Adult and child care facilities that are within a single family home are permitted to comply with the International Residential Code in accordance with Section 101.2. Areas used for day care purposes may be located in a residential dwelling unit under all of the following conditions:

1. Compliance with the Utah Administrative Code, R710-8, Day Care Rules, as enacted under the authority of the Utah Fire Prevention Board.

2. Use is approved by the State Department of Health, as enacted under the authority of the Utah Child Care Licensing Act, UCA, Sections 26-39-101 through 26-39-110, and in any of the following categories:

a. Utah Administrative Code, R430-50, Residential Certificate Child Care Standards.

b. Utah Administrative Code, R430-90, Licensed Family Child Care.

3. Compliance with all zoning regulations of the local regulator.

R-4: Residential occupancies shall include buildings arranged for occupancy as Residential Care/Assisted Living Facilities including more than five but not more than 16 occupants, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3 except as otherwise provided for in this code or shall comply with the International Residential Code in accordance with Section 101.2.

(15) A new Section 403.9.1 is added as follows:

403.9.1 Elevator lobby. Elevators on all floors shall open into elevator lobbies that are separated from the remainder of the building, including corridors and other means of egress by smoke partitions complying with Section 710. Elevator lobbies shall have at least one means of egress complying with Chapter 10 and other provisions within the code. Elevator lobbies shall be separated from a fire resistance rated corridor with fire partitions complying with Section 708 and shall have walls of not less than one-hour fire resistance rating and openings shall conform to Section 715.

Exceptions:

1. Separations are not required from a street floor elevator lobby.

2. In atria complying with the provisions of Section 404 elevator lobbies are not required.

(16) A new section 419 is added as follows:

Section 419 Group E Child Day Care Centers. Group E child day care centers shall comply with Section 419.

419.1 Location at grade. Group E child day care centers shall be located at the level of exit discharge.

Exception: Child day care spaces for children over the age of 24 months may be located on the second floor of buildings equipped with automatic fire protection throughout and an automatic fire alarm system.

419.2 Egress. All Group E child day care spaces with an occupant load of 10 or more shall have a second means of egress. If the second means of egress is not an exit door leading directly to the exterior, the room shall have an emergency escape and rescue window complying with Section 1025.

(17) In Section 707.14.1 Exception 4 is deleted and replaced with the following:

4. See Section 403.9.1 for high rise buildings.

(18) In Section (F)902, the definition for record drawings is deleted and replaced with the following:

(F)RECORD DRAWINGS. Drawings ("as builts") that document all aspects of a fire protection system as installed.

(19) Section (F)903.2.7 is deleted and replaced with the following:

(F)903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

Exception:

1. Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) constructed in accordance with the International Residential Code For One- and Two-Family Dwellings.

2. Group R-4 fire areas not more than 4,500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives it primary power from the building wiring and a commercial power system.

(20) Section (F)903.3.7 is deleted and replaced with the following:

(F)903.3.7 Fire department connections. The location of fire department connections shall be approved by the code official.

(21) Section 905.5.3 is deleted and replaced with the following:

905.5.3 Class II system 1-inch hose. A minimum 1-inch (25.4 mm) hose shall be permitted to be used for hose stations in light-hazard occupancies where investigated and listed for this service and where approved by the code official.

(22) Section (F)907.2.10 is deleted and replaced with the following:

(F)907.2.10 Single- and multiple-station alarms. Listed single- and multiple-station smoke alarms shall be installed in accordance with the provision of this code and the household fire-warning equipment provision of NFPA 72. Listed single- and multiple-station carbon monoxide detectors shall comply with U.L. 2034 and shall be installed in accordance with the provisions of this code and NFPA 720.

(F)907.2.10.1 Smoke alarms. Single- or multiple-station smoke alarms shall be installed in the locations described in Sections (F)907.2.10.1.1 through (F)907.2.10.1.4.

(F)907.2.10.1.1 Group R-1. Single- or multiple-station smoke alarms shall be installed in all of the following locations

in Group R-1:

1. In sleeping areas.

2. In every room in the path of the means of egress from the sleeping area to the door leading from the sleeping unit.

3. In each story within the sleeping unit, including basements. For sleeping units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

(F)907.2.10.1.2 Groups R-2, R-3, R-4 and I-1. Single- or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4 and I-1, regardless of occupant load at all of the following locations:

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.

2. In each room used for sleeping purposes.

3. In each story within a dwelling unit, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

(F)907.2.10.1.3 Group I-1. Single- or multiple-station smoke alarms shall be installed and maintained in sleeping areas in occupancies in Group I-1. Single- or multiple-station smoke alarms shall not be required where the building is equipped throughout with an automatic fire detection system in accordance with Section (F)907.2.6.

(F)907.2.10.2 Carbon monoxide alarms. Carbon monoxide alarms shall be installed on each habitable level of a dwelling unit or sleeping unit in Groups R-2, R-3, R-4 and I-1 equipped with fuel burning appliances.

(F)907.2.10.3. Power source. In new construction, required alarms shall receive their primary power from the building wiring where such wiring is served from a commercial source and shall be equipped with a battery backup. Alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

Exception: Alarms are not required to be equipped with battery backup in Group R-1 where they are connected to an emergency electrical system.

(F)907.2.10.4 Interconnection. Where more than one alarm is required to be installed with an individual dwelling unit in Group R-2, R-3, or R-4, or within an individual sleeping unit in Group R-1, the alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Approved combination smoke and carbon-monoxide detectors shall be permitted.

(F)907.2.10.5 Acceptance testing. When the installation of the alarm devices is complete, each detector and interconnecting wiring for multiple-station alarm devices shall be tested in accordance with the household fire warning equipment provisions of NFPA 72 and NFPA 720, as applicable.

(23) Section 1009.3, Exception #5 is deleted and replaced with the following:

5. In occupancies in Group R-3, as applicable in Section 101.2, within dwelling units in occupancies in Group R-2, as applicable in Section 101.2, and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, the maximum riser height shall be 8 inches (203 mm) and the minimum tread depth shall be 9 inches (229 mm). The minimum winder tread depth at the walk line shall be 10 inches (254 mm), and the minimum winder tread depth shall be 6 inches (152 mm). A nosing not less than 0.75 inch (19.1 mm) but not more than 1.25 inches (32 mm) shall be provided on stairways with solid risers where the tread depth is less than 10 inches (254 mm).

(24) Section 1009.11 Exception #4 is deleted and replaced with the following:

4. In occupancies in Group R-3, as applicable in Section 101.2 and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, handrails shall be provided on at least one side of stairways consisting of four or more risers.

(25) Section 1009.11.3 is amended to include the following exception at the end of the section:

Exception. Non-circular handrails serving an individual unit in a Group R-1, Group R-2 or Group R-3 occupancy shall be permitted to have a maximum cross sectional dimension of 3.25 inches (83 mm) measured 2 inches (51 mm) down from the top of the crown. Such handrail is required to have an indention on both sides between 0.625 inch (16 mm) and 1.5 inches (38 mm) down from the top or crown of the cross section. The indentation shall be a minimum of 0.25 inch (6 mm) deep on each side and shall be at least 0.5 (13 mm) high. Edges within the handgrip shall have a minimum radius of 0.0625 inch (2 mm). The handrail surface shall be smooth with no cusps so as to avoid catching clothing or skin.

(26) In Section 1012.2 Exception 3 is added as follows:

3. For occupancies in Group R-3 and within individual dwelling units in occupancies in Group R-2, as applicable in Section 101.2, guards shall form a protective barrier not less than 36 inches (914 mm) in height.

(27) New sections 1109.7.1 and 1109.7.2 are added as follows:

1109.7.1 All platform (wheelchair) lifts shall be capable of independent operation without a key.

1109.7.2 Standby power shall be provided for platform lifts permitted to serve as part of the accessible means of egress.

(28) Section 1208.4 subparagraph 1 is deleted and replaced with the following:

1. The unit shall have a living room of not less than 165 square feet (15.3 m^2) of floor area. An additional 100 square feet (9.3 m^2) of floor area shall be provided for each occupant of such unit in excess of two.

(29) Section 1405.3 is deleted and replaced with the following:

1405.3 Flashing. Flashing shall be installed in such a manner so as to prevent moisture from entering the wall or to redirect it to the exterior. Flashings shall be installed at the perimeters of exterior door and window assemblies, penetrations and terminations of exterior wall assemblies, exterior wall intersections with roofs, chimneys, porches, decks, balconies and similar projections and at built-in gutters and similar locations where moisture could enter the wall. Flashing with projected flanges shall be installed on both sides and the ends of copings, under sills and continuously above projected trim. A flashing shall be installed at the intersection of the foundation to stucco, masonry, siding or brick veneer. The flashing shall be on an approved corrosion-resistant flashing with a 1/2" drip leg extending past exterior side of the foundation.

(30) Section 1604.5, footnote "c" is added to Table 1604.5 Classification of Buildings and Other Structures for Importance Factors:

c. For determining "W" per sections 1616.4.1, 1617, 1617.5.1, or 1618.1, the Snow Factor I_s, may be taken as 1.0.

(31) In Section 1605.2.1, the formula shown as "$f_2 = 0.2$ for other roof configurations" is deleted and replaced with the following:

$f_2 = 0.20 + .025(A-5)$ for other configurations where roof snow load exceeds 30 psf

$f_2 = 0$ for roof snow loads of 30 psf (1.44kN/m^2) or less.

Where A = Elevation above sea level at the location of the

structure (ft/1000).

(32) In Section 1605.3.1 and section 1605.3.2, Exception number 2 in each section is deleted and replaced with the following:

Flat roof snow loads of 30 pounds per square foot (1.44 kNm^2) or less need not be combined with seismic loads. Where flat roofs exceed 30 pounds per square foot (1.44 kNm^2), the snow loads may be reduced in accordance with the following in load combinations including both snow and seismic loads.

$W_s = (0.20 + 0.025(A-5))P_f$

Where

W_s = Weight of snow to be included, psf

A = Elevation above sea level at the location of the structure (ft/1000)

P_f = Design roof snow load, psf

(33) In Table 1607.1 number 6 is deleted and replaced with the following:

TABLE 1607.1 NUMBER 6

Occupancy or Use	Uniform (psf)	Concentrated (lbs)
6. Decks, except residential	Same as occupancy served[h]	
6.1 Residential decks	60 psf	

(34) In Table 1607.1 number 27 is deleted and replaced with the following:

TABLE 1607.1 NUMBER 27

Occupancy or Use	Uniform (psf)	Concentrated (lbs)
27. Residential		
Group R-3 as applicable in Section 101.2		-
Uninhabitable attics without storage	10[i]	
Uninhabitable attics with storage	20	
Habitable attics and sleeping areas	30	
All other areas except balconies and decks	40	
Hotels and multifamily dwellings		
Private rooms	40	
Public rooms and corridors serving them	100	

(35) In Notes to Table 1607.1, Note i is added as follows:

i. This live load need not be considered as acting simultaneously with other live loads imposed upon the ceiling framing or its supporting structure.

(36) Section 1608.1 is deleted and replaced with the following:

Except as modified in section 1608.1.1, design snow loads shall be determined in accordance with Section 7 of ASCE 7, but the design roof load shall not be less than that determined by Section 1607.

(37) Section 7.4.5 of Section 7 of ASCE 7 referred to in Section 1608.1 of the IBC is deleted and replaced with the following:

Section 7.4.5 Ice Dams and Icicles Along Eaves. Where ground snow loads exceed 75 psf, eaves shall be capable of sustaining a uniformly distributed load of $2p_f$ on all overhanging portions. No other loads except dead loads shall be present on the roof when this uniformly distributed load is applied. All building exits under down-slope eaves shall be protected from sliding snow and ice.

(38) Section 1608.1.1 is added as follows:

1608.1.1 Utah Snow Loads. The ground snow load, P_g, to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula: $P_g = (P_o^2 + S^2(A-A_o)^2)^{0.5}$ for A greater than A_o, and $P_g = P_o$ for A less than or equal to A_o.

WHERE

P_g = Ground snow load at a given elevation (psf)

P_o = Base ground snow load (psf) from Table No. 1608.1.1(a)

S = Change in ground snow load with elevation (psf/100 ft.) From Table No. 1608.1.1(a)

A = Elevation above sea level at the site (ft./1000)

A_o = Base ground snow elevation from Table 1608.1.1(a) (ft./1000)

The building official may round the roof snow load to the nearest 5 psf. The ground snow load, P_g, may be adjusted by the building official when a licensed engineer or architect submits data substantiating the adjustments. A record of such action together with the substantiating data shall be provided to the division for a permanent record.

The building official may also directly adopt roof snow loads in accordance with Table 1608.1.1(b), provided the site is no more than 100 ft. higher than the listed elevation.

Where the minimum roof live load in accordance with section 1607.11 is greater than the design roof snow load, such roof live load shall be used for design, however, it shall not be reduced to a load lower than the design roof snow load. Drifting need not be considered for roof snow loads less than 20 psf.

(39) Table 1608.1.1(a) and Table 1608.1.1(b) are added as follows:

TABLE NO. 1608.1.1(a)
STATE OF UTAH - REGIONAL SNOW LOAD FACTORS

COUNTY	P_o	S	A_o
Beaver	43	63	6.2
Box Elder	43	63	5.2
Cache	50	63	4.5
Carbon	43	63	5.2
Daggett	43	63	6.5
Davis	43	63	4.5
Duchesne	43	63	6.5
Emery	43	63	6.0
Garfield	43	63	6.0
Grand	36	63	6.5
Iron	43	63	5.8
Juab	43	63	5.2
Kane	36	63	5.7
Millard	43	63	5.3
Morgan	57	63	4.5
Piute	43	63	6.2
Rich	57	63	4.1
Salt Lake	43	63	4.5
San Juan	43	63	6.5
Sanpete	43	63	5.2
Sevier	43	63	6.0
Summit	86	63	5.0
Tooele	43	63	4.5
Uintah	43	63	7.0
Utah	43	63	4.5
Wasatch	86	63	5.0
Washington	29	63	6.0
Wayne	36	63	6.5
Weber	43	63	4.5

TABLE NO. 1608.1.1(b)
RECOMMENDED SNOW LOADS FOR SELECTED UTAH CITIES AND TOWNS(2)

		Roof Snow Load (PSF)	Ground Snow Load (PSF)
Beaver County			
Beaver	5920 ft.	43	62
Box Elder County			
Brigham City	4300 ft.	30	43
Tremonton	4290 ft.	30	43
Cache County			
Logan	4530 ft.	35	50
Smithfield	4595 ft.	35	50
Carbon County			
Price	5550 ft.	30	43
Daggett County			
Manila	5377 ft.	30	43
Davis County			
Bountiful	4300 ft.	30	43
Farmington	4270 ft.	30	43
Layton	4400 ft.	30	43

Fruit Heights	4500 ft.	40	57
Duchesne County			
Duchesne	5510 ft.	30	43
Roosevelt	5104 ft.	30	43
Emery County			
Castledale	5660 ft.	30	43
Green River	4070 ft.	25	36
Garfield County			
Panguitch	6600 ft.	30	43
Grand County			
Moab	3965 ft.	25	36
Iron County			
Cedar City	5831 ft.	30	43
Juab County			
Nephi	5130 ft.	30	43
Kane County			
Kanab	5000 ft.	25	36
Millard County			
Millard	5000 ft.	30	43
Delta	4623 ft.	30	43
Morgan County			
Morgan	5064 ft.	40	57
Piute County			
Piute	5996 ft.	30	43
Rich County			
Woodruff	6315 ft.	40	57
Salt Lake County			
Murray	4325 ft.	30	43
Salt Lake City	4300 ft.	30	43
Sandy	4500 ft.	30	43
West Jordan	4375 ft.	30	43
West Valley	4250 ft.	30	43
San Juan County			
Blanding	6200 ft.	30	43
Monticello	6820 ft.	35	50
Sanpete County			
Fairview	6750 ft.	35	50
Mt. Pleasant	5900 ft.	30	43
Manti	5740 ft.	30	43
Ephraim	5540 ft.	30	43
Gunnison	5145 ft.	30	43
Sevier County			
Salina	5130 ft.	30	43
Richfield	5270 ft.	30	43
Summit County			
Coalville	5600 ft.	60	86
Kamas	6500 ft.	70	100
Park City	6800 ft.	100	142
Park City	8400 ft.	162	231
Summit Park	7200 ft.	90	128
Tooele County			
Tooele	5100 ft.	30	43
Uintah County			
Vernal	5280 ft.	30	43
Utah County			
American Fork	4500 ft.	30	43
Orem	4650 ft.	30	43
Pleasant Grove	5000 ft.	30	43
Provo	5000 ft.	30	43
Spanish Fork	4720 ft.	30	43
Wasatch County			
Heber	5630 ft.	60	86
Washington County			
Central	5209 ft.	25	36
Dameron	4550 ft.	25	36
Leeds	3460 ft.	20	29
Rockville	3700 ft.	25	36
Santa Clara	2850 ft.	15 (1)	21
St. George	2750 ft.	15 (1)	21
Wayne County			
Loa	7080 ft.	30	43
Hanksville	4308 ft.	25	36
Weber County			
North Ogden	4500 ft.	40	57
Ogden	4350 ft.	30	43

NOTES

(1) The IBC requires a minimum live load - See 1607.11.2.

(2) This table is informational only in that actual site elevations may vary. Table is only valid if site elevation is within 100 feet of the listed elevation.

(40) Section 1608.2 is deleted and replaced with the following:

1608.2 Ground Snow Loads. The ground snow loads to be used in determining the design snow loads for roofs in states other than Utah are given in Figure 1608.2 for the contiguous United States and Table 1608.2 for Alaska. Site-specific case studies shall be made in areas designated CS in figure 1608.2. Ground snow loads for sites at elevations above the limits indicated in Figure 1608.2 and for all sites within the CS areas shall be approved. Ground snow load determination for such sites shall be based on an extreme value statistical analysis of data available in the vicinity of the site using a value with a 2-percent annual probability of being exceeded (50-year mean recurrence interval). Snow loads are zero for Hawaii, except in mountainous regions as approved by the building official.

(41) Section 1608.3.2 is deleted and replaced with the following:

1608.3.2 Thermal Factor. The value for the thermal factor, C_t, used in calculation of p_f shall be determined from Table 1608.3.2.

Exception: Except for unheated structures, the value of C_t need not exceed 1.0 when ground snow load, P_g, is calculated using Section 1608.1.1 as amended.

(42) Section 1614.2 is deleted and replaced with the following:

1614.2 Change in Occupancy. When a change of occupancy results in a structure being reclassified to a higher Seismic Use Group, or when such change of occupancy results in a design occupant load increase of 100% or more, the structure shall conform to the seismic requirements for a new structure.

Exceptions:

1. This is not required if the design occupant load increase is less than 25 persons and the Seismic Use Group does not change.

2. Specific detailing provisions required for a new structure are not required to be met where it can be shown an equivalent level of performance and seismic safety contemplated for a new structure is obtained. Such analysis shall consider the regularity, overstrength, redundancy and ductility of the structure within the context of the specific detailing provided. Alternatively, the building official may allow the structure to be upgraded in accordance with the latest edition of the "Guidelines for Seismic Rehabilitation of Existing Buildings" or another nationally recognized standard for retrofit of existing buildings.

(43) In Section 1616.4.1, Definition of W, Item 4 is deleted and replaced with the following:

4. Roof snow loads of 30 psf or less need not be included. Where the roof snow load exceeds 30 psf, the snow load shall be included, but may be adjusted in accordance with the following formula: $W_s = (0.20 + 0.025(A-5))P_f$

WHERE:

W_s = Weight of snow to be included in seismic calculation;

A = Elevation above sea level at the location of the structure (ft/1000)

P_f = Design roof snow load, psf

For the purposes of this section, snow load shall be assumed uniform on the roof footprint without including the effects of drift or sliding.

(44) Section 1617.4 is deleted and replaced with the following:

1617.4 Equivalent lateral force procedure for seismic design of buildings. The provisions given in Section 9.5.5 of ASCE 7 shall be used. Roof snow loads to be included in the seismic dead load (W) may be adjusted as outlined in Section 1616.4.1, Item 4, as amended.

(45) In Section 1617.5.1, Definition of W, Item 4 is deleted and replaced with the following:

4. Roof snow loads to be included shall be as outlined in section 1616.4.1, Definition of W, Item 4, as amended.

(46) Section 1618.1 is deleted and replaced with the following:

1618.1 Dynamic analysis procedures. The following dynamic analysis procedures are permitted to be used in lieu of

the equivalent lateral force procedure of Section 1617.4:

1. Modal Response Spectral Analysis.
2. Linear Time-history Analysis.
3. Nonlinear Time-history Analysis.

The dynamic analysis procedures listed above shall be performed in accordance with the requirements of Section 9.5.6, 9.5.7, and 9.5.8 respectively, of ASCE 7. Roof snow loads to be included in the seismic dead load (W) may be adjusted as outlined in Section 1616.4.1, Item 4, as amended.

(47) Section 1805.2.1 is deleted and replaced with the following:

Sections 1805.2.1 Frost protection. Except where otherwise protected from frost, foundation walls, piers and other permanent supports of buildings and structures shall be protected from frost by one or more of the following methods:

(1) Extending below the frost line of the locality;

(2) Constructed in accordance with ASCE-32; or

(3) Erected on solid rock.

Exception: Freestanding buildings meeting all of the following conditions shall not be required to be protected:

1. Classified in Importance Category I (see Table 1604.5), or Occupancy Group U (see Section 312);
2. Area of 1,000 square feet (93m^2) or less;
3. Eave height of 10 feet (3048 mm) or less; and
4. Constructed of light-wood-framed construction.

Footings shall not bear on frozen soil unless such frozen condition is of a permanent character.

(48) Section 1805.5 is deleted and replaced with the following:

1805.5 Foundation walls. Concrete and masonry foundation walls shall be designed in accordance with Chapter 19 or 21. Foundation walls that are laterally supported at the top and bottom and within the parameters of Tables 1805.5(1) through 1805.5(4) are permitted to be designed and constructed in accordance with Sections 1805.5.1 through 1805.5.5. Concrete foundation walls may also be constructed in accordance with Section 1805.5.8.

(49) A new section 1805.5.8 is added as follows:

1805.5.8 Empirical foundation design. Group R, Division 3 Occupancies three stories or less in height, and Group U Occupancies, which are constructed in accordance with Section 2308, or with other methods employing repetitive wood-frame construction or repetitive cold-formed steel structural member construction, shall be permitted to have concrete foundations constructed in accordance with Table 1805.5(5).

(50) Table 1805.5(5) is added as follows:

Table 1805.5(5), entitled "Empirical Foundation Walls, dated September 1, 2002, published by the Department of Commerce, Division of Occupational and Professional Licensing is hereby adopted and incorporated by reference. Table 1805.5(5) identifies foundation requirements for empirical walls.

(51) A new section 2306.1.4 is added as follows:

2306.1.4 Load duration factors. The allowable stress increase of 1.15 for snow load, shown in Table 2.3.2, Frequently Used Load Duration Factors, C_d, of the National Design Specifications, shall not be utilized at elevations above 5,000 feet (1524 M).

(52) Section 2308.6 is deleted and replaced with the following:

2308.6 Foundation plates or sills. Foundations and footings shall be as specified in Chapter 18. Foundation plates or sills resting on concrete or masonry foundations shall comply with Section 2304.3.1 and shall be bolted or anchored by one of the following:

1. Foundation plates or sill shall be bolted or anchored to the foundation with not less than 1/2 inch (12.7 mm) diameter steel bolts or approved anchors. Bolts shall be embedded at least 7 inches (178 mm) into concrete or masonry, and spaced not more than 6 feet (1829 mm) apart. There shall be a minimum of two bolts or anchor straps per piece with one bolt or anchor strap located not more than 12 inches (305 mm) or less than 4 inches (102 mm) from each end of each piece.

2. Foundation plates or sills shall be bolted or anchored to the foundation with not less than 1/2 inch (12.7 mm) diameter steel bolts or approved anchors. Bolts shall be embedded at least 7 inches (178 mm) into concrete or masonry, and spaced not more than 32 inches (816 mm) apart. There shall be a minimum of two bolts or anchor straps per piece located not less than 4 inches (102 mm) from each end of each piece.

A properly sized nut and washer shall be tightened on each bolt to the plate.

(53) In Section 2902.1, the title for Table 2902.1 is deleted and replaced with the following and footnote f is added as follows: Table 2902.1, Minimum Number of Plumbing Facilities[a, f].

FOOTNOTE: f. When provided, in public toilet facilities there shall be an equal number of diaper changing facilities in male toilet rooms and female toilet rooms.

(54) A new section 2902.1.1 is added as follows:

2902.1.1 Unisex toilets and bath fixtures. Fixtures located within unisex toilet and bathing rooms complying with section 2902 are permitted to be included in determining the minimum number of fixtures for assembly and mercantile occupancies.

(55) Section 3006.5 Shunt Trip, the following exception is added:

Exception: Hydraulic elevators and roped hydraulic elevators with a rise of 50 feet or less.

(56) A new section 3403.5 is added as follows:

3403.5 Parapets and other appendages. Building constructed prior to 1975 with parapet walls, cornices, spires, towers, tanks, signs, statuary and other appendages shall have such appendages evaluated by a licensed engineer to determine resistance to design loads specified in this code when said building is undergoing reroofing, or alteration of or repair to said feature.

EXCEPTION: Group R-3 an U occupancies.

Original Plans and/or structural calculations may be utilized to demonstrate that the parapet or appendages are structurally adequate. When found to be deficient because of design or deteriorated condition, the engineer shall prepare specific recommendations to anchor, brace, reinforce or remove the deficient feature.

The maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F. If the required parapet height exceeds this maximum height, a bracing system designed using the coefficients specified in ASCE 7-02 Table 9.6.2.2 shall support the top of the parapet. When positive diaphragm connections are absent, tension roof anchors shall be added. Approved alternative methods of equivalent strength will be considered when accompanied by engineer sealed drawings, details and calculations.

(57) The exception in 3409.1 is deleted and replaced with the following:

Exception: Type B dwelling or sleeping units required by section 1107 are not required to be provided in existing buildings and facilities, except when an existing occupancy is changed to R-2.

(58) In Section 3409.3, number 7 is added as follows:

7. When a change of occupancy in a building or portion of a building results in multiple dwelling or sleeping units as determined in section 1107.6.2, not less than 20 percent of the dwelling or sleeping units shall be Type B dwelling or sleeping units. These dwelling or sleeping units may be located on any

floor of the building provided with an accessible route. Two percent, but not less than one, of the dwelling or sleeping units shall be Type A dwelling units.

(59) The following referenced standard is added under NFPA in chapter 35:

TABLE

Number	Title	Referenced in code Section number
720-99	Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment	907.2.10.1, 907.2.10.5

(60) In Chapter 35, Referenced Standards, the following NFPA referenced standards are deleted and replaced with the current versions as follows:

TABLE

DELETED	REPLACED BY	
13 - 99	13 - 02	Installation of Sprinkler Systems
13D - 99	13D - 02	Installation of Sprinkler Systems in One- and Two-family Dwellings and Manufactured Homes
13R - 99	13R - 02	Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height
72 - 99	72 - 02	National Fire Alarm Code
101 - 00	101 - 03	Life Safety Code

R156-56-705. Local Amendments to the IBC.

The following are adopted as amendments to the IBC to be applicable to the following jurisdictions:

(1) City of Farmington:

Section (F)903.2.14 is adopted as follows:

(F)903.2.14 Group R, Division 3 Occupancies. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when any of the following conditions are present:

1. The structure is over two stories high, as defined by the building code;

2. The nearest point of structure is more than 150 feet from the public way;

3. The total floor area of all stories is over 5,000 square feet (excluding from the calculation the area of the basement and/or garage); or

4. The structure is located on a street constructed after March 1, 2000 that has a gradient over 12% and, during fire department response, access to the structure will be gained by using such street. (If the access is intended to be from a direction where the steep gradient is not used, as determined by the Chief, this criteria shall not apply).

Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves or in enclosed attic spaces, unless required by the Chief.

(2) City of North Salt Lake

Section (F)903.2.14 is adopted as follows:

(F)903.2.14 Group R, Division 3 Occupancies. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when the following condition is present:

1. The structure is over 6,200 square feet.

Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves, or in enclosed attic spaces, unless required by the fire chief.

(3) Park City Corporation and Park City Fire District:

Section (F)903.2 is deleted and replaced with the following:

(F)903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the location described in this section.

All new construction having more than 6,000 square feet on any one floor, except R-3 occupancy.

All new construction having more than two (2) stories, except R-3 occupancy.

All new construction having three (3) or more dwelling units, including units rented or leased, and including condominiums or other separate ownership.

All new construction in the Historic Commercial Business zone district, regardless of occupancy.

All new construction and buildings in the General Commercial zone district where there are side yard setbacks or where one or more side yard setbacks is less than two and one half (2.5) feet per story of height.

All existing building within the Historic District Commercial Business zone.

In Table 1505.1, the following is added as footnotes d and e:

d. Wood roof covering assemblies are prohibited in R-3 occupancies in areas with a combined rating of more than 11 using Tables 1505.1.1 and 1505.1.2 with a score of 9 for weather factors.

e. Wood roof covering assemblies shall have a Class A rating in occupancies other than R-3 in areas with a combined rating of more than 11 using Tables 1505.1.1 and 1505.1.2 with a score of 9 for weather factors. The owner of the building shall enter into a written and recorded agreement that the Class A rating of the roof covering assembly will not be altered through any type of maintenance process.

TABLE 1505.1.1
WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

TABLE 1505.1.2
PROHIBITION/ALLOWANCE OF WOOD ROOFING

Rating	R-3 Occupancy	All Other Occupancies
less than or equal to 11	wood roof covering assemblies per Table 1505.1 are allowed	wood roof covering assemblies per Table 1505.1 are allowed
greater than or equal to 12	wood roof covering is prohibited	wood roof covering assemblies with a Class A rating are allowed

Appendix C is adopted.

(4) Sandy City

Section (F)903.2.14 is added as follows:

(F)903.2.14 An automatic sprinkler system shall be installed in accordance with NFPA 13 throughout buildings containing all occupancies where fire flow exceeds 2,000 gallons per minute, based on Table B105.1 of the 2003 International Fire Code. Exempt locations as indicated in Section 903.3.1.1.1 are allowed.

Exception: Automatic fire sprinklers are not required in buildings used solely for worship, Group R Division 3, Group U occupancies and buildings complying with the International Residential Code unless otherwise required by the International Fire Code.

R156-56-706. Statewide Amendments to the NEC.

The following are adopted as amendments to the NEC to be applicable statewide:

R156-56-707. Statewide Amendments to the IPC.

The following are adopted as amendments to the IPC to be

applicable statewide:

(1) In Section 202, the definition for "Backflow Backpressure, Low Head" is deleted in its entirety.

(2) In Section 202, the definition for "Backsiphonage" is deleted and replaced with the following:

Backsiphonage. The backflow of potentially contaminated, polluted or used water into the potable water system as a result of the pressure in the potable water system falling below atmospheric pressure of the plumbing fixtures, pools, tanks or vats connected to the potable water distribution piping.

(3) In Section 202, the following definition is added:

Certified Backflow Preventer Assembly Tester. A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Subsection 19-4-104(4), Utah Code Ann. (1953), as amended.

(4) In Section 202, the definition for "Cross Connection" is deleted and replaced with the following:

Cross Connection. Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems (see "Backflow").

(5) In Section 202, the following definition is added:

Heat Exchanger (Potable Water). A device to transfer heat between two physically separated fluids (liquid or steam), one of which is potable water.

(6) In Section 202, the definition for "Potable Water" is deleted and replaced with the following:

Potable Water. Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Titles 19-4 and 19-5, Utah Code Ann. (1953), as amended and the regulations of the public health authority having jurisdiction.

(7) In Section 202, the following definition is added:

S-Trap. A trap having its weir installed above the inlet of the vent connection.

(8) In Section 202, the following definition is added:

Trap Arm. That portion of a fixture drain between a trap weir and the vent fitting.

(9) In Section 202, the definition for "Water Heater" is deleted and replaced with the following:

Water Heater. A closed vessel in which water is heated by the combustion of fuels or electricity and is withdrawn for use external to the system at pressures not exceeding 160 psig (1100 kPa (gage)), including the apparatus by which heat is generated, and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit (99 degrees Celsius).

(10) Section 304.3 Meter Boxes is deleted.

(11) Section 304.4 is deleted and replaced with the following:

304.4 Opening of Pipes. In or on the exterior habitable envelop of structures where openings have been made in walls, floors, or ceilings for the passage of pipes, the annular space between the opening and the pipe shall not exceed 1/2 inch (12.7 mm). Openings exceeding 1/2 inch (12.7 mm) shall be closed and protected by the installation of approved metal collars that are securely fastened to the adjoining structure.

(12) Section 305.5 is deleted and replaced with the following:

305.5 Pipes through or under footings or foundation walls. Any pipe that passes under or through a footing or through a foundation wall shall be protected against structural settlement.

(13) Section 305.8 is deleted and replaced with the following:

305.8 Protection against physical damage. In concealed locations where piping, other than cast-iron or galvanized steel, is installed through holes or notches in studs, joists, rafters or similar members less than 1 1/2 inches (38 mm) from the nearest edge of the member, the pipe shall be protected by shield plates. Protective shield plates shall be minimum of 1/16 inch-thick (1.6 mm) steel, shall cover the area of the pipe where the member is notched or bored, and shall be at least the thickness of the framing member penetrated.

(14) Section 305.10 is added as follows:

Section 305.10 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

(15) Sections 308.7 and 308.7.1 are deleted and replaced with the following:

308.7 Anchorage. All drainage piping except ABS, PVC, CPVC, PP or any other approved piping material having solvent weld or heat fused joints shall be anchored and restrained to prevent axial movement.

308.7.1 Location. Restraints specified by an engineer and approved by the code official shall be provided for pipe sizes greater than 4 inches (102 mm), having changes in direction greater than 45 degrees and at all changes in diameter greater than two pipe sizes.

(16) Section 311.1 is deleted.

(17) Section 312.9 is deleted in its entirety and replaced with the following:

312.9 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and Reduced Pressure Detector Assembly.

(18) In Section 403.1, the title for Table 403.1 is deleted and replaced with the following title and footnote f is added as follows: Table 403.1, Minimum Number of Plumbing Facilities[a, f], (see Sections 403.2 and 403.3).

FOOTNOTE: f. When provided, in public toilet facilities there shall be an equal number of diaper changing facilities in male toilet rooms and female toilet rooms.

(19) In Section 406.3, an exception is added as follows:

Exception: Gravity discharge clothes washers, when properly trapped and vented, shall be allowed to be directly connected to the drainage system or indirectly discharge into a properly sized catch basin, trench drain, or other approved indirect waste receptor installed for the purpose of receiving such waste.

(20) A new section 406.4 is added as follows:

406.4 Automatic clothes washer metal safe pans. Metal safe pans, when installed under automatic clothes washers, shall only be allowed to receive the unintended discharge from a leaking appliance, valve, supply hose, or overflowing waste water from the clothes washer standpipe. Clothes washer metal safe pans shall not be used as indirect waste receptors to receive the discharge of waste water from any other equipment, appliance, appurtenance, drain pipe, etc. Each safe pan shall be provided with an approved trap seal primer, conforming to ASSE 1018 or 1044 or a deep seal trap. The sides of the safe pan shall be no less than 1 1/2" high and shall be soldered at the joints to provide a water tight seal.

406.4.1 Safe pan outlet. The safe pan outlet shall be no less than 1 1/2" in diameter and shall be located in a visible and accessible location to facilitate cleaning and maintenance. The

outlet shall be flush with the surface of the pan so as not to allow water retention within the pan.

(21) Section 412.1 is deleted and replaced with the following:

412.1 Approval. Floor drains shall be made of ABS, PVC, cast-iron, stainless steel, brass, or other approved materials that are listed for the use.

(22) Section 412.5 is added as follows:

412.5 Public toilet rooms. All public toilet rooms shall be equipped with at least one floor drain.

(23) Section 417.5.2 is deleted and replaced with the following:

417.5.2 Shower lining. Floors under shower compartments, except where prefabricated receptors have been provided, shall be lined and made water tight utilizing material complying with Sections 417.5.2.1 through 417.5.2.4. Such liners shall turn up on all sides at least three inches (76.2 mm) above the finished threshold level. Liners shall be recessed and fastened to an approved backing so as not to occupy the space required for wall covering, and shall not be nailed or perforated at any point less than two inches (50.8 mm) above finished threshold. Liners shall be pitched one-fourth unit vertical in 12 units horizontal (2-percent slope) and shall be sloped towards the fixture drains and be securely fastened to the waste outlet at the seepage entrance, making a watertight joint between the liner and the outlet.

(24) Section 418.1 is deleted and replaced with the following:

418.1 Approval. Sinks shall conform to ANSI Z124.6, ASME A112.19.1M, ASME A112.19.2M, ASME A112.19.3M, ASME A112.19.4M, ASME A112.19.9M, CSA B45.1, CSA B45.2, CSA B45.3, CSA B45.4 or NSF 2.

(25) Section 424.3 is deleted and replaced with the following:

424.5 Shower Valves. Shower and tub-shower combination valves shall be balanced pressure, thermostatic or combination balanced-pressure/thermostatic valves that conform to the requirements of ASSE 1016 or CSA B125. Multiple (gang) showers supplied with a single tempered water supply pipe shall have the water supply for such showers controlled by an approved master thermostatic mixing valve complying with ASSE 1017. Shower and tub-shower combination valves and master thermostatic mixing valves required by this section shall be equipped with a means to limit the maximum setting of the valve to 120 degrees F (49 degrees C), which shall be field adjusted in accordance with the manufacturer's instructions. The water heater thermostat shall not be used as a water tempering device to meet this requirement.

(26) Section 502.4 is deleted and replaced with the following:

502.4 Water Heater Seismic Bracing. Water heaters shall be anchored or strapped in the upper third of the appliance to resist a horizontal force equal to one third the operating weight of the water heater, acting in any horizontal direction, or in accordance with the appliance manufacturers recommendations.

(27) Section 504.6.2 is deleted and replaced with the following:

504.6.2 Material. Relief valve discharge piping shall be of those materials listed in Table 605.5 and meet the requirements for Section 605.5 or shall be tested, rated and approved for such use in accordance with ASME A112.4.1. Piping from safety pan drains shall meet the requirements of Section 804.1 and be constructed of those materials listed in Section 702.

(28) Section 504.7.1 is amended as follows:

The measurement of "3/4 inch" in the last sentence of the paragraph is replaced with the measurement "1 1/2 inch".

(29) Section 504.7.2 is deleted and replaced with the following:

504.7.2 Pan drain termination. The pan drain shall extend full-size and terminate over a suitably located indirect waste receptor, floor drain or extend to the exterior of the building and terminate not less than 6 inches (152 mm) and not more than 24 inches (610 mm) above the adjacent ground surface. When permitted by the administrative authority, the pan drain may be directly connected to a soil stack, waste stack, or branch drain. The pan drain shall be individually trapped and vented as required in Section 907.1. The pan drain shall not be directly or indirectly connected to any vent. The trap shall be provided with a trap primer conforming to ASSE 1018 or ASSE 1044.

(30) A new section 504.7.3 is added as follows:

504.7.3 Pan Designation. A water heater pan shall be considered an emergency receptor designated to receive the discharge of water from the water heater only and shall not receive the discharge from any other fixtures, devises or equipment.

(31) Section 602.3 is deleted and replaced with the following:

602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1, 73-3-3, and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction. The source shall supply sufficient quantity of water to comply with the requirements of this chapter.

(32) Sections 602.3.1, 602.3.2, 602.3.3, 602.3.4, 602.3.5 and 602.3.5.1 are deleted in their entirety.

(33) Section 604.4.1 is added as follows:

604.4.1 Metering faucets. Self closing or metering faucets shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(34) Section 606.5 is deleted and replaced with the following:

606.5 Water pressure booster systems. Water pressure booster systems shall be provided as required by Section 606.5.1 through 606.5.11.

(35) Section 606.5.11 is added as follows:

606.5.11 Prohibited installation. In no case shall a booster pump be allowed that will lower the pressure in the public main to less than 20 psi.

(36) In Section 608.1, the following sentence is added at the end of the paragraph:

Connection without an air gap between potable water piping and sewer-connected waste shall not exist under any condition.

(37) Table 608.1 is deleted and replaced with the following:

TABLE 608.1
General Methods of Protection

Assembly (applicable standard)	Degree of Hazard	Application	Installation Criteria
Air Gap (ASME A112.1.2)	High or Low	Backsiphonage	See Table 608.15.1
Reduced Pressure Principle Backflow Preventer (AWWA C511, USC-FCCCHR, ASSE 1013 CSA CNA/CSA-B64.4) and Reduced Pressure Detector Assembly (ASSE 1047, USC-FCCCHR)	High or Low	Backpressure or Backsiphonage 1/2" - 16"	a. The bottom of each RP assembly shall be a minimum of 12 inches above the ground or floor. b. RP assemblies shall NOT be installed in a pit. c. The relief valve on each RP assembly shall not be directly connected to any waste disposal line, including sanitary

			sewer, storm drains, or vents. d. The assembly shall be installed in a horizontal position only unless listed or approved for vertical installation.	
Double Check Backflow Prevention Assembly (AWWA C510, USC-FCCCHR, ASSE 1015) Double Check Detector Assembly Backflow Preventer (ASSE 1048, USC-FCCCHR)	Low	Backpressure or Backsiphonage 1/2" - 16"	a. If installed in a pit, the DC assembly shall be installed with a minimum of 12 inches of clearance between all sides of the vault including the floor and roof or ceiling with adequate room for testing and maintenance. b. Shall be installed in a horizontal position unless listed or approved for vertical installation.	
Pressure Vacuum Breaker Assembly (ASSE 1020, USC-FCCCHR)	High or Low	Backsiphonage 1/2" - 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.	
Spill Resistant Vacuum Breaker (ASSE 1056, USC-FCCCHR)	High or Low	Backsiphonage 1/4" - 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.	
Atmospheric Vacuum Breaker (ASSE 1001 USC-FCCCHR, CSA CAN/CSA-B64.1.1	High or Low	Backsiphonage	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall not be installed where it may be subjected to continuous pressure for more than 12 consecutive hours at any time. c. Shall be installed a minimum of six inches above all downstream piping	
			and the highest point of use. d. Shall be installed on the discharge (downstream) side of any valves. e. The AVB shall be installed in a vertical position only.	
				General Installation Criteria
				The assembly owner, when necessary, shall provide devices or structures to facilitate testing, repair, and/or maintenance and to insure the safety of the backflow technician. Assemblies shall not be installed more than five feet off the floor unless a permanent platform is installed. The body of the assembly shall not be closer than 12 inches to any wall, ceiling or incumbrance, and shall be accessible for testing, repair and/or maintenance. In cold climates, assemblies shall be protected from freezing by a means acceptable to the code official. Assemblies shall be maintained as an intact assembly.

(38) Table 608.1.1 is added as follows:

TABLE 608.1.1
Specialty Backflow Devices for low hazard use only

Device	Degree of Hazard	Application	Applicable Standard
Antisiphon-type Water Closet Flush Tank Ball Cock	Low	Backsiphonage	ASSE 1002 CSA CAN/ CSA-B125
Dual check valve Backflow Preventer	Low	Backsiphonage or Backpressure 1/4" - 1"	ASSE 1024
Backflow Preventer with Intermediate Atmospheric Vent	Low Residential Boiler	Backsiphonage or Backpressure 1/4" - 3/4"	ASSE 1012 CSA CAN/ CSA-B64.3
Dual check valve type Backflow Preventer for Carbonated Beverage Dispensers/Post Mix Type	Low	Backsiphonage or Backpressure 1/4" - 3/8"	ASSE 1032
Hose-connection Vacuum Breaker	Low	Backsiphonage 1/2", 3/4", 1"	ASSE 1011 CSA CAN/ CSA-B64.2
Vacuum Breaker Wall Hydrants, Frost-resistant, Automatic Draining Type	Low	Backsiphonage 3/4", 1"	ASSE 1019 CSA CAN/ CSA-B64.2.2
Laboratory Faucet Backflow Preventer	Low	Backsiphonage	ASSE 1035 CSA CAN/

CSA-B64.7

Hose Connection Backflow Preventer	Low	Backsiphonage 1/2" - 1"	ASSE 1052

Installation Guidelines: The above specialty devices shall be installed in accordance with their listing and the manufacturer's instructions and the specific provisions of this chapter.

(39) In Section 608.3.1, the following sentence is added at the end of the paragraph:

All piping and hoses shall be installed below the atmospheric vacuum breaker.

(40) Section 608.7 is deleted in its entirety.

(41) In Section 608.8, the following sentence is added at the end of the paragraph:

In addition each nonpotable water outlet shall be labeled with the words "CAUTION: UNSAFE WATER, DO NOT DRINK".

(42) In Section 608.11, the following sentence is added at the end of the paragraph:

The coating shall conform to NSF Standard 61 and application of the coating shall comply with the manufacturers instructions.

(43) Section 608.13.3 is deleted and replaced with the following:

608.13.3 Backflow preventer with intermediate atmospheric vent. Backflow preventers with intermediate atmospheric vents shall conform to ASSE 1012 or CAS CAN/CAS-B64.3. These devices shall be permitted to be installed on residential boilers only where subject to continuous pressure conditions. The relief opening shall discharge by air gap and shall be prevented from being submerged.

(44) Section 608.13.4 is deleted in its entirety.

(45) Section 608.15.3 is deleted and replaced with the following:

608.15.3 Protection by a backflow preventer with intermediate atmospheric vent. Opening and outlets to residential boilers only shall be protected by a backflow preventer with an intermediate atmospheric vent.

(46) Section 608.15.4 is deleted and replaced with the following:

608.15.4 Protection by a vacuum breaker. Openings and outlets shall be protected by atmospheric-type or pressure-type vacuum breakers. The critical level of the atmospheric vacuum breaker shall be set a minimum of 6 inches (152 mm) above the flood level rim of the fixture or device. The critical level of the pressure vacuum breaker shall be set a minimum of 12 inches (304 mm) above the flood level rim of the fixture or device. Ball cocks shall be set in accordance with Section 425.3.1. Vacuum breakers shall not be installed under exhaust hoods or similar locations that will contain toxic fumes or vapors. Pipe-applied vacuum breakers shall be installed not less than 6 inches (152 mm) above the flood level rim of the fixture, receptor or device served. No valves shall be installed downstream of the atmospheric vacuum breaker.

(47) Section 608.15.4.2 is deleted and replaced with the following:

608.15.4.2 Hose connections. Sillcocks, hose bibbs, wall hydrants and other openings with a hose connection shall be protected by an atmospheric-type or pressure-type vacuum breaker or a permanently attached hose connection vacuum breaker. Add-on-type backflow prevention devices shall be non-removable. In climates where freezing temperatures occur, a listed self-draining frost proof hose bibb with an integral backflow preventer shall be used.

(48) In Section 608.16.2, the first sentence of the paragraph is deleted and replaced as follows:

608.16.2 The potable water supply to the residential boiler shall be equipped with a backflow preventer with an intermediate atmospheric vent complying with ASSE 1012 or CSA CAN/CSA B64.3.

(49) Section 608.16.3 is deleted and replaced with the following:

608.16.3 Heat exchangers. Heat exchangers shall be separated from potable water by double-wall construction. An air gap open to the atmosphere shall be provided between the two walls.

Exceptions:

1. Single wall heat exchangers shall be permitted when all of the following conditions are met:

a. It utilizes a heat transfer medium of potable water or contains only substances which are recognized as safe by the United States Food and Drug Administration (FDA);

b. The pressure of the heat transfer medium is maintained less than the normal minimum operating pressure of the potable water system; and

c. The equipment is permanently labeled to indicate only additives recognized as safe by the FDA shall be used.

2. Steam systems that comply with paragraph 1 above.

3. Approved listed electrical drinking water coolers.

(50) In Section 608.16.4.1, add the following exception:

Exception: All class 1 and 2 systems containing chemical additives consisting of strictly glycerine (C.P. or U.S.P. 96.5 percent grade) or propylene glycol shall be protected against backflow with a double check valve assembly. Such systems shall include written certification of the chemical additives at the time of original installation and service or maintenance.

(51) Section 608.16.5 is deleted and replaced with the following:

608.16.5 Connections to lawn irrigation systems. The potable water supply to lawn irrigation systems shall be protected against backflow by an atmospheric-type vacuum breaker, a pressure-type vacuum breaker, a double check valve backflow preventer or a reduced pressure principle backflow preventer. A valve shall not be installed downstream from an atmospheric vacuum breaker. Where chemicals are introduced into the system, the potable water supply shall be protected against backflow by a reduced pressure principle backflow preventer.

(52) Section 608.16.7 is deleted and replaced with the following:

608.16.7 Chemical dispensers. Where chemical dispensers connect to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

(53) Section 608.16.8 is deleted and replaced with the following:

608.16.8 Portable cleaning equipment. Where the portable cleaning equipment connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2 or Section 608.13.8.

(54) Section 608.16.9 is deleted and replaced with the following:

608.16.9 Dental pump equipment or water syringe. Where dental pumping equipment or water syringes connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

(55) Section 608.16.10 is added as follows:

608.16.10 Automatic and coin operated car washes. The water supply to an automatic or coin operated car wash shall be protected in accordance with Section 608.13.1 or Section 608.13.2.

(56) Section 608.17 is deleted in its entirety.

(57) Section 701.2 is deleted and replaced with the following:

701.2 Sewer required. Every building in which plumbing

fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann., (1953), as amended; or an approved private sewage disposal system in accordance with Rule R317-501 through R317-513 and Rule R317-5, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

(58) Section 802.3.2 is deleted in its entirety and replaced with the following:

802.3.2 Open hub waste receptors. Waste receptors for clear water waste shall be permitted in the form of a hub or pipe extending not more than 1/2 inch above a water impervious floor and are not required to have a strainer.

(59) Section 904.1 is deleted and replaced with the following:

904.1 Roof extensions. All open vent pipes that extend through a roof shall be terminated at least 12 inches (304.8 mm) above the roof, except that where a roof is to be used for any purpose other than weather protection, the vent extension shall be run at least 7 feet (2134 mm) above the roof.

(60) In Section 904.6, the following sentence is added at the end of the paragraph:

Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

(61) In Section 905.4, the following sentence is added at the end of the paragraph:

Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when installed in accordance with Sections 702.2, 905.2 and 905.3 and provided with a wall clean out.

(62) Section 1002.2 is deleted and replaced with the following:

1002.2 Design of traps. Fixture traps shall be self-scouring. Fixture traps shall not have interior partitions, except where such traps are integral with the fixture or where such traps are constructed of an approved material that is resistant to corrosion and degradation. Slip joints shall be made with an approved elastomeric gasket and shall only be installed on the trap inlet, trap outlet and within the trap seal. One slip joint fitting shall be allowed to be installed downstream of the trap.

(63) Section 1002.8 is deleted and replaced with the following:

1002.8 Recess for trap connection. A recess provided for connection of the underground trap, such as one serving a bathtub in slab-type construction, shall have sides and a bottom of corrosion-resistant, insect- and vermin-proof construction. The annular space between the pipe and the penetration shall not exceed 1/2 inch (12.7 mm).

(64) Section 1003.3.5 is added as follows:

1003.3.5 Grease trap restriction. Unless specifically required or permitted by the code official, no food waste grinder or dishwasher shall be connected to or discharge into any grease trap.

(65) Section 1104.2 is deleted and replaced with the following:

1104.2 Combining storm and sanitary drainage prohibited. The combining of sanitary and storm drainage systems is prohibited.

(66) Section 1108 is deleted in its entirety.

(67) Chapter 13, Referenced Standards, is amended as follows:

NSF - Standard Reference Number 61-99 - The following referenced in code section number is added: 608.11

The following reference standard is added:

TABLE

USC-FCCCHR	Foundation for Cross-Connection Control and Hydraulic Research 9th Edition Manual of Cross Connection Control University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531	Table 608.1

(68) Appendix C of the IPC, Gray Water Recycling Systems as amended herein shall not be adopted by any local jurisdiction until such jurisdiction has requested Appendix C as amended to be adopted as a local amendment and such local amendment has been approved as a local amendment under these rules.

(69) In jurisdictions which have adopted Appendix C as amended as a local amendment as provided herein, Section 301.3 of the IPC is deleted and replaced with the following:

301.3 Connection to the drainage system. All plumbing fixtures, drains, appurtenances and appliances used to receive or discharge liquid wastes or sewage shall be directly connected to the drainage system of the building or premises, in accordance with the requirements of this Code. This section shall not be construed to prevent indirect waste systems provided for in Chapter 8.

Exception: Bathtubs, showers, lavatories, clothes washers and laundry sinks shall not be required to discharge to the sanitary drainage system where such fixtures discharge to a gray water recycling system meeting all the requirements as specified in Appendix C as amended by these rules.

(70) Appendix C is deleted and replaced with the following, to be effective only in jurisdictions which have adopted Appendix C as amended as a local amendment under these rules:

Appendix C, Gray Water Recycling Systems, C101 Gray Water Recycling Systems

C101.1 General, recycling gray water within a building. In R1, R2 and R4 occupancies and one- and two-family dwellings, gray water recycling systems are prohibited.

In commercial occupancies, recycled gray water shall only be utilized for the flushing of water closets and urinals that are located in the same building as the gray water recycling system, provided the following conditions are met:

1. Such systems comply with Sections C101.1 through C101.14 as amended by these rules.

2. The commercial establishment demonstrates that it has and will have qualified staff to oversee the gray water recycling systems. Qualified staff is defined as level 3 waste water treatment plan operator as specified by the Department of Environmental Quality.

3. Gray water recycling systems shall only receive non hazardous waste discharge of bathtubs, showers, lavatories, clothes washers and laundry sinks such as chemicals having a pH of 6.0 to 9.0, or non flammable or non combustible liquids, liquids without objectionable odors, non-highly pigmented liquids, or other liquids that will not interfere with the operation of the sewer treatment facilities.

C101.2 Permit required. A permit for any gray water recycling system shall not be issued until complete plans prepared by a licensed engineer, with appropriate data satisfactory to the Code Official, have been submitted and approved. No changes or connections shall be made to either the gray water recycling system or the potable water system within any site containing a gray water recycling system, without prior approved by the Code Official. A permit may also be required by the local health department to monitor compliance with this appendix for system operator standards and record keeping.

C101.3 Definition. The following term shall have the meaning shown herein.

GRAY WATER. Waste water discharged from lavatories, bathtubs, showers, clothes washers and laundry sinks.

C101.4 Installation. All drain, waste and vent piping

associated with gray water recycling systems shall be installed in full compliance with this code.

C101.5 Gray Water Reservoir. Gray water shall be collected in an approved reservoir construction of durable, nonabsorbent and corrosion-resistant materials. The reservoir shall be a closed and gas-tight vessel. Gas tight access openings shall be provided to allow inspection and cleaning of the reservoir interior. The holding capacity of the reservoir shall be a minimum of twice the volume of water required to meet the daily flushing requirements of the fixtures supplied by the gray water, but not less than 50 gallons (189 L). The reservoir shall be sized to limit the retention time of gray water to 72 hours maximum.

C101.6 Filtration. Gray water entering the reservoir shall pass through an approved cartridge filter or other method approved by the Code Official.

C101.7 Disinfection. Gray water shall be disinfected by an approved method that employs one or more disinfectants such as chlorine, iodine or ozone. A minimum of 1 ppm free residual chlorine shall be maintained in the gray water recycling system reservoir. Such disinfectant shall be automatically dispensed. An alarm shall be provided to shut down the gray water recycling system if disinfectant levels are not maintained at the required levels.

C101.8 Makeup water. Potable water shall be supplied as a source of makeup water for the gray water recycling system. The potable water supply to any building with a gray water recycling system shall be protected against backflow by an RP backflow assembly installed in accordance with this code. There shall be full-open valve on the makeup water supply to the reservoir. The potable water supply to the gray water reservoir shall be protected by an air gap installed in accordance with this code.

C101.9 Overflow. The reservoir shall be equipped with an overflow pipe of the same diameter as the influent pipe for the gray water. The overflow shall be directly connected to the sanitary drainage system.

C101.10 Drain. A drain shall be located at the lowest point of the reservoir and shall be directly connected to the sanitary drainage system. The drain shall be the same diameter as the overflow pipe required by Section C101.9 and shall be provided with a full-open valve.

C101.11 Vent required. The reservoir shall be provided with a vent sized in accordance with Chapter 9 based on the size of the reservoir influent pipe.

C101.12 Coloring. The gray water shall be automatically dyed blue or green with a food grade vegetable dye before such water is supplied to the fixtures.

C101.13 Identification. All gray water distribution piping and reservoirs shall be identified as containing non-potable water. Gray water recycling system piping shall be permanently colored purple or continuously wrapped with purple-colored Mylar tape. The tape or permanently colored piping shall be imprinted in black, upper case letters with the words "CAUTION: GRAY WATER, DO NOT DRINK."

All equipment areas and rooms for gray water recycling system equipment shall have a sign posted in a conspicuous place with the following text: TO CONSERVE WATER, THIS BUILDING USES GRAY WATER TO FLUSH TOILETS AND URINALS, DO NOT CONNECT TO THE POTABLE WATER SYSTEM. The location of the signage shall be determined by the Code Official.

C101.14 Removal from service. All gray water recycling systems that are removed from service shall have all connections to the reservoir capped and routed back to the building sewer. All gray water distribution lines shall be replaced with new materials.

C201.1 Outside the building. Gray water reused outside the building shall comply with the requirements of the Department of Environmental Quality Rule R317.

R156-56-708. Statewide Amendments to the IMC.

The following are adopted as amendments to the IMC to be applicable statewide:

R156-56-709. Statewide Amendments to the IFGC.

The following are adopted as amendments to the IFGC to be applicable statewide:

(1) Chapter 4, Section 401 General, a new section 401.9 is added as follows:

401.9 Meter protection. Gas meters shall be protected from physical damage, including falling ice and snow.

R156-56-710. Statewide Amendments to the IECC.

The following are adopted as amendments to the IECC to be applicable statewide:

(1) In Section 504.7, the following exception is added:

Exception: Heat traps, other than the arrangement of piping and fittings, shall be prohibited unless a means of controlling thermal expansion can be ensured as required in the IPC Section 607.3.

R156-56-711. Statewide Amendments to the IRC.

The following are adopted as amendments to the IRC to be applicable statewide:

(1) All amendments to the IBC under Section R156-56-704, local amendments under Section R156-56-705, the NEC under Section R156-56-706, the IPC under Section R156-56-707, the IMC under Section R156-56-708, the IFGC under Section R156-56-709 and the IECC under Section R156-56-710 which may be applied to detached one and two family dwellings and multiple single family dwellings shall be applicable to the corresponding provisions of the IRC. All references to the International Electrical Code are deleted and replaced with the National Electrical Code adopted under Section R156-56-701(1)(b). Should there be any conflicts between the NEC and the IRC, the NEC shall prevail.

(2) In Section 109, a new section is added as follows:

R109.1.5 Weather-resistive barrier and flashing inspections. An inspection shall be made of the weather-resistive barrier as required by Section R703.1 and flashings as required by Section R703.8 to prevent water from entering the weather-resistant exterior wall envelope.

The remaining sections are renumbered as follows:

R109.1.6 Other inspections

R109.1.6.1 Fire-resistance-rated construction inspection

R109.1.7 Final inspection.

(3) Section R114.1 is deleted and replaced with the following:

R114.1 Notice to owner. Upon notice from the building official that work on any building or structured is being prosecuted contrary to the provisions of this code or other pertinent laws or ordinances or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent or to the person doing the work; and shall state the conditions under which work will be permitted to resume.

(4) In Section R202, the definition of "Backsiphonage" is deleted and replaced with the following:

BACKSIPHONAGE: The backflow of potentially contaminated, polluted or used water into the potable water system as a result of the pressure in the potable water system falling below atmospheric pressure of the plumbing fixtures, pools, tanks or vats connected to the potable water distribution piping.

(5) In Section R202 the following definition is added:

CERTIFIED BACKFLOW PREVENTER ASSEMBLY

TESTER: A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Subsection 19-4-104(4), Utah Code Ann. (1953), as amended.

(6) In Section R202 the definition of "Cross Connection" is deleted and replaced with the following:

CROSS CONNECTION. Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems(see "Backflow, Water Distribution").

(7) In Section R202 the following definition is added:

HEAT exchanger (Potable Water). A device to transfer heat between two physically separated fluids (liquid or steam), one of which is potable water.

(8) In Section R202 the definition of "Potable Water" is deleted and replaced with the following:

POTABLE WATER. Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Titles 19-4 and 19-5, Utah Code Ann. (1953), as amended and the regulations of the public health authority having jurisdiction.

(9) In Section R202, the following definition is added:

S-Trap. A trap having it's weir installed above the inlet of the vent connection.

(10) In Section R202 the definition of "Water Heater" is deleted and replaced with the following:

WATER HEATER. A closed vessel in which water is heated by the combustion of fuels or electricity and is withdrawn for use externally to the system at pressures not exceeding 160 psig (1100 kPa (gage)), including the apparatus by which heat is generated, and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit (99 degrees Celsius).

(11) Section R301.5 is deleted and replaced with the following:

R301.5 Live Load. The minimum uniformly distributed live load shall be as provided in Table R301.5.

TABLE R301.5
MINIMUM UNIFORMLY DISTRIBUTED LIVE LOADS
(in pounds per square foot)

USE	LIVE LOAD
Attics with storage (b), (e)	20
Attics without storage (b), (e), (g)	10
Decks (f)	60
Exterior balconies	60
Fire escapes	40
Guardrails and handrails (d)	200
Guardrails in-fill components (f)	50
Passenger vehicle garages (a)	50(a)
Rooms other than sleeping rooms	40
Sleeping rooms	30
Stairs	40(c)

For SI: 1 pound per square foot = 0.0479kN/m^2, 1 square inch = 645 mm^2 1 pound = 4.45N.

(a) Elevated garage floors shall be capable of supporting a 2,000-pound load applied over a 20-square-inch area.

(b) No storage with roof slope not over 3 units in 12 units.

(c) Individual stair treads shall be designed for the uniformly distributed live load or a 300-pound concentrated load acting over an area of 4 square inches, whichever produces the greater stresses.

(d) A single concentrated load applied in any direction at any point along the top.

(e) Attics constructed with wood trusses shall be designated in accordance with Section R802.10.1.

(f) See Section R502.2.1 for decks attached to exterior walls.

(g) This live load need not be considered as acting simultaneously with other live loads imposed upon the ceiling framing or its supporting structure.

(12) Section R304.3 is deleted and replaced with the following:

R304.3 Minimum dimensions. Habitable rooms shall not be less than 7 feet (2134 mm) in any horizontal dimension.

Exception: Kitchens shall have a clear passageway of not less than 3 feet (914 mm) between counter fronts and appliances or counter fronts and walls.

(13) Section R311.5.3 is deleted and replaced with the following:

R311.5.3 Treads and risers. The maximum riser height shall be 8 inches (203 mm) and the minimum tread depth shall be 9 inches (229 mm). The riser height shall be measured vertically between leading edges of the adjacent treads. The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The walking surface of treads and landings of a stairway shall be sloped no steeper than one unit vertical in 48 units horizontal (2-percent slope). The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

R311.5.3.3 Profile. The radius of curvature at the leading edge of the tread shall be no greater than 9/16 inch (14.3 mm). A nosing not less than 3/4 inch (19.1 mm) but not more than 1 1/4 inches (32 mm) shall be provided on stairways with solid risers. The greatest nosing projection shall not exceed shall not exceed the smallest nosing projection by more than 3/8 inches (9.5 mm) between two stories, including the nosing at the level of floors and landings. Beveling of nosing shall not exceed 1/2 inch (12.7 mm). Risers shall be vertical or sloped from the underside of the leading edge of the tread above at an angle not more than 30 degrees from the vertical. Open risers are permitted, provided that the opening between treads does not permit the passage of a 4-inch diameter (102 mm) sphere.

Exceptions.

1. A nosing is not required where the tread depth is a minimum of 10 inches (254 mm).

2. The opening between adjacent treads is not limited on stairs with a total rise of 30 inches (762 mm) or less.

(14) Section R311.5.6 is deleted and replaced with the following:

R311.5.6 Handrails. Handrails shall be provided on at least one side of stairways consisting of four or more risers. Handrails shall have a minimum height of 34 inches (864 mm) and a maximum height of 38 inches (965 mm) measured vertically from the nosing of the treads. All required handrails shall be continuous the full length of the stairs from a point directly above the top riser to a point directly above the lowest riser of the stairway. The ends of the handrail shall be returned into a wall or shall terminate in newel post or safety terminals. A minimum clear space of 1 1/2 inches (38 mm) shall be provided between the wall and the handrail.

Exceptions:

1. Handrails shall be permitted to be interrupted by a newel post at a turn.

2. The use of a volute, turnout or starting easing shall be allowed over the lowest tread.

(15) Section R311.5.6.3 is deleted and replaced with the following:

R311.5.6.3 Handrail grip size. The handgrip portion of handrails shall have a circular cross section of 1 1/4 inches (32mm) minimum to 2 5/8 inches (67mm) maximum. Edges shall have a minimum radius of 1/8 inch (3.2mm).

Exception: Non-circular handrails shall be permitted to

have a maximum cross sectional dimension of 3.25 inches (83mm) measured 2 inches (51 mm) down from the top of the crown. Such handrail is required to have an indentation on both sides between 0.625 inch (16mm) and 1.5 inches (38mm) down from the top or crown of the cross section. The indentation shall be a minimum of 0.25 inch (6mm) deep on each side and shall be at least 0.5 inch (13 mm)high. Edges within the handgrip shall have a minimum radius of 0.0625 inch (2 mm). The handrail surface shall be smooth with no cusps so as to avoid catching clothing or skin.

(16) Section R313 is deleted and replaced with the following:

R313.1 Single- and multiple-station smoke alarms. Single- and multiple-station smoke alarms shall be installed in the following locations:

1. In each sleeping room.

2. Outside of each separate sleeping area in the immediate vicinity of the bedrooms.

3. On each additional story of the dwelling, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

All smoke alarms shall be listed and installed in accordance with the provisions of this code and the household fire warning equipment provision of NFPA 72.

R313.2 Carbon monoxide alarms. Carbon monoxide alarms shall be installed on each habitable level of a dwelling unit equipped with fuel burning appliances. All carbon monoxide detectors shall be listed and comply with U.L. 2034 and shall be installed in accordance with provisions of this code and NFPA 720.

R313.3 Interconnection of alarms. When multiple alarms are required to be installed within an individual dwelling unit, the alarm devices shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Approved combination smoke- and carbon-monoxide detectors shall be permitted.

R313.4 Power source. In new construction, the required alarms shall receive their primary power from the building wiring when such wiring is served from a commercial source, and when primary power is interrupted, shall receive power from a battery. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Alarms shall be permitted to be battery operated when installed in buildings without commercial power or in buildings that undergo alterations, repairs, or additions regulated by Section R313.5

R313.5 Alterations, repairs and additions. When interior alterations, repairs or additions requiring a permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be provided with alarms located as required for new dwellings; the alarms shall be interconnected and hard wired.

Exceptions:

1. Alarms in existing areas shall not be required to be interconnected and hard wired where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space, or basement available which could provide access for hard wiring and interconnection without the removal of interior finishes.

2. Repairs to the exterior surfaces of dwellings are exempt from the requirements of this section.

(17) In Section 317.3.2 Exception 1.1 is deleted and replaced with the following:

1.1 By a horizontal distance of not less than the width of a stud space regardless of stud spacing, or

(18) In Section R403.1.4.1 exception 1 is deleted and replaced with the following:

1. Freestanding accessory structures, not intended for human occupancy, with an area of 1,000 square feet (93m^2) or less, of wood framed construction, with an eave height of 10 feet (3080 mm) or less shall not be required to be protected.

(19) In Section R403.1.6 the exception is deleted and replaced with the following exceptions:

Exceptions:

1. Foundation anchor straps, spaced as required to provide equivalent anchorage to 1/2 inch diameter (12.7 mm) anchor bolts.

2. When anchor bolt spacing does not exceed 32 inches (816 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls.

(20) In Section R403.1.6.1 the following exception is added at the end of Item 2 and Item 3:

Exception: When anchor bolt spacing does not exceed 32 inches (816 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls.

(21) Section R703.6 is deleted and replaced with the following:

R703.6 Exterior plaster.

R703.6.1 Lath. All lath and lath attachments shall be of corrosion-resistant materials. Expanded metal or woven wire lath shall be attached with 1 1/2 inch-long (38 mm), 11 gage nails having 7/16 inch (11.1 mm) head, or 7/8-inch-long (22.2 mm), 16 gage staples, spaced at no more than 6 inches (152 mm), or as otherwise approved.

R703.6.2 Weather-resistant barriers. Weather-resistant barriers shall be installed as required in Section R703.2 and, where applied over wood-based sheathing, shall include a weather-resistive vapor permeable barrier with a performance at least equivalent to two layers of Grade D paper.

R703.6.3 Plaster. Plastering with portland cement plaster shall be not less than three coats when applied over metal lath or wire lath and shall be not less than two coats when applied over masonry, concrete or gypsum backing. If the plaster surface is completely covered by veneer or other facing material or is completed concealed, plaster application need be only two coats, provided the total thickness is as set forth in Table R702.1(1). On wood-frame construction with an on-grade floor slab system, exterior plaster shall be applied in such a manner as to cover, but not extend below, lath, paper and screed.

The proportion of aggregate to cementitious materials shall be as set forth in Table R702.1(3).

(22) In Section R703.8, number 8 is added as follows:

8. At the intersection of foundation to stucco, masonry, siding, or brick veneer with an approved corrosive-resistance flashing with a 1/2" drip leg extending past exterior side of the foundation.

(23) A new Section G2401.2 is added as follows:

G2401.2 Meter Protection. Gas meters shall be protected from physical damage, including falling ice and snow.

(24) Section P2602.3 is added as follows:

P2602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1 and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction.

(25) Section P2602.4 is added as follows:

P2602.4 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann, (1953), as amended; or an approved private sewage disposal system in accordance with Rule R317-501 through R317-513 and Rule R317-5, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

(26) Section P2603.2.1 is deleted and replaced with the following:

P2603.2.1 Protection against physical damage. In concealed locations where piping, other than cast-iron or galvanized steel, is installed through holes or notches in studs, joists, rafters, or similar members less than 1 1/2 inch (38 mm) from the nearest edge of the member, the pipe shall be protected by shield plates. Protective shield plates shall be a minimum of 1/16 inch-thick (1.6 mm) steel, shall cover the area of the pipe where the member is notched or bored, and shall be at least the thickness of the framing member penetrated.

(27) Section P2801.2.1 is added as follows:

P2801.2.1 Water heater seismic bracing. In Seismic Design Categories C, D_1 and D_2, water heaters shall be anchored or strapped in the upper third of the appliance to resist a horizontal force equal to one third the operating weight of the water heater, acting in any horizontal direction, or in accordance with the appliance manufacturers recommendations.

(28) Section P2902.1.1 is added as follows:

P2902.1.1 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and Reduced Pressure Detector Assembly.

(29) Section P3003.2.1 is added as follows:

Section P3003.2.1 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

(30) In Section P3103.6, the following sentence is added at the end of the paragraph:

Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

(31) In Section P3104.4, the following sentence is added at the end of the paragraph:

Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when installed below grade in accordance with Chapter 30, and Sections P3104.2 and P3104.3. A wall cleanout shall be provided in the vertical vent.

(32) Chapter 43, Referenced Standards, is amended as follows:

The following reference standard is added:

TABLE

USC-FCCCHR 9th Edition Manual of Cross Connection Control	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531	Section P2902

(33) In Chapter 43, the following standard is added under NFPA as follows:

TABLE

720-98	Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment	R313.2

R156-56-712. Local Amendments to the IRC.

The following are adopted as amendments to the IRC to be applicable to the following jurisdictions:

(1) City of Farmington:

Sections R324.1 and R324.2 are added as follows:

R324.1 When required. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when any of the following conditions are present:

1. the structure is over two stories high, as defined by the building code;

2. the nearest point of structure is more than 150 feet from the public way;

3. the total floor area of all stories is over 5,000 square feet (excluding from the calculation the area of the basement and/or garage); or

4. the structure is located on a street constructed after March 1, 2000 that has a gradient over 12% and, during fire department response, access to the structure will be gained by using such street. (If the access is intended to be from a direction where the steep gradient is not used, as determined by the Chief, this criteria shall not apply).

R324.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves or in enclosed attic spaces, unless required by the Chief. Such system shall be installed in accordance with NFPA 13-D.

(2) Morgan City Corp:

Section R105.2 Work Exempt From Permit, the following is added:

10. Structures intended to house farm animals, or for the storage of feed associated with said farm animals when all the following criteria is met:

a. The parcel of property involved is zoned for the keeping of farm animals or has grand fathered animal rights.

b. The structure is setback not less than 50 feet from the rear or side of dwellings, and not less than 10 feet from property lines and other structures.

c. The structure does not exceed 1000 square feet of floor area, and is limited to 20 feet in height. Height is measured from the average grade to the highest point of the structure.

d. Before construction, a site plan is submitted to, and approved by the building official.

Electrical, plumbing, and mechanical permits shall be required when that work is included in the structure.

(3) Morgan County:

Section R105.2 Work Exempt From Permit, the following is added:

10. Structures intended to house farm animals, or for the storage of feed associated with said farm animals when all the following criteria is met:

a. The parcel of property involved is zoned for the keeping of farm animals or has grand fathered animal rights.

b. The structure is set back not less than required by the Morgan County Zoning Ordinance for such structures, but not less than 10 feet from property lines and other structures.

c. The structure does not exceed 1000 square feet of floor area, and is limited to 20 feet in height. Height is measured from the average grade to the highest point of the structure.

d. Before construction, a Land Use Permit must be applied for, and approved, by the Morgan County Planning and Zoning Department.

Electrical, plumbing, and mechanical permits shall be

required when that work is included in the structure.

(4) City of North Salt Lake:

Sections R324.1 and R324.2 are added as follows:

R324.1 When Required. An automatic sprinkler system shall be installed throughout every dwelling when the following condition is present:

1. The structure is over 6,200 square feet.

R324.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves, or in enclosed attic spaces, unless required by the fire chief. Such system shall be installed in accordance with NFPA 13-D.

(5) Park City Corporation and Park City Fire District:

Section R905.7 is deleted and replaced with the following:

R905.7 Wood shingles. The installation of wood shingles shall comply with the provisions of this section.

Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE
WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

Section R905.8 is deleted and replaced with the following:

R905.8 Wood Shakes. The installation of wood shakes shall comply with the provisions of this section. Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE
WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

Appendix K is adopted.

KEY: contractors, building codes, building inspection, licensing

August 17, 2004 **58-1-106(1)(a)**
Notice of Continuation May 16, 2002 **58-1-202(1)(a)**
58-56-1
58-56-4(2)
58-56-6(2)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-60a. Social Worker Licensing Act Rules.
R156-60a-101. Title.

These rules are known as the "Social Worker Licensing Act Rules".

R156-60a-102. Definitions.

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

(1) "ASWB" means the Association of Social Work Boards.

(2) "CSW" means a licensed certified social worker.

(3) "Clinical social work concentration and practicum", "clinical concentration and practicum" "case work", "group work", or "family treatment course sequence with a clinical practicum", "clinical practicum" or "practicum", as used in Subsections 58-60-205(1)(g) and (2)(d)(ii), means a track of professional education which is specifically established to prepare an individual to practice or engage in mental health therapy.

(4) "LCSW" means a licensed clinical social worker.

(5) "SSW" means a licensed social service worker.

(6) "Supervised practice of mental health therapy by a clinical social worker", as used in Subsection 58-60-202(3)(a), means that the CSW is supervised by a LCSW meeting the requirements of Sections R156-60a-302e and R156-60a-601.

R156-60a-103. Authority - Purpose.

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 60.

R156-60a-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.

R156-60a-302a. Education Requirements for Licensure as a SSW.

In accordance with Subsection 58-60-205(3)(d)(ii), a master's degree qualifying an applicant for licensure as a SSW shall be in a field of social work, psychology, marriage and family therapy, or professional counseling.

R156-60a-302b. Experience Requirements for Licensure as a SSW.

In accordance with Subsection 58-60-205(3)(d)(iii) and (iv), the 2000 hours of supervised social work activity or the one year of qualifying experience for licensure as a SSW shall:

(1) be performed as an employee of an agency providing social work services and activities; and

(2) be performed according to a written social work job description approved by the LCSW or CSW supervisor.

R156-60a-302c. Training Requirements for Licensure as a LCSW.

In accordance with Subsections 58-60-205(1)(d),(e),(f) and (g), and 58-60-202(3)(a), the 4000 hours of clinical social work and mental health therapy training qualifying an applicant for licensure as a LCSW shall:

(1) be obtained after completion of the education requirement set forth in Subsections 58-60-205(d) and (g) and shall not include any clinical practicum hours obtained as part of the education program;

(2) be completed over a duration of not less than two years;

(3) be completed while the CSW is an employee of a public or private agency engaged in mental health therapy;

(4) be completed under a program of supervision by a LCSW meeting the requirements of Sections R156-60a-302e and R156-60a-601; and

(5) include the following training requirements:

(a) individual, family, and group therapy;

(b) crisis intervention;

(c) intermediate treatment; and

(d) long term treatment.

R156-60a-302d. Examination Requirements.

(1) In accordance with Subsection 58-60-205(1)(h), the examination requirements for licensure as a LCSW include passing the Clinical Examination of the ASWB or the Clinical Social Workers Examination of the State of California.

(2) In accordance with Subsection 58-60-205(2)(e), the examination requirements for licensure as a CSW shall include passing the Masters, Advanced Generalist, or Clinical Examination of the ASWB.

(3) In accordance with Subsection 58-60-205(3)(e), the examination requirements for licensure as a SSW shall include passing the Bachelors Examination of the ASWB.

R156-60a-302e. Requirements to Become a LCSW Supervisor.

In accordance with Subsections 58-60-202(2)(c), 58-60-202(3)(a) and 58-60-205(1)(e) and (f), in order for an LCSW to supervise a CSW, the LCSW shall:

(1) be currently licensed in good standing as a LCSW; and

(2) have engaged in active practice as a LCSW, including mental health therapy, for a period of not less than two years prior to supervising a CSW.

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

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

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

R156-60a-304. Continuing Education Requirements for LCSW.

In accordance with Subsection 58-60-105(1), the continuing education requirements for LCSWs are defined, clarified and established as follows:

(1) During each two year period commencing January 1st of each even numbered year, a LCSW shall be required to complete not less than 40 hours of continuing education.

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

(3) Continuing education under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training, and experience to provide social work continuing education; and

(c) have a method of verification of attendance.

(4) Credit for continuing education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences, or training sessions which meet the criteria listed in Subsection (3) above, and which are approved by, conducted by or under sponsorship of:

(i) the National Association of Social Workers;

(ii) community mental health agencies or entities providing mental health services under the auspices of the State of Utah;

(iii) recognized universities and colleges; and

(iv) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of social work; and

(b) a maximum of ten hours per two year period may be recognized for teaching continuing education relevant to clinical social work or mental health therapy; and

(c) a maximum of ten hours per two year period may be recognized for continuing education that is provided via Internet or through home study which meets the criteria listed in Subsection (3) above.

(5) A licensee is responsible to complete relevant continuing education, to document completion of the continuing education, and to maintain the records of the continuing education completed for a period of four years after close of the two year period to which the records pertain.

(6) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing 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.

(7) If more than 40 hours of continuing education is completed during the two year period specified in Subsection (1), up to ten hours of the excess over 40 hours may be carried over to the next two year period. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

R156-60a-308. Reinstatement of a LCSW License which has Expired Beyond Two Years.

In accordance with Subsection 58-1-308(6) and Section R156-1-308e, an applicant for reinstatement for licensure as a LCSW, whose license expired after two years following the expiration of that license, shall:

(1) upon request, meet with the board to evaluate the applicant's ability to safely and competently practice clinical social work and mental health therapy;

(2) upon recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4000 hours of clinical social work and mental health therapy training as a CSW before qualifying for reinstatement of the LCSW license;

(3) pass the Clinical Examination of the ASWB if it is determined by the board that examination or reexamination is necessary to demonstrate the applicant's ability to safely and competently practice clinical social work and mental health therapy; and

(4) complete a minimum of 40 hours of continuing education in subjects determined by the board as necessary to ensure the applicant's ability to safely and competently practice clinical social work and mental health therapy.

R156-60a-309. Exemption from Licensure Clarified.

The exemption specified in Subsection 58-60-107(5) does not permit an individual to engage in the 4000 hours of clinical social work and mental health therapy training without first becoming licensed as a CSW.

R156-60a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) using the abbreviated title of LCSW unless licensed as a LCSW;

(2) using the abbreviated title of CSW unless licensed as a CSW;

(3) using the abbreviated title of SSW unless licensed as a SSW;

(4) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60a-302d and R156-60a-601.

(5) engaging in the supervised practice of mental health therapy as a licensed CSW unless:

(a) the licensee has completed a clinical practicum as part of the Council on Social Work Education (CSWE) accredited master's degree program; and

(b) the scope of practice is otherwise within the licensee's competency, abilities and education;

(6) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60a-302c(4) and R156-60a-601(7);

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

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

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

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

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

(12) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services when there is no risk of exploitation or potential harm to the client;

(13) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a personal relationship when there is a risk of exploitation or potential harm to the client;

(14) embracing, massaging, cuddling, caressing, or performing any other act of physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(15) 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;

(16) failing to exercise professional discretion and impartial judgement required for the performance of professional activities, duties and functions;

(17) 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;

(18) exploiting a client or former client for personal gain;

(19) exploiting a person who has a personal relationship with a client for personal gain;

(20) failing to maintain client records including records of assessment, treatment, progress notes and billing information for a period of not less than ten years from the documented termination of services to the client;

(21) failing to provide client records in a reasonable time upon written request of the client, or legal guardian;

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

(23) failing to protect the confidences of other persons named or contained in the client records; and

(24) failing to abide by the provisions of the Code of Ethics of the National Association of Social Workers (NASW) as approved by the NASW 1996 Delegate Assembly and revised by the 1999 NASW Delegate Assembly, which is adopted and incorporated by reference.

R156-60a-601. Duties and Responsibilities of a LCSW

Supervisor.

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

(1) be professionally responsible for the acts and practices of the supervisee;

(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 or is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession;

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

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

(6) monitor the performance of the supervisee for compliance with laws, rules, standards and ethics applicable to the practice of social work;

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

(8) supervise not more than three individuals who are lawfully engaged in mental health therapy training, unless otherwise approved by the board;

(9) not begin supervision of a CSW until having met the requirements of Section R156-60a-302e; and

(10) in accordance with Subsections 58-60-205(1)(e) and (f), submit to the division on forms made available by the division:

(a) documentation of the training hours completed by the CSW; and

(b) an evaluation of the CSW, with respect to the quality of the work performed and the competency of the CSW to practice clinical social work and mental health therapy.

R156-60a-602. Supervision - Scope of Practice - SSW.

In accordance with Subsections 58-60-202(4) and (5), supervision and scope of practice of a SSW is further defined, clarified and established as follows:

(1) supervision of an SSW by a licensed mental health therapist is only required where mental health therapy services are provided; and

(2) the scope of practice of the SSW shall be in accordance with a written social work job description approved by the licensed mental health therapy supervisor, except that the SSW may not engage in the supervised or unsupervised practice of mental health therapy.

KEY: licensing, social workers

September 1, 2004	**58-60-201**
Notice of Continuation November 15, 1999	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-78A. Prelitigation Panel Review Rules.
R156-78A-1. Title.

These rules are known as the "Prelitigation Panel Review Rules".

R156-78A-2. Definitions.

In addition to the definitions in Section 78-14-3, which shall apply to these rules:

(1) "Answer" means a responsive answer to a request.

(2) "Director" means the Director of the Division of Occupational and Professional Licensing.

(3) "Meritorious claim" means that there is a basis in fact and law to conclude that the standard of care has been breached and the petitioner has been injured thereby, such that the petitioner has a reasonable expectation of prevailing at trial.

(4) "Motion" means a request for any action or relief permitted under Sections 78-14-12 through 78-14-16 or these rules.

(5) "Nonmeritorious claim" means that the evidence before the panel is insufficient to conclude that the case is meritorious, but does not necessarily mean the case is frivolous.

(6) "Notice" means a notice of intent to commence action under Section 78-14-8.

(7) "Panel" means the prelitigation panel appointed in accordance with Subsection 78-14-12(4) to review a request.

(8) "Party" means a petitioner or respondent.

(9) "Person" means any natural person, sole proprietorship, joint venture, corporation, limited liability company, association, governmental subdivision or agency, or organization of any type.

(10) "Petitioner" means any person who files a request with the division.

(11) "Pleadings" include the requests, answers, motions, briefs and any other documents filed by the parties to a request.

(12) "Request" means a request for prelitigation panel review under Section 78-14-12.

(13) "Respondent" means any health care provider named in a request.

R156-78A-3. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 78-14-12(1)(b) to define, clarify, and establish the process and procedures which govern prelitigation panel reviews.

R156-78A-4. General Provisions.

(1) Liberal Construction.

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

(2) Deviation from Rules.

The division may permit a deviation from these rules insofar as it may find compliance therewith to be impractical or unnecessary.

(3) Computation of Time.

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.

R156-78A-5. Representations - Appearances.

(1) Representation of Parties.

A party may represent himself individually, or if not an individual, may represent itself through an officer or employee, or may be represented by counsel.

(2) Entry of Appearance of Representation.

Parties shall promptly enter their appearances by giving their names and addresses and stating their positions or interests in the proceeding. When possible, appearances shall be entered in writing concurrently with the filing of the request for petitioner and no later than 10 days from service of the request for respondent.

R156-78A-6. Pleadings.

(1) Docket Number and Title.

Upon receipt of a timely Request for Prelitigation Review, the division shall assign a two letter code identifying the matter as involving this type of request (PR), a two digit code indicating the year the request was filed, a two digit code indicating the month the request was filed, and another number indicating chronological position among requests filed during the month. The division shall give the matter a title in substantially the following form:

TABLE I

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

John Doe, Petitioner	Request for Prelitigation Review
-vs-	
Richard Roe, Respondent	No. PR-XX-XX-XXX

(2) Form and Content of Pleadings.

Pleadings must be double-spaced and typewritten and presented on standard 8 1/2" x 11" white paper. They must identify the proceeding by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate prayer for relief when relief is sought. A request shall, by affirmation, set forth the date that the required notice was served, shall include a copy of the notice and shall reflect service of the request upon all parties named in the notice and request. When a petitioner fails to attach a copy of the notice to petitioner's request, the division shall return the request to the petitioner with a written notice of incomplete request and conditional denial thereof. The notice shall advise the petitioner that his request is incomplete and that the request is denied unless the petitioner corrects the deficiency within the time period specified in the notice and otherwise meets all qualifications to have the request granted.

(3) Signing of Pleadings.

Pleadings shall be signed by the party or their counsel of record and shall indicate the addresses of the party and, if applicable, their counsel of record. The signature shall be deemed to be a certification that the signer has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

(4) Answers.

A respondent named in a request may file an answer relative to the merits set forth in the petitioner's notice. Affirmative defenses shall be separately stated and numbered in an answer or raised at the time of the hearing. Any answer must be filed no later than 15 days following the filing of the request.

(5) Motions.

(a) Motions to be Filed in Writing.

Motions shall be in writing unless the motion could not have been anticipated prior to the prelitigation panel hearing.

(b) Time Periods for Filing Motions and Responding Thereto.

(i) Motions to Withdraw a Request.

Any motion to withdraw a request shall be filed no later than five days before the prelitigation panel hearing.

(ii) Motions Directed Toward a Request.

Any motion directed toward a request shall be filed no later than 15 days after service of the request.

(iii) Motions Directed Toward the Composition of a Panel.

Any motion directed toward the composition of a panel shall be filed no later than five days after discovering a basis therefore.

(iv) Motions to Dismiss.

Any motion to dismiss shall be filed no later than five days after discovering a basis therefore.

(v) Extraordinary Motions for Discovery or Perpetuation of Evidence.

Any motion seeking discovery or perpetuation of evidence for good cause shown demonstrating extraordinary circumstances shall be filed no later than 15 days before the prelitigation panel hearing.

(vi) Response to a Motion.

A response to a motion shall be filed no later than five days after service of the motion and any final reply shall be filed no later than five days after service of the response to the motion.

(c) Affidavits and Memoranda.

The division or panel shall permit and may require affidavits and memoranda, or both, in support or contravention of a motion.

(d) The division or panel may permit or require oral argument on a motion.

R156-78A-7. Filing and Service.

(1) Filing of Pleadings. All pleadings shall be filed with the division with service thereof to all parties named in the notice. The division may refuse to accept pleadings if they are not filed in accordance with the requirements of these rules.

(2) Service. Pleadings and documents issued by the division or panel shall be served either by personal service or by first class mail. Personal service shall be made upon a party in accordance with the Utah Rules of Civil Procedure by any peace officer within the State of Utah or by any person specifically designated by the division. When an attorney has entered an appearance on behalf of any party, service upon that attorney constitutes service upon the party so represented.

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

TABLE II

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

(Name of parties of record)
(addresses)

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

(Signature)
(Title)

R156-78A-8. Panel Selection and Compensation.

(1) The division shall commence the selection and appointment of panel members following the issuance of a notice of hearing pursuant to these rules.

(2) The selection and appointment of panel members shall be in accordance with Subsections 78-14-12(4) and (5).

(3) (a) In accordance with Subsection 78-14-12(4), whenever multiple respondents are identified in a request, the division shall select and appoint a panel to sit in consideration of all claims against any respondent as follows:

(i) one lawyer member who is the chairman in accordance with Subsection 78-14-12(4)(a);

(ii) one lay panelist member in accordance with Subsection 78-14-12(4)(c);

(iii) one licensed health care provider who is practicing and knowledgeable for each specialty represented by the respondents in accordance with Subsection 78-14-12(4)(b)(i); and

(iv) if a hospital or their employees are named as a respondent, one member who is an individual currently serving in a hospital administration position directly related to hospital operations or conduct that includes responsibility for the area of practice that is the subject of the liability claim, in accordance with Subsection 78-14-12(4)(b)(ii).

(b) The distinction between a hospital administrator and a person serving in a hospital administration position referenced in Subsection 78-14-12(4)(b)(ii) is significant and is hereby emphasized.

(c) The person serving in a hospital administration position referenced in Subsection 78-14-12(4)(b)(ii) shall be from a different facility than the facility which is the subject of the alleged medical liability case, but may be from the same umbrella organization provided the panel member certifies under oath that he is free from bias or conflict of interest with respect to any matter under consideration as required by Subsection 78-14-12(6).

(d) Petitioner and respondent may stipulate concerning the type of health care provider to be selected and appointed by the division, unless the stipulation is in violation with the panel composition requirements set forth in Subsection 78-14-12(4)(b).

(4) Upon stipulation of all parties, a motion to evaluate damages may be submitted to the division whereupon the division may appoint an additional panel member to assist in evaluating damages.

(5) The division shall ensure that panelists possess all qualifications required by statute and these rules.

(6) Upon appointment to a prelitigation panel, each member thereof shall sign a written affirmation in substantially the following form:

TABLE III

I, (panel member), hereby affirm that, as a member of a prelitigation panel, I will discharge my responsibilities without bias towards any party. I also affirm that, to the best of my knowledge, no conflict of interest exists as to any matter which will be entrusted to my consideration as a panel member.
Dated this (day) day of (month), (year).

(Signature)

(7) Panel members shall be entitled to per diem compensation and travel expenses according to a schedule as established and published by the division.

R156-78A-9. Action upon Request - Scheduling Procedures - Continuances.

(1) Action upon Request.

Upon receiving a request, the division shall issue an order approving or denying the request.

(2) Criteria for Approving or Denying a Request.

The criteria for approving or denying a request shall be whether:

(a) the request is timely filed in accordance with Subsection 78-14-12(2)(a);

(b) the request includes a copy of the notice in accordance

with Subsection 78-14-12(2)(b); and

(c) the request has been mailed to all health care providers named in the notice and request as required by Subsection 78-14-12(2)(b).

(3) Legal Effect of Denial of Request.

The denial of a request restarts the running of the applicable statute of limitations until an appropriate request is filed with the division.

(4) Scheduling Procedures.

(a) If a request is approved, the order approving the request shall direct the party who made the request to contact all parties named in the request and notice to determine by agreement of the parties:

(i) what type of health care provider panelists are requested;

(ii) at least two dates acceptable to all parties on which a prelitigation panel hearing may be scheduled; and

(iii) whether or not the case will be submitted in accordance with Section R156-78A-13 and if so, the nature of the submission.

(b) The order shall direct the party who made the request to file the scheduling information with the division, on forms available from the division, no later than 20 days following the issuance of the order.

(c) If the party so directed fails to comply with the directive without good cause, the division shall schedule the hearing without further input from the party.

(d) No later than five days following the filing of the approved form, the division shall issue a notice of hearing setting a date, time and a place for the prelitigation panel hearing. No hearing shall take place within the 35 day period immediately following the filing of a Request for Prelitigation Review, unless the parties and the division consent to a shorter period of time.

(e) The division shall thereafter promptly select and appoint a panel in accordance with Subsections 78-14-12(4) and (5) and these rules.

(5) Continuances.

(a) Standard.

In order to prevail on a motion for a continuance the moving party must establish:

(i) that the motion was filed no later than five days after discovering the necessity for the motion and at least two days before the scheduled hearing;

(ii) that extraordinary facts and circumstances unknown and uncontrollable by the party at the time the hearing date was established justify a continuance;

(iii) that the rights of the other parties, the division, and the panel will not be unfairly prejudiced if the hearing is continued; and

(iv) that a continuance will serve the best interests of the goals and objectives of the prelitigation panel review process.

(b) If a continuance is granted, the order shall direct the party who requested the continuance to contact all parties named in the request and notice to establish no less than two dates acceptable to all parties, on which the prelitigation panel hearing may be rescheduled.

(c) The order shall direct the party who requested the continuance to file the scheduling information with the division, on forms approved by the division, no later than five days following the issuance of the order.

(d) If a party so directed is the petitioner and the petitioner fails to comply with the directive without good cause, the division shall dismiss the request without prejudice. Upon issuance of the order of dismissal by the division, the applicable statute of limitations on the cause of action shall no longer be tolled. The petitioner shall be required to file another request prior to the scheduling of any further proceeding and, until this request is filed, the statute of limitations shall continue to run.

(e) If a party so directed is the respondent and the respondent fails to comply with the directive without good cause, the division shall establish a date for the prelitigation panel hearing acceptable to petitioner and disallow any further motions for continuances from respondent.

(f) No later than three days following the filing of the dates, the division shall issue a notice of hearing resetting a date, time and a place for the prelitigation panel hearing.

R156-78A-10. Consequences of Failure to Appear at a Scheduled Hearing.

(1) Except as provided by Section R156-78A-13:

(a) If a party or a representative appointed by the party fails to appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the hearing shall proceed in the party's absence and the party shall lose the right to present any further evidence to the panel.

(b) If neither party nor their representatives appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the division shall dismiss the request without prejudice. The dismissal shall terminate the tolling of the applicable statute of limitations under Subsection 78-14-12(3).

R156-78A-11. Prehearing Procedure.

The division may, upon written notice to all parties of record, schedule a prehearing conference with the panel for the purposes of formulating or simplifying the issues, obtaining admissions of fact and genuineness of documents which will avoid unnecessary proof, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement thereof. Agreements reached during the conference shall be recorded in an appropriate order unless the parties enter into a written stipulation on the matters or agree to a statement thereof made on the record by the chairman of the panel.

R156-78A-12. Hearing Procedures.

(1) Hearings Closed to the Public.

All hearings are closed to the public.

(2) Attendance of Panel Members.

Except where a case is submitted in written form in accordance with Section R156-78A-13, all panel members appointed shall be present during the entire hearing.

(3) Order of Presentation of Evidence.

Unless otherwise directed by the panel at the hearing, the order of procedure and presentation of evidence will be as follows:

(a) Petitioner;

(b) Respondent; and

(c) Petitioner, if the panel permits petitioner to present rebuttal evidence.

(4) Method of Presentation of Evidence.

Evidence may be presented by any party on a narrative basis or through direct examination of said party by their counsel of record. The panel may make inquiry of any party pertinent to the issues to be addressed. If a motion to evaluate damages has been granted, the panel may properly take evidence as to that issue. As set forth in Section 78-14-13, no party has the right to cross-examine, rebut, or demand that customary formalities of civil trials and court proceedings be followed. The panel may, however, request special or supplemental participation of some or all parties in particular respects, including oral argument, evidentiary rebuttal, or submission of briefs.

(5) Rules of Evidence.

Formal rules of evidence are not applicable. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent people in the conduct of their affairs. The panel shall give effect to the rules of privilege recognized

by law. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded.

(6) Burden of Proof.

The petitioner shall be responsible for establishing a meritorious claim against any respondent, and if the issue of damages is presented, the amount of damages.

(7) Standard of Proof.

The standard of proof for prelitigation hearings is a preponderance of the evidence.

(8) Use of Evidence.

Use of evidence, documents, and exhibits submitted to a panel shall be in accordance with Subsection 78-14-13(1) and Section 78-14-14.

(9) Record of Hearing.

On its own motion, the panel may record the proceeding for the sole purpose of assisting the panel in its subsequent deliberation and issuance of an opinion. The record may be made by means of tape recorder or other recording device. No tape recorder or other device shall be used by anyone otherwise present during the proceeding to record the matter. Upon issuance by the panel of its opinion, the record of the proceeding shall be destroyed.

(10) Subpoenas and Fees.

(a) Issuance of Subpoenas.

The division may issue subpoenas for the attendance of witnesses and the production of medical records in accordance with Subsection 78-14-13(2) and (3). However, except as permitted by Subsection 78-14-13(2) and (3) and in accordance with Subsection 78-14-13(4), there is not discovery or perpetuation of testimony in prelitigation panel hearings, except upon special order of the panel, and for good cause shown demonstrating extraordinary circumstances.

(b) Payment of Witness Fees.

A subpoenaed witness who appears for a prelitigation panel review shall be entitled to witness fees and mileage to be paid by the requesting party. Witnesses shall receive the same fee and mileage allowed by law to witnesses in a district court. A witness subpoenaed by a party may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless the fee is tendered, the witness shall not be required to appear.

R156-78A-13. Submission of Case in Written Form, by Proffer, or a Combination thereof - Requirements.

(1) A full prelitigation panel hearing is not required if the parties enter into a stipulation that no useful purpose would be served by convening a panel hearing as to any or all respondents or if the parties agree to submit their case as to any or all respondents to the panel in written form, by proffer of evidence, or by a combination thereof.

(2) Any case submitted in writing must include a legal argument addressing the relevant evidence and law with regard to the issues presented in the case.

R156-78A-14. Determination - Supplemental Opinion - Certificate of Compliance.

(1) Panel Determination.

As soon as is reasonably practicable following the conclusion of a hearing or submission of a case to the panel in accordance with Section R156-78A-13, and, if applicable, submission of briefs by the parties, the panel shall file with the division a determination whether any claim against any respondent is meritorious. If applicable, the determination shall also reflect the panel's evaluation of the damages sustained by the petitioner.

(2) Supplementary Memorandum Opinion.

Within 30 days after filing its determination, the panel shall file a memorandum opinion explaining the panel's determination. The chairman of the panel shall be responsible for the preparation of the memorandum opinion of the panel, but may delegate the initial preparation of the opinion to another member of the panel.

(3) Certificate of Compliance.

Within 15 days after receiving the panel's memorandum opinion, the director shall issue a certificate of compliance which recites that petitioner has fully complied with the requirements of Section 78-14-12. With respect to the tolling of the statute of limitations referenced in Section 78-14-12(3), the 60 day time period mentioned therein shall begin to run as of the date the Director causes the certificate of compliance to be served, the three day mailing period set forth in Section R156-78A-4(3) to be applied.

KEY: medical malpractice, prelitigation
May 16, 1997 **78-14-12(1)(b)**
Notice of Continuation July 16, 2002

R277. Education, Administration.
R277-444. Distribution of Funds to Arts and Sciences Organizations.
R277-444-1. Definitions.

A. "Arts organization (organization)" means a non-profit professional artistic organization that provides artistic (dance, music, drama, art) services, performances or instruction to the Utah community.

B. "Arts and science subsidy program" means groups that have participated in the RFP program and have been determined by the Board to be providing valuable services in the schools. They do not qualify as professional outreach programs.

C. "Board" means the Utah State Board of Education.

D. "Hands-on activities" means activities that include active involvement of students with presenters, ideally with materials provided by the organization.

E. "Non-profit organization" means an organization no part of the income of which is distributable to its members, directors or officers; a corporation organized for other than profit-making purposes.

F. "Professional outreach programs in the schools" means those established arts and sciences organizations which previously received line item funding from the Utah State Legislature.

G. "Request for proposal (RFP)" means a competitive application process used to identify programs that best meet requirements established by the Board.

H. "RFP program" means arts and science organizations that receive one-time funding through application to the USOE.

I. "School visits" means performances, lecture demonstrations/presentations, in-depth instructional workshops, residencies, side-by-side mentoring, and exhibit tours by professional arts and science groups in the community.

J. "Science organization (organization)" means a non-profit professional science organization that provides science-related services, performances or instruction to the Utah community.

K. "State Core Curriculum" means those standards of learning that are essential for all Utah students, as well as the ideas, concepts, and skills that provide a foundation on which subsequent learning may be built, as established by the Board.

L. "USOE" means the Utah State Office of Education.

R277-444-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of the arts and science program is to provide opportunities for students to develop and use the knowledge, skills, and appreciation contained in the arts and sciences Core curricula through in-depth school instructional services, performances or presentations in school and theatres, or arts or science museum tours.

C. This rule also provides criteria for the distribution of funds appropriated by the Utah Legislature for this program.

R277-444-3. Eligibility of Organizations.

A. Established professional outreach program in the schools (POPS) organizations shall be eligible for funding under the POPS program applications and funding criteria and not eligible to apply for the RFP or subsidy programs.

B. Non-profit professional arts and science organizations that have existed for at least three years prior to application with a track record of proven fiscal responsibility, of demonstrated excellence in their discipline, and with the ability to share their discipline creatively and effectively in educational settings shall be eligible to apply for RFP funding.

C. Documentation of an organization's non-profit status, professional excellence or educational effectiveness may be required by the USOE prior to receipt of application from these organizations.

D. RFP organizations that can demonstrate successful participation in the RFP Program for three years, have an education staff, and the capacity to reach out statewide may apply to the Board to become a POPS organization.

E. The completed application shall be submitted prior to June 1 of the year in which the application is to be considered.

F. The Board shall request new money for a new POPS organization from the Utah State Legislature if the application is approved, prior to providing funds to the organization.

G. Arts and science organizations meeting the subsidy criteria may apply for the arts and science subsidy program, but may not also apply for RFP funding.

H. Arts and science organizations qualifying for POPS or RFP funding may not charge schools for services funded under those programs.

I. Scientists, artists, or entities hired/sponsored for services in the schools, directly or indirectly through coordinating organizations, shall be subject to the same review and approval process.

R277-444-4. Applications and Funding.

A. Applications shall be provided by the USOE.

B. Every four years, beginning in July 1998, all POPS organizations shall reapply to the USOE to reestablish their continuation and amount of funding. Applications shall include a plan for participating with all similar arts or science groups to reach all designated schools.

C. Organizations funded through an RFP process shall submit applications to the USOE.

D. The designated USOE specialist shall make final funding recommendations to the USOE Finance Committee by August 31 of the school year in which the money is available.

E. Every four years, beginning in 2006, all arts and science subsidy program organizations shall reapply to the USOE to reestablish the continuation and amount of funding.

F. The USOE may require additional evaluation or audit procedures from organizations to demonstrate use of funds consistent with the law and this rule.

G. When there are changes in the program funding from the Utah State Legislature, allocations shall be at the discretion of the Board.

H. Funds shall be distributed annually beginning in August.

R277-444-5. Accountability.

A. Organizations may be visited by USOE staff prior to funding or at school presentations during the funding cycle to evaluate the effectiveness and preparation of the organization.

B. Organizations that receive arts/science funding shall submit an annual evaluation report to the USOE by July 1.

C. The year-end report shall include:

(1) a budget expenditure report and income source report using a form provided by the USOE, including a report and accounting of fees charged, if any, to recipient schools, districts, or organizations; and

(2) record of the dates and places of all services rendered, the number of instruction and performance hours per district, school, and classroom service, as applicable, with the number of students and teachers served, including:

(a) documentation that all school districts and schools have been offered opportunities for participation with all organizations over a three year period consistent with the arts and science organizations' plans and to the extent possible; and

(b) documentation of collaboration with the USOE and school communities in planning visit preparation/follow up and

content that is related to the state Core curriculum; and

(3) a brief description of services provided by the organizations through the fine arts and sciences POPS, RFP, or subsidy programs, and if requested, copies of any and all materials developed; and

(4) a summary of organization's evaluation of:

(a) cost-effectiveness;

(b) procedural efficiency;

(c) collaborative practices;

(d) program quality, including impact of services on students, teachers, school science or art programs or curricula; and

(e) the resultant goals, plans, or both, for continued evaluation and improvement.

R277-444-6. Variations or Waivers.

A. No deviations from the approved and funded proposal shall be permitted without prior approval from the appropriate USOE specialist or his designee.

B. The USOE may require requests for variations to be submitted in writing.

C. The nature and justification for any deviation or variation from the approved proposal shall be reported in the year-end report.

D. Any variation shall be consistent with law and the purposes of this rule.

KEY: arts, science, curricula
August 17, 2004 Art X Sec 3
Notice of Continuation October 13, 2000 53A-1-401(3)

R277. Education, Administration.
R277-503. Licensing Routes.
R277-503-1. Definitions.

A. "Alternative Routes to Licensure (ARL) advisors" mean a USOE specialist with specific professional development and educator licensing expertise, and a USOE-designated curriculum specialist.

B. "Board" means the Utah State Board of Education.

C. "Competency-based" means a teacher training approach structured for an individual to master and demonstrate content and teaching skills and knowledge at the individual's own pace and sometimes in alternative settings.

D. "Educational Testing Service (ETS)" is a worldwide educational testing and measurement organization.

E. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.

F. "Letter of authorization" means a formal approval given to an individual such as an out-of-state candidate or a first year ARL candidate who is employed by a school district/charter school in a position requiring a professional educator license who has not completed the requirements for an ARL license or a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements. A teacher working under a letter of authorization cannot be designated highly qualified under R277-520-1G.

G. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to applicants who have also met all ancillary requirements established by law or rule.

H. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) requirements established by law or rule;

(2) three years of successful education experience within a five-year period; and

(3) satisfaction of requirements under R277-522 for teachers employed after January 1, 2003.

I. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school.

J. "National Association of State Directors of Teacher Education and Certification (NASDTEC)" is an educator information clearinghouse that maintains an interstate reciprocity agreement and database for its members regarding educators whose licenses have been suspended or revoked.

K. "National Council for Accreditation of Teacher Education (NCATE)" is a nationally recognized organization which accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

L. "Pedagogical knowledge" means practices and strategies of teaching, classroom management, preparation and planning that go beyond an educator's content knowledge of an academic discipline.

M. "Praxis II - Principles of Learning and Teaching" is a standards-based test provided by ETS and designed to assess a beginning teacher's pedagogical knowledge. This test is used by many states as part of their teacher licensing process. Colleges and universities may use this test as an exit exam from teacher education programs. All Utah Level 1 license holders employed or reemployed after January 1, 2003 shall pass this test prior to the issuance of a Level 2 professional educator license consistent with R277-522-1H(3).

N. "Regional accreditation" means formal approval of a school that has met standards considered to be essential for the operation of a quality school program by the following organizations:

(1) Middle States Commission on Higher Education;

(2) New England Association of Schools and Colleges;

(3) North Central Association Commission on Accreditation and School Improvement;

(4) Northwest Commission on Colleges and Universities;

(5) Southern Association of Colleges and Schools; and

(6) Western Association of Schools and colleges: Senior College Commission.

O. "Restricted endorsement" means a qualification based on content area knowledge obtained through a USOE-approved program of study or test and shall be available only to teachers in necessarily existent small school settings and teachers in youth in custody programs.

P. "State-approved Endorsement Plan (SAEP)" means a plan in place developed between the USOE and a licensed educator to direct the completion of endorsement requirements by the educator.

Q. "Teacher Education Accreditation Council (TEAC)" is a nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

R. "USOE" means the Utah State Office of Education.

R277-503-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board, Section 53A-1-402(1)(a) which directs the Board to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide minimum eligibility requirements for applicants for teacher licenses and to provide explanation and criteria of various teacher licensing routes. The rule also provides criteria and procedures for licensed teachers to earn endorsements and the requirement for all applicants for licenses to have and pass criminal background checks.

R277-503-3. USOE Licensing Eligibility.

A. Traditional college/university license - A license applicant shall have completed an approved college/university teacher preparation program, been recommended for licensing, and shall have satisfied all other requirements for educator licensing required by law; or

B. Alternative Licensing Route

(1) A license applicant shall have a bachelors degree or higher from an accredited higher education institution in an area related to the position he seeks; and

(2) A license applicant shall have skills, talents or abilities, as evaluated by the employing entity, making the applicant appropriate for a licensed teaching position and eligible to participate in an ARL program.

(3) While beginning an alternative licensing program, an applicant shall be approved for employment under a letter of authorization for a maximum of one school year and may be employed under an ARL license for an additional two years. An ARL program may not exceed three school years. ARL candidates who receive ARL licensure status may be designated highly qualified under R277-520-1G.

C. All Level 1 license applicants seeking a Utah educator license after July 1, 2005 shall take a USOE-designated content

test prior to the issuance of a license.

(1) Early childhood (K-3) and elementary major (1-8) are required to take the appropriate content test.

(2) Secondary teachers are required to take an appropriate content test, as designated by USOE.

(3) An applicant shall qualify for a Level 2 license by earning a USOE designated passing score.

D. The credentials and documentation of experience of applicants for Level 2 and 3 professional educator licenses shall be evaluated by the USOE to determine the appropriate license level.

R277-503-4. Licensing Routes.

Applicants who seek Utah licenses shall successfully complete accredited programs or legislatively mandated programs consistent with this rule.

A. Institution of higher education teacher preparation programs shall be:

(1) Nationally accredited by:

(a) NCATE; or

(b) TEAC; or

(2) Regionally accredited competency-based teacher preparation programs as provided under R277-503-1N.

B. USOE Alternative Routes to Licensure (ARL)

(1) To be eligible to begin the ARL program, an applicant for an elementary or early childhood school position shall have a bachelors degree and at least 27 semester hours of applicable content courses distributed among elementary curriculum areas. Elementary curriculum areas are provided under R277-700-4. To proceed from temporary license status, an ARL applicant shall submit a score on the ETS Praxis II Elementary Education Content Knowledge Examination (0014) to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.

(2) To be eligible to begin the ARL program, applicants for secondary school positions shall hold a degree major or major equivalent directly related to the assignment. To proceed from temporary license status an ARL license applicant shall submit a score on the ETS Praxis II Applicable Content Knowledge test(s) to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.

(3) Licensing by Agreement

(a) An individual employed by a school district shall satisfy the minimum requirements of R277-503-3 as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district.

(b) An applicant shall obtain an ARL application for licensing from the USOE or USOE web site.

(c) After evaluation of candidate transcript(s), and USOE designated content test score, the USOE ARL advisors and the candidate shall determine the specific content knowledge and pedagogical knowledge required of the license applicant to satisfy the requirements for licensing.

(d) The USOE ARL advisors may identify institution of higher education courses, district inservice classes, Board-approved training, or Board-approved competency tests to prepare or indicate content, content-specific, and developmentally-appropriate pedagogical knowledge required for licensing.

(e) The employing school district shall assign a trained mentor to work with the applicant for licensing by agreement.

(f) The school district shall supervise and assess the license applicant's classroom performance during a minimum one school year full-time employment experience. The district may request assistance from a institution of higher education or the USOE in the monitoring and assessment.

(g) The school district shall assess the license applicant's disposition as a teacher following a minimum one school year full-time teaching experience. The district may request assistance in this assessment; and

(h) The USOE ARL advisors shall annually review and evaluate the license applicant following training, assessments or course work, and the full-time teaching experience and evaluation by the school district.

(i) Consistent with evidence and documentation received, the USOE ARL advisor may recommend the license applicant to the Board for a Level 1 educator license.

(4) USOE Licensing by Competency

(a) A school district employs an individual as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district who satisfies the minimum requirements of R277-503-3.

(b) An employing school district, in consultation with the applicant and the USOE, shall identify Board-approved content knowledge and pedagogical knowledge examinations. The applicant shall pass designated examinations demonstrating the applicant's adequate preparation and readiness for licensing.

(c) The employing school district shall assign a trained mentor to work with the applicant for licensing by competency.

(d) The school district shall monitor and assess the license applicant's classroom performance during a minimum one-year full-time teaching experience.

(e) The school district shall assess the license applicant's disposition for teaching following a minimum one-year full-time teaching experience.

(f) The school district may request assistance in the monitoring or assessment of a license applicant's classroom performance or disposition for teaching.

(g) Following the one-year training period, the school district and USOE shall verify all aspects of preparation (content knowledge, pedagogical knowledge, classroom performance skills, and disposition for teaching) to the USOE.

(h) If all evidence/documentation is complete, the USOE shall recommend the applicant for a Level 1 educator license.

(5) USOE ARL candidates under R277-503-4B(3) and (4) may teach under a letter of authorization for a maximum of one year. The letter of authorization shall expire after the first year on June 30 when the ARL candidate submits documentation of progress in the program, and the candidate shall be issued an ARL license.

(6) The ARL license may be extended annually for two subsequent school years with documentation of progress in the ARL program.

(7) Documentation shall include, specifically, a copy of the supervisor's successful end-of-year evaluation, copies of transcripts and test results or both showing completion of required coursework, verification of working with a trained mentor, and satisfaction of the full-time full year experience.

C. School district/charter school specific competency-based licenses:

(1) A local board/charter school board may apply to the Board for a letter of authorization to fill a position in the district.

(2) The employing school district/charter school shall request a letter of authorization no later than 60 days after the date of the individual's first day of employment.

(3) The application for the letter of authorization from the local board/charter school board for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b) for a K-6 grade teacher, the satisfactory results of the rigorous state test including subject knowledge and teaching skills in the required core academic subjects under Section 53A-6-104.5(3)(ii) as approved by the Board; or

(c) for the teacher in grades 7-12, demonstration of a high level of competency in each of the core academic subjects in which the teacher teaches by completion of an academic major,

a graduate degree, course work equivalent to an undergraduate academic major, advanced certification or credentialing, results or scores of a rigorous state core academic subject test, similar to the test required under R277-503-3E, in each of the core academic subjects in which the teacher teaches.

(4) The application for the letter of authorization from the local board/charter school board for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the local board/charter school board.

(5) Following receipt of documentation and consistent with Section 53A-6-104.5(2), the USOE shall approve a district/charter school specific competency-based license.

(6) If an individual with a district/charter school specific competency-based license leaves the district before the end of the employment period, the district shall notify the USOE Licensing Section regarding the end-of-employment date.

(7) The individual's district/charter school specific competency-based license shall be valid only in the district/charter school that originally requested the letter of authorization and for the individual originally employed under the letter of authorization or district/charter school specific competency-based license.

(8) The written copy of the district/charter school specific competency-based license shall prominently state the name of the school district/charter school followed by DISTRICT/CHARTER SCHOOL SPECIFIC COMPETENCY-BASED LICENSE.

(9) A school district/charter school may change the assignment of a school district/charter school specific competency-based license holder but notice to USOE shall be required and additional competency-based documentation may be required for the teacher to remain qualified or highly qualified.

(10) School district/charter school specific competency-based license holders are at-will employees consistent with Section 53A-8-106(5).

R277-503-5. Endorsement Routes.

A. An applicant shall successfully complete one of the following for endorsement:

(1) a USOE-approved institution of higher education educator preparation program with endorsement(s); or

(2) assessment, approval and recommendation by a designated and subject-appropriate USOE specialist under a SAEP. The USOE shall be responsible for final recommendation and approval; or

(3) USOE-approved examination(s) assessing content knowledge and content-specific pedagogical knowledge. The USOE is responsible for final review and approval; or

(4) a USOE-approved Utah institution of higher education or Utah school district-sponsored endorsement program which includes content knowledge and content-specific pedagogical knowledge approved by the USOE. The university or school district shall be responsible for final review and recommendation. The USOE shall be responsible for final approval.

B. A restricted endorsement shall be available and limited to teachers in necessarily existent small schools as determined under R277-445, and teachers in youth in custody programs. Teacher qualifications shall include at least nine semester hours of USOE-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

C. All provisions that directly affect the health and safety of students required for endorsements, such as prerequisites for drivers education teachers or coaches, shall apply to applicants seeking endorsements through all routes under this rule.

D. Prior to an individual taking courses, exams or seeking a recommendation in the ARL licensing program, the individual shall have school district/charter school and USOE authorization.

R277-503-6. Additional Provisions.

A. All programs or assessments used in applicant preparation shall meet national professional educator standards such as those developed by NCATE, TEAC or competency-based regional accreditation.

B. All educators licensed under this rule shall also:

(1) complete the background check required under Section 53A-6-401;

(2) satisfy the professional development requirements of R277-502; and

(3) be subject to all Utah licensing requirements and professional standards.

C. An applicant may satisfy the student teaching/clinical experience requirement for licensing through successful completion of either the licensing by agreement or by competency route.

KEY: teachers, alternative licensing
August 17, 2004 **Art X Sec 3**
Notice of Continuation April 15, 2002 **53A-1-402(1)(a)**
53A-1-401(3)

R277. Education, Administration.
R277-609. Standards for School District Discipline Plans.
R277-609-1. Definitions.

A. "Discipline" means:

(1) Imposed discipline: Code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives; and

(2) Self-Discipline: A personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.

B. "Board" means the Utah State Board of Education.

R277-609-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with the Board's responsibilities, Section 53A-1-402(1)(b) which permits the Board to adopt rules concerning discipline, Section 53A-11-103(3) which requires the Board to adopt a uniform fee schedule for truancy citations, and 53A-17a-135(4) which directs districts to adopt discipline plans to qualify for state funding.

B. The purpose of this rule is to specify the standards for school discipline which must be met in order to qualify for state education funds.

R277-609-3. District and School Plans.

A. Each school district shall develop and implement a Board approved comprehensive district plan for school discipline. The plan shall include:

(1) goals and objectives, giving special emphasis to the teaching and practice of self-discipline and citizenship skills;

(2) an evaluation process whereby the goals and objectives are assessed annually;

(3) an ongoing staff development program related to student self-discipline and good citizenship;

(4) policies and procedures relating to the use and abuse of alcohol and controlled substances, and

(5) procedures for issuing truancy citations allowed under Section 53A-11-103 if the district's board of education authorizes truancy citations. The plan shall contain provisions to assure that any fee assessed with a truancy citation is in accordance with the current uniform fee schedule adopted by the Board.

B. Each school district and school shall develop written standards for behavior and class and school management, including consequences for appropriate and inappropriate behavior. The standards are developed by administration, instruction and support staff, students, parents, and community members in such a manner as to create widespread understanding and a sense of participation, ownership, support, and responsibility.

C. All discipline policies and procedures, including due process, must be in accord with the law.

R277-609-4. Intervention.

A continuum of intervention strategies must be made available to assist students whose behavior in school is repeatedly short of reasonable expectations. Earnest and persistent effort shall be made to resolve individual discipline problems within the least restrictive school setting.

R277-609-5. Truancy Citation Uniform Fee Schedule.

A. The Board's uniform fee schedule for truancy citations consists of 5 levels. As the number of the level increases, so does the permitted maximum fee assessment. The maximum fee assessment which may be required of a student is calculated by determining the level for that student and the current base value and increment value adopted by the Board. The value of the base and the increment are subject to change by the Board.

TABLE

LEVEL	CITATION	MAXIMUM FEE ASSESSMENT PERMITTED
1	First	Warning
2	Second	Base
3	Third	Base + 1 Increment
4	Fourth	Base + 2 Increments
5	Fifth or More	Base + 3 Increments

B. The Board shall develop operational and maximum fee assessment guidelines to accompany the uniform fee schedule.

KEY: disciplinary actions, truancy
1988 **53A-1-401(3)**
Notice of Continuation August 10, 2004 **53A-1-402(1)(b)**
53A-11-103
53A-11-103(3)
53A-17a-135(4)

R277. Education, Administration.
R277-800. Administration of the Utah School for the Deaf and the Utah School for the Blind.
R277-800-1. Definitions.

A. "Board" means the board of trustees for USDB which is the Utah State Board of Education.

B. "USDB" means the Utah School for the Deaf and the Utah School for the Blind.

C. "Schools" means the Utah School for the Deaf and the Utah School for the Blind.

D. "USOE" means the Utah State Office of Education.

E. "Superintendent" means the Superintendent for USDB.

F. "Current funds" means economic resources of USDB that may be expended for the primary and supporting missions of the USDB.

G. "Institutional Council" means a statutory council established to advise the Board as to the needs of those who are deaf or hard of hearing, blind or visually impaired, or dual sensory impaired with membership, appointment of terms and powers consistent with Section 53A-25-302 through 305.

H. "Restricted fund balance" means the difference between the assets and liabilities of the restricted fund identified at the closeout of the fiscal year.

R277-800-2. Authority and Purpose.

A. This rule is authorized by Sections 53A-25-104 and 53A-25-203 which vest the Board with governance and control of USDB, and management of its property and affairs, Section 53A-25-103(4) which requires the Board to establish policies regarding the acceptance of nonresident students, Section 53A-25-107 which allows the Board to adopt rules for internal management of the School for the Deaf and Section 53A-25-204 which makes the School for the Blind subject to all provisions of law governing the School for the Deaf.

R277-800-3. Governance.

A. The Board shall:

(1) direct USOE to support, provide necessary assistance, and work in a cooperative manner with the Schools in implementing the policies and rules associated with the Schools;

(2) direct the Schools, with the support of the USOE, to conduct periodic reviews of practices and procedures for best serving students at the Schools;

(3) adopt an annual budget for the Schools;

(4) adopt an annual legislative program for the Schools to be presented to the Legislature; and

(5) appoint the Superintendent in accordance with Section 53A-25-109, approve employees appointed by the Superintendent, and approve their salaries and duties.

B(1) In addition to its statutory duties, the Institutional Council established under Section 53A-25-301 shall:

(a) establish operating procedures for the Council;

(b) establish committees it deems necessary to fulfill its responsibilities, subject to ratification by the Board;

(c) facilitate communication between the Schools and the community;

(d) advise the Superintendent in the operation of the Schools and in the fulfillment of his or her duties; and

(e) seek resources from other funding sources for the Schools.

(2) members of the Institutional Council shall receive reimbursement for their expenses for attending Council meetings as established by the director of the Division of Finance in Section 53A-25-302(4).

C. In addition to the duties in Section 53A-25-109 the Superintendent shall:

(1) assure proper procedures for diagnosis, evaluation, and placement of students at the Schools;

(2) participate in, encourage, and supervise relevant research and evaluation of programs and teaching practices;

(3) conduct in-service training for USDB staff;

(4) encourage cooperative efforts and utilize input of patrons, staff, and other interested persons in achieving the goals and purposes of the Schools;

(5) file the minutes of the Institutional Council meetings with the State Superintendent of Public Instruction; and

(6) be responsible for control of students, instructors, and employees of the Schools.

R277-800-4. Staff and Personnel.

A. The Superintendent shall appoint personnel for the Schools, subject to Section 53A-25-109. Personnel employed in positions for which the Board requires certification shall be appropriately certified.

B. Personnel employed at USDB are covered by employment procedures and salary schedules approved by the Board.

C. Faculty and employees of USDB, and USOE staff associated with the purposes of USDB, shall conduct themselves and carry out their duties in a professional and competent manner so that USDB may provide the strongest possible program for its students.

R277-800-5. Accreditation.

The Schools shall be accredited by the Board.

R277-800-6. Student Eligibility; Admission.

A. Student eligibility for and admission to USDB is determined in accordance with Sections 53A-25-103 and 53A-2-201.

B. USDB may conduct programs and establish eligibility criteria, as approved by the Board, for children under 5 years of age.

C. Children who are not residents of the state but who meet other eligibility criteria may be admitted as students at USDB on a space-available basis and upon payment of out-of-state tuition set under Section 7.

R277-800-7. Out-of-state Tuition.

The annual tuition for students attending USDB who are not residents of the state is determined according to a formula which is based on the costs of providing educational, residential, and related services to such students.

R277-800-8. Student Transportation.

USDB shall provide transportation required by a student's IEP.

R277-800-9. Capital Facilities.

A. USDB shall follow standard procedures adopted by the Board governing capital facilities.

B. All capital facility requests, including land acquisition, shall be submitted to the Board in accordance with its capital facility request procedure.

R277-800-10. Building Rental.

A(1) The Board establishes a uniform fee schedule for the use of USDB facilities by the public. The fee shall reflect the maintenance and operation costs of USDB during the time rented. The fee schedule shall distinguish between those renting USDB facilities for non-profit type activities and those renting the facilities for profit-making type activities. Fees may be waived by the Superintendent for non-profit activities which are in harmony with the objectives of the USDB;

(2) in addition to the rental fees, custodial and maintenance personnel time is charged for rental of USDB facilities at time and a half for a minimum of 4 hours. Weekend and additional hours require additional charges as negotiated by

the Superintendent and those renting the facilities. The Superintendent may assess charges in addition to those covered by the rental agreement for property damage and for use in exception to the rental agreement.

B. A rental agreement must be completed between persons seeking to rent the facilities and the Superintendent prior to use of the facilities. Only the equipment and facilities expressly rented in the rental agreement may be used. The Superintendent is responsible for administering this section, including collection of all fees and amounts due and submission of those amounts to the USDB Business Office.

C. Persons using USDB facilities must comply with state laws, Board rules and policies, and USDB rules and policies, including those governing conduct in public buildings and on school grounds.

D. USDB functions have preference for facility use over rental use. USDB facilities shall not be used for activities conducted by the public which interfere in any way with USDB educational purposes.

R277-800-11. Fiscal Procedures.

A. USDB shall keep fiscal, program, and accounting records as required by the Board and the State Department of Finance, and as needed by USDB, and shall submit reports required by the Board and the State Department of Finance. USDB shall follow the standards established by the state for fiscal procedures, auditing, and accounting.

B. Fund accounting standards

(1) Current funds include the following two subgroups:

(a) Unrestricted current funds are those funds received for which the source of the money made no requirements for specific use of the money.

(b) Restricted current funds are those resources available for financing operations, but which are limited by the source of the money for use for specific purposes, programs, departments or schools. Externally imposed restrictions are different than internal designations imposed by the agency on restricted funds. Internal designations do not create restricted funds if the removal of the designation remains at the agency's discretion.

(2) Fund balance limits

(a) Unrestricted current fund balance not externally restricted and not internally reserved for inventories, investment in general fixed assets, or purchase order encumbrances, in all current funds, shall not exceed, combined and at year end, seven and one-half percent of the total combined unrestricted revenues in those accounting funds for the year then ended.

(b) The Institutional Council may recommend to the Board an amount greater than that provided in Subsection 11B(2)(a) up to 10 percent of the total combined unrestricted revenues.

(c) Exceptional revenue items received late in the fiscal year due to circumstances not in the control of the USDB or due to mandate from a governing authority at Board level or higher to spend such revenue item(s) in a subsequent time period, such as a supplemental appropriation for expenditure in a subsequent fiscal year, shall be excluded from fund balances when calculating fund balance percentages for these purposes.

(d) Restricted current funds:

(i) are restricted by external sources for specific future operating purposes;

(ii) shall be expended in the term designated for the specific fund;

(iii) shall not be available to specific future operating purposes; and

(iv) shall not be available for allocation by the Institutional Council.

C. USDB is considered a state agency for insurance purposes. As such, the USDB shall comply with the policies and rules of the State Risk Management Office and maintain proper coverage at all times by appropriate types and levels of insurance through that office.

D. USDB shall follow an internal policy to maintain and account for capital inventory.

R277-800-12. Dormitories.

USDB establishes procedures which promote the health, safety, and welfare of students residing in its dormitories. USDB establishes procedures for maintaining its dormitories in a condition which is in accordance with applicable state laws, rules, and policies.

KEY: educational administration, educational facilities

March 10, 1997	**53A-25-104**
Notice of Continuation August 10, 2004	**53A-25-203**
	53A-25-103(4)
	53A-25-107
	53A-25-204
	53A-25-109
	53A-25-301
	53A-25-302(4)
	53A-25-103
	53A-2-201

R280. Education, Rehabilitation.
R280-150. Adjudicative Proceedings Under the Vocational Rehabilitation Act.
R280-150-1. Definitions.

A. This rule incorporates by reference Section 63-46b-2, U.C.A. 1953.

B. "Board" means the Utah State Board of Education.

C. "Presiding officer" means, in addition to the definition of 63-46b-2(1)(h), any person designated by the Division to serve as the presiding officer.

D. "Director" means the Director of the Division of Rehabilitation Services or the Director of the Division of Services for the Visually Handicapped.

E. "Division" means the Division of Rehabilitation Services or the Director of the Division of Services for the Visually Handicapped.

F. "Fair hearing" means the requirement for adjudicative proceedings under Section 63-46b-4, U.C.A. 1953, and the Vocational Rehabilitation Act.

R280-150-2. Authority and Purpose.

A. This rule is authorized by Section 63-46b-1(5), U.C.A. 1953, which allows the Board to promulgate rules, which are in conformity with Chapter 46b, Title 63, affecting or governing its adjudicative proceedings.

B. The purpose of this rule is to specify how adjudicative proceedings are conducted under state and federal Vocational Rehabilitation Acts administered by the Board.

R280-150-3. Initial Determination.

A. Initial action taken to determine the legal rights, duties, privileges, immunities, or other legal interests of persons under state and federal Vocational Rehabilitation Acts is comprised of a decision and resolution of concerns regarding the decision.

B. (1) any applicant or client unable to resolve concerns surrounding a decision with his or her counselor may ask the appropriate District Director to resolve his or her concerns regarding the decision. A member of the supervisory staff of the agency is assigned to re-examine the counselor's decision. The request for review shall describe the decision and facts and reasons for re-examination. The supervisory staff member shall not have participated in making the decision in question.

(2) a written decision regarding the issues in question shall be mailed to the party making the request and other appropriate persons no later than 10 days following the conclusion of the re-examination. The decision shall include notice to the party of the right to administrative review of the decision under the Utah Administrative Procedures Act and this rule.

R280-150-4. Commencement of Adjudicative Proceedings.

A. This rule incorporates by reference Section 63-46b-3, U.C.A. 1953.

B. Any party to an initial determination made under this rule may initiate a fair hearing on the matter by sending to the Director a written request for a hearing which contains the information required by Section 63-46b-3(3)(a). The request must be received by the Director within 30 days of the date on which a decision rendered on the matter under R280-150-3(B)(2) was sent to the party making the request.

C. The Director may initiate a fair hearing by filing notice of the action as required by Section 63-46b-3(2)(a), U.C.A. 1953 and relevant federal law.

D. Any party may be represented by counsel or by another person of his or her choice at any time in any fair hearing.

R280-150-5. Designation of Adjudicative Proceedings as Formal or Informal.

A. This rule incorporates by reference Section 63-46b-4, U.C.A. 1953.

B. All fair hearings commenced under this rule are initially designated as informal. The presiding officer designated for the hearing may convert a formal hearing to informal and vice versa under Section 63-46b-4(3), U.C.A. 1953.

C. All informal fair hearings shall be conducted as informal hearings on the record.

R280-150-6. Procedures for Informal Fair Hearings.

A. This rule incorporates by reference Section 63-46b-5, U.C.A. 1953.

B. No answer is required of a respondent in an informal fair hearing. The respondent may file with the presiding officer a response containing the information required by Section 63-46b-6, U.C.A. 1953 and any evidence related to the matter.

C. The Division shall only hold a hearing if a party to the matter requests a hearing:

(1) under R280-150-4(B); or

(2) within 30 days of receiving notice issued under R280-150-4(C).

The party requesting the hearing shall be notified in writing within ten working days of when the request is received as to the date, time, and place of the hearing.

D. Intervention is prohibited unless required by a federal or state statute applicable to the matter.

E. A record of all aspects of the informal fair hearing shall be maintained.

R280-150-7. Procedures for Formal Hearings - Responsive Pleadings.

A. This rule incorporates by reference Section 63-46b-6, U.C.A. 1953.

B. The requirement that a respondent must respond within 20 days may be waived by the presiding officer for good cause or may be changed to meet the requirements of federal law applicable to the matter.

C. The response shall be filed in a manner that provides for the information required by Section 63-46b-6, U.C.A. 1953.

D. The presiding officer may permit or require any pleadings which will provide for the fair and efficient conduct of the fair hearing.

R280-150-8. Procedures for Formal Fair Hearings - Discovery, Subpoenas, Motions, and Prehearing Conferences.

A. This rule incorporates by reference Section 63-46b-7, U.C.A. 1953.

B. (1) The presiding officer may, upon written notice to all parties of record, hold a prehearing conference for the purpose of:

(a) formulating or simplifying the issues;

(b) obtaining admissions of fact and of documents which will avoid unnecessary proof;

(c) arranging for the exchange of proposed exhibits or prepared expert testimony and procedure at the hearing;

(d) agreeing to other matters that may expedite the orderly conduct of the proceedings or the settlement; or

(e) obtaining a settlement of the matter.

(2) agreements reached during a prehearing conference are recorded in an appropriate order.

C. The presiding officer may permit or require parties to file motions, other pleadings, affidavits, briefs, or other materials relevant to the action in order to provide for the fair and efficient conduct of the adjudicative proceeding.

R280-150-9. Procedure for Formal Fair Hearings - Hearings Procedure.

A. This rule incorporates by reference Section 63-46b-8, U.C.A. 1953.

B. The party requesting the hearing shall be notified in

writing within ten working days of when the request is received as to the date, time, and place of the hearing.

R280-150-10. Procedure for Formal Fair Hearings - Intervention.

This rule incorporates by reference Section 63-46b-9, U.C.A. 1953.

R280-150-11. Procedures for Formal Fair Hearings - Orders.

A. This rule incorporates by reference Section 63-46b-10, U.C.A. 1953.

B. The written decision shall be mailed to all parties within 30 days of the date of the hearing.

R280-150-12. Default.

A. This rule incorporates by reference section 63-46b-11, U.C.A. 1953.

B. A party to an informal fair hearing is deemed to have failed to participate in the adjudicative proceeding if:

(1) that party does not attend, either in person or by representation, any hearing, conference, or other meeting on the matter at which his or her presence is requested or which that party has requested, or

(2) that party does not respond, when requested, to any correspondence or communication made in connection with the matter by the presiding officer, Director, or the Board.

R280-150-13. Reconsideration.

A. This rule incorporates by reference Section 63-46b-13, U.C.A. 1953, except that, in accordance with section 102 of the federal Vocational Rehabilitation Act, the time within which the request for reconsideration must be filed is 20 days.

B. (1) the Director may reconsider any fair hearing on his or her own initiative. All parties are notified within 20 days of the mailing of the presiding officer's decision of the Director's intent to reconsider.

C. The Director issues a decision on the matter within 30 days after the filing of the request for, or sending the notice of, reconsideration. The review is based on the record of the fair hearing.

D. Enforcement of a presiding officer's order is stayed during the reconsideration period.

R280-150-14. Judicial Review.

A. This rule incorporates by reference Section 63-46b-18, U.C.A. 1953.

B. A party requesting a stay of its order or temporary remedy during the pendency of judicial review shall petition the Director for such. The Director shall within a reasonable time issue an order either granting or denying the stay. The order shall state the reasons for the grant or denial.

R280-150-15. Declaratory Orders.

A. This rule incorporates by reference Section 63-46b-21, U.C.A. 1953.

B. A request for a declaratory order shall be filed on a form, Request for a Declaratory Order, provided by the Division which is hereby incorporated by reference, or submitted in writing in a manner that contains all the information on the form. If it appears to the Director upon the filing of the request that the matters requested in the petition are not within the jurisdiction or adjudicative powers of the Division, the Director need not take further action on the matter. It shall notify the petitioner of the reasons why the request is denied and of the procedures to obtain reconsideration of the decision. If it appears to the Director upon the filing of the request that the matters requested in the petition are within the jurisdiction or adjudicative power of the Division, the Director shall appoint a presiding officer for the matter.

C. The presiding officer has the discretion to issue an order making any provision of Sections 63-46b-4 through 63-46b-13, U.C.A. 1953, apply to the proceeding to issue the declaratory order. The presiding officer shall conduct the proceeding in a fair and efficient manner.

D. The Director shall not issue a declaratory order in the following instances:

(1) issuance of an order is not under circumstances in which both the public interest and the interests of the parties are protected;

(2) the critical facts are not clear and may be altered by subsequent events;

(3) the party making the request is unable to show real risk will be confronted if the intended course of conduct is taken.

E. Parties which meet the requirements of Section 63-46b-10, U.C.A. 1953, may intervene in a declaratory action upon filing a petition to intervene within ten days of the filing of the request for declaratory action. Section 63-46b-10 and Section 9 of this rule govern intervention in proceedings to issue declaratory orders.

KEY: administrative procedures, rules and procedures
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Notice of Continuation August 10, 2004

R307. Environmental Quality, Air Quality.
R307-415. Permits: Operating Permit Requirements.
R307-415-1. Purpose.

Title V of the Clean Air Act (the Act) requires states to develop and implement a comprehensive air quality permitting program. Title V of the Act does not impose new substantive requirements. Title V does require that sources subject to R307-415 pay a fee and obtain a renewable operating permit that clarifies, in a single document, which requirements apply to a source and assures the source's compliance with those requirements. The purpose of R307-415 is to establish the procedures and elements of such a program.

R307-415-2. Authority.

R307-415 is required by Title V of the Act and 40 Code of Federal Regulations (CFR) Part 70, and is adopted under the authority of Section 19-2-104.

R307-415-3. Definitions.

(1) The definitions contained in R307-101-2 apply throughout R307-415, except as specifically provided in (2).

(2) The following additional definitions apply to R307-415.

"Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

"Administrator" means the Administrator of EPA or his or her designee.

"Affected States" are all states:

(a) Whose air quality may be affected and that are contiguous to Utah; or

(b) That are within 50 miles of the permitted source.

"Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, or radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source, including requirements that have been promulgated or approved by the Board or by the EPA through rulemaking at the time of permit issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the State Implementation Plan;

(b) Any term or condition of any approval order issued under R307-401;

(c) Any standard or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources, including Section 111(d);

(d) Any standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

(e) Any standard or other requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated thereunder;

(f) Any requirements established pursuant to Section 504(b) of the Act, Monitoring and Analysis, or Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification;

(g) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

(h) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

(i) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an operating permit;

(j) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act;

(k) Any standard or other requirement under rules adopted by the Board.

"Area source" means any stationary source that is not a major source.

"Designated representative" shall have the meaning given to it in Section 402 of the Act and in 40 CFR Section 72.2, and applies only to Title IV affected sources.

"Draft permit" means the version of a permit for which the Executive Secretary offers public participation under R307-415-7i or affected State review under R307-415-8(2).

"Emissions allowable under the permit" means a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including a work practice standard, or a federally-enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act, Acid Deposition Control.

"Final permit" means the version of an operating permit issued by the Executive Secretary that has completed all review procedures required by R307-415-7a through 7i and R307-415-8.

"General permit" means an operating permit that meets the requirements of R307-415-6d.

"Hazardous Air Pollutant" means any pollutant listed by the Administrator as a hazardous air pollutant under Section 112(b) of the Act.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (a), (b), or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be considered in determining whether a stationary source is a major source under this definition.

(a) A major source under Section 112 of the Act, Hazardous Air Pollutants, which is defined as: for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential

to emit, 100 tons per year or more of any air pollutant, including any major source of fugitive emissions or fugitive dust of any such pollutant as determined by rule by the Administrator. The fugitive emissions or fugitive dust of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to any one of the following categories of stationary source:

(i) Coal cleaning plants with thermal dryers;
(ii) Kraft pulp mills;
(iii) Portland cement plants;
(iv) Primary zinc smelters;
(v) Iron and steel mills;
(vi) Primary aluminum ore reduction plants;
(vii) Primary copper smelters;
(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(ix) Hydrofluoric, sulfuric, or nitric acid plants;
(x) Petroleum refineries;
(xi) Lime plants;
(xii) Phosphate rock processing plants;
(xiii) Coke oven batteries;
(xiv) Sulfur recovery plants;
(xv) Carbon black plants, furnace process;
(xvi) Primary lead smelters;
(xvii) Fuel conversion plants;
(xviii) Sintering plants;
(xix) Secondary metal production plants;
(xx) Chemical process plants;
(xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) Taconite ore processing plants;
(xxiv) Glass fiber processing plants;
(xxv) Charcoal production plants;
(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
(xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or Section 112 of the Act.

(c) A major stationary source as defined in part D of Title I of the Act, Plan Requirements for Nonattainment Areas, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas that are classified as "serious" and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide;

(iv) For PM-10 particulate matter nonattainment areas classified as "serious," sources with the potential to emit 70 tons per year or more of PM-10 particulate matter.

"Non-Road Vehicle" means a vehicle that is powered by an internal combustion engine (including the fuel system), that is not a self-propelled vehicle designed for transporting persons or property on a street or highway or a vehicle used solely for competition, and is not subject to standards promulgated under Section 111 of the Act (New Source Performance Standards) or Section 202 of the Act (Motor Vehicle Emission Standards).

"Operating permit" or "permit," unless the context suggests otherwise, means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to these rules.

"Part 70 Source" means any source subject to the permitting requirements of R307-415, as provided in R307-415-4.

"Permit modification" means a revision to an operating permit that meets the requirements of R307-415-7f.

"Permit revision" means any permit modification or administrative permit amendment.

"Permit shield" means the permit shield as described in R307-415-6f.

"Proposed permit" means the version of a permit that the Executive Secretary proposes to issue and forwards to EPA for review in compliance with R307-415-8.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million in second quarter 1980 dollars; or

(ii) the delegation of authority to such representative is approved in advance by the Executive Secretary;

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of R307-415, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency;

(d) For Title IV affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act, Acid Deposition Control, or the regulations promulgated thereunder are concerned;

(ii) The responsible official as defined above for any other purposes under R307-415.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any hazardous air pollutant.

"Title IV Affected source" means a source that contains one or more affected units as defined in Section 402 of the Act and in 40 CFR, Part 72.

R307-415-4. Applicability.

(1) Part 70 sources. All of the following sources are subject to the permitting requirements of R307-415, and unless exempted under (2) below are required to submit an application for an operating permit:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(c) Any source, including an area source, subject to a

standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Act, Prevention of Accidental Releases;

(d) Any Title IV affected source.

(2) Source category exemptions. The following source categories are exempted from the requirement to obtain an operating permit.

(a) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters;

(b) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation. For Part 70 sources, demolition and renovation activities within the source under 40 CFR 61.145 shall be treated as a separate source for the purpose of R307-415.

(3) Emissions units and Part 70 sources.

(a) For major sources, the Executive Secretary shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) For any area source subject to the operating permit program under R307-415-4(1) or (2), the Executive Secretary shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the operating permit program.

(4) Fugitive emissions. Fugitive emissions and fugitive dust from a Part 70 source shall be included in the permit application and the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of source categories contained in the definition of major source.

(5) Control requirements. R307-415 does not establish any new control requirements beyond those established by applicable requirements, but may establish new monitoring, recordkeeping, and reporting requirements.

(6) Synthetic minors. An existing source that wishes to avoid designation as a major Part 70 source under R307-415, must obtain federally-enforceable conditions which reduce the potential to emit, as defined in R307-101-2, to less than the level established for a major Part 70 source. Such federally-enforceable conditions may be obtained by applying for and receiving an approval order under R307-401. The approval order shall contain periodic monitoring, recordkeeping, and reporting requirements sufficient to verify continuing compliance with the conditions which would reduce the source's potential to emit.

R307-415-5a. Permit Applications: Duty to Apply.

For each Part 70 source, the owner or operator shall submit a timely and complete permit application. A pre-application conference may be held at the request of a Part 70 source or the Executive Secretary to assist a source in submitting a complete application.

(1) Timely application.

(a) Except as provided in the transition plan under (3) below, a timely application for a source applying for an operating permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program.

(b) Except as provided in the transition plan under (3) below, any Part 70 source required to meet the requirements under Section 112(g) of the Act, Hazardous Air Pollutant Modifications, or required to receive an approval order to construct a new source or modify an existing source under R307-401, shall file a complete application to obtain an operating permit or permit revision within 12 months after commencing operation of the newly constructed or modified source. Where an existing operating permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted by the renewal date established in the permit. The Executive Secretary shall establish a renewal date for each permit that is at least six months and not greater than 18 months prior to the date of permit expiration. A source may submit a permit application early for any reason, including timing of other application requirements.

(2) Complete application.

(a) To be deemed complete, an application must provide all information sufficient to evaluate the subject source and its application and to determine all applicable requirements pursuant to R307-415-5c. Applications for permit revision need supply such information only if it is related to the proposed change. A responsible official shall certify the submitted information consistent with R307-415-5d.

(b) Unless the Executive Secretary notifies the source in writing within 60 days of receipt of the application that an application is not complete, such application shall be deemed to be complete. A completeness determination shall not be required for minor permit modifications. If, while processing an application that has been determined or deemed to be complete, the Executive Secretary determines that additional information is necessary to evaluate or take final action on that application, the Executive Secretary may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in R307-415-7b(2), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified in writing by the Executive Secretary.

(3) Transition Plan. A timely application under the transition plan is an application that is submitted according to the following schedule:

(a) All Title IV affected sources shall submit an operating permit application as well as an acid rain permit application in accordance with the date required by 40 CFR Part 72 effective April 11, 1995, Subpart C-Acid Rain Permit Applications;

(b) All major Part 70 sources operating as of July 10, 1995, except those described in (a) above, and all solid waste incineration units operating as of July 10, 1995, that are required to obtain an operating permit pursuant to 42 U.S.C. Sec. 7429(e) shall submit a permit application by October 10, 1995.

(c) Area sources.

(i) Except as provided in (c)(ii) and (c)(iii) below, each Part 70 source that is not a major source, a Title IV affected source, or a solid waste incineration unit required to obtain a permit pursuant to section 129(e) (42 U.S.C. 7429), is deferred from the obligation to submit an application until 12 months after the Administrator completes a rulemaking to determine how the program should be structured for area sources and the appropriateness of any permanent exemptions in addition to those provided in R307-415-4(2).

(ii) General Permits.

(A) The Executive Secretary shall develop general permits and application forms for area source categories.

(B) After a general permit has been issued for a source category, the Executive Secretary shall establish a due date for permit applications from all area sources in that source category.

(C) The Executive Secretary shall provide at least six months notice that the application is due for a source category.

(iii) Regulation-specific Requirements.

(A) If a regulation promulgated under Section 111 or 112 (42 U.S.C. 7411 or 7412) requires an area source category to submit an application for a Part 70 permit, each area source covered by the requirement must submit an application in accordance with the regulation.

(d) Extensions. The owner or operator of any Part 70 source may petition the Executive Secretary for an extension of the application due date for good cause. The due date for major Part 70 sources shall not be extended beyond July 10, 1996. The due date for an area source shall not be extended beyond twelve months after the due date in (c)(i) above.

(e) Application shield. If a source submits a timely and complete application under this transition plan, the application shield under R307-415-7b(2) shall apply to the source. If a source submits a timely application and is making sufficient progress toward correcting an application determined to be incomplete, the Executive Secretary may extend the application shield under R307-415-7b(2) to the source when the application is determined complete. The application shield shall not be extended to any major source that has not submitted a complete application by July 10, 1996, or to any area source that has not submitted a complete application within twelve months after the due date in (c)(i) above.

(4) Confidential information. Claims of confidentiality on information submitted to EPA may be made pursuant to applicable federal requirements. Claims of confidentiality on information submitted to the Department shall be made and governed according to Section 19-1-306. In the case where a source has submitted information to the Department under a claim of confidentiality that also must be submitted to the EPA, the Executive Secretary shall either submit the information to the EPA under Section 19-1-306, or require the source to submit a copy of such information directly to EPA.

(5) Late applications. An application submitted after the deadlines established in R307-415-5a shall be accepted for processing, but shall not be considered a timely application. Submitting an application shall not relieve a source of any enforcement actions resulting from submitting a late application.

R307-415-5b. Permit Applications: Duty to Supplement or Correct Application.

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

R307-415-5c. Permit Applications: Standard Requirements.

Information as described below for each emissions unit at a Part 70 source shall be included in the application except for insignificant activities and emissions levels under R307-415-5e. The operating permit application shall include the elements specified below:

(1) Identifying information, including company name, company address, plant name and address if different from the company name and address, owner's name and agent, and telephone number and names of plant site manager or contact.

(2) A description of the source's processes and products by Standard Industrial Classification Code, including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(a) A permit application shall describe the potential to emit of all air pollutants for which the source is major, and the potential to emit of all regulated air pollutants and hazardous air pollutants from any emissions unit, except for insignificant activities and emissions under R307-415-5e. For emissions of hazardous air pollutants under 1,000 pounds per year, the following ranges may be used in the application: 1-10 pounds per year, 11-499 pounds per year, 500-999 pounds per year. The mid-point of the range shall be used to calculate the emission fee under R307-415-9 for hazardous air pollutants reported as a range.

(b) Identification and description of all points of emissions described in (a) above in sufficient detail to establish the basis for fees and applicability of applicable requirements.

(c) Emissions rates in tons per year and in such terms as are necessary to establish compliance with applicable requirements consistent with the applicable standard reference test method.

(d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants and hazardous air pollutants at the Part 70 source.

(g) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to Section 123 of the Act.

(h) Calculations on which the information in items (a) through (g) above is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements, and

(b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce applicable requirements or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the Executive Secretary to define alternative operating scenarios identified by the source pursuant to R307-415-6a(9) or to define permit terms and conditions implementing emission trading under R307-415-7d(1)(c) or R307-415-6a(10).

(8) A compliance plan for all Part 70 sources that contains all of the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) A schedule of compliance for sources that are not in

compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary, for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, Acid Deposition Control, with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including all of the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with R307-415-5d and Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification.

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test method.

(c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary.

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) Nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act, Acid Deposition Control.

R307-415-5d. Permit Applications: Certification.

Any application form, report, or compliance certification submitted pursuant to R307-415 shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under R307-415 shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

R307-415-5e. Permit Applications: Insignificant Activities and Emissions.

An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under R307-415-9. The following lists apply only to operating permit applications and do not affect the applicability of R307-415 to a source, do not affect the requirement that a source receive an approval order under R307-401, and do not relieve a source of the responsibility to comply with any applicable requirement.

(1) The following insignificant activities and emission levels are not required to be included in the permit application.

(a) Exhaust systems for controlling steam and heat that do not contain combustion products, except for systems that are subject to an emission standard under any applicable requirement.

(b) Air contaminants that are present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or air contaminants that are present in compressed air or in ambient air, which may contain air pollution, used for combustion.

(c) Air conditioning or ventilating systems not designed to remove air contaminants generated by or released from other processes or equipment.

(d) Disturbance of surface areas for purposes of land development, not including mining operations or the disturbance of contaminated soil.

(e) Brazing, soldering, or welding operations.

(f) Aerosol can usage.

(g) Road and parking lot paving operations, not including asphalt, sand and gravel, and cement batch plants.

(h) Fire training activities that are not conducted at permanent fire training facilities.

(i) Landscaping, janitorial, and site housekeeping activities, including fugitive emissions from landscaping activities.

(j) Architectural painting.

(k) Office emissions, including cleaning, copying, and restrooms.

(l) Wet wash aggregate operations that are solely dedicated to this process.

(m) Air pollutants that are emitted from personal use by employees or other persons at the source, such as foods, drugs, or cosmetics.

(n) Air pollutants that are emitted by a laboratory at a facility under the supervision of a technically qualified individual as defined in 40 CFR 720.3(ee); however, this exclusion does not apply to specialty chemical production, pilot plant scale operations, or activities conducted outside the laboratory.

(o) Maintenance on petroleum liquid handling equipment such as pumps, valves, flanges, and similar pipeline devices and appurtenances when purged and isolated from normal operations.

(p) Portable steam cleaning equipment.

(q) Vents on sanitary sewer lines.

(r) Vents on tanks containing no volatile air pollutants, e.g., any petroleum liquid, not containing Hazardous Air Pollutants, with a Reid Vapor Pressure less than 0.05 psia.

(2) The following insignificant activities are exempted because of size or production rate and a list of such insignificant activities must be included in the application. The Executive Secretary may require information to verify that the activity is insignificant.

(a) Emergency heating equipment, using coal, wood, kerosene, fuel oil, natural gas, or LPG for fuel, with a rated capacity less than 50,000 BTU per hour.

(b) Individual emissions units having the potential to emit less than one ton per year per pollutant of PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide, unless combined emissions from similar small emission units located within the same Part 70 source are greater than five tons per year of any one pollutant. This does not include emissions units that emit air contaminants other than PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide.

(c) Petroleum industry flares, not associated with refineries, combusting natural gas containing no hydrogen sulfide except in amounts less than 500 parts per million by weight, and having the potential to emit less than five tons per year per air contaminant.

(d) Road sweeping.

(e) Road salting and sanding.

(f) Unpaved public and private roads, except unpaved haul

roads located within the boundaries of a stationary source. A haul road means any road normally used to transport people, livestock, product or material by any type of vehicle.

(g) Non-commercial automotive (car and truck) service stations dispensing less than 6,750 gal. of gasoline/month

(h) Hazardous Air Pollutants present at less than 1% concentration, or 0.1% for a carcinogen, in a mixture used at a rate of less than 50 tons per year, provided that a National Emission Standards for Hazardous Air Pollutants standard does not specify otherwise.

(i) Fuel-burning equipment, in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure, with a rated capacity of less than five million BTU per hour using no other fuel than natural gas, or LPG or other mixed gas distributed by a public utility.

(j) Comfort heating equipment (i.e., boilers, water heaters, air heaters and steam generators) with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6.

(3) Any person may petition the Board to add an activity or emission to the list of Insignificant Activities and Emissions which may be excluded from an operating permit application under (1) or (2) above upon a change in the rule and approval of the rule change by EPA. The petition shall include the following information:

(a) A complete description of the activity or emission to be added to the list.

(b) A complete description of all air contaminants that may be emitted by the activity or emission, including emission rate, air pollution control equipment, and calculations used to determine emissions.

(c) An explanation of why the activity or emission should be exempted from the application requirements for an operating permit.

(4) The executive secretary may determine on a case-by-case basis, insignificant activities and emissions for an individual Part 70 source that may be excluded from an application or that must be listed in the application, but do not require a detailed description. No activity with the potential to emit greater than two tons per year of any criteria pollutant, five tons of a combination of criteria pollutants, 500 pounds of any hazardous air pollutant or one ton of a combination of hazardous air pollutants shall be eligible to be determined an insignificant activity or emission under this subsection (4).

R307-415-6a. Permit Content: Standard Requirements.

Each permit issued under R307-415 shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(a) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit shall state that, where an applicable requirement is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, Acid Deposition Control, both provisions shall be incorporated into the permit.

(c) If the State Implementation Plan allows a determination of an alternative emission limit at a Part 70 source, equivalent to that contained in the State Implementation Plan, to be made in the permit issuance, renewal, or significant modification process, and the Executive Secretary elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. Except as provided by Section 19-2-109.1(3), the Executive Secretary shall issue permits for a fixed term of five years.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

(i) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(ii) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to (3)(c) below. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph;

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(i) Records of required monitoring information that include the following:

(A) The date, place as defined in the permit, and time of sampling or measurements;

(B) The dates analyses were performed;

(C) The company or entity that performed the analyses;

(D) The analytical techniques or methods used;

(E) The results of such analyses;

(F) The operating conditions as existing at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require all of the following:

(i) Submittal of reports of any required monitoring every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with R307-415-5d.

(ii) Prompt reporting of deviations from permit requirements including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The Executive Secretary shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Deviations from permit requirements due to unavoidable breakdowns shall be reported according to the

unavoidable breakdown provisions of R307-107. The Executive Secretary may establish more stringent reporting deadlines if required by the applicable requirement.

(d) Claims of confidentiality shall be governed by Section 19-1-306.

(4) Acid Rain Allowances. For Title IV affected sources, a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Standard provisions stating the following:

(a) The permittee must comply with all conditions of the operating permit. Any permit noncompliance constitutes a violation of the Air Conservation Act and is grounds for any of the following: enforcement action; permit termination; revocation and reissuance; modification; denial of a permit renewal application.

(b) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition, except as provided under R307-415-7f(1) for minor permit modifications.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee shall furnish to the Executive Secretary, within a reasonable time, any information that the Executive Secretary may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Executive Secretary copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(7) Emission fee. A provision to ensure that a Part 70 source pays fees to the Executive Secretary consistent with R307-415-9.

(8) Emissions trading. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Alternate operating scenarios. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Executive Secretary. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield to all terms and conditions under each such operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of R307-415.

(10) Emissions trading. Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under R307-415-6a and 6c to determine compliance;

(b) Shall extend the permit shield to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of R307-415.

R307-415-6b. Permit Content: Federally-Enforceable Requirements.

(1) All terms and conditions in an operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by EPA and citizens under the Act.

(2) Notwithstanding (1) above, applicable requirements that are not required by the Act or implementing federal regulations shall be included in the permit but shall be specifically designated as being not federally enforceable under the Act and shall be designated as "state requirements." Terms and conditions so designated are not subject to the requirements of R307-415-7a through 7i and R307-415-8 that apply to permit review by EPA and affected states. The Executive Secretary shall determine which conditions are "state requirements" in each operating permit.

R307-415-6c. Permit Content: Compliance Requirements.

All operating permits shall contain all of the following elements with respect to compliance:

(1) Consistent with R307-415-6a(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including any report, required by an operating permit shall contain a certification by a responsible official that meets the requirements of R307-415-5d;

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Executive Secretary or an authorized representative to perform any of the following:

(a) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(d) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;

(e) Claims of confidentiality on the information obtained during an inspection shall be made pursuant to Section 19-1-306;

(3) A schedule of compliance consistent with R307-415-5c(8);

(4) Progress reports consistent with an applicable schedule

of compliance and R307-415-5c(8) to be submitted semiannually, or at a more frequent period if specified in the applicable requirement or by the Executive Secretary. Such progress reports shall contain all of the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved;

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include all of the following:

(a) Annual submission of compliance certification, or more frequently if specified in the applicable requirement or by the Executive Secretary;

(b) In accordance with R307-415-6a(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may reference the permit or previous reports, as applicable):

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under R307-415-6a(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(iii) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in (ii) above. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and

(iv) Such other facts as the executive secretary may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the Executive Secretary;

(e) Such additional requirements as may be specified pursuant to Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification, and Section 504(b) of the Act, Monitoring and Analysis;

(6) Such other provisions as the Executive Secretary may require.

R307-415-6d. Permit Content: General Permits.

(1) The Executive Secretary may, after notice and opportunity for public participation provided under R307-415-7i, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the Executive Secretary shall grant the conditions and terms of the general permit. Notwithstanding the permit shield, the source shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be issued for Title IV affected sources under the Acid Rain Program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the Executive Secretary for coverage under the terms of the general permit or must apply for an operating permit consistent with R307-415-5a through 5e. The Executive Secretary may, in the general permit, provide for applications which deviate from the requirements of R307-415-5a through 5e, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under R307-415-7i, the Executive Secretary may grant a source's request for authorization to operate under a general permit, but such a grant to a qualified source shall not be a final permit action until the requirements of R307-415-5a through 5e have been met.

R307-415-6e. Permit Content: Temporary Sources.

The owner or operator of a permitted source may temporarily relocate the source for a period not to exceed that allowed by R307-401-7. A permit modification is required to relocate the source for a period longer than that allowed by R307-401-7. No Title IV affected source may be permitted as a temporary source. Permits for temporary sources shall include all of the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator receive approval to relocate under R307-401-7 before operating at the new location;

(3) Conditions that assure compliance with all other provisions of R307-415.

R307-415-6f. Permit Content: Permit Shield.

(1) Except as provided in R307-415, the Executive Secretary shall include in each operating permit a permit shield provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The Executive Secretary, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An operating permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any operating permit shall alter or affect any of the following:

(a) The emergency provisions of Section 19-1-202 and Section 19-2-112, and the provisions of Section 303 of the Act, Emergency Orders, including the authority of the Administrator under that Section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements under Section 19-2-107(2)(g) and Section 19-2-110 prior to or at the time of permit issuance;

(c) The applicable requirements of the Acid Rain Program, consistent with Section 408(a) of the Act;

(d) The ability of the Executive Secretary to obtain information from a source under Section 19-2-120, and the ability of EPA to obtain information from a source under Section 114 of the Act, Inspection, Monitoring, and Entry.

R307-415-6g. Permit Content: Emergency Provision.

(1) Emergency. An "emergency" is any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of (3) below are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the causes of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the Executive Secretary within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of R307-415-6a(3)(c)(ii). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

R307-415-7a. Permit Issuance: Action on Application.

(1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The Executive Secretary has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit;

(b) Except for modifications qualifying for minor permit modification procedures under R307-415-7f(1)and (2), the Executive Secretary has complied with the requirements for public participation under R307-415-7i;

(c) The Executive Secretary has complied with the requirements for notifying and responding to affected States under R307-415-8(2);

(d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of R307-415;

(e) EPA has received a copy of the proposed permit and any notices required under R307-415-8(1) and (2), and has not objected to issuance of the permit under R307-415-8(3) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under R307-415-5a(3) or under regulations promulgated under Title IV of the Act for the permitting of Title IV affected sources under the Acid Rain Program, the Executive Secretary shall take final action on each permit application, including a request for permit modification or renewal, within 18 months after receiving a complete application.

(3) The Executive Secretary shall promptly provide notice to the applicant of whether the application is complete. Unless the Executive Secretary requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. A completeness determination shall not be required for minor permit modifications.

(4) The Executive Secretary shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The Executive Secretary shall send this statement to EPA and to any other person who requests it.

(5) The submittal of a complete application shall not affect the requirement that any source have an approval order under R307-401.

R307-415-7b. Permit Issuance: Requirement for a Permit.

(1) Except as provided in R307-415-7d and R307-415-7f(1)(f)and 7f(2)(e), no Part 70 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under these rules.

(2) Application shield. If a Part 70 source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have an operating permit is not a violation of R307-415 until the Executive Secretary takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to R307-415-7a(3), and as required by R307-415-5a(2), the applicant fails to submit by the deadline specified in writing by the Executive Secretary any additional information identified as being needed to process the application.

R307-415-7c. Permit Renewal and Expiration.

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with R307-415-7b and R307-415-5a(1)(c).

(3) If a timely and complete renewal application is submitted consistent with R307-415-7b and R307-415-5a(1)(c)and the Executive Secretary fails to issue or deny the renewal permit before the end of the term of the previous permit, then all of the terms and conditions of the permit, including the permit shield, shall remain in effect until renewal or denial.

R307-415-7d. Permit Revision: Changes That Do Not Require a Revision.

(1) Operational Flexibility.

(a) A Part 70 source may make changes that contravene an express permit term if all of the following conditions have been met:

(i) The source has obtained an approval order, or has met the exemption requirements under R307-402;

(ii) The change would not violate any applicable requirements or contravene any federally enforceable permit terms and conditions for monitoring, including test methods, recordkeeping, reporting, or compliance certification requirements;

(iii) The changes are not modifications under any provision of Title I of the Act; and the changes do not exceed the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions.

(iv) For each such change, the source shall provide written notice to the Executive Secretary and send a copy of the notice to EPA at least seven days before implementing the proposed change. The seven-day requirement may be waived by the Executive Secretary in the case of an emergency. The written notification shall include a brief description of the change

within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield shall not apply to these changes. The source, the EPA, and the Executive Secretary shall attach each such notice to their copy of the relevant permit.

(b) Emission trading under the State Implementation Plan. Permitted sources may trade increases and decreases in emissions in the permitted facility, where the State Implementation Plan provides for such emissions trades, without requiring a permit revision provided the change is not a modification under any provision of Title I of the Act, the change does not exceed the emissions allowable under the permit, and the source notifies the Executive Secretary and the EPA at least seven days in advance of the trade. This provision is available in those cases where the permit does not already provide for such emissions trading.

(i) The written notification required above shall include such information as may be required by the provision in the State Implementation Plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the State Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the State Implementation Plan and that provide for the emissions trade.

(ii) The permit shield shall not extend to any change made under this paragraph. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the State Implementation Plan authorizing the emissions trade.

(c) If a permit applicant requests it, the Executive Secretary shall issue permits that contain terms and conditions, including all terms required under R307-415-6a and 6c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. Such changes in emissions shall not be allowed if the change is a modification under any provision of Title I of the Act or the change would exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Executive Secretary shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements, and shall require the source to notify the Executive Secretary and the EPA in writing at least seven days before making the emission trade.

(i) The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(ii) The permit shield shall extend to terms and conditions that allow such increases and decreases in emissions.

(2) Off-permit changes. A Part 70 source may make changes that are not addressed or prohibited by the permit without a permit revision, unless such changes are subject to any requirements under Title IV of the Act or are modifications under any provision of Title I of the Act.

(a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(b) Sources must provide contemporaneous written notice to the Executive Secretary and EPA of each such change, except for changes that qualify as insignificant under R307-415-5e. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirements that would apply as a result of the change.

(c) The change shall not qualify for the permit shield.

(d) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(e) The off-permit provisions do not affect the requirement for a source to obtain an approval order under R307-401.

R307-415-7e. Permit Revision: Administrative Amendments.

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source where the Executive Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Executive Secretary;

(e) Incorporates into the operating permit the requirements from an approval order issued under R307-401, provided that the procedures for issuing the approval order were substantially equivalent to the permit issuance or modification procedures of R307-415-7a through 7i and R307-415-8, and compliance requirements are substantially equivalent to those contained in R307-415-6a through 6g;

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the Executive Secretary consistent with the following:

(a) The Executive Secretary shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that the Executive Secretary designates any such permit revisions as having been made pursuant to this paragraph. The Executive Secretary shall take final action on a request for a change in ownership or operational control of a source under (1)(d) above within 30 days of receipt of a request.

(b) The Executive Secretary shall submit a copy of the revised permit to EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The Executive Secretary shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for administrative permit amendments made pursuant to (1)(e) above which meet the relevant requirements of R307-415-6a through 6g, 7 and 8 for significant permit modifications.

R307-415-7f. Permit Revision: Modification.

The permit modification procedures described in R307-

415-7f shall not affect the requirement that a source obtain an approval order under R307-401 before constructing or modifying a source of air pollution. A modification not subject to the requirements of R307-401 shall not require an approval order in addition to the permit modification as described in this section. A permit modification is any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under R307-415-7e. Any permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(1) Minor permit modification procedures.

(a) Criteria. Minor permit modification procedures may be used only for those permit modifications that:

(i) Do not violate any applicable requirement or require an approval order under R307-401;

(ii) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such term or condition would include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I or an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act, Early Reduction; and

(v) Are not modifications under any provision of Title I of the Act.

(b) Notwithstanding (1)(a)above and (2)(a) below, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State Implementation Plan or an applicable requirement.

(c) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of R307-415-5c and shall include all of the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) The source's suggested draft permit;

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used;

(iv) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(d) EPA and affected State notification. Within five working days of receipt of a complete permit modification application, the Executive Secretary shall notify EPA and affected States of the requested permit modification. The Executive Secretary promptly shall send any notice required under R307-415-8(2)(b) to EPA.

(e) Timetable for issuance. The Executive Secretary may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the Executive Secretary that EPA will not object to issuance of the permit modification, whichever is first. Within 90 days of the Executive Secretary's receipt of an application under minor permit modification procedures or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later, the Executive Secretary shall:

(i) Issue the permit modification as proposed;

(ii) Deny the permit modification application;

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(iv) Revise the draft permit modification and transmit to EPA the new proposed permit modification as required by R307-415-8(1).

(f) Source's ability to make change. A Part 70 source may make the change proposed in its minor permit modification application immediately after it files such application if the source has received an approval order under R307-401 or has met the approval order exemption requirements under R307-413-1 through 6. After the source makes the change allowed by the preceding sentence, and until the Executive Secretary takes any of the actions specified in (1)(e)(i) through (iii) above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) Permit shield. The permit shield under R307-415-6f shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications. Consistent with this paragraph, the Executive Secretary may modify the procedure outlined in (1) above to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

(i) That meet the criteria for minor permit modification procedures under (1)(a) above; and

(ii) That collectively are below the following threshold level: 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in R307-415-3, or five tons per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of R307-415-5c and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(ii) The source's suggested draft permit.

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(iv) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under R307-415-7e(2)(a)(ii).

(v) Certification, consistent with R307-415-5d, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(vi) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(c) EPA and affected State notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under (2)(a)(ii) above, whichever is earlier, the Executive Secretary shall notify EPA and affected States of the requested permit

modifications. The Executive Secretary shall send any notice required under R307-415-8(2)(b)to EPA.

(d) Timetable for issuance. The provisions of (1)(e) above shall apply to modifications eligible for group processing, except that the Executive Secretary shall take one of the actions specified in (1)(e)(i) through (iv) above within 180 days of receipt of the application or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later.

(e) Source's ability to make change. The provisions of (1)(f) above shall apply to modifications eligible for group processing.

(f) Permit shield. The provisions of (1)(g) above shall also apply to modifications eligible for group processing.

(3) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with R307-415 that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of R307-415, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The Executive Secretary shall complete review on the majority of significant permit modifications within nine months after receipt of a complete application.

R307-415-7g. Permit Revision: Reopening for Cause.

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(a) New applicable requirements become applicable to a major Part 70 source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the terms and conditions of the permit have been extended pursuant to R307-415-7c(3).

(b) Additional requirements, including excess emissions requirements, become applicable to an Title IV affected source under the Acid Rain Program. Upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The Executive Secretary or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) EPA or the Executive Secretary determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(e) Additional applicable requirements are to become effective before the renewal date of the permit and are in conflict with existing permit conditions.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under (1) above shall not be initiated before a notice of such intent is provided to the Part 70 source by the Executive Secretary at least 30 days in advance of the date that the permit is to be reopened, except that the Executive Secretary may provide a shorter time period in the case of an emergency.

R307-415-7h. Permit Revision: Reopenings for Cause by EPA.

The Executive Secretary shall, within 90 days after receipt of notification that EPA finds that cause exists to terminate, modify or revoke and reissue a permit, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Executive Secretary may request a 90-day extension if a new or revised permit application is necessary or if the Executive Secretary determines that the permittee must submit additional information.

R307-415-7i. Public Participation.

The Executive Secretary shall provide for public notice, comment and an opportunity for a hearing on initial permit issuance, significant modifications, reopenings for cause, and renewals, including the following procedures:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the Executive Secretary, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.

(2) The notice shall identify the Part 70 source; the name and address of the permittee; the name and address of the Executive Secretary; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan or compliance and monitoring certification, and all other materials available to the Executive Secretary that are relevant to the permit decision; a brief description of the comment procedures; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.

(3) The Executive Secretary shall provide such notice and opportunity for participation by affected States as is provided for by R307-415-8.

(4) Timing. The Executive Secretary shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The Executive Secretary shall keep a record of the commenters and also of the issues raised during the public participation process, and such records shall be available to the public and to EPA.

R307-415-8. Permit Review by EPA and Affected States.

(1) Transmission of information to EPA.

(a) The Executive Secretary shall provide to EPA a copy of each permit application, including any application for permit modification, each proposed permit, and each final operating permit, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category. The applicant may be required by the Executive Secretary to provide a copy of the permit application, including the compliance plan, directly to EPA. Upon agreement with EPA, the Executive Secretary may submit to EPA a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(b) The Executive Secretary shall keep for five years such

records and submit to EPA such information as EPA may reasonably require to ascertain whether the Operating Permit Program complies with the requirements of the Act or of 40 CFR Part 70.

(2) Review by affected States.

(a) The Executive Secretary shall give notice of each draft permit to any affected State on or before the time that the Executive Secretary provides this notice to the public under R307-415-7i, except to the extent R307-415-7f(1) or (2) requires the timing to be different, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category.

(b) The Executive Secretary, as part of the submittal of the proposed permit to EPA, or as soon as possible after the submittal for minor permit modification procedures allowed under R307-415-7f(1) or (2), shall notify EPA and any affected State in writing of any refusal by the Executive Secretary to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the Executive Secretary's reasons for not accepting any such recommendation. The Executive Secretary is not required to accept recommendations that are not based on applicable requirements or the requirements of R307-415.

(3) EPA objection. If EPA objects to the issuance of a permit in writing within 45 days of receipt of the proposed permit and all necessary supporting information, then the Executive Secretary shall not issue the permit. If the Executive Secretary fails, within 90 days after the date of an objection by EPA, to revise and submit a proposed permit in response to the objection, EPA may issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Act.

(4) Public petitions to EPA. If EPA does not object in writing under R307-415-8(3), any person may petition EPA under the provisions of 40 CFR 70.8(d) within 60 days after the expiration of EPA's 45-day review period to make such objection. If EPA objects to the permit as a result of a petition, the Executive Secretary shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Executive Secretary has issued a permit prior to receipt of an EPA objection under this paragraph, EPA may modify, terminate, or revoke such permit, consistent with the procedures in 40 CFR 70.7(g) except in unusual circumstances, and the Executive Secretary may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(5) Prohibition on default issuance. The Executive Secretary shall not issue an operating permit, including a permit renewal or modification, until affected States and EPA have had an opportunity to review the proposed permit as required under this Section.

R307-415-9. Fees for Operating Permits.

(1) Definitions. The following definition applies only to R307-415-9: "Allowable emissions" are emissions based on the potential to emit stated by the Executive Secretary in an approval order, the State Implementation Plan or an operating permit.

(2) Applicability. As authorized by Section 19-2-109.1, all Part 70 sources must pay an annual fee, based on annual emissions of all chargeable pollutants.

(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 source, even if only one unit or one chargeable pollutant triggers the applicability of R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source elected, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire term of the permit.

(d) When a new Part 70 source begins operating, it shall pay an emission fee for that fiscal year, prorated from the date the source begins operating. The emission fee for a new Part 70 source shall be based on allowable emissions until that source has been in operation for a full calendar year, and has submitted an inventory of actual emissions. If a new Part 70 source is not billed in the first billing cycle of its operation, the emission fee shall be calculated using the emissions that would have been used had the source been billed at that time. This fee shall be in addition to any subsequent emission fees.

(e) When a Part 70 source is no longer subject to Part 70, the emission fee shall be prorated to the date that the source ceased to be subject to Part 70. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance will be refunded.

(i) If that Part 70 source again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source again became subject to the emission fee requirements. The fee shall be based on the emission inventory during the last full year of operation. The emission fee shall continue to be based on actual emissions reported for the last full calendar year of operation until that source has been in operation for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee on allowable emissions, then the prorated fee shall be calculated using allowable emissions.

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications at that source, unless the source demonstrates to the Executive Secretary that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The Executive Secretary may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent

inventory data are not available.

(4) Collection of Fees.

(a) The emission fee is due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The Executive Secretary may require any person who fails to pay the annual emission fee by the due date to pay interest on the fee and a penalty under 19-2-109.1(7)(a).

(c) A person may contest an emission fee assessment, or associated penalty, under 19-2-109.1(8).

KEY: air pollution, environmental protection, operating permit, emission fee
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R309. Environmental Quality, Drinking Water.
R309-700. Financial Assistance: State Drinking Water Project Revolving Loan Program.
R309-700-1. Purpose.

This rule establishes criteria for financial assistance to public drinking water systems in accordance with Title 73, Chapter 10c, Utah Code Annotated using funds made available by the Utah legislature from time to time for this purpose.

R309-700-2. Statutory Authority.

The authority for the Department of Environmental Quality acting through the Drinking Water Board to issue loans to political subdivisions to finance all or part of drinking water project costs and to enter into "credit enhancement agreements", "interest buy-down agreements", and "Hardship Grants" is provided in Chapter 10c, Title 73, Utah Code.

R309-700-3. Definitions and Eligibility.

Title 73, Chapter 10c, subsection 4(2)(a) limits eligibility for financial assistance under this section to political subdivisions.

Definitions for terms used in this rule are given in R309-110. Definitions for terms specific to this rule are given below.

"Board" means the Drinking water Board.

"Drinking Water Project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses. Its scope includes collection, treatment, storage, and distribution facilities.

"Project Costs" include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary project, easement or right of way, engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the Board or the Department of Environmental Quality, in connection with the issuance of obligation to evidence any loan made to it under the law.

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project, including, but not limited to, preliminary planning, studies, surveys, engineering or architectural fees, and preparation of plans and specifications.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

"Eligible Water System" means any community drinking water system owned by a political subdivision of the State.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system, for the purpose of reducing the cost of financing incurred by an eligible water system on bonds issued by the subdivision for project costs.

"Financial Assistance" means a project loan, credit enhancement agreement, interest buy-down agreement, or technical assistance.

"Interest" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal.

"Emergency" means an unexpected, serious occurrence or situation requiring urgent or immediate action resulting from the failure of equipment or other infrastructure, or contamination of the water supply, threatening the health and / or safety of the public / water users.

R309-700-4. Application and Project Initiation Procedures.

The following procedures must normally be followed to obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel to prepare its application and an effective and appropriate financial assistance agreement.

(2) A completed application form, engineering report listing the project alternatives considered and including a justification for the chosen alternative, a project financing plan including an evaluation of credit enhancement, interest buy-down and loan methods applicable to the project, and financial capability assessment are submitted to the Board. Comments from the local health department and/or district engineer may accompany the application. Comments from other interested parties such as an association of governments will also be accepted. Those costs incurred subsequent to the submission of a completed funding application form to the Board and prior to the execution of a financial assistance agreement and which meet the criteria for project costs are eligible for reimbursement from the proceeds of the financial assistance agreement.

(3) An engineering and financial feasibility report is prepared by Division staff for the Board's consideration.

(4) The Board may authorize financial assistance for the project on the basis of the staff's feasibility report and designate whether a loan, credit enhancement agreement, interest buy-down agreement, hardship grant or any combination thereof, is to be entered into, and approve the project schedule (see R309-700-13). The Board shall authorize a hardship grant only if it determines that other financing alternatives are unavailable or unreasonably expensive to the applicant (see R309-700-5). If the applicant seeks financial assistance in the form of a loan of amounts in the security account established pursuant to Chapter 10c, Title 73 "Utah Code", which loan is intended to provide direct financing of projects costs, then the Board shall authorize such loan only if it determines that credit enhancement agreements, interest buy-down agreements and other financing alternatives are unavailable or unreasonably expensive to the applicant or that a loan represents the financing alternative most economically advantageous to the state and the applicant; provided, that for purposes of this paragraph and for purposes of Section 73-10c-4(2), Utah Code, the term "loan" shall not include loans issued in connection with interest buy-down agreements as described in R309-700-11(2) or in connection with any other interest buy-down arrangement.

(5) Planning Grant - The applicant must submit an application provided by the Division and attach a scope of work, project schedule, cost estimates, and a draft contract for planning services.

(6) Planning Loan - The applicant requesting a Planning Loan must complete an application for a Planning Loan, prepare a plan of study, satisfactorily demonstrate procurement of planning services, and prepare a draft contract for planning services including financial evaluations and a schedule of work.

(7) Design Grant or Loan - The applicant requesting a Design Grant or Loan must have completed an engineering plan meeting program requirements.

(8) The project applicant must demonstrate public support for the project. As a minimum, for a loan to be secured by a revenue bond, the Sponsor must mail notices to each water user in the Sponsor's service area informing them of a public hearing. In addition to the time and location of the public hearing the notice shall inform water users of the Sponsor's intent to issue a non-voted revenue bond to the Board, shall describe the face

amount of the bond, the rate of interest, the repayment schedule and shall describe the impact of the project on the user including: user rates, impact and connection fees. The notice shall state that water users may respond to the Sponsor in writing or in the public hearing within ten days after the date of the notice. A copy of all written responses and a certified record of a public hearing shall be forwarded to the Division of Drinking Water.

(9) For financial assistance mechanisms when the applicant's bond is purchased by the Board, the project applicant's bond documentation, including an opinion from legal counsel experienced in bond matters that the drinking water project obligation is a valid and binding obligation of the applicant (see R309-700-14(3)), must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to the Utah Code, Section 11-14-21. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel experienced in bond matters that the drinking water project obligation is a valid and binding obligation of the applicant.

(10) Hardship Grant - The Board or its designee executes a grant agreement setting forth the terms and conditions of the grant.

(11) The Board, through its Executive Secretary, shall issue a Plan Approval for plans and specifications.

(12) If a project is designated to be financed by the Board through a loan or an interest buy-down agreement as described in R309-700-11(2) to cover any part of project costs an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for qualified project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement as described in R309-700-11(1) all project funds will be maintained in a separate account and a quarterly report of project expenditures will be provided to the Board.

(13) If a revenue bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to insure adequate provisions for debt retirement and/or operation and maintenance. If a general obligation bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to insure the system will have adequate resources to provide acceptable service.

(14) A plan of operation for the completed project, including staffing with an appropriately certified (in accordance with R309-300) operator, staff training, and procedures to assure efficient start-up, operation and maintenance of the project, must be submitted by the applicant and approved by the Board, its Executive Secretary or other designee.

(15) The applicant's contract with its engineer must be submitted to the Board for review to determine that there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

(16) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, and adequacy of bidding and contract documents.

(17) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board executes the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and notifies the applicant to sell the bonds (See R309-700-10 and -11).

(18) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant sells the bonds and notifies the Board of the terms of sale. If a credit enhancement agreement is utilized, the bonds shall contain the legend required by Section 73-10c-6(3)(d), Utah Code. If an interest buy-down agreement is utilized, the bonds shall bear a legend which makes reference to the interest buy-down agreement and states that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

(19) The applicant opens bids for the project.

(20) LOAN ONLY - The Board approves purchase of the bonds and executes the loan contract (see R309-700-4(24)).

(21) LOAN ONLY - The loan closing is conducted.

(22) A preconstruction conference shall be held.

(23) The applicant issues a written notice to proceed to the contractor.

(24) The applicant must have adopted a Water Management and Conservation Plan prior to executing the loan agreement.

R309-700-5. Loan, Credit Enhancement, Interest Buy-Down, and Hardship Grant Consideration Policy.

(1) Board Priority Determination. In determining the priority for financial assistance the Board shall consider:

(a) The ability of the applicant to obtain funds for the drinking water project from other sources or to finance such project from its own resources;

(b) The ability of the applicant to repay the loan or other project obligations;

(c) Whether a good faith effort to secure all or part of the services needed from the private sector through privatization has been made; and

(d) Whether the drinking water project:

(i) meets a critical local or state need;

(ii) is cost effective;

(iii) will protect against present or potential hazards;

(iv) is needed to comply with the minimum standards of the Federal Safe Drinking Water Act, 42 USC, 300f, et. seq. or similar or successor statute;

(v) is needed to comply with the minimum standards of the Utah Safe Drinking Water Act, Title 19, Chapter 4 or similar or successor statute.

(vi) is needed as a result of an Emergency.

(e) The overall financial impact of the proposed project on the citizens of the community, including direct and overlapping indebtedness, tax levies, user charges, impact or connection fees, special assessments, etc., resulting from the proposed project, and anticipated operation and maintenance costs versus the median income of the community;

(f) Consistency with other funding source commitments which may have been obtained for the project;

(g) The point total from an evaluation of the criteria listed in Table 1;

TABLE 1

NEED FOR PROJECT	POINTS
1. PUBLIC HEALTH AND WELFARE (SELECT ONE)	
A. There is evidence that waterborne illnesses have occurred	15
B. There are reports of illnesses which may be waterborne	10
C. No reports of waterborne illness, but high potential for such exists	5
D. No reports of possible waterborne illness and low potential for such exists	0
2. WATER QUALITY RECORD (SELECT ONE)	

A. Primary Maximum Contaminant Level (MCL) violation more than 6 times in preceding 12 months	15
B. In the past 12 months violated a primary MCL 4 to 6 times	12
C. In the past 12 months violated a primary MCL 2 to 3 times or exceeded the Secondary Drinking Water Standards by double	9
D. In the past 12 months violated MCL 1 time	6
E. Violation of the Secondary Drinking Water Standards	5
F. Does not meet all applicable MCL goals	3
G. Meets all MCLs and MCL goals	0

3. VERIFICATION OF POTENTIAL SHORTCOMINGS (SELECT ONE)

A. Has had sanitary survey within the last year	5
B. Has had sanitary survey within the last five years	3
C. Has not had sanitary survey within last five years	0

4. GENERAL CONDITIONS OF EXISTING FACILITIES (SELECT ALL THOSE WHICH ARE TRUE AND PROJECT WILL REMEDY)

A. The necessary water treatment facilities do not exist, not functioning, functioning but do not meet the requirements of the Utah Public Drinking Water Rules (UPDWR)	10
B. Sources are not developed or protected according to UPDWR	10
C. Source capacity is not adequate to meet current demands and system occasionally goes dry or suffers from low pressures	10
D. Significant areas within distribution system have inadequate fire protection	8
E. Existing storage tanks leak excessively or are structurally flawed	5
F. Pipe leak repair rate is greater than 4 leaks per 100 connections per year	2
G. Existing facilities are generally sound and meeting existing needs	0

5. ABILITY TO MEET FUTURE DEMANDS (Select One)

A. Facilities have inadequate capacity and cannot reliably meet current demands	10
B. Facilities will become inadequate within the next three years	5
C. Facilities will become inadequate within the next five to ten years	3

6. OVERALL URGENCY (Select One)

A. System is generally out of water. There is no fire protection or water for flushing toilets	10
B. System delivers water which cannot be rendered safe by boiling	10
C. System delivers water which can be rendered safe by boiling	8
D. System is occasionally out of water	5
E. Situation should be corrected, but is not urgent	0
TOTAL POSSIBLE POINTS FOR NEED FOR PROJECT	100

(h) Other criteria that the Board may deem appropriate.

(2) Drinking Water Board Financial Assistance Determination. The amount and type of financial assistance offered will be based on the following considerations:

(a) An evaluation based upon the criteria in Tables 2 and 3 of the applicant's financial condition, the project's impact on the community, and the applicant's commitment to operating a responsible water system.

The interest rate to be charged by the Board for its financial assistance will be computed using the number of points assigned to the project from Table 2 to reduce, in a manner determined by Board resolution from time to time, the most recent Revenue Bond Buyer Index (RBBI) as published by the Bond Buyer's Guide. The interest rate so calculated will be assigned to the financial assistance. To encourage rapid repayment of a loan the Board will increase the interest rate 0.02 per cent (0.02%) for each year the repayment period exceeds five (5.0) years.

For hardship grant consideration, exclusive of planning and design grants or loans described in Sections R309-700-6, 7 and 8, the estimated annual cost of drinking water service for the average residential user should exceed 1.75% of the median adjusted gross household income from the most recent available State Tax Commission records. If, in the judgment of the Board, the State Tax Commission data is insufficient the Board may accept other measurements of the water users' income (i.e. local income survey or questionnaire when there is a significant difference between the number of service connections for a system and the number of tax filings for a given zip code or city). The Board will also consider the applicant's level of contribution to the project.

TABLE 2

FINANCIAL CONSIDERATIONS

	POINTS
1. COST EFFECTIVENESS RATIO (SELECT ONE)	
A. Project cost $0 to $500 per benefitting connection	13
B. $501 to $1,500	11
C. $1,501 to $2,000	9
D. $2,001 to $3,000	6
E. $3,001 to $5,000	3
F. $5,001 to $10,000	1
G. Over $10,000	0

2. PRIVATE SECTOR OR OTHER FUNDING, BUT NOT OWN CONTRIBUTION (SELECT ONE)

A. A reasonable search for it has been made without success	10
B. Will provide greater than 50% of project cost	10
C. Will provide 25 to 49% of project cost	8
D. Will provide 10 to 24% of project cost	5
E. Will provide 1 to 9% of project cost	3
F. Has not been investigated	0

3. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)

A. Less than 70% of State Median AGI	15
B. 71 to 90% of State Median AGI	12
C. 91 to 115% of State Median AGI	9
D. 116 to 135% of State Median AGI	6
E. 136 to 160% of State Median AGI	3
F. Greater than 161% of State Median AGI	0

4. APPLICANT'S COMMITMENT TO PROJECT
PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)

a. Greater than 25% of project funds	15
b. 10 to 25% of project funds	12
c. 5 to 9% of project funds	9
d. 2 to 4% of project funds	6
e. Less than 2% of project funds	0

5. ABILITY TO REPAY LOAN

5A. WATER BILL (INCLUDING TAXES) AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME (SELECT ONE)

a. Greater than 2.50% of local median AGI	15
b. 2.01 to 2.50% of local median AGI	11
c. 1.51 to 2.00% of local median AGI	7
d. 1.01 to 1.50% of local median AGI	3
e. 0 to 1.00% of local median AGI	0

5B. TOTAL DEBT LOAD (PRINCIPAL ONLY) OF APPLICANT AFTER PROJECT IS CONSTRUCTED (INCLUDING WATER AND SEWER DEBT, LIGHTING DEBT, SCHOOL DEBT, ETC.) (SELECT ONE)

a. Greater than 12% of fair market value	15
b. 8.1 to 12% of fair market value	12
c. 4.1 to 8.0% of fair market value	9
d. 2.1 to 4.0% of fair market value	6
e. 1.0 to 2.0% of fair market value	3
f. Less than 1% of fair market value	0

6. SPECIAL INCENTIVES
Applicant:

A. is using a master plan which includes	

water management and conservation	4
B. has a replacement fund receiving annual deposits of 5% of drinking water budget	4
C. is creating or enhancing a regionalization Plan	4
D. has a rate structure encouraging conservation	4
E. has received a Quality Community designation	4
TOTAL POSSIBLE POINTS FOR FINANCIAL NEED	100

(b) Optimizing return on the security account while still allowing the project to proceed.

(c) Local political and economic conditions.

(d) Cost effectiveness evaluation of financing alternatives.

(e) Availability of funds in the security account.

(f) Environmental need.

(g) Other criteria the Board may deem appropriate.

R309-700-6. Planning Grant.

(1) A Planning Grant can only be made to a political subdivision with a population less than 10,000 people demonstrating an urgent need to evaluate its drinking water system's technical, financial and managerial capacity, and lacks the financial means to readily accomplish such an evaluation. A Planning Grant will be limited to $10,000 or the estimated cost of the planning effort, whichever is less unless otherwise approved by the Board.

(2) The applicant must demonstrate that all funds necessary to complete project planning will be available prior to commencing the planning effort. The Planning Grant will be deposited with these other funds into a supervised escrow account at the time the grant agreement between the applicant and the Board is executed.

(3) Failure on the part of the recipient of a Planning Grant to implement the findings of the plan may prejudice any future applications for drinking water project funding.

(4) The recipient of a Planning Grant must first receive written approval for any cost increases or changes to the scope of work.

(5) The Planning Grant recipient must provide a copy of the planning project results to the Division. The planning effort shall conform to rules R309.

R309-700-7. Planning Loan.

(1) A Planning Loan can only be made to a political subdivision which demonstrates a financial hardship preventing the completion of project planning.

(2) A Planning Loan is made to a political subdivision with the intent to provide interim financial assistance for project planning until the long-term project financing can be secured. The Planning Loan must be repaid to the Board unless the payment obligation is waived by the Board.

(3) The applicant must demonstrate that all funds necessary to complete project planning will be available prior to commencing the planning effort. The Planning Loan will be deposited with these other funds into a supervised escrow account at the time the loan agreement between the applicant and the Board is executed.

(4) The recipient of a Planning Loan must first receive written approval for any cost increases or changes to the scope of work.

(5) A copy of the document(s) prepared by means of the planning loan shall be submitted to the Division.

R309-700-8. Design Grant or Loan.

(1) A Design Grant or Loan can only be made to a political subdivision demonstrating financial hardship preventing completion of project design. For purposes of this Section R309-700-8, project design means engineering plans and specifications, construction contracts, and associated work.

(2) A Design Grant or Loan is made to a political subdivision with the intent to provide interim financial assistance for the completion of the project design until the long-term project financing can be secured. The Design Grant or Loan must be repaid to the Board unless the payment obligation is waived by the Board as authorized by 73-10c-4(3)(b).

(3) The applicant must demonstrate that all funds necessary to complete the project design will be available prior to commencing the design effort. The Design Grant or Loan will be deposited with these other funds into a supervised escrow account at the time the grant or loan agreement between the applicant and the Board is executed.

(4) The recipient of a Design Grant or Loan must first receive written approval from the Board before incurring any cost increases or changes to the scope of work.

R309-700-9. Credit Enhancement Agreements.

The Board will determine whether a project may receive all or part of a loan, credit enhancement agreement or interest buy-down agreement subject to the criteria in R309-700-5. To provide security for project obligations the Board may agree to purchase project obligations of applicants or make loans to the applicants to prevent defaults in payments on project obligations. The Board may also consider making loans to the applicants to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. In addition, the Board may consider other methods and assistance to applicants to properly enhance the marketability of or security for project obligations.

R309-700-10. Interest Buy-Down Agreements.

Interest buy-down agreements may consist of:

(1) A financing agreement between the Board and applicant whereby a specified sum is loaned or granted to the applicant to be placed in a trust account. The trust account shall be used exclusively to reduce the cost of financing for the project.

(2) A financing agreement between the Board and the applicant whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

(3) Any other legal method of financing which reduces the annual payment amount on locally issued bonds. After credit enhancement agreements have been evaluated by the Board and it is determined that this method is not feasible or additional assistance is required, interest buy-down agreements and loans may be considered. Once the level of financial assistance required to make the project financially feasible is determined, a cost effective evaluation of interest buy-down options and loans must be completed. The financing alternative chosen should be the one most economically advantageous for the state and the applicant.

R309-700-11. Loans.

The Board may make loans to finance all or part of a drinking water project only after credit enhancement agreements and interest buy-down agreements have been evaluated and found either unavailable or unreasonably expensive. The financing alternative chosen should be the one most economically advantageous for the state and its political subdivisions.

R309-700-12. Project Authorization (Reference R309-700-4(4)).

A project may be "Authorized" for a loan, credit

enhancement agreement, interest buy-down agreement, or hardship grant in writing by the Board following submission and favorable review of an application form, engineering report (if required), financial capability assessment and staff feasibility report. The engineering report shall include a cost effectiveness analysis of feasible project alternatives capable of meeting State and Federal drinking water requirements. It shall include consideration of monetary costs including the present worth or equivalent annual value of all capital costs, operation, maintenance, and replacement costs. The alternative selected must be the most economical means of meeting applicable State and Federal drinking water requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations. If it is anticipated that a project will be a candidate for financial assistance from the Board, the Staff should be contacted, and the plan of study for the engineering report (if required) should be approved before the planning is initiated.

Once the application form, plan of study, engineering report, and financial capability assessment are reviewed, the staff will prepare a project feasibility report for the Board's consideration in Authorizing a project. The project feasibility report will include a detailed evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended (i.e., for a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant).

Project Authorization is not a contractual commitment and is conditioned upon the availability of funds at the time of loan closing or signing of the credit enhancement, interest buy-down, or grant agreement and upon adherence to the project schedule approved at that time. If the project is not proceeding according to the project schedule the Board may withdraw the project Authorization so that projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

R309-700-13. Financial Evaluations.

(1) The Board considers it a proper function to assist and give direction to project applicants in obtaining funding from such State, Federal or private financing sources as may be available to achieve the most effective utilization of resources in meeting the needs of the State. This may also include joint financing arrangements with several funding agencies to complete a total project.

(2) Hardship Grants will be evidenced by a grant agreement.

(3) In providing any form of financial assistance in the form of a loan, the Board may purchase bonds of the applicant only if the bonds are accompanied by a legal opinion of recognized municipal bond counsel to the effect that the bonds are legal and binding under applicable Utah law (including, if applicable, the Utah Municipal Bond Act). For bonds of $150,000 or less the Board will not require this opinion.

(a) In providing any form of financial assistance in the form of a loan, the Board may purchase either a taxable or non-taxable bonds; provided that it shall be the general preference of the Board to purchase bonds issued by the applicant only if the bonds are tax exempt and are accompanied by a legal opinion of recognized municipal bond counsel to the effect that interest on the bonds is exempt from federal income taxation. Such an opinion must be obtained by the applicant in the following situations:

(i) Bonds which are issued to finance a project which will also be financed in part at any time by the proceeds of other bonds which are exempt from federal income taxation.

(ii) Bonds which are not subject to the arbitrage rebate provisions of Section 148 of the Internal Revenue Code of 1986 (or successor provision of similar intent), including, without limitation, bonds covered by the "small governmental units" exemption contained in Section 148(f)(4)(c) of the Internal Revenue Code of 1986 (or any successor provision of similar intent) and bonds which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of such bonds.

(b) In any other situations, the Board may purchase taxable bonds if it determines, after evaluating all relevant circumstances including the applicant's ability to pay, that the purchase of the taxable bonds is in the best interests of the State and applicant.

(c) If more than 25 percent of the project is to serve industry, bond counsel must evaluate the loan to ensure the tax exempt status of the loan fund.

(d) Revenue bonds purchased by the Board shall be secured by a pledge of water system revenues, and it is the general policy of the Board that the pledge of water revenues for the payment of debt service (principal and/or interest) on a particular revenue bond be on a parity with the pledge of those water revenues as security for the debt service payments on all other bonds or other forms of indebtedness which are secured by the water revenues.

(4) The Board will consider the financial feasibility and cost effectiveness evaluation of the project in detail. The financial capability assessment must be completed as a basis for the review. The Board will generally use these reports to determine whether a project will be Authorized to receive a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant (Reference R309-700-9, -10 and -11). If a project is Authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. The Board will require the applicants to repay the loan as rapidly as is reasonably consistent with the financial capability of the applicant. It is the Board's intent to avoid repayment schedules which would exceed the design life of the project facilities.

(5) Normal engineering and investigation costs incurred by the Department of Environmental Quality or Board during preliminary project investigation and prior to Board Authorization will not become a charge to the applicant if the project is found infeasible, denied by the Board, or if the applicant withdraws the Application prior to the Board's Authorization. If the credit enhancement agreement or interest buy-down agreement does not involve a loan of funds from the Board, then administrative costs will not be charged to the project. However, if the project is Authorized to receive a loan or grant of funds from the Board, all costs from the beginning of the project will be charged to the project and paid by the applicant as a part of the total project cost. If the applicant decides not to build the project after the Board has Authorized the project, all costs accruing after the Authorization will be reimbursed by the applicant to the Board.

(6) The Board shall determine the date on which the scheduled payments of principal and interest will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system one year of actual use of the project facilities before the first repayment of principal is required.

(7) The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

(8) LOANS AND INTEREST BUY-DOWN AGREEMENTS ONLY - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction prior to or concurrent with the committal of State funds.

(9) The Board will not forgive the applicant of any

payment after the payment is due.

(10) The Board will require a debt service reserve account be established by the applicant at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of one-tenth of the annual payment on the bond(s) purchased by the Board and shall continue until the total amount in the debt service reserve fund is equal to the annual payment. The debt service reserve account shall be continued until the bond is retired. Annual reports/statements will be required. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed. Annual reports/statements will be required.

(11) The Board will require a capital facilities replacement reserve account be established at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of five percent (5%) of the applicant's annual drinking water system budget, including depreciation, unless otherwise specified by the Board at the time of loan authorization, until the loan is repaid. This fund shall not serve as security for the payment of principal or interest on the loan. The applicant shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system and to notify the Board prior to making any disbursements from the fund so the Board can confirm that any expenditure is for an acceptable purpose. The applicant will not need the consent of the Board prior to making any expenditure from the fund. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed. Annual reports/statements will be required.

(12) If the Board is to purchase a revenue bond, the Board will require that the applicant's water rates be established such that sufficient net revenue will be raised to provide at least 125% or such other amount as the Board may determine of the total annual debt service.

R309-700-14. Committal of Funds and Approval of Agreements.

After the Board has issued a Plan Approval and received the appropriate legal documents and other items required by Rule R309-700, the Board will determine whether the project loan, interest buy-down, credit enhancement, and/or grant meets the conditions of its authorization. If so, the Board will give its final approval. The Executive Secretary or designee may then execute the financial assistance agreement if no aspects of the project have changed significantly since the Board's authorization of the loan or credit enhancement, provided all conditions imposed by the Board have been met. If significant changes have occurred the Board will then review the project and, if satisfied, the Board will then commit funds, approve the signing of the contract, credit enhancement agreement, interest buy-down agreement, or grant agreement, and instruct the Executive Secretary to submit a copy of the signed contract or agreement to the Division of Finance.

R309-700-15. Construction.

The Division of Drinking Water staff may conduct inspections and will report to the applicant and applicant's engineer. Contract change orders must be properly negotiated with the contractor and approved in writing. Change orders in excess of $10,000 must receive prior written approval by the Executive Secretary before execution. The applicant shall notify the Executive Secretary when the project is near completion and request a final inspection. When the project is complete to the satisfaction of the applicant, the applicant's engineer, and the Executive Secretary, written approval will be issued by the Executive Secretary in accordance with R309-500-9 to commence using the project facilities.

KEY: loans, interest buy-downs, credit enhancements, hardship grants
August 6, 2004 19-4-104
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R309. Environmental Quality, Drinking Water.
R309-705. Financial Assistance: Federal Drinking Water Project Revolving Loan Program.
R309-705-1. Purpose.

The purpose of this rule is to establish criteria for financial assistance to public drinking water system in accordance with a federal grant established under 42 U.S.C. 300j et seq., federal Safe Drinking Water Act (SDWA).

R309-705-2. Statutory Authority.

The authority for the Department of Environmental Quality acting through the Drinking Water Board to issue financial assistance for drinking water projects from a federal capitalization grant is provided in 42 U.S.C. 300j et seq., federal Safe Drinking Water Act, and Title 73, Chapter 10c, Utah Code.

R309-705-3. Definitions.

Definitions for general terms used in this rule are given in R309-110. Definitions for terms specific to this rule are given below.

"Board" means the Drinking Water Board.

"Drinking Water Project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses. Its scope includes collection, treatment, storage, and distribution facilities.

"Project Costs" include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way, except property condemnation cost, which are not eligible costs; engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; Hardship Grant Assessments, fees and interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the Board or the Department of Environmental Quality, in connection with the issuance of obligation to evidence any loan made to it under the law.

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax commission from federal individual income tax returns excluding zero exemption returns, or where the estimated annual cost, including loan repayment costs, of drinking water service for the average residential user exceeds 1.75% of the median adjusted gross income. If, in the judgment of the Board, the State Tax Commission data is insufficient the Board may accept other measurements of the water users' income (i.e. local income survey or questionnaire when there is a significant difference between the number of service connections for a system and the number of tax filing for a given zip code or city).

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project, including, but not limited to, preliminary planning, studies, surveys, engineering or architectural fees, and preparation of plans and specifications.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

"Eligible Water System" means any community drinking water system, either privately or publicly owned; and nonprofit noncommunity water systems.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system, for the purpose of reducing the cost of financing incurred by an eligible water system on bonds issued by the subdivision for project costs.

"Financial Assistance" means a project loan, credit enhancement agreement, interest buy-down agreement, or technical assistance.

"Hardship Grant Assessment" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal. Hardship grant assessment funds shall be subject to the requirements of UAC R309-700 for hardship grants.

"Negative Interest" means a loan with an interest rate at less than zero percent. The repayment schedule for loans having a negative interest rate will be prepared by the Drinking Water Board.

"Principal Forgiveness" means a loan wherein a portion of the loan amount is "forgiven" upon closing the loan. The terms for principal forgiveness will be as directed by section 4 of this rule and by the Drinking Water Board.

"Interest" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal.

"Emergency" means an unexpected, serious occurrence of situation requiring urgent or immediate action. With regard to a water system this would be a situation resulting from the failure of equipment or other infrastructure, or contamination of the water supply, which threatens the health and / or safety of the public / water users.

"Technical Assistance" means financial assistance provided for a feasibility study or master plan, to identify and / or correct system deficiencies, to help a water system overcome other technical problems. The system receiving said technical assistance may or may not be required to repay the funds received. If repayment is required, the Board will establish the terms of repayment.

"SRF Technical Assistance Fund" means a fund (or account) that will be established for the express purpose of providing "Technical Assistance" to eligible drinking water systems.

R309-705-4. Financial Assistance Methods.

(1) Eligible Activities of the SRF.

Funds within the SRF may be used for loans and other authorized forms of financial assistance. Funds may be used for the construction of publicly or privately owned works or facilities, or any work that is an eligible project cost as defined by 73-10c-2 of the Utah Code or as allowed by 42 U.S.C.A. 300f et seq. Those costs incurred subsequent to the submission of a funding application to the Board and prior to the execution of a financial assistance agreement and which meet the above criteria are eligible for reimbursement from the proceeds of the financial assistance agreement.

(2) Types of Financial Assistance Available for Eligible Water Systems.

(a) Loans.

To qualify for "negative interest" or "principal forgiveness", the system must qualify as a "disadvantaged community". Upon application, the Board will make a case by case determination whether the system is a "disadvantaged community". To be eligible to be considered as a disadvantaged community, the system must be located in a service area or zip code area which has a median adjusted gross income which is less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax Commission from federal individual income tax returns excluding zero exemption

returns. Additionally, the Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and other such information as the Board determines relevant to making the decision to recognize the system as a "disadvantaged community".

(i) Hardship Grant Assessment.

The assessment will be calculated based on the procedures and formulas shown in section 6 of this rule.

(ii) Repayment.

Annual repayments of principal, interest, fees and/or Hardship Grant Assessment generally commence not later than one year after project completion. Project completion shall be defined as the date the funded project is capable of operation and a notice of "beneficial occupancy" is given to the general contractor. Where a project has been phased or segmented, the repayment requirement applies to the completion of individual phases or segments.

The loan must be fully amortized not later than 20 years after project completion or not later than 30 years after project completion if the community served by the water system is determined to be a disadvantaged community. The yearly amount of the principal repayment is set at the discretion of the Board.

(iii) Principal Forgiveness.

Eligible water systems meeting the definition of "disadvantaged community" may qualify for financial assistance in the form of forgiveness of the principal loan amount. Terms for principal forgiveness will be determined by Board resolution.

Eligible applicants for "principal forgiveness" financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

(iv) Negative Interest Rate.

Eligible water systems meeting the definition of "disadvantaged community" may qualify for financial assistance in the form of a loan with a negative interest rate, as determined by Board resolution.

Eligible applicants for "negative interest" financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

(v) Dedicated Repayment Source and Security.

Loan recipients must establish one or more dedicated sources of revenue for repayment of the loan. As a condition of financial assistance, the applicant must demonstrate a revenue source and security, as required by the Board.

(b) Refinancing Existing Debt Obligations.

The Board may use funds from the SRF to buy or refinance municipal, inter-municipal or interstate agencies, where the initial debt was incurred and construction started after July 1, 1993. Refinanced projects must comply with the requirements imposed by the Safe Drinking Water Act(SDWA) as though they were projects receiving initial financing from the SRF.

(c) Credit Enhancement Agreements and Interest Buy-Down Agreements.

The Board will determine whether a project's funding may receive all or part of a loan, credit enhancement agreement or interest buy-down agreement. To provide security for project obligations, the Board may agree to purchase project obligations of applicants, or make loans to the applicants. The Board may also consider making loans to the applicants to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. The Board may also consider other methods of assistance to applicants to properly enhance the marketability of or security for project obligations.

Interest buy-down agreements may consist of any of the following:

(i) A financing agreement between the Board and applicant whereby a specified sum is loaned to the applicant. The loaned funds shall be placed in a trust account, which shall be used exclusively to reduce the cost of financing for the project.

(ii) A financing agreement between the Board and the applicant whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

(iii) Any other legal method of financing which reduces the annual payment amount on publicly issued bonds. The financing alternative chosen should be the one most economically advantageous for the State and the applicant.

(d) Technical Assistance.

The Board may establish a fund (or account) into which the proceeds of an annual fee on loans will be placed. These funds will be used to finance technical assistance for eligible water systems.

This fund will provide low interest loans for technical assistance and any other eligible purpose as defined by Section 1452 of the Safe Drinking Water Act (SDWA) Amendments of 1996 to water systems that are eligible for Federal SRF loans. Repayment of these loans may be waived in whole or in part (grant funds) by the Board whether or not the borrower is disadvantaged.

(i) The Board may establish a fee to be assessed against loans authorized under the Federal SRF Loan Program. The revenue generated by this fee will be placed in a new fund called the "SRF Technical Assistance Fund".

(ii) The amount will be assessed as a percentage of the Principal Balance of the loan on an annual basis, the same as the annual interest and hardship grant assessment are assessed. The borrower will pay the fee annually when paying the principal and interest or hardship grant assessments.

(iii) The Board may set / change the amount of the fee from time to time as they determine meets the needs of the program.

(iv) This fee will be part of the "effective rate" calculated for the loan using Table 2, R309-705-6. This fee may be charged in lieu of or in addition to the interest rate or hardship grant assessment, but in no case will the total of the technical assistance fee, the interest rate, and hardship grant assessment exceed the "effective rate".

(v) The proceeds of the fund will be used as defined above or as modified by the Board in compliance with Section 1452 of the federal SDWA Amendments of 1996.

(3) Ineligible Projects.

Projects which are ineligible for financial assistance include:

(a) Any project for a water system in significant non-compliance, as measured by a "not approved" (R309-150) rating, unless the project will resolve all outstanding issues causing the non-compliance.

(b) Any project where the Board determines that the

applicant lacks the technical, managerial, or financial capability to achieve or maintain SDWA compliance, unless the Board determines that the financial assistance will allow or cause the system to maintain long-term capability to stay in compliance.

(c) Any project meant to finance the expansion of a drinking water system to supply or attract future population growth. Eligible projects, however, can be designed and funded at a level which will serve the population that a system expects to serve over the useful life of the facility.

(d) Projects which are specifically prohibited from eligibility by Federal guidelines. These include the following:

(i) Dams, or rehabilitation of dams;

(ii) Water rights, unless the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy;

(iii) Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the treatment facility is located;

(iv) Laboratory fees for monitoring;

(v) Operation and maintenance costs;

(vi) Projects needed mainly for fire protection.

R309-705-5. Application and Project Initiation Procedures.

The following procedures must normally be followed to obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel to prepare its application and an effective and appropriate financial assistance agreement.

(2) A completed application form and project engineering report listing the project alternatives considered and including a justification for the chosen alternative, a project financing plan including an evaluation of credit enhancement, interest buy-down and loan methods applicable to the project and financial capability assessment and a history of the applicant's compliance with the SDWA are submitted to the Board. Comments from other interested parties such as an association of governments will also be accepted. Those costs incurred subsequent to the submission of a completed funding application form to the Board and prior to the excution of a financial assistance agreement and which meet the criteria for project costs are eligible for reimbursement from the proceeds of the financial assistance agreement.

(3) An engineering, capacity development analysis, and financial feasibility report is prepared by Division staff for presentation to the Board.

(4) The Board may authorize financial assistance for the project on the basis of the staff's feasibility report and designate whether a loan, credit enhancement agreement, interest buy-down agreement, or any combination thereof, is to be entered into, and approve the project schedule (see section 7 of this rule).

(5) The applicant must demonstrate public support for the project prior to bonding, as deemed acceptable by the Drinking Water Board. As a minimum, for a loan to be secured by a revenue bond, the Sponsor must mail notices to each water user in the Sponsor's service area informing them of a public hearing. In addition to the time and location of the public hearing the notice shall inform water users of the Sponsor's intent to issue a non-voted revenue bond to the Board, shall describe the face amount of the bond, the "effective rate", the repayment schedule and shall describe the impact of the project on the user including: user rates, impact and connection fees. The notice shall state that water users may respond to the Sponsor in writing or in the public hearing within ten days after the date of the notice. A copy of all written responses and a certified record of the public hearing shall be forwarded to the Division of Drinking Water.

(6) For financial assistance mechanisms where the applicant's bond is purchased by the Board, the project applicant's bond documentation must include an opinion from recognized bond counsel. Counsel must be experienced in bond matters, and must include an opinion that the drinking water project obligation is a valid and binding obligation of the applicant (see section 8 of this rule). The opinion must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to 11-14-21 of the Utah Code. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel, experienced in bond matters, that the drinking water project obligation is a valid and binding obligation of the applicant.

(7) The Board, through its Executive Secretary, shall issue, if warranted by conformance to Rules R309-500-560, a Plan Approval for plans and specifications.

(8) If a project is designated to be financed by the Board through a loan or an interest buy-down agreement, an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for eligible project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement, all project funds will be maintained in a separate account, and a quarterly report of project expenditures will be provided to the Board.

Incremental disbursement bonds will be required. Cash draws will be based on a schedule that coincides with the rate at which project related costs are expected to be incurred for the project.

(9) If a revenue bond is to be used to secure a loan, a User Charge Ordinance, or water rate structure, must be submitted to the Board for review and approval to insure adequate provisions for debt retirement and/or operation and maintenance. If a general obligation bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to insure the system will have adequate resources to provide acceptable service.

(10) A "Private Company" will be required to enter into a Loan Agreement with the Board. The loan agreement will establish the procedures for disbursement of loan proceeds and will set forth the security interests to be granted to the Board by the Applicant to secure the Applicant's repayment obligations.

(a) The Board may require any of the following forms of security interest or additional/other security interests to guarantee repayment of the loan: deed of trust interests in real property, security interests in equipment and water rights, and personal guarantees.

(b) The security requirements will be established after the Board's staff has reviewed and analyzed the Applicants financial condition.

(c) These requirements may vary from project to project at the discretion of the Board

(d) The Applicant will also be required to execute a Promissory Note in the face amount of the loan, payable to the order of the lender, and file a Utah Division of Corporations and Commercial Code Financing Statement, Form UCC-1.

(e) The Board may specify that loan proceeds be disbursed incrementally into an escrow account for expected construction costs, or it may authorize another acceptable disbursement procedure.

(11) The applicant's contract with its engineer must be submitted to the Board for review to determine if there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

(12) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, validity and

quantity of water rights, and adequacy of bidding and contract documents, as required.

(13) A position fidelity bond may be required by the Board insuring the treasurer or other local staff handling the repayment funds and revenues produced by the applicant's system and payable to the State of Utah through the Drinking Water Board.

(14) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board shall execute the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and shall notify the applicant to sell the bonds.

(15) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant shall sell the bonds and shall notify the Board of the terms of sale. If a credit enhancement agreement is utilized, the bonds shall contain the legend required by 73-10c-6(3)(d) of the Utah Code. If an interest buy-down agreement is being utilized, the bonds shall bear a legend referring to the interest buy-down agreement and state that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

(16) The applicant shall open bids for the project.

(17) LOAN ONLY - The Board shall give final approval to purchase the bonds and execute the loan contract.

(18) LOAN ONLY - The closing of the loan is conducted.

(19) A preconstruction conference shall be held.

(20) The applicant shall issue a written notice to proceed to the contractor.

R309-705-6. Applicant Priority System and Selection of Terms of Assistance.

(1) Priority Determination.

The Board may, at its option, modify a project's priority rating based on the following considerations:

(a) The project plans, specifications, contract, financing, etc., of a lesser-rated project are ready for execution.

(b) Available funding.

(c) Acute health risk.

(d) Capacity Development (financial, technical, or managerial issues needing resolution to avoid EPA intervention).

(e) An Emergency.

The Board will utilize Table 1 to prioritize loan applicants as may be modified by (a), (b), (c), or (d) above.

TABLE 1
Priority System

Deficiency Description	Points Received
Source Quality/Quantity	
Health Risk (select one)	
A. There is evidence that waterborne illnesses have occurred.	25
B. There are reports of illnesses which may be waterborne.	20
C. High potential for waterborne illness exists.	15
D. Moderate potential for waterborne illness	8
E. No evidence of potential health risks	0
Compliance with SDWA (select all that apply)	
A. Source has been determined to be under the influence of surface water.	25
B. System is often out of water due to inadequate source capacity.	20
-or- System capacity does not meet the requirements of UPDWR.	10
C. Source has a history of three or more confirmed microbiological violations within the last year.	10
D. Sources are not developed or protected according to UPDWR.	10
E. Source has confirmed MCL chemistry violations within the last year.	10
Total	100
Treatment	
Deficiency Description	Points Available
Health Risk/Compliance with SDWA (select all that apply)	
A. Treatment system cannot consistently meet log removal requirements, turbidity standards, or other enforceable drinking water quality standards.	25
B. The required disinfection facilities are not installed, are inadequate, or fail to provide adequate water quality.	25
C. Treatment system is subject to impending failure, or has failed.	25
-or- Treatment system equipment does not meet demands of UPDWR including the lead and/or copper action levels.	20
-or- System equipment is projected to become inadequate without upgrades.	5
Total	80
Storage	
Deficiency Description	Points Available
Health Risk / Compliance with SDWA (select all that apply)	
A. Storage system is subject to impending failure, or has failed.	25
-or- System is old, cannot be easily cleaned, or subject to contamination.	15
B. Storage system is inadequate for existing demands.	20
-or- Storage system demand exceeds 90% of storage capacity.	10
C. Applicable contact time requirements cannot be met without an upgrade.	15
D. System suffers from low static pressures.	15
Total	75
Distribution	
Deficiency Description	Points Available
Health Risk/Compliance with SDWA (select all that apply)	
A. Distribution system equipment is deteriorated or inadequate for existing demands.	20
-or- Distribution system is inadequate to meet 5 year projected demands.	10
B. Applicable disinfectant residual maintenance requirements are not met or high backflow contamination potential exists.	20
C. Project will replace pipe containing unsafe materials (lead, asbestos, etc).	15
D. Minimum dynamic pressure requirements are not met.	10
E. System experiences a heavy leak rate in the distribution lines.	10
Total	75
Emergencies	
Upon the Board finding of an emergency as required by R309-705-9.	Total 100

Priority Rating = (Average Points Received) x (Rate Factor) x (AGI Factor)

Where:
* Rate Factor = (Average System Water Bill/Average State Water Bill)
** AGI Factor = (State Median AGI/System Median AGI)

(2) Financial Assistance Determination. The amount and type of financial assistance offered will be based upon the criteria shown in Table 2. As determined by Board resolution, disadvantaged communities may also receive zero-percent loans, or other financial assistance as described herein.

Effective rate calculation methods will be determined by Board resolution from time to time, using the Revenue Bond Buyer Index (RBBI)as a basis point, the points assigned in Table 2, and a method to reduce the interest rate from a recent RBBI rate down to a potential minimum of zero percent. To encourage rapid repayment of a loan the Board will increase the

interest rate 0.02 per cent (0.02%) for each year the repayment period exceeds five (5.0) years.

TABLE 2
INTEREST, HARDSHIP GRANT FEE AND OTHER FEES REDUCTION FACTORS

	POINTS
1. COST EFFECTIVENESS RATIO (SELECT ONE)	
A. Project cost $0 to $500 per benefitting connection	13
B. $501 to $1,500	11
C. $1,501 to $2,000	9
D. $2,001 to $3,000	6
E. $3,001 to $5,000	3
F. $5,001 to $10,000	1
G. Over $10,000	0
2. PRIVATE SECTOR OR OTHER FUNDING, BUT NOT OWN CONTRIBUTION (SELECT ONE)	
A. A reasonable search for it has been made without success	10
B. Will provide greater than 50% of project cost	10
C. Will provide 25 to 49% of project cost	8
D. Will provide 10 to 24% of project cost	5
E. Will provide 1 to 9% of project cost	3
F. Has not been investigated	0
3. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)	
A. Less than 70% of State Median AGI	15
B. 71 to 90% of State Median AGI	12
C. 91 to 115% of State Median AGI	9
D. 116 to 135% of State Median AGI	6
E. 136 to 160% of State Median AGI	3
F. Greater than 161% of State Median AGI	0
4. APPLICANT'S COMMITMENT TO PROJECT PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)	
A. Greater than 25% of project funds	12
B. 10 to 25% of project funds	9
C. 5 to 9% of project funds	6
D. 2 to 4% of project funds	3
E. Less than 2% of project funds	0
5. ABILITY TO REPAY LOAN	
5A. WATER BILL (INCLUDING TAXES) AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME (SELECT ONE)	
a. Greater than 2.50% of local median AGI	15
b. 2.01 to 2.50% of local median AGI	11
c. 1.51 to 2.00% of local median AGI	7
d. 1.01 to 1.50% of local median AGI	3
e. 0 to 1.00% of local median AGI	0
5B. TOTAL DEBT LOAD (PRINCIPAL ONLY) OF APPLICANT AFTER PROJECT IS CONSTRUCTED (INCLUDING WATER AND SEWER DEBT, LIGHTING DEBT, SCHOOL DEBT, ETC.) (SELECT ONE)	
a. Greater than 12% of fair market value	15
b. 8.1 to 12% of fair market value	12
c. 4.1 to 8.0% of fair market value	9
d. 2.1 to 4.0% of fair market value	6
e. 1.0 to 2.0% of fair market value	3
f. Less than 1% of fair market value	0
6. SPECIAL INCENTIVES	
Applicant:	
A. is using a master plan which includes water management and conservation	4
B. has a replacement fund receiving annual deposits of 5% of drinking water budget	4
C. is creating or enhancing a regionalization plan	4
D. has a rate structure encouraging conservation	4
E. has received a Quality Community designation	4
TOTAL POSSIBLE POINTS FOR FINANCIAL NEED	100

R309-705-7. Project Authorization.

A project may receive written authorization for financial or technical assistance from the Board following submission and favorable review of an application form, engineering report (if required), capacity development (including financial capability) assessment and staff feasibility report. The engineering report shall include a cost effective analysis of feasible project alternatives capable of meeting State and Federal drinking water requirements. It shall include consideration of monetary costs including the present worth or equivalent annual value of all capital costs, operation, maintenance, and replacement costs. The alternative selected must be the most economical means of meeting applicable State and Federal drinking water requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations.

Once the application submittals are reviewed, the staff will prepare a project feasibility report for the Board's consideration in Authorizing a project. The project feasibility report will include an evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended (i.e., for a loan, credit enhancement agreement, or interest buy-down agreement).

The Board may authorize financial assistance for any work or facility to provide water for human consumption and other domestic uses. Generally, work means planning, engineering design, or other eligible activities defined elsewhere in these rules.

Project Authorization is conditioned upon the availability of funds at the time of loan closing or signing of the credit enhancement, or interest buy-down and upon adherence to the project schedule approved at that time. The Board, at its own discretion, may require the Applicant to enter into a "Commitment Agreement" with the Board prior to execution of final loan documents or closing of the loan. This Commitment Agreement or Binding Commitment may specify date(s) by which the Applicant must complete the requirements set forth in the Project Authorization Letter. The Commitment Agreement shall state that if the Department of Environmental Quality acting through the Drinking Water Board is unable to make the Loan by the Loan Date, this Agreement shall terminate without any liability accruing to the Department or the Applicant hereunder. Also, if the project does not proceed according to the project schedule, the Board may withdraw project Authorization, so that projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

R309-705-8. Financial Evaluations.

(1) The Board considers it a proper function to assist project applicants in obtaining funding from such financing sources as may be available.

(2) In providing financial assistance in the form of a loan, the Board may purchase bonds of the applicant only if the bonds are accompanied by a legal opinion of recognized municipal bond counsel. Bond counsel must provide an opinion that the bonds are legal and binding under applicable Utah law (including, if applicable, the Utah Municipal Bond Act). For bonds of $150,000 or less the Board will not require this opinion.

(3) In providing financial assistance in the form of a loan, the Board may purchase either taxable or non-taxable bonds; or a secured promissory note provided that it shall be the general preference of the Board to purchase bonds issued by the applicant only if the bonds are tax exempt. Tax-exempt bonds must be accompanied by a legal opinion of recognized municipal bond counsel to the effect that the Interest and the Hardship Grant Assessment, or a fee (also interest) on the bonds is exempt from federal income taxation. Such an opinion must be obtained by the applicant in the following situations:

(a) Bonds which are issued to finance a project which will also be financed in part at any time by the proceeds of other bonds which are exempt from federal income taxation.

(b) Bonds which are not subject to the arbitrage rebate provisions of Section 148 of the Internal Revenue Code of 1986 (or successor provision of similar intent), including, without limitation, bonds covered by the "small governmental units" exemption contained in Section 148(f)(4)(c) of the Internal Revenue Code of 1986 (or any successor provision of similar intent) and bonds which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of such bonds.

(4) If more than 25 percent of the project is to serve industry, bond counsel must evaluate the loan to ensure the tax exempt status of the loan fund.

(5) Revenue bonds purchased by the Board shall be secured by a pledge of water system revenues, and it is the general policy of the Board that the pledge of water revenues for the payment of debt service (principal and/or Hardship Grant Assessment) on a particular revenue bond be on a parity with the pledge of those water revenues as security for the debt service payments on all other bonds or other forms of indebtedness which are secured by the water revenues.

(6) If a project is Authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. It is the Board's intent to avoid repayment schedules exceeding the design life of the project facilities.

(7) Normal engineering and investigation costs incurred by the Department of Environmental Quality (DEQ) or Board during preliminary project investigation and prior to Board Authorization will not become a charge to the applicant if the project is found infeasible, denied by the Board, or if the applicant withdraws the Application prior to the Board's Authorization.

If the credit enhancement agreement or interest buy-down agreement does not involve a loan of funds from the Board administrative costs will not be charged to the project. However, if the Board Authorizes a loan for the project, all costs incurred by the DEQ or Board on the project will be charged against the project and paid by the applicant as a part of the total project cost. Generally, this will include all DEQ and Board costs incurred from the beginning of the preliminary investigations through the end of construction and close-out of the project. If the applicant decides not to build the project after the Board has Authorized the project, all costs accrued after the Authorization date will be reimbursed by the applicant to the Board.

(8) The Board shall determine the date on which the scheduled payments of principal, Hardship Grant Assessment, and interest will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system up to one year of actual use of the project facilities before the first repayment of principal is required.

(9) The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

(10) LOANS AND INTEREST BUY-DOWN AGREEMENTS ONLY - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction prior to or concurrent with the committal of State funds.

(11) The Board will not forgive the applicant of any payment after the payment is due.

(12) The Board will require that a debt service reserve account be established by the applicant at or before the time that the loan is closed. Deposits to that account shall be made at least annually in the amount of one-tenth of the annual payment on the bond(s) purchased by the Board and shall continue until the total amount in the debt service reserve fund is equal to the annual payment. The debt service reserve account shall be continued until the bond is retired. Failure to maintain the reserve account will constitute a technical default on the bond(s).

(13) The Board will require a capital facilities replacement reserve account be established at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of five percent (5%) of the applicant's annual drinking water system budget, including depreciation, unless otherwise specified by the Board at the time of loan authorization, until the loan is repaid. This fund shall not serve as security for the payment of principal or Hardship Grant Assessment on the loan. The applicant shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system. The applicant will not need the consent of the Board prior to making any expenditure from the fund. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed.

(14) If the Board is to purchase a revenue bond, the Board will require that the applicant's water rates be established such that sufficient net revenue will be raised to provide at least 125% or such other amount as the Board may determine of the total annual debt service.

(15) The applicant must have adopted a Water Management and Conservation Plan prior to executing the loan agreement.

R309-705-9. Emergency Assistance.

(1) Authority: Title 73, Chapter 10c of State Statute and the SDWA Amendment of 1996 give the Board authority to provide emergency assistance to drinking water systems.

(2) Eligibility: Generally, any situation occurring as defined in Section R309-705-3 would qualify for consideration for emergency funding. However, prior to authorizing funds for an emergency, the Board may consider one or more of the various factors listed below:

(i) Was the emergency preventable? Did the utility / water system have knowledge that this emergency could be expected? If not. Should it have been aware of the potential for this problem? Did its management take reasonable action to either prevent it or to be as prepared as reasonably possible to correct the problem when it occurred (prepared financially and technically for the event causing the problem)?

(ii) Has the utility / system established a capital improvement replacement reserve fund? Has the utility / system been charging reasonably high rates in order to establish a reserve fund to cover normal infrastructure replacement and emergencies?

(iii) Is the community a disadvantaged (hardship) community?

(iv) Is the potential for illness, injury, or other harm to the public or system operators sufficiently high that the value of providing financial assistance outweighs other factors that would preclude providing this assistance. (Even though the State does not have any legal obligation to provide financial assistance to help correct the problem.).

(3) Requirements for the Applicant: The applicant will be required to do the following as a condition of receiving financial assistance to cope with a drinking water emergency:

(i) To the extent feasible, the utility / system shall first use its own resources, e.g. capital improvement replacement fund, to correct the problem.

(ii) If the utility / system is not placing funds into a reserve fund on a regular basis and / or is charging relatively low water rates it shall be required to examine its current rate structure and policies for placing funds into a reserve account. The Board may require the utility / system to establish a reserve account and / or to revise its rate structure (increasing its rate) as a condition of the loan.

(iii) The Board may place other requirements on the utility / system.

(4) Financial Agreements, Bonding, etc: The State will work with the Applicant to help secure obligating documents. For example, the Board:

(i) Could waive the 30-day notice period, if legally possible.

(ii) Could accept a generic bond.

(iii) Could accept an unsecured loan or bond.

(5) Funding Alternatives: An Applicant may be authorized to receive a loan by any of the financial assistance methods specified in R309-705-4 for funding an emergency project. The Board may set and revise the methodology and factors to be considered when determining the terms of financial assistance it provides including assigning a priority it deems appropriate. The terms of the loan, including length of repayment period, interest or hardship grant assessment, and principal forgiveness (grant) or repayment waivers will be determined at the time the emergency funding is authorized.

(6) Funding Process - The Board must find that an emergency exists according to the criteria in R309-705-9(2). It is anticipated that under normal emergency conditions time restraints will not allow a request for emergency funding to be placed on the agenda of a regularly scheduled Board meeting or adoption and advertisement of a project priority list. Therefore, the following procedures will be followed in processing a loan application for emergency assistance:

(i) Division staff will evaluate each application for emergency funding according to the criteria listed in R309-705-9(2). Staff will solicit recommendations from the LHD and District Engineer about the proposed project to mitigate the emergency. Staff will submit a report of its findings to the Board Chairperson or designee.

(ii) The Board Chairperson or designee will arrange for a timely meeting of the Board to consider authorizing assistance for the emergency. This meeting may be conducted by telephone.

R309-705-10. Committal of Funds and Approval of Agreements.

After the Board has issued a Plan Approval, the loan, credit enhancement, interest buy-down, or hardship grant will be considered by the Board for final approval. The Board will determine whether the agreement is in proper order. The Executive Secretary, or designee, may then execute the loan or credit enhancement agreement if no aspects of the project have changed significantly since the Board's authorization of the loan or credit enhancement, provided all conditions imposed by the Board have been met. If significant changes have occurred the Board will then review the project and, if satisfied, the Board will then commit funds, approve the signing of the contract, credit enhancement agreement, or interest buy-down agreement, and instruct the Executive Secretary to submit a copy of the signed contract or agreement to the Division of Finance.

R309-705-11. Construction.

The Division of Drinking Water staff may conduct inspections and will report to the applicant and applicant's engineer. Contract change orders must be properly negotiated with the contractor and approved in writing. Change orders in excess of $10,000 must receive prior written approval by the Executive Secretary before execution. When the project is complete to the satisfaction of the applicant, the applicant's engineer, and the Executive Secretary, written approval will be issued by the Executive Secretary in accordance with R309-500-9 to commence using the project facilities.

R309-705-12. Compliance with Federal Requirements.

(1) Applicants must show the legal, institutional, managerial, and financial capability to construct, operate, and maintain the drinking water system(s) that the project will serve.

(2) Applicant(s) shall require its contractors to comply with federal provisions for disadvantaged business enterprises and exclusions for businesses under suspension and/or debarment. Any bidder not complying with these requirements shall be considered a non-responsive bidder.

(3) As required by Federal Code, applicants may be subject to the following federal requirements (all assessments shall consider the impacts of the project twenty (20) years into the future):

Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended

Clean Air Act, Pub. L. 84-159, as amended

Coastal Barrier Resources Act, Pub. L. 97-348

Coastal Zone Management Act, Pub. L. 92-583, as amended

Endangered Species Act, Pub. L. 92-583

Environmental Justice, Executive Order 12898

Floodplain Management, Executive Order 11988 as amended by Executive Order 12148

Protection of Wetlands, Executive Order 11990

Farmland Protection Policy Act, Pub. L. 97-98

Fish and Wildlife Coordination Act, Pub. L. 85-624

National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190

National Historic Preservation Act of 1966, PL 89-665, as amended

Safe Drinking Water Act, Pub. L. 93-523, as amended

Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

Age Discrimination Act of 1975, Pub. L. 94-135

Title VI of the Civil Rights Act of 1964, Pub. L. 88-352

Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)

Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)

The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient)

Equal Employment Opportunity, Executive Order 11246

Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432

Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

Anti-Lobbying Provisions (40 CFR Part 30)

Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended

Procurement Prohibitions under Section 306 of the Clean Water Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

Debarment and Suspension, Executive Order 12549

Accounting procedures, whereby applicants agree to maintain a separate project account in accordance with Generally Accepted Accounting Standards and Utah State Uniform Accounting requirements

KEY: SDWA, financial assistance, loans
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R317. Environmental Quality, Water Quality.
R317-6. Ground Water Quality Protection.
R317-6-1. Definitions.

1.1 "Aquifer" means a geologic formation, group of geologic formations or part of a geologic formation that contains sufficiently saturated permeable material to yield usable quantities of water to wells and springs.

1.2 "Background Concentration" means the concentration of a pollutant in ground water upgradient or lateral hydraulically equivalent point from a facility, practice or activity which has not been affected by that facility, practice or activity.

1.3 "Best Available Technology" means the application of design, equipment, work practice, operation standard or combination thereof at a facility to effect the maximum reduction of a pollutant achievable by available processes and methods taking into account energy, public health, environmental and economic impacts and other costs.

1.4 "Best Available Technology Standard" means a performance standard or pollutant concentration achievable through the application of best available technology.

1.5 "Board" means the Utah Water Quality Board.

1.6 "Class TDS Limit" means the upper boundary of the TDS range for an applicable class as specified in Section R317-6-3.

1.7 "Community Drinking Water System" means a public drinking water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

1.8 "Comparable Quality (Source)" means a potential alternative source or sources of water supply which has the same general quality as the ground water source.

1.9 "Comparable Quantity (Source)" means a potential alternative source of water supply capable of reliably supplying water in quantities sufficient to meet the year-round needs of the users served by the ground water source.

1.10 "Compliance Monitoring Point" means a well, seep, spring, or other sampling point used to determine compliance with applicable permit limits.

1.11 "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

1.12 "Conventional Treatment" means normal and usual treatment of water for distribution in public drinking water supply systems including flocculation, sedimentation, filtration, disinfection and storage.

1.13 "Discharge" means the release of a pollutant directly or indirectly into subsurface waters of the state.

1.14 "Existing Facility" means a facility or activity that was in operation or under construction after August 14, 1989 and before February 10, 1990.

1.15 "Economically Infeasible" means, in the context of a public drinking water source, the cost to the typical water user for replacement water would exceed the community's ability to pay.

1.16 "Executive Secretary" means the Executive Secretary of the Utah Water Quality Board.

1.17 "Facility" means any building, structure, processing, handling, or storage facility, equipment or activity; or contiguous group of buildings, structures, or processing, handling or storage facilities, equipment, or activities or combination thereof.

1.18 "Gradient" means the change in total water pressure head per unit of distance.

1.19 "Ground Water" means subsurface water in the zone of saturation including perched ground water.

1.20 "Ground Water Quality Standards" means numerical contaminant concentration levels adopted by the Board in or under R317-6-2 for the protection of the subsurface waters of the State.

1.21 "Infiltration" means the movement of water from the land surface into the pores of rock, soil or sediment.

1.22 "Institutional Constraints" means legal or other restrictions that preclude replacement water delivery and which cannot be alleviated through administrative procedures or market transactions.

1.23 "Lateral Hydraulically Equivalent Point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water at that point has not been affected by the facility.

1.24 "Limit of Detection" means the concentration of a chemical below which it can not be detected using currently accepted sampling and analytical techniques for drinking water as determined by the U.S. Environmental Protection Agency.

1.25 "New Facility" means a facility for which construction or modification is initiated after February 9, 1990.

1.26 "Permit Limit" means a ground water pollutant concentration limitation specified in a Ground Water Discharge Permit and may include protection levels, class TDS limits, ground water quality standards, alternate concentration limits, permit-specific ground water quality standards, or limits stipulated in the application and use of best available technology. For facilities permitted by rule under R317-6-6.2, a permit limit is a ground water pollutant concentration limitation specified in R317-6-6.2.B.

1.27 "Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the federal, state, or local government.

1.28 "Point of Discharge" means the area within outermost location at which effluent or leachate has been stored, applied, disposed of, or discharged; for a diked facility, the outermost edge of the dikes.

1.29 "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, munitions, trash, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into waters of the state.

1.30 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the State, or such discharge of any liquid, gaseous, or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.31 "Professional Engineer" means any person qualified to practice engineering before the public in the state of Utah and professionally registered as required under the Professional Engineers and Professional Land Surveyors Licensing Act rules (UAC 156-22).

1.32 "Professional Geologist" means any person qualified to practice geology before the public in the State of Utah and professionally registered as required under the Professional Geologist Licensing Act rules (UAC R156-76).

1.33 "Protection Level" means the ground water pollutant concentration levels specified in R317-6-4.

1.34 "Substantial Treatment" means treatment of water utilizing specialized treatment methods including ion exchange, reverse osmosis, electrodialysis and other methods needed to upgrade water quality to meet standards for public water systems.

1.35 "Technology Performance Monitoring" means the evaluation of a permitted facility to determine compliance with best available technology standards.

1.36 "Total Dissolved Solids (TDS)" means the quantity of dissolved material in a sample of water which is determined by weighing the solid residue obtained by evaporating a

measured volume of a filtered sample to dryness; or for many waters that contain more than 1000 mg/l, the sum of the chemical constituents.

1.37 "Radius of Influence" means the radial distance from the center of a well bore to the point where there is no lowering of the water table or potentiometric surface because of pumping of the well; the edge of the cone of depression.

1.38 "Upgradient" means a point located hydraulically above a facility such that the ground water at that point has not been impacted by discharges from the facility.

1.39 "Vadose Zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

1.40 "Waste" see "Pollutant."

1.41 "Water Table" means the top of the saturated zone of a body of unconfined ground water at which the pressure is equal to that of the atmosphere.

1.42 "Water Table Aquifer" means an aquifer extending downward from the water table to the first confining bed.

1.43 "Waters of the State" means all streams, lakes, ponds, marshes, water courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof; except bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition.

1.44 "Zone of Influence" means the area contained by the outer edge of the drawdown cone of a water well.

R317-6-2. Ground Water Quality Standards.

2.1 The following Ground Water Quality Standards as listed in Table I are adopted for protection of ground water quality.

TABLE 1
GROUND WATER QUALITY STANDARDS

Parameter	Milligrams per liter (mg/l) unless noted otherwise and based on analysis of filtered sample except for Mercury and organic compounds
PHYSICAL CHARACTERISTICS	
Color (units)	15.0
Corrosivity (characteristic)	noncorrosive
Odor (threshold number)	3.0
pH (units)	6.5-8.5
INORGANIC CHEMICALS	
Bromate	0.01
Chloramine (as Cl_2)	4
Chlorine (as Cl_2)	4
Chlorine Dioxide	0.8
Chlorite	1.0
Cyanide (free)	0.2
Fluoride	4.0
Nitrate (as N)	10.0
Nitrite (as N)	1.0
Total Nitrate/Nitrite (as N)	10.0
METALS	
Antimony	0.006
Asbestos (fibers/l and > 10 microns in length)	7.0×10^6
Arsenic	0.05
Barium	2.0
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Copper	1.3
Lead	0.015
Mercury	0.002
Selenium	0.05
Silver	0.1
Thallium	0.002
Zinc	5.0
ORGANIC CHEMICALS	
Pesticides and PCBs	
Alachlor	0.002
Aldicarb	0.003
Aldicarb sulfone	0.002
Aldicarb sulfoxide	0.004
Atrazine	0.003
Carbofuran	0.04
Chlordane	0.002
Dalapon (sodium salt)	0.2
Dibromochloropropane (DBCP)	0.0002
2, 4-D	0.07
Dichlorophenoxyacetic acid (2, 4-) (2,4D)	0.07
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylene Dibromide (EDB)	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Oxamyl (Vydate)	0.2
Pentachlorophenol	0.001
Picloram	0.5
Polychlorinated Biphenyls	0.0005
Simazine	0.004
Toxaphene	0.003
2, 4, 5-TP (Silvex)	0.05
VOLATILE ORGANIC CHEMICALS	
Benzene	0.005
Benzo (a) pyrene (PAH)	0.0002
Carbon tetrachloride	0.005
1, 2 - Dichloroethane	0.005
1, 1 - Dichloroethylene	0.007
1, 1, 1-Trichloroethane	0.200
Dichloromethane	0.005
Di (2-ethylhexyl) adipate	0.4
Di (2-ethylhexyl) phthalate	0.006
Dioxin (2,3,7,8-TCDD)	0.00000003
para - Dichlorobenzene	0.075
o-Dichlorobenzene	0.6
cis-1,2 dichloroethylene	0.07
trans-1,2 dichloroethylene	0.1
1,2 Dichloropropane	0.005
Ethylbenzene	0.7
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Monochlorobenzene	0.1
Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1
Trichlorobenzene (1,2,4-)	0.07
Trichloroethane (1,1,1-)	0.2
Trichloroethane (1,1,2-)	0.005
Trichloroethylene	0.005
Vinyl chloride	0.002
Xylenes (Total)	10
OTHER ORGANIC CHEMICALS	
Five Haloacetic Acids (HAA5) (Monochloroacetic acid) (Dichloroacetic acid) (Trichloroacetic acid) (Bromoacetic acid) (Dibromoacetic acid)	0.06
Total Trihalomethanes (TTHM)	0.08
RADIONUCLIDES The following are the maximum contaminant levels for Radium-226 and Radium-228, and gross alpha particle radioactivity, beta particle radioactivity, photon radioactivity, and uranium concentration:	
Combined Radium-226 and Radium-228	5pCi/l
Gross alpha particle activity, including Radium-226 but excluding Radon and Uranium	15pCi/l
Uranium	0.030 mg/l
Beta particle and photon radioactivity	

The average annual concentration from man-made radionuclides of beta particle and photon radioactivity from man-made radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirem/year.

Except for the radionuclides listed below, the concentration of man-made radionuclides causing four millirem total body or organ dose equivalents shall be calculated on the basis of a two liter per day drinking water intake using the 168 hour data listed in "Maximum Permissible Body Burden and Maximum Permissible Concentration Exposure", NBS Handbook 69 as amended August 1962, U.S. Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed four millirem/year.

Average annual concentrations assumed to produce a total body or organ dose of four millirem/year:

Radionuclide	Critical Organ	pCi per liter
Tritium	Total Body	20,000
Strontium-90	Bone Marrow	8

2.2 A permit specific ground water quality standard for any pollutant not specified in Table 1 may be established by the Executive Secretary at a level that will protect public health and the environment. This permit limit may be based on U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk based contaminant levels, standards established by other regulatory agencies and other relevant information.

R317-6-3. Ground Water Classes.

3.1 GENERAL

The following ground water classes are established: Class IA - Pristine Ground Water; Class IB - Irreplaceable Ground Water; Class IC - Ecologically Important Ground Water; Class II - Drinking Water Quality Ground Water; Class III - Limited Use Ground Water; Class IV - Saline Ground Water.

3.2 CLASS IA - PRISTINE GROUND WATER

Class IA ground water has the following characteristics:

A. Total dissolved solids of less than 500 mg/l.

B. No contaminant concentrations that exceed the ground water quality standards listed in Table 1.

3.3 CLASS IB - IRREPLACEABLE GROUND WATER

Class IB ground water is a source of water for a community public drinking water system for which no reliable supply of comparable quality and quantity is available because of economic or institutional constraints.

3.4 CLASS IC - ECOLOGICALLY IMPORTANT GROUND WATER

Class IC ground water is a source of ground water discharge important to the continued existence of wildlife habitat.

3.5 CLASS II - DRINKING WATER QUALITY GROUND WATER

Class II ground water has the following characteristics:

A. Total dissolved solids greater than 500 mg/l and less than 3000 mg/l.

B. No contaminant concentrations that exceed ground water quality standards in Table 1.

3.6 CLASS III - LIMITED USE GROUND WATER

Class III ground water has one or both of the following characteristics:

A. Total dissolved solids greater than 3000 mg/l and less than 10,000 mg/l, or;

B. One or more contaminants that exceed the ground water quality standards listed in Table 1.

3.7 CLASS IV - SALINE GROUND WATER

Class IV ground water has total dissolved solids greater than 10,000 mg/l.

R317-6-4. Ground Water Class Protection Levels.

4.1 GENERAL

A. Protection levels are ground water pollutant concentration limits, set by ground water class, for the operation of facilities that discharge or would probably discharge to ground water.

B. For the physical characteristics (color, corrosivity, odor, and pH) and radionuclides listed in Table 1, the values listed are the protection levels for all ground water classes.

4.2 CLASS IA PROTECTION LEVELS

A. Class IA ground water will be protected to the maximum extent feasible from degradation due to facilities that discharge or would probably discharge to ground water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the greater of 1.25 times the background or background plus two standard deviations.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard value, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.25 times the background concentration, 0.25 times the ground water quality standard, or background plus two standard deviations; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.3 CLASS IB PROTECTION LEVELS

A. Class IB ground water will be protected as an irreplaceable source of drinking water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the lesser of 1.1 times the background value or 2000mg/l.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.1 times the background concentration or 0.1 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.4 CLASS IC PROTECTION LEVELS

Class IC ground water will be protected as a source of water for potentially affected wildlife habitat. Limits on increases of total dissolved solids and organic and inorganic chemical compounds will be determined in order to meet applicable surface water standards.

4.5 CLASS II PROTECTION LEVELS

A. Class II ground water will be protected for use as drinking water or other similar beneficial use with conventional treatment prior to use.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the greater of 1.25 times the background value or background plus two standard deviations.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.25 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.25 times the background concentration, 0.25 times the ground water quality standard, or background plus two standard deviations; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.6 CLASS III PROTECTION LEVELS

A. Class III ground water will be protected as a potential

source of drinking water, after substantial treatment, and as a source of water for industry and agriculture.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the greater of 1.25 times the background concentration level or background plus two standard deviations.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.5 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.5 times the background concentration or 0.5 times the ground water quality standard or background plus two standard deviations; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard. If the background concentration exceeds the ground water quality standard no increase will be allowed.

4.7 CLASS IV PROTECTION LEVELS

Protection levels for Class IV ground water will be established to protect human health and the environment.

R317-6-5. Ground Water Classification for Aquifers.

5.1 GENERAL

A. When sufficient information is available, entire aquifers or parts thereof may be classified by the Board according to the quality of ground water contained therein and commensurate protection levels will be applied.

B. Ground water sources furnishing water to community drinking water systems with ground water meeting Class IA criteria are classified as Class IA.

5.2 CLASSIFICATION AND RECLASSIFICATION PROCEDURE

A. The Board may initiate classification or reclassification.

B. A petition for classification or reclassification must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

C. Boundaries for class areas will be delineated so as to enclose distinct ground water classes as nearly as known facts permit. Boundaries will be based on hydrogeologic properties, existing ground water quality and for Class IB and IC, current use. Parts of an aquifer may be classified differently.

D. The petitioner requesting reclassification will provide sufficient information to determine if reclassification is in the best interest of the beneficial users.

E. A petition for classification or reclassification shall include:

1. factual data supporting the proposed classification;

2. a description of the proposed ground waters to be classified or reclassified;

3. potential contamination sources;

4. ground water flow direction;

5. current beneficial uses of the ground water; and

6. location of all water wells in the area to be classified or reclassified.

F. One or more public hearings will be held to receive comment on classification and reclassification proposals.

G. The Board will determine the disposition of all petitions for classification and reclassification, except as provided in R317-6-5.2.H.

H. Ground water proximate to a facility for which an application for a ground water discharge permit has been made may be classified by the Executive Secretary for purposes of making permitting decisions.

R317-6-6. Implementation.

6.1 DUTY TO APPLY FOR A GROUND WATER DISCHARGE PERMIT

A. No person may construct, install, or operate any new facility or modify an existing or new facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, without a ground water discharge permit from the Executive Secretary. A ground water discharge permit application should be submitted at least 180 days before the permit is needed.

B. All persons who constructed, modified, installed, or operated any existing facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to: land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, must have submitted a notification of the nature and location of the discharge to the Executive Secretary before February 10, 1990 and must submit an application for a ground water discharge permit within one year after receipt of written notice from the Executive Secretary that a ground water discharge permit is required.

6.2 GROUND WATER DISCHARGE PERMIT BY RULE

A. Except as provided in R317-6-6.2.C, the following facilities are considered to be permitted by rule and are not required to obtain a discharge permit under R317-6-6.1 or comply with R317-6-6.3 through R317-6-6.7, R317-6-6.9 through R317-6-6.11, R317-6-6.13, R317-6-6.16, R317-6-6.17 and R317-6-6.18:

1. facilities with effluent or leachate which has been demonstrated to the satisfaction of the Executive Secretary to conform and will not deviate from the applicable class TDS limits, ground water quality standards, protection levels or other permit limits and which does not contain any contaminant that may present a threat to human health, the environment or its potential beneficial uses of the ground water. The Executive Secretary may require samples to be analyzed for the presence of contaminants before the effluent or leachate discharges directly or indirectly into ground water. If the discharge is by seepage through natural or altered natural materials, the Executive Secretary may require samples of the solution be analyzed for the presence of pollutants before or after seepage;

2. water used for watering of lawns, gardens, or shrubs or for irrigation for the revegetation of a disturbed land area except for the direct land application of wastewater;

3. application of agricultural chemicals including fertilizers, herbicides and pesticides including but not limited to, insecticides fungicides, rodenticides and fumigants when used in accordance with current scientifically based manufacturer's recommendations for the crop, soil, and climate and in accordance with state and federal statutes, regulations, permits, and orders adopted to avoid ground water pollution;

4. water used for irrigated agriculture except for the direct land application of wastewater from municipal, industrial or mining facilities;

5. flood control systems including detention basins, catch basins and wetland treatment facilities used for collecting or conveying storm water runoff;

6. natural ground water seeping or flowing into conventional mine workings which re-enters the ground by natural gravity flow prior to pumping or transporting out of the mine and without being used in any mining or metallurgical process;

7. leachate which results entirely from the direct natural

infiltration of precipitation through undisturbed materials;

8. wells and facilities regulated under the underground injection control (UIC) program;

9. land application of livestock wastes, within expected crop nitrogen uptake;

10. individual subsurface wastewater disposal systems approved by local health departments or large subsurface wastewater disposal systems approved by the Board;

11. produced water pits, and other oil field waste treatment, storage, and disposal facilities regulated by the Division of Oil, Gas, and Mining in accordance with Section 40-6-5(3)(d) and R649-9, Disposal of Produced Water;

12. reserve pits regulated by the Division of Oil, Gas and Mining in accordance with Section 40-6-5(3)(a) and R649-3-7, Drilling and Operating Practices;

13. storage tanks installed or operated under regulations adopted by the Utah Solid and Hazardous Waste Control Board;

14. coal mining operations or facilities regulated under the Coal Mining and Reclamation Act by the Utah Division of Oil, Gas, and Mining (DOGM). The submission of an application for ground water discharge permit under R317-6-6.2.C may be required only if the Executive Secretary, after consideration of recommendations, if any, by DOGM, determines that the discharge violates applicable ground water quality standards, applicable Class TDS limits, or is interfering with a reasonable foreseeable beneficial use of the ground water. DOGM is not required to establish any administrative or regulatory requirements which are in addition to the rules of DOGM for coal mining operations or facilities to implement these ground water regulations;

15. hazardous waste or solid waste management units managed or undergoing corrective action under R315-1 through R315-14;

16. solid waste landfills permitted under the requirements of R315-303;

17. animal feeding operations, as defined in UAC R317-8-3.5(2) that use liquid waste handling systems, which are not located within Zone 1 (100 feet) for wells in a confined aquifer or Zone 2 (250 day time of travel) for wells and springs in unconfined aquifers, in accordance with the Public Drinking Water Regulations UAC R309-600, and which meet either of the following criteria:

a) operations constructed prior to the effective date of this rule which incorporated liquid waste handling systems and which are either less than 4 million gallons capacity or serve fewer than 1000 animal units, or

b. operations with fewer than the following numbers of confined animals:

i. 1,500 slaughter and feeder cattle,

ii. 1,050 mature dairy cattle, whether milked or dry cows,

iii. 3,750 swine each weighing over 25 kilograms (approximately 55 pounds),

iv. 18,750 swine each weighing 25 kilograms or less (approximately 55 pounds),

v. 750 horses,

vi. 15,000 sheep or lambs,

vii. 82,500 turkeys,

viii. 150,000 laying hens or broilers that use continuous overflow watering but dry handle wastes,

ix. 45,000 hens or broilers,

x. 7,500 ducks, or

xi. 1,500 animal units

18. animal feeding operations, as defined in UAC R317-8-3.5(2), which do not utilize liquid waste handling systems;

19. mining, processing or milling facilities handling less than 10 tons per day of metallic and/or nonmetallic ore and waste rock, not to exceed 2500 tons/year in aggregate unless the processing or milling uses chemical leaching;

20. pipelines and above-ground storage tanks;

21. drilling operations for metallic minerals, nonmetallic minerals, water, hydrocarbons, or geothermal energy sources when done in conformance with applicable regulations of the Utah Division of Oil, Gas, and Mining or the Utah Division of Water Rights;

22. land application of municipal sewage sludge for beneficial use, at or below the agronomic rate and in compliance with the requirements of 40 CFR 503, July 1, 2000 edition;

23. land application of municipal sewage sludge for mine-reclamation at a rate higher than the agronomic rate and in compliance with 40 CFR 503, July 1, 2000 edition;

24. municipal wastewater treatment lagoons receiving no wastewater from a significant industrial discharger as defined in R317-8-8.2(12); and

25. facilities and modifications thereto which the Executive Secretary determines after a review of the application will have a de minimis actual or potential effect on ground water quality.

B. No facility permitted by rule under R317-6-6.2.A may cause ground water to exceed ground water quality standards or the applicable class TDS limits in R317-6-3.1 to R317-6-3.7. If the background concentration for affected ground water exceeds the ground water quality standard, the facility may not cause an increase over background. This section, R317-6-6.2B. does not apply to facilities undergoing corrective action under R317-6-6.15A.3.

C. The submission of an application for a ground water discharge permit may be required by the Executive Secretary for any discharge permitted by rule under R317-6-6.2 if it is determined that the discharge may be causing or is likely to cause increases above the ground water quality standards or applicable class TDS limits under R317-6-3 or otherwise is interfering or may interfere with probable future beneficial use of the ground water.

6.3 APPLICATION REQUIREMENTS FOR A GROUND WATER DISCHARGE PERMIT

Unless otherwise determined by the Executive Secretary, the application for a permit to discharge wastes or pollutants to ground water shall include the following complete information:

A. The name and address of the applicant and the name and address of the owner of the facility if different than the applicant. A corporate application must be signed by an officer of the corporation. The name and address of the contact, if different than above, and telephone numbers for all listed names shall be included.

B. The legal location of the facility by county, quarter-quarter section, township, and range.

C. The name of the facility and the type of facility, including the expected facility life.

D. A plat map showing all water wells, including the status and use of each well, Drinking Water source protection zones, topography, springs, water bodies, drainages, and man-made structures within a one-mile radius of the discharge. The plat map must also show the location and depth of existing or proposed wells to be used for monitoring ground water quality. Identify any applicable Drinking Water source protection ordinances and their impacts on the proposed permit.

E. Geologic, hydrologic, and agricultural description of the geographic area within a one-mile radius of the point of discharge, including soil types, aquifers, ground water flow direction, ground water quality, aquifer material, and well logs.

F. The type, source, and chemical, physical, radiological, and toxic characteristics of the effluent or leachate to be discharged; the average and maximum daily amount of effluent or leachate discharged (gpd), the discharge rate (gpm), and the expected concentrations of any pollutant (mg/l) in each discharge or combination of discharges. If more than one discharge point is used, information for each point must be given separately.

G. Information which shows that the discharge can be controlled and will not migrate into or adversely affect the quality of any other waters of the state, including the applicable surface water quality standards, that the discharge is compatible with the receiving ground water, and that the discharge will comply with the applicable class TDS limits, ground water quality standards, class protection levels or an alternate concentration limit proposed by the facility.

H. For areas where the ground water has not been classified by the Board, information on the quality of the receiving ground water sufficient to determine the applicable protection levels.

I. A proposed sampling and analysis monitoring plan which conforms to EPA Guidance for Quality Assurance Project Plans, EPA QA/G-5 (EPA/600/R-98/018, February 1998) and includes a description, where appropriate, of the following:

1. ground water monitoring to determine ground water flow direction and gradient, background quality at the site, and the quality of ground water at the compliance monitoring point;

2. installation, use and maintenance of monitoring devices;

3. description of the compliance monitoring area defined by the compliance monitoring points including the dimensions and hydrologic and geologic data used to determine the dimensions;

4. monitoring of the vadose zone;

5. measures to prevent ground water contamination after the cessation of operation, including post-operational monitoring;

6. monitoring well construction and ground water sampling which conform where applicable to the Handbook of Suggested Practices for Design and Installation of Ground-Water Monitoring Wells (EPA/600/4-89/034, March 1991), ASTM Standards on Ground Water and Vadose Investigations (1996), Practical Guide for Ground Water Sampling EPA/600/2-85/104, (November 1985) and RCRA Ground Water Monitoring Technical Enforcement Guidance Document (1986), unless otherwise specified by the Executive Secretary;

7. description and justification of parameters to be monitored;

8. quality assurance and control provisions for monitoring data.

J. The plans and specifications relating to construction, modification, and operation of discharge systems.

K. The description of the ground water most likely to be affected by the discharge, including water quality information of the receiving ground water prior to discharge, a description of the aquifer in which the ground water occurs, the depth to the ground water, the saturated thickness, flow direction, porosity, hydraulic conductivity, and flow systems characteristics.

L. The compliance sampling plan which in addition to the information specified in the above item I includes, where appropriate, provisions for sampling of effluent and for flow monitoring in order to determine the volume and chemistry of the discharge onto or below the surface of the ground and a plan for sampling compliance monitoring points and appropriate nearby water wells. Sampling and analytical methods proposed in the application must conform with the most appropriate methods specified in the following references unless otherwise specified by the Executive Secretary:

1. Standard Methods for the Examination of Water and Wastewater, twentieth edition, 1998; Library of Congress catalogue number: ISBN: 0-87553-235-7.

2. E.P.A. Methods, Methods for Chemical Analysis of Water and Wastes, 1983; Stock Number EPA-600/4-79-020.

3. Techniques of Water Resource Investigations of the U.S. Geological Survey, (1998); Book 9.

4. Monitoring requirements in 40 CFR parts 141 and 142, 2000 ed., Primary Drinking Water Regulations and 40 CFR parts 264 and 270, 2000 ed.

5. National Handbook of Recommended Methods for Water-Data Acquisition, GSA-GS edition; Book 85 AD-2777, U.S. Government Printing Office Stock Number 024-001-03489-1.

M. A description of the flooding potential of the discharge site, including the 100-year flood plain, and any applicable flood protection measures.

N. Contingency plan for regaining and maintaining compliance with the permit limits and for reestablishing best available technology as defined in the permit.

O. Methods and procedures for inspections of the facility operations and for detecting failure of the system.

P. For any existing facility, a corrective action plan or identification of other response measures to be taken to remedy any violation of applicable ground water quality standards, class TDS limits or permit limit established under R317-6-6.4E. which has resulted from discharges occurring prior to issuance of a ground water discharge permit.

Q. Other information required by the Executive Secretary.

R. All applications for a groundwater discharge permit must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

S. A closure and post closure management plan demonstrating measures to prevent ground water contamination during the closure and post closure phases of an operation.

6.4 ISSUANCE OF DISCHARGE PERMIT

A. The Executive Secretary may issue a ground water discharge permit for a new facility if the Executive Secretary determines, after reviewing the information provided under R317-6-6.3, that:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards protection levels, and permit limits established under R317-6-6.4E will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant is using best available technology to minimize the discharge of any pollutant; and

4. there is no impairment of present and future beneficial uses of the ground water.

B. The Board may approve an alternate concentration limit for a new facility if:

1. The applicant submits a petition for an alternate concentration limit showing the extent to which the discharge will exceed the applicable class TDS limits, ground water standards or applicable protection levels and demonstrates that:

a. the facility is to be located in an area of Class III ground water;

b. the discharge plan incorporates the use of best available technology;

c. the alternate concentration limit is justified based on substantial overriding social and economic benefits; and,

d. the discharge would pose no threat to human health and the environment.

2. One or more public hearings have been held by the Board in nearby communities to solicit comment.

C. The Executive Secretary may issue a ground water discharge permit for an existing facility provided:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards and protection levels will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant utilizes treatment and discharge minimization technology commensurate with plant process design capability and similar or equivalent to that utilized by facilities that produce similar products or services with similar production process technology; and,

4. there is no current or anticipated impairment of present and future beneficial uses of the ground water.

D. The Board may approve an alternate concentration limit for a pollutant in ground water at an existing facility or facility permitted by rule under R317-6-6.2 if the applicant for a ground water discharge permit shows the extent the discharge exceeds the applicable class TDS limits, ground water quality standards and applicable protection levels that correspond to the otherwise applicable ground water quality standards and demonstrates that:

1. steps are being taken to correct the source of contamination, including a program and timetable for completion;

2. the pollution poses no threat to human health and the environment; and

3. the alternate concentration limit is justified based on overriding social and economic benefits.

E. An alternate concentration limit, once adopted by the Board under R317-6-6.4B or R317-6-6.4D, shall be the pertinent permit limit.

F. A facility permitted under this provision shall meet applicable class TDS limits, ground water quality standards, protection levels and permit limits.

G. The Board may modify a permit for a new facility to reflect standards adopted as part of corrective action.

6.5 NOTICE OF INTENT TO ISSUE A GROUND WATER DISCHARGE PERMIT

The Executive Secretary shall publish a notice of intent to approve in a newspaper in the affected area and shall allow 30 days in which interested persons may comment to the Board. Final action will be taken by the Executive Secretary following the 30-day comment period.

6.6 PERMIT TERM

A. The ground water discharge permit term will run for 5 years from the date of issuance. Permits may be renewed for 5-year periods or extended for a period to be determined by the Executive Secretary but not to exceed 5 years.

B. In the event that new ground water quality standards are adopted by the Board, permits may be reopened to extend the terms of the permit or to include pollutants covered by new standards. The holder of a permit may apply for a variance under the conditions outlined in R317-6-6.4.D.

6.7 GROUND WATER DISCHARGE PERMIT RENEWAL

The permittee for a facility with a ground water discharge permit must apply for a renewal or extension for a ground water discharge permit at least 180 days prior to the expiration of the existing permit. If a permit expires before an application for renewal or extension is acted upon by the Executive Secretary, the permit will continue in effect until it is renewed, extended or denied. Permit renewals with significant changes to the original permit must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

6.8 TERMINATION OF A GROUND WATER DISCHARGE PERMIT BY THE EXECUTIVE SECRETARY

A ground water discharge permit may be terminated or a renewal denied by the Executive Secretary if one of the following applies:

A. noncompliance by the permittee with any condition of the permit where the permittee has failed to take appropriate action in a timely manner to remedy the permit violation;

B. the permittee's failure in the application or during the permit approval process to disclose fully all significant relevant facts at any time;

C. a determination that the permitted facility endangers human health or the environment and can only be regulated to acceptable levels by plan modification or termination; or

D.the permittee requests termination of the permit.

6.9 PERMIT COMPLIANCE MONITORING

A. Ground Water Monitoring

The Executive Secretary may include in a ground water discharge permit requirements for ground water monitoring, and may specify compliance monitoring points where the applicable class TDS limits, ground water quality standards, protection levels or other permit limits are to be met.

The Executive Secretary will determine the location of the compliance monitoring point based upon the hydrology, type of pollutants, and other factors that may affect the ground water quality. The distance to the compliance monitoring points must be as close as practicable to the point of discharge. The compliance monitoring point shall not be beyond the property boundaries of the permitted facility without written agreement of the affected property owners and approval by the Executive Secretary.

B. Performance Monitoring

The Executive Secretary may include in a ground water discharge permit requirements for monitoring performance of best available technology standards.

6.10 BACKGROUND WATER QUALITY DETERMINATION

A. Background water quality contaminant concentrations shall be determined and specified in the ground water discharge permit. The determination of background concentration shall take into account any degradation.

B. Background water quality contaminant concentrations may be determined from existing information or from data collected by the permit applicant. Existing information shall be used, if the permit applicant demonstrates that the quality of the information and its means of collection are adequate to determine background water quality. If existing information is not adequate to determine background water quality, the permit applicant shall submit a plan to determine background water quality to the Executive Secretary for approval prior to data collection. One or more up-gradient, lateral hydraulically equivalent point, or other monitoring wells as approved by the Executive Secretary may be required for each potential discharge site.

C. After a permit has been issued, permittee shall continue to monitor background water quality contaminant concentrations in order to determine natural fluctuations in concentrations. Applicable up-gradient, and on-site ground water monitoring data shall be included in the ground water quality permit monitoring report.

6.11 NOTICE OF COMMENCEMENT AND DISCONTINUANCE OF GROUND WATER DISCHARGE OPERATIONS

A. The permittee shall notify the Division of Water Quality immediately upon commencement of the ground water discharge and submit a written notice within 30 days of the commencement of the discharge.

B. The permittee shall notify the Division of Water Quality of the date and reason for discontinuance of ground water discharge within 30 days.

6.12 SUBMISSION OF DATA

A. Laboratory Analyses

All laboratory analysis of samples collected to determine compliance with these regulations shall be performed in accordance with standard procedures by the Utah Division of Laboratory Services or by a laboratory certified by the Utah Department of Health.

B. Field Analyses

All field analyses to determine compliance with these regulations shall be conducted in accordance with standard procedures specified in R317-6-6.3.L.

C. Periodic Submission of Monitoring Reports

Results obtained pursuant to any monitoring requirements in the discharge permit and the methods used to obtain these results shall be periodically reported to the Executive Secretary

according to the schedule specified in the ground water discharge permit.

6.13 REPORTING OF MECHANICAL PROBLEMS OR DISCHARGE SYSTEM FAILURES

The permittee shall notify the Executive Secretary within 24 hours of the discovery of any mechanical or discharge system failures that could affect the chemical characteristics or volume of the discharge. A written statement confirming the oral report shall be submitted to the Executive Secretary within five days of the failure.

6.14 CORRECTION OF ADVERSE EFFECTS REQUIRED

A. If monitoring or testing indicates that the permit conditions may be or are being violated by ground water discharge operations or the facility is otherwise in an out-of-compliance status, the permittee shall promptly make corrections to the system to correct all violations of the discharge permit.

B. The permittee, operator, or owner may be required to take corrective action as described in R317-6-6.15 if a pollutant concentration has exceeded a permit limit.

6.15 CORRECTIVE ACTION

It is the intent of the Board that the provisions of these regulations should be considered when making decisions under any state or federal superfund action; however, the protection levels are not intended to be considered as applicable, relevant or appropriate clean-up standards under such other regulatory programs.

A. Application of R317-6-6.15

1. Generally - R317-6-6.15 shall apply to any person who discharges pollutants into ground water in violation of Section 19-5-107, or who places or causes to be placed any wastes in a location where there is probable cause to believe they will cause pollution of ground water in violation of Section 19-5-107.

2. Corrective Action shall include, except as otherwise provided in R317-6-6.15, preparation of a Contamination Investigation and preparation and implementation of a Corrective Action Plan.

3. The procedural provisions of R-317-6-6.15 shall not apply to any facility where a corrective or remedial action for ground water contamination, that the Executive Secretary determines meets the substantive standards of this rule, has been initiated under any other state or federal program. Corrective or remedial action undertaken under the programs specified in Table 2 are considered to meet the substantive standards of this rule unless otherwise determined by the Executive Secretary.

TABLE 2
PROGRAM

Leaking Underground Storage Tank, Sections 19-6-401, et seq.

Federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601, et seq.

Hazardous Waste Mitigation Act, Sections 19-6-301 et seq.
Utah Solid and Hazardous Waste Act, Sections 19-6-101 et seq.

B. Notification and Interim Action

1. Notification - A person who spills or discharges any oil or other substance which may cause pollution of ground waters in violation of Section 19-5-107 shall notify the Executive Secretary within 24 hours of the spill or discharge. A written notification shall be submitted to the Executive Secretary within five days after the spill or discharge.

2. Interim Actions - A person is encouraged to take immediate, interim action without following the steps outlined in R317-6-6.15 if such action is required to control a source of pollutants. Interim action is also encouraged if required to protect public safety, public health and welfare and the environment, or to prevent further contamination that would result in costlier clean-up. Such interim actions should include source abatement and control, neutralization, or other actions as appropriate. A person that has taken these actions shall remain subject to R317-6-6.15 after the interim actions are completed unless he demonstrates that:

a. no pollutants have been discharged into ground water in violation of 19-5-107; and

b. no wastes remain in a location where there is probable cause to believe they will cause pollution of ground water in violation of 19-5-107.

C. Contamination Investigation and Corrective Action Plan - General

1. The Executive Secretary may require a person that is subject to R317-6-6.15 to submit for the Executive Secretary's approval a Contamination Investigation and Corrective Action Plan, and may require implementation of an approved Corrective Action Plan. A person subject to this rule who has been notified that the Executive Secretary is exercising his or her authority under R317-6-6.15 to require submission of a Contamination Investigation and Corrective Action Plan, shall, within 30 days of that notification, submit to the Executive Secretary a proposed schedule for those submissions, which may include different deadlines for different elements of the Investigation and Plan. The Executive Secretary may accept, reject, or modify the proposed schedule.

2. The Contamination Investigation or the Corrective Action Plan may, in order to meet the requirements of this Part, incorporate by reference information already provided to the Executive Secretary in the Contingency Plan or other document.

3. The requirements for a Contamination Investigation and a Corrective Action Plan specified in R317-6-6.15.D are comprehensive. The requirements are intended to be applied with flexibility, and persons subject to this rule are encouraged to contact the Executive Secretary's staff to assure its efficient application on a site-specific basis.

4. The Executive Secretary may waive any or all Contamination Investigation and Corrective Action Plan requirements where the person subject to this rule demonstrates that the information that would otherwise be required is not necessary to the Executive Secretary's evaluation of the Contamination Investigation or Corrective Action Plan. Requests for waiver shall be submitted to the Executive Secretary as part of the Contamination Investigation or Corrective Action Plan, or may be submitted in advance of those reports.

D. Contamination Investigation and Corrective Action Plan - Requirements

1. Contamination Investigation - The contamination investigation shall include a characterization of pollution, a characterization of the facility, a data report, and, if the Corrective Action Plan proposes standards under R317-6-6.15.F.2. or Alternate Corrective Action Concentration Limits higher than the ground water quality standards, an endangerment assessment.

a. The characterization of pollution shall include a description of:

(1) The amount, form, concentration, toxicity, environmental fate and transport, and other significant characteristics of substances present, for both ground water contaminants and any contributing surficial contaminants;

(2) The areal and vertical extent of the contaminant concentration, distribution and chemical make-up; and

(3) The extent to which contaminant substances have migrated and are expected to migrate.

b. The characterization of the facility shall include descriptions of:

(1) Contaminant substance mixtures present and media of occurrence;

(2) Hydrogeologic conditions underlying and, upgradient and downgradient of the facility;

(3) Surface waters in the area;
(4) Climatologic and meteorologic conditions in the area of the facility; and
(5) Type, location and description of possible sources of the pollution at the facility;
(6) Groundwater withdrawals, pumpage rates, and usage within a 2-mile radius.
c. The report of data used and data gaps shall include:
(1) Data packages including quality assurance and quality control reports;
(2) A description of the data used in the report; and
(3) A description of any data gaps encountered, how those gaps affect the analysis and any plans to fill those gaps.
d. The endangerment assessment shall include descriptions of any risk evaluation necessary to support a proposal for a standard under R317-6-6.15.F.2 or for an Alternate Corrective Action Concentration Limit.
e. The Contamination Investigation shall include such other information as the Executive Secretary requires.
2. Proposed Corrective Action Plan
The proposed Corrective Action Plan shall include an explanation of the construction and operation of the proposed Corrective Action, addressing the factors to be considered by the Executive Secretary as specified in R317-6-6.15.E. and shall include such other information as the Executive Secretary requires. It shall also include a proposed schedule for completion.
3. The Contaminant Investigation and Corrective Action Plan must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.
E. Approval of the Corrective Action Plan
After public notice in a newspaper in the affected area and a 30-day period for opportunity for public review and comment, the Executive Secretary shall issue an order approving, disapproving, or modifying the proposed Corrective Action Plan. The Executive Secretary shall consider the following factors and criteria in making that decision:
1. Completeness and Accuracy of Corrective Action Plan.
The Executive Secretary shall consider the completeness and accuracy of the Corrective Action Plan and of the information upon which it relies.
2. Action Protective of Public Health and the Environment
a. The Corrective Action shall be protective of the public health and the environment.
b. Impacts as a result of any off-site activities shall be considered under this criterion (e.g., the transport and disposition of contaminated materials at an off-site facility).
3. Action Meets Concentration Limits
The Corrective Action shall meet Corrective Action Concentration Limits specified in R317-6-6.15.F, except as provided in R317-6-6.15.G.
4. Action Produces a Permanent Effect
a. The Corrective Action shall produce a permanent effect.
b. If the Corrective Action Plan provides that any potential sources of pollutants are to be controlled in place, any cap or other method of source control shall be designed so that the discharge from the source following corrective action achieves ground water quality standards or, if approved by the Board, alternate corrective action concentration limits (ACACLs). For purposes of this paragraph, sources of pollutants are controlled "in place" even though they are moved within the facility boundaries provided that they are not moved to areas with unaffected ground water.
5. Action May Use Other Additional Measures
The Executive Secretary may consider whether additional measures should be included in the Plan to better assure that the criteria and factors specified in R317-6-6.15.E are met. Such measures may include:
a. Requiring long-term ground water or other monitoring;
b. Providing environmental hazard notices or other security measures;
c. Capping of sources of ground water contamination to avoid infiltration of precipitation;
d. Requiring long-term operation and maintenance of all portions of the Corrective Action; and
e. Periodic review to determine whether the Corrective Action is protective of public health and the environment.
F. Corrective Action Concentration Limits
1. Contaminants with specified levels
Corrective Actions shall achieve ground water quality standards or, where applicable, alternate corrective action concentration limits (ACACLs).
2. Contaminants without specified levels
For contaminants for which no ground water quality standard has been established, the proposed Corrective Action Plan shall include proposed Corrective Action Concentration Limits. These levels shall be approved, disapproved or modified by the Executive Secretary after considering U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk-based contaminant levels or standards established by other regulatory agencies and other relevant information.
G. Alternate Corrective Action Concentration Limits
An Alternate Corrective Action Concentration Limit that is higher or lower than the Corrective Action Concentration Limits specified in R317-6-6.15.F may be required as provided in the following:
1. Higher Alternate Corrective Action Concentration Limits
A person submitting a proposed Corrective Action Plan may request approval by the Board of an Alternate Corrective Action Concentration Limit higher than the Corrective Action Concentration Limit specified in R317-6-6.15.F. The proposed limit shall be protective of human health, and the environment, and shall utilize best available technology. The Corrective Action Plan shall include the following information in support of this request:
a. The potential for release and migration of any contaminant substances or treatment residuals that might remain after Corrective Action in concentrations higher than Corrective Action Concentration Limits;
b. An evaluation of residual risks, in terms of amounts and concentrations of contaminant substances remaining following implementation of the Corrective Action options evaluated, including consideration of the persistence, toxicity, mobility, and propensity to bioaccumulate such contaminants substances and their constituents; and
c. Any other information necessary to determine whether the conditions of R317-6-6.15.G have been met.
2. Lower Alternate Corrective Action Concentration Limits
The Board may require use of an Alternate Corrective Action Concentration Limit that is lower than the Corrective Action Concentration Limit specified in R317-6-6.15.F if necessary to protect human health or the environment. Any person requesting that the Board consider requiring a lower Alternate Corrective Action Concentration Limit shall provide supporting information as described in R317-6-6.15.G.3.
3. Protective of human health and the environment
The Alternate Corrective Action Concentration Limit must be protective of human health and the environment. In making this determination, the Board may consider:
a. Information presented in the Contamination Investigation;
b. Other relevant cleanup or health standards, criteria, or guidance;
c. Relevant and reasonably available scientific information;

d. Any additional information relevant to the protectiveness of a Corrective Action; and

e. The impact of additional proposed measures, such as those described in R317-6-6.15.E.5.

4. Good cause

An Alternate Corrective Action Concentration Limit shall not be granted without good cause.

a. The Board may consider the factors specified in R317-6-6.15.E in determining whether there is good cause.

b. The Board may also consider whether the proposed remedy is cost-effective in determining whether there is good cause. Costs that may be considered include but are not limited to:

(1) Capital costs;

(2) Operation and maintenance costs;

(3) Costs of periodic reviews, where required;

(4) Net present value of capital and operation and maintenance costs;

(5) Potential future remedial action costs; and

(6) Loss of resource value.

5. Conservative

An Alternate Corrective Action Concentration Limit that is higher than the Corrective Action Concentration Limits specified in R317-6-6.15.F must be conservative. The Board may consider the concentration level that can be achieved using best available technology if attainment of the Corrective Action Concentration Limit is not technologically achievable.

6. Relation to background and existing conditions

a. The Board may consider the relationship between the Corrective Action Concentration Limits and background concentration limits in considering whether an Alternate Corrective Action Concentration Limit is appropriate.

b. No Alternate Corrective Action Concentration Limit higher than existing ground water contamination levels or ground water contamination levels projected to result from existing conditions will be granted.

6.16 OUT-OF-COMPLIANCE STATUS

A. Accelerated Monitoring for Probable Out-of-Compliance Status

If the value of a single analysis of a pollutant concentration in any compliance monitoring sample exceeds an applicable permit limit, the facility shall:

1. Notify the Executive Secretary in writing within 30 days of receipt of data;

2. Immediately initiate monthly sampling if the value exceeds both the background concentration of the pollutant by two standard deviations and an applicable permit limit, unless the Executive Secretary determines that other periodic sampling is appropriate, for a period of two months or until the compliance status of the facility can be determined.

B. Violation of Permit Limits

Out-of-compliance status exists when:

1. The value for two consecutive samples from a compliance monitoring point exceeds:

a. one or more permit limits; and

b. the background concentration for that pollutant by two standard deviations (the standard deviation and background (mean) being calculated using values for the ground water pollutant at that compliance monitoring point) unless the existing permit limit was derived from the background pollutant concentration plus two standard deviations; or

2. the concentration value of any pollutant in two or more consecutive samples is statistically significantly higher than the applicable permit limit. The statistical significance shall be determined using the statistical methods described in Statistical Methods for Evaluating Ground Water Monitoring Data from Hazardous Waste Facilities, Vol. 53, No. 196 of the Federal Register, Oct. 11, 1988 and supplemental guidance in Guidance For Data Quality Assessment (EPA/600/R-96/084 January 1998).

C. Failure to Maintain Best Available Technology Required by Permit

1. Permittee to Provide Information

In the event that the permittee fails to maintain best available technology or otherwise fails to meet best available technology standards as required by the permit, the permittee shall submit to the Executive Secretary a notification and description of the failure according to R317-6-6.13. Notification shall be given orally within 24 hours of the permittee's discovery of the failure of best available technology, and shall be followed up by written notification, including the information necessary to make a determination under R317-6-6.16.C.2, within five days of the permittee's discovery of the failure of best available technology.

2. Executive Secretary

The Executive Secretary shall use the information provided under R317-6-6.16.C.1 and any additional information provided by the permittee to determine whether to initiate a compliance action against the permittee for violation of permit conditions. The Executive Secretary shall not initiate a compliance action if the Executive Secretary determines that the permittee has met the standards for an affirmative defense, as specified in R317-6-6.16.C.3.

3. Affirmative Defense

In the event a compliance action is initiated against the permittee for violation of permit conditions relating to best available technology, the permittee may affirmatively defend against that action by demonstrating the following:

a. The permittee submitted notification according to R317-6-6.13;

b. The failure was not intentional or caused by the permittee's negligence, either in action or in failure to act;

c. The permittee has taken adequate measures to meet permit conditions in a timely manner or has submitted to the Executive Secretary, for the Executive Secretary's approval, an adequate plan and schedule for meeting permit conditions; and

d. The provisions of 19-5-107 have not been violated.

6.17 PROCEDURE WHEN A FACILITY IS OUT-OF-COMPLIANCE

A. If a facility is out of compliance the following is required:

1. The permittee shall notify the Executive Secretary of the out of compliance status within 24 hours after detection of that status, followed by a written notice within 5 days of the detection.

2. The permittee shall initiate monthly sampling, unless the Executive Secretary determines that other periodic sampling is appropriate, until the facility is brought into compliance.

3. The permittee shall prepare and submit within 30 days to the Executive Secretary a plan and time schedule for assessment of the source, extent and potential dispersion of the contamination, and an evaluation of potential remedial action to restore and maintain ground water quality and insure that permit limits will not be exceeded at the compliance monitoring point and best available technology will be reestablished.

4. The Executive Secretary may require immediate implementation of the contingency plan submitted with the original ground water discharge permit in order to regain and maintain compliance with the permit limit standards at the compliance monitoring point or to reestablish best available technology as defined in the permit.

5. Where it is infeasible to re-establish BAT as defined in the permit, the permittee may propose an alternative BAT for approval by the Executive Secretary.

6.18 GROUND WATER DISCHARGE PERMIT TRANSFER

A. The permittee shall give written notice to the Executive Secretary of any transfer of the ground water discharge permit,

within 30 days of the transfer.

B. The notice shall include a written agreement between the existing and new permittee establishing a specific date for transfer of permit responsibility, coverage and liability.

6.19 ENFORCEMENT

These rules are subject to enforcement under Section 19-5-115 of the Utah Water Quality Act.

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R317. Environmental Quality, Water Quality.
R317-100. Utah State Project Priority System for the Utah Wastewater Project Assistance Program.
R317-100-1. Project Priority System.

This rule is necessary to meet requirements of Federal Water Quality Act, 40 CFR 35.3115 and Section 19-5-104(f) of the Utah Code. Copies of the current Utah State Project Priority List are available at the Utah Department of Environmental Quality, Division of Water Quality.

R317-100-2. General.

A. The Project Priority System is used to prioritize projects to allocate wastewater revolving loan and grant funds which may be available through the state and federal governments. The priority system is intended to identify those projects which will remedy the most severe water quality problems and to provide funds for the most beneficial program of public health protection and water quality improvement.

B. The Project Priority System will prioritize non-point source pollution, point source pollution (both storm water and municipal wastewater), and underground wastewater disposal system projects which are candidates for funding through the Utah State Wastewater Project Assistance Program. All projects considered for funding under this program receive an "alpha" ranking in accordance with R317-100-4. In addition, all point source projects identified on the State Revolving Fund (SRF) Intended Use Plan (IUP) receive a "numeric" ranking under R317-100-3.

R317-100-3. Numeric Project Priority Ranking System.

A. PRIORITY POINT TOTAL

1. A priority number total for a project will be determined by adding the priority points from each of the four priority categories. Total Priority Points = Project Need for Reduction of Water Pollution + Potential for Improvement Factor + Existing Population Affected + Special Consideration. If two or more projects receive an equal number of priority points, such ties shall be broken using the following criteria:

a. The projects shall be ranked in order of the highest "Need for Reduction of Water Pollution."

b. If the tie cannot be broken on the basis of need, the projects shall be ranked in order of the "Potential for Improvement Factor."

c. If the tie cannot be broken on the basis of the above, the project serving the greatest population will be given priority.

B. PROJECT NEED FOR REDUCTION OF WATER POLLUTION

All projects receive the highest applicable point level only.

1. A documented existing substantial health hazard will be eliminated by the project. This may include: (1) discharge of inadequately treated wastewater to an area of immediate public contact where inadequate operation and maintenance is not the primary cause of the condition; (2) an area where a substantial number of failing subsurface disposal systems are causing surfacing sewage in areas of human habitation. The elimination of existing substantial health hazards is of highest priority. The determination of the existence of substantial health hazards shall be based upon the investigation, report, and certification of the local health department and the State Division of Water Quality. Such reports and certifications will be forwarded to EPA with the Priority List. The health hazard designation will normally apply to unsewered communities experiencing widespread septic tank failures and surfacing sewage: 70 points.

2. A raw sewage discharge will be eliminated or prevented: 60 points.

3. The surface water quality standards identified in R317-2 are impaired by an existing discharge. For points to be allotted under this criterion the affected stream segment must be "water quality limited" according to a wasteload analysis and water quality standards. Water quality standards have been established for the waters of Utah according to designated beneficial use classifications. A stream segment is considered to be "water quality limited" if a higher level of treatment than that which is provided by state effluent limitations is required to meet water quality standards. A stream segment is "effluent limited" if water quality standards are met by state imposed effluent limitations: 50 points.

4. The ground water quality standards identified in R317-6 are impaired by an existing discharge. For points to be allotted under this criterion the affected ground water must be impaired according to the numerical criteria outlined in the ground water protection levels established for Class I and II aquifers: 50 points.

5. Construction is needed to provide secondary treatment, or to meet the requirements of a Utah Pollution Discharge Elimination System (UPDES) Permit or Ground Water Discharge Permit, or the Federal Sludge Disposal Requirements: 50 points.

6. Documented water quality degradation is occurring, attributable to failing individual subsurface disposal systems where inadequate operation and maintenance is not the primary cause of the condition: 45 points.

7. Areas not qualifying as an existing substantial health hazard, but where it is evident that inadequate on-site conditions have resulted in the chronic failure of a significant number of individual subsurface disposal systems, causing an ongoing threat to public health or the environment. Points may be awarded in this category only when the Division of Water Quality determines that existing on-site limitations cannot be overcome through the use of approved subsurface disposal practices, or that the cost of upgrading or replacing failed systems to meet the minimum requirements of the local health department are determined to be excessive: 45 points.

8. Treatment plant loading has reached or exceeded 95 percent of design requirements needed to meet conditions of an UPDES Permit or needed to restore designated water use, or design requirements are projected to be exceeded within 5 years by the Division of Water Quality. Points will not be allocated under this criterion where excessive infiltration or inflow is the primary cause for the loading to the system to be at 95 percent or greater of design requirements: 40 points.

9. Existing facilities that do not meet the design requirements in R317-3. Points may be allocated under this category only if the design requirements that are not being met are determined to be fundamental to the ability of the facility to meet water quality standards: 40 points.

10. Interceptor sewers, collection systems, pump stations and treatment, where applicable, are needed to solve existing pollution, ground water, or public health concerns: 35 points.

a. Points may be awarded under this category only if they will primarily serve established residential areas and only if they are needed to solve existing pollution or public health problems.

b. Points shall not be awarded under this category where an interceptor is proposed for newly developing recreational communities, resorts, or unincorporated subdivisions.

c. Points may be awarded under this category when the majority of existing septic systems are located in defined well head protection zones or principal ground water recharge areas to Class I and II aquifers.

11. Interceptor sewers, collection systems, pump stations and treatment, where applicable, are needed to accomplish regionalization or eliminate existing treatment facilities. Points shall not be awarded under this category where an interceptor is proposed for newly developing recreational communities, resorts, or unincorporated subdivisions: 25 points.

12. Communities having future needs for wastewater facilities construction at existing wastewater systems, not included above, which are consistent with the goals of the

Federal Water Pollution Control Act: 10 points.

13. Communities having future needs for new treatment plants and interceptors, not included above, which are consistent with the goals of the Federal Water Pollution Control Act: 5 points.

C. POTENTIAL FOR IMPROVEMENT FACTOR (PIF)

The PIF priority point sub-total is obtained by adding the points obtained in each of the four subcategories. Total PIF points = Classified Water Use + Discharge Standard Factor + Restoration from Water Quality Standard Violation + Estimated Improvement.

1. Classified Water Use. Priority points under this subcategory are allotted in accordance with segment designations listed in R317-2-13, Classifications of Waters of the State. Points are cumulative for segments classified for more than one beneficial use.

a. Protected as a raw water source of culinary water supply; R317-2-13 Use Classes: 1A, 1B, or 1C: 4 points.

b. Protected for primary contact recreation (swimming); R317-2-13: 2A: 4 points.

c. Protected for secondary contact recreation (water skiing, boating and similar uses); R317-2-13: 2B: 3 points.

d. Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain; R317-2-13: 3A: 3 points.

e. Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in the food chain; R317-2-13: 3B: 3 points.

f. Protected for non-game fish and other aquatic life, including the necessary aquatic organisms in their food chain; R317-2-13: 3C: 2 points.

g. Protected for waterfowl, shore birds and other water-oriented wildlife not included above, including the necessary aquatic organisms in their food chain; R317-2-13: 3D: 2 points.

h. Protected for agricultural, industrial, and "special" uses; R317-2-13: 4, 5, and 6: 1 point.

2. Discharge Standard Factor. Priority points are allotted as follows:

a. Project discharge standards are water quality based: 5 points.

b. Project must meet secondary effluent treatment standards: 2 points.

c. Project does not discharge to surface waters: 0 points.

3. Restoration from Water Quality Standard Violation.

a. Project WILL RESTORE Designated Water Use: 5 points.

b. Project WILL NOT RESTORE Designated Water Use: 0 points.

c. Points under this subcategory are assigned on the basis of whether appropriate water quality standard(s) can be restored if the respective project is constructed and any other water quality management controls are maintained at present levels. For a project to receive points under this subcategory, data from a State-approved waste load analysis must generally show that the designated water use is substantially impaired by the wastewater discharge and that the proposed project will likely restore the numerical water quality standards and designated use(s) identified in R317-2-12 and R317-2-14 for the waterbody.

d. Points may not be assigned under this subcategory if nonpoint source pollution levels negate water quality improvement from the proposed construction, if numerical standards or actual levels of pollutants being discharged are questionable, if serious consideration is being given to the redesignation of the stream segment to a lower classification, or if numerical standards for specific pollutants are inappropriately low for the classified water use.

4. Estimated Improvement in Stream Quality or Estimated Improvement in Environmental Quality including Presently Unsewered Communities and Sewered Communities with Raw Sewage Discharges. Points in this category shall be allocated based upon the judgment of the Division of Water Quality Staff and on the nature of the receiving water and surrounding watershed. Consideration shall be given to projects which discharge into Utah priority stream segments as identified in the biennial water quality report (305(b)). The criteria used to develop the Stream Segment Priority List may be used to evaluate projects on other streams not on the Stream Segment Priority List. These criteria include the existing use impairment, the overall index from a use impairment analysis, the potential for use impairment, the downstream use affected, the population affected, the amount of local interest and involvement toward improving the stream quality, the presence of endangered species, and the beneficial use classification. Activities within the watershed that are aimed at reducing point and nonpoint sources of pollution may also be considered in the allocation of points. In addition, the effect of a discharge or proposed change in a discharge on the chemical and biological quality of the receiving stream may be considered in the determination of points. Only those projects which will significantly improve water quality or environmental quality and will restore or protect the designated uses or eliminate public health hazards shall be given the maximum points allowable. Fewer points can be given in instances where some significant improvement will be achieved if a project is constructed.

a. The project is essential immediately, and must be constructed to protect public health or attain a high, measurable improvement in water quality: 20 points.

b. The project will likely result in a substantial level of improvement in water quality or public health protection: 10 points.

c. Some level of water quality improvement or public health protection would likely be provided by the construction of the project, but the effect has not yet been well established. Also, present facilities lack unit processes needed to meet required discharge standards: 5 points.

d. No significant improvement of water quality or public health protection would likely be achieved, at present, by a project: 0 points.

D. EXISTING POPULATION AFFECTED

For sewered communities, priority points are based on the population served by a treatment facility. For unsewered areas, points are based on the population of the affected community.

1. Greater than 80,000: 10 points.
2. 40,000 - 80,000: 9 points.
3. 20,000 - 40,000: 8 points.
4. 10,000 - 20,000: 7 points.
5. 5,000 - 10,000: 6 points.
6. 4,000 - 5,000: 5 points.
7. 3,000 - 4,000: 4 points.
8. 2,000 - 3,000: 3 points.
9. 1,000 - 2,000: 2 points.
10. Less than 1,000: 1 point.

E. SPECIAL CONSIDERATION

1. The proposed project is an interceptor sewer which is part of a larger regional plan and is necessary to maintain the financial, environmental or engineering integrity of that regionalization plan: 20 points, or

2. The project is needed to preserve high quality waters such as prime cold water fishery and anti-degradation segments: 20 points.

3. The proposed project will change the facility's sludge disposal practice from a non-beneficial use to a beneficial use method: 20 points.

4. The users of the proposed project are subject to a documented water conservation plan: 20 points.

5. The sponsor of the proposed project has completed and

submitted the most recent Municipal Wastewater Planning Program (MWPP) questionnaire: 20 points.

6. The sponsor of the proposed project, or its member entities, is certified as meeting the requirements for a Quality Growth Community: 20 points.

R317-100-4. Alpha Project Priority System.

All projects receive the highest applicable designation only. Projects will be included in one of three categories: A. Underground Wastewater Disposal Systems; B. Non-Point Source Pollution Projects, and C. Point Source Pollution Projects. The projects shall be ranked in order of: 1. Public Health Protection; 2. Water Quality Improvement; 3. Potential for Improvement; and, in the case of point source pollution projects, 4. Future Needs. Funding will be allocated as identified in R317-101, Utah Wastewater Project Assistance Program and R317-102, Utah Wastewater State Revolving Fund (SRF) Program for the categories of projects identified below.

A. UNDERGROUND WASTEWATER DISPOSAL SYSTEM PROJECTS:

1. Public Health Protection

a. Projects that improve or prevent a discharge of inadequately treated wastewater to an area of immediate public contact.

b. Projects that improve or prevent a discharge of inadequately treated wastewater within a zone of protection of a municipal or private drinking water well or that eliminate a drinking water impairment.

2. Water Quality Improvement

a. Projects that restore beneficial uses to surface water identified on the 303(d) Water Quality Impaired Waters list.

b. Projects that improve or prevent pollution to ground water.

3. Potential for Improvement

a. Projects that include improvement or replacement of underground wastewater disposal systems that may prevent degradation to surface water or ground water.

b. Projects that are necessary to comply with state or local underground wastewater disposal rules or regulations, e.g., existing systems that have inadequate ground water separation or are installed in unsuitable soil.

c. Projects that may improve underground wastewater disposal system reliability and function.

B. NON-POINT SOURCE POLLUTION PROJECTS:

1. Public Health Protection

a. Projects that improve or prevent a discharge of inadequately treated wastewater or other polluted water to an area of immediate public contact.

b. Projects that improve or prevent a discharge of inadequately treated wastewater or other polluted water within a zone of protection of a municipal or private drinking water well or that eliminate a drinking water impairment.

2. Water Quality Improvement

a. Projects that restore beneficial uses to surface water identified on the 303(d) Water Quality Impaired Waters list.

b. Projects that improve or prevent other surface water pollution.

c. Projects that improve or prevent ground water pollution.

3. Potential for Improvement

a. Projects that improve non-point sources of pollution from industrial, municipal, private or agricultural systems that may prevent degradation to surface water or ground water.

b. Projects that may prevent degradation to riparian areas, wetlands or that preserve the natural environment.

c. Projects that encourage conservation including wastewater reuse, biosolids reuse or new conservation technologies.

d. Projects that encourage Best Management Practices that may directly or indirectly improve or prevent degradation to surface water or ground water.

C. POINT SOURCE POLLUTION PROJECTS:

1. Public Health Protection

a. Projects that improve or prevent a discharge of inadequately treated wastewater to an area of immediate public contact.

b. Projects that improve or prevent a discharge of inadequately treated wastewater or storm water within a zone of protection of a municipal or private drinking water well or that eliminate a drinking water impairment.

2. Water Quality Improvement

a. Projects that restore beneficial uses to surface water identified on the 303(d) Water Quality Impaired Waters list.

b. Projects that improve or prevent other surface water pollution.

c. Projects that improve or prevent ground water pollution.

d. Projects necessary to achieve water quality standards more stringent than secondary treatment standards.

e. Projects needed to meet secondary treatment standards or that expand systems that are beyond 95 percent of the design capacity or that do not meet current design criteria.

3. Potential for Improvement

a. Projects that improve collection, treatment and disposal systems that may prevent degradation to a surface water or ground water aquifer.

b. Projects that may prevent degradation to riparian areas, wetlands or that preserve the natural environment.

c. Projects that encourage regionalization of treatment systems.

d. Projects that encourage conservation including wastewater reuse, biosolids reuse, or new conservation technologies

4. Future Needs. Projects that may have future needs for the construction, expansion or replacement of collection and treatment systems.

KEY: grants, state assisted loans, wastewater
June 1, 2004 19-5
Notice of Continuation October 7, 2002 19-5-104
40 CFR 35.915 and 40 CFR 35.2015

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-71. Medical Supplies -- Parenteral, Enteral, and IV Therapy.
R414-71-1. Introduction and Authority.

(1) Eligible Medicaid recipients with chronic physical illnesses, trauma, or terminal disease, who are able to live at home or in a long term care facility but who cannot be sustained with oral feeding, and, therefore rely on total parenteral nutrition (TPN) or enteral nutrition (EN) to sustain life, are covered under this program.

(2) The IV therapy program provides medications, solutions, blood factors, chemicals, or nutrients by injection or infusion for eligible Medicaid recipients who reside at home or in a nursing facility.

(3) The provision of services and supplies is under the authority of 42 CFR 440.70 and 42 CFR 441.15, Oct. 2003 ed.

R414-71-2. Definitions.

(1) Total Parenteral Nutrition (TPN) means total nutrition administered by intravenous, subcutaneous or mucosal infusion.

(2) Enteral Nutrition (EN) means by nasogastric, jejunostomy or gastrostomy tube into the stomach or intestines to supply nutrition when a non-functioning gastrointestinal tract is present due to pathology or structure.

(3) Nutrients means those products with specific formulas used to supply the total nutritional intake of the patient by gastrostomy, jejunostomy or nasogastric tube.

(4) Nutritional Supplements means products, such as Ensure, that are used occasionally to supplement a regular but possibly inadequate diet.

(5) Cassettes mean prepackaged containers or envelopes of semi-disposable needles and tubing which provide a pathway for the TPN or IV medication to pass from container to vein.

(6) WIC is the federal nutritional program for women, infants and children.

R414-71-3. Client Eligibility Requirements.

TPN, EN and IV services are provided to categorically and medically needy eligible individuals.

R414-71-4. Program Access Requirements.

(1) TPN and EN is available to individuals with a:

(a) missing digestive organ;

(b) long term or permanently non-functioning gastrointestinal tract; or

(c) short term non-functioning gastrointestinal tract which may occur following a surgical procedure.

(2) IV therapies require a physician's order or prescription and require prior authorization.

(3) TPN, EN or other related nutritional products require a physician's order or prescription which must specify the kilo calories necessary per day. Parenteral infusions are identified and reimbursed per daily kilocalorie requirements.

(4) EN products must be given by gastrostomy, jejunostomy or nasogastric tube to qualify for coverage under the EN Program.

R414-71-5. Service Coverage.

(1) TPN and EN systems, related supplies, equipment, and nutrients are covered as prosthetic devices if they replace normal nutritional function of the esophagus, stomach or bowel.

(2) TPN or EN therapy is a covered benefit for clients residing at home or in a long term care facility.

(3) Parenteral solutions and IV therapy provided by infusion or enteral therapy are benefits for clients residing in a long term care facility.

(4) The following services are allowed for clients residing at home or in a long term care facility:

(a) parenteral solutions;

(b) a monthly parenteral nutrition administration kit which includes all catheters, pump filters, tubing, connectors, and syringes relating to the parenteral infusions;

(c) enteral solutions for total enteral therapy;

(d) IV medications, blood factors, and solutions;

(e) enteral administration kits; and

(f) heparin flush and heparin.

(5) Medicaid may approve nutritional supplements for covered infants and children ages 0 to 5 who live at home and are in the WIC program, for quantities which exceed 8 ounces per day and time which exceeds 60 days if the:

(a) target weight of a child cannot be attained with expected oral feedings;

(b) oral feedings are present but too extended due to weakness, illness, or disease to the infant; or

(c) child is concurrently using a ventilator or oxygen, or has a tracheostomy.

(6) IV Therapy and treatment which may include injections or infusions are a covered service. IV therapy may include:

(a) pain medication therapy;

(b) antibiotics and antimicrobials;

(c) fluids such as glucose and fluid replacement;

(d) electrolytes;

(e) blood products;

(f) IV supply kit for patients residing at home;

(g) extension tubing set for peripheral or midline catheter; or

(h) solutions used to cleanse or irrigate the catheter for which a national drug code (NDC) code exists.

(7) Administration supplies, syringes, bags, pumps, tubes, and administration kits for providing TPN, EN and IV therapies are covered with reasonable limitations as to amounts and length of administration as medically indicated and according to current standard medical practices.

(8) All TPN and EN solutions, equipment, and nutritional products and most IV supplies require prior authorization. There must be a reasonable medical expectation that an improved quality of life will result from the TPN, EN, or IV therapy. A copy of the physician's prescription must be on file with the provider as part of the prior authorization request.

(a) The attending physician must justify through diagnosis and applicable history the need for a pump for metered dosage, continuous infusion, extremely small doses which cannot be measured accurately without a pump for metered dosage, continuous infusion, extremely small doses which cannot be measured accurately without a pump, or other special medical needs requiring a pump. For nutritional pumps, the medical need determination must establish that syringe feeding or gravity feeding is not satisfactory due to aspiration, diarrhea, or dumping syndrome, or other unique medical manifestations. The simplest form of feeding by syringe must be ruled out prior to authorizing a nutritional pump.

(b) For TPN or EN a new prior authorization shall be obtained every two months to renew the type of feeding or therapy in use for home health patients. Extended use of TPN or EN without home health intervention may be approved for a longer period of time.

(c) The home health agency and the pharmacy shall make separate prior authorization requests for their respective services and supplies.

(d) IV products, including IV catheters, require prior authorization. Gravity flow supplies and equipment do not require prior authorization.

(e) Nutritional supplements require prior authorization. Documentation must include:

(i) medical condition of the patient;

(ii) weight loss or expected gain to a specific level;

(iii) expected duration of supplementation, including quantity and frequency of administration.

R414-71-6. Limitations for TPN or EN Therapy.

The specific limitations for TPN or EN therapy are as follows:

(1) Cassettes shall be supplied with the parenteral administration kits and not as separate items.

(2) Enteral nutrients, IV diluents, injectable medications, and solutions are available as allowed in the pharmacy program with the limitations stipulated therein.

(3) Baby foods such as Similac, Enfamil and Mull-Soy are breast milk substitutes and are not covered by Medicaid.

(4) Kits, bags and pumps are not covered benefits with nutritional supplements.

(5) A monthly supply and administration kit containing all supplies except the catheter is a Medicaid benefit only for patients residing at home. Bags can not be reimbursed separately if a kit is supplied.

(6) Total nutrition is not available for persons with nutritional need resulting from psychological problems or a failure to thrive.

(7) Equipment such as IV poles, disposable swabs, antiseptic solutions and dressings for the catheter are not reimbursable by Medicaid for nursing home patients, but are provided by the nursing home under a per diem rate.

(8) General nutrition is included in the per diem rate paid by Medicaid under a contract with a long term care facility and is not separately reimbursable for its patients.

(9) Nutritional supplements are not covered for patients residing at home or in a long term care facility. Only total nutrition for patients residing at home is covered with the exception of children who are covered under the WIC program, as stated in R414-71-5(5).

(10) Pharmacy providers may be reimbursed for TPN or EN supplies, nutrients and medications. There is no additional reimbursement to the pharmacist for preparing the medication, such as filling syringes, mixing solutions, or adding drugs to an infusion solution. Pharmacists bill Medicaid using National Drug Codes. Heparin for flushing the infusion catheter is billed through the pharmacy point of sale system using the NDC for heparin.

(11) To begin an infusion, intravenous catheters may be placed by a home health agency nurse who has been trained for IV catheter placement, a physician, or a physician's assistant whose training and protocols allow for this service.

R414-71-7. Reimbursement.

(1) HCPCs coding is used for reimbursement. Reimbursement fees are established by discounting historical charges, by discounting Medicare fees for HCPCs codes for the geographic region, and by professional judgment to encourage efficient, effective and economical services. Adjustments to the fee schedule are made in accordance with appropriations and to produce efficient and effective services to be in accordance with the provisions of 4.19-B of the State Plan.

(2) The Department pays the lower of the amount billed and the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

(3) Providers must accept the Medicare assignment for clients eligible for both Medicare and Medicaid benefits. All third party payors, including Medicare, must be billed prior to billing Medicaid.

KEY: Medicaid
August 5, 2004 **26-18-3**
26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-303. Coverage Groups.
R414-303-1. Authority and Purpose.

This rule is authorized by Utah Code Sections 26-1-5 and 26-18-3 and establishes Medicaid eligibility requirements for the following coverage groups:

(1) Aged;
(2) Blind;
(3) Disabled;
(4) Family;
(5) Institutional;
(6) Transitional;
(7) Child;
(8) Refugee;
(9) Prenatal and Newborn;
(10) Pregnant Women;
(11) DD/MR Home and Community Based Services Waiver;
(12) Aging Home and Community Based Services Waiver;
(13) Technologically Dependent Child Waiver/Travis C. Waiver;
(14) Persons with Brain Injury Home and Community Based Services Waiver;
(15) Personal Assistance Waiver for Adults with Physical Disabilities; and
(16) Cancer Program.

R414-303-2. Definitions.

The definitions in R414-1 and R414-301 apply to this rule. In addition:

(1) "Medicaid agency" means any one of the state departments that determine eligibility for one or more of the following medical assistance programs: Medicaid, the Primary Care Network, or the Covered-at-Work program.

(2) "Federal poverty guideline" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for certain means-tested federal programs. Any usage in this rule of the term poverty means the federal poverty guideline.

R414-303-3. A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups.

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.301, 435.320, 435.322, 435.324, 435.340, 435.350 and 435.541, 2001 ed., which are incorporated by reference. The Department provides coverage to individuals as described in 20 CFR 416.901 through 416.1094, 2002 ed., which is incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv)(I) of Title XIX of the Social Security Act in effect January 1, 2001, which are incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 2001, which is incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An applicant or recipient may request the State Medicaid Disability Office to review medical evidence to determine if the individual is disabled or blind. If the client has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(a) If, within the prior 12 months, SSA has determined that the individual is not disabled, the Medicaid agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(b) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(c) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(d) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual denied disability status by the Medicaid Disability Review Office requests a fair hearing, the Disability Review Office may reconsider its determination as part of fair hearing process.

(a) The individual may provide the Department additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The Department shall notify the individual of its decision upon reconsideration. Thereafter, the individual may choose to pursue or abandon his fair hearing rights.

(5) If the Department denies an individual's Medicaid application because it or SSA has determined that the individual is not disabled and that determination is later reversed on appeal and the individual has otherwise been eligible, the individual's eligibility shall extend back to the application that gave rise to the appeal.

(a) Eligibility cannot begin any earlier than the date of disability onset or the date that is three months before the date of application as defined in R414-306-4(2), whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the Medicaid agency to request the Disability Medicaid coverage.

(c) The individual must provide any verifications the Medicaid agency needs to determine eligibility for past or current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown to receive coverage, the spenddown must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 2001, the Department shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by the section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv)(I) of Title XIX of the Social Security Act in effect January 1, 2001, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 2001, for a given year, or as

subsequently authorized by Congress. Applicants will be denied coverage when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the Department shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The Department shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

R414-303-4. Family Medicaid and Family Institutional Medicaid Coverage Groups.

(1) The Department shall provide Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.217, 435.223, and 435.300 through 435.310, 2001 ed., and 45 CFR 233.90, 2001 ed., and Title XIX of the Social Security Act as in effect January 1, 2001, Sections 1902(e)(1), (4), (5), (6), (7), 1931(a), (b), and (g), which are incorporated by reference.

(2) The following definitions apply to this rule:

(a) "1931 Family Medicaid" (1931 FM) means a medical assistance program that meets the criteria found in Section 1931(a) and (b) of the Social Security Act in effect January 1, 2001 that requires the Department to use the eligibility criteria of the pre-welfare reform Aid to Families With Dependent Children cash assistance program along with any subsequent amendments made by the Department as allowed under Section 1931 of the Act.

(b) "Family Employment Program" (FEP) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Temporary Assistance to Needy Families (TANF).

(c) "Diversion" means a one time FEP payment that may equal up to three months of FEP cash assistance.

(3) The Department provides Medicaid coverage to individuals who are 1931 FM qualified, as described in 45 CFR 233.39, 233.90, and 233.100, 2001 ed., which are incorporated by reference.

(4) The Department provides 1931 Family Medicaid coverage to individuals who are qualified for FEP cash assistance.

(5) For unemployed two-parent households, the Department shall not require the primary wage earner to have an employment history.

(6) Households that receive a FEP diversion payment shall have the option to receive 1931 Family Medicaid coverage for three months beginning with the month of application for the diversion payment.

(7) A specified relative, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following rules apply to a Family Medicaid application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The parents' obligation to financially support their child shall be enforced.

(d) The income and resources of the specified relative will not be counted unless the specified relative is also included in the Medicaid coverage group.

(e) If the specified relative is currently included in a FEP household or a 1931 Family Medicaid household, the child shall be included in the FEP or 1931 FM case of the specified relative.

(f) The specified relative may choose to be excluded from the Medicaid coverage group. The ineligible children of the specified relative must be excluded. The specified relative will not be included in the income standard calculation.

(g) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources will not be used to determine eligibility or spenddown.

(h) If the specified relative is not the parent of a dependent child who meets deprivation of support criteria and elects to be included in the Medicaid coverage group, the following income rules apply:

(i) The monthly gross earned income of the specified relative and spouse shall be counted.

(ii) The unearned income of the relative and the excluded spouse shall be counted.

(iii) For each employed person, $90 will be deducted from the monthly gross income.

(iv) Child care expenses necessary for employment will be deducted for only the specified relative's children. The maximum allowable deduction will be $200.00 per child under age two and $175.00 per child age two and older each month for full-time employment or $160.00 per child under age two and $140.00 per child age two and older each month for part-time employment.

(8) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(9) Temporary absence from the home for purposes of schooling, vacation, medical treatment, military service, or other temporary purpose shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences caused solely by reason of employment, schooling, military service, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

(10) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

(11) The Department imposes no suitable home requirement.

(12) Medicaid assistance is not continued for a temporary period if deprivation of support no longer exists. If deprivation of support ends due to increased hours of employment of the primary wage earner, the household may qualify for Transitional Medicaid described in R414-303-5.

(13) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity, a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration, or be determined disabled by the Medicaid Disability Review Office or the Social Security Administration;

(c) provide, either on a Department-approved form or in another written document, completed by one of the following licensed medical professionals: medical doctor; doctor of Osteopathy; Advanced Practice Registered Nurse; Physician's Assistant; or a mental health therapist, which includes a psychologist, Licensed Clinical Social Worker, Certified Social Worker, Marriage and Family Therapist, Professional

Counselor, or MD, DO or APRN engaged in the practice of mental health therapy, that states the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.

R414-303-5. 12 Month Transitional Family Medicaid.

(1) The Department complies with Title XIX of the Social Security Act, Sections 1925 and 1931 (c)(2) as in effect January 1, 2001, which are incorporated by reference.

(2) The Department shall consider Medicaid coverage under 12 month Transitional Medicaid for households that lose eligibility for 1931 Family Medicaid, FEP cash assistance, and households that receive 1931 Family Medicaid for three months because they received a FEP Diversion payment.

R414-303-6. Four Month Transitional Family Medicaid.

(1) The Department adopts 42 CFR 435.112 and 435.115(f), (g) and (h), 2001 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) in effect January 1, 2001 which are incorporated by reference.

(2) Changes in household composition do not affect eligibility for the four month extension period. New household members may be added to the case only if they meet the AFDC or AFDC two-parent criteria for being included in the household if they were applying in the current month. Newborn babies are considered household members even if they were unborn the month the household became ineligible for Family Medicaid under Section 1931 of the Social Security Act. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-7. Foster Care.

(1) The Department adopts 42 CFR 435.115(e)(2), 2001 ed., which is incorporated by reference.

(2) Eligibility for foster children is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

R414-303-8. Subsidized Adoptions.

(1) The Department adopts 42 CFR 435.115(e)(1), 2001 ed., which is incorporated by reference.

(2) Eligibility for subsidized adoptions is not governed by this rule. The Department of Human Services determines eligibility for subsidized adoption Medicaid.

R414-303-9. Child Medicaid.

(1) The Department adopts 42 CFR 435.222 and 435.301 through 435.308, 2001 ed., which are incorporated by reference.

(2) The Department elects to cover all individuals under age 18 who would be eligible for AFDC but do not qualify as dependent children. Individuals who are 18 years old may be covered if they would be eligible for AFDC except for not living with a specified relative or not being deprived of support.

(3) If a child receiving SSI elects to receive Child Medicaid or receives benefits under the Home and Community Based Services Waiver, the child's SSI income shall be counted with other household income.

R414-303-10. Refugee Medicaid.

(1) The Department adopts 45 CFR 400.90 through 400.107, 2001 ed., which are modified by the Federal Register 60 FR 33584, published Wednesday, June 28, 1995, and 45 CFR 401, 2001 ed., all of which are incorporated by reference.

(2) Specified relative rules do not apply.

(3) Child support enforcement rules do not apply.

(4) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(5) Initial settlement payments made to a refugee from a resettlement agency are not counted.

(6) Refugees may qualify for medical assistance for eight months after entry into the United States.

R414-303-11. Prenatal and Newborn Medicaid.

(1) The Department adopts Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(IV), (VI), (VII), 1902(a)(47) and 1902(l), in effect January 1, 2001, and Title XIX of the Social Security Act, Section 1902(k) in effect January 1, 1993, which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider that the Department has determined is qualified to make a determination of presumptive eligibility for a pregnant woman and that meets the criteria defined in Section 1920(b)(2) of the Social Security Act;

(b) "presumptive eligibility" means a period of eligibility for medical services for a pregnant woman based on self-declaration that she meets the eligibility criteria.

(3) The Department provides coverage to pregnant women during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman:

(a) is pregnant;

(b) meets citizenship or alien status criteria as defined in R414-302-1;

(c) has a declared household income that does not exceed 133% of the federal poverty guideline applicable to her declared household size; and

(d) the woman is not covered by CHIP.

(4) No resource test applies to determine presumptive eligibility of a pregnant woman.

(5) A pregnant woman made eligible for a presumptive eligibility period must apply for Medicaid benefits by the last day of the month following the month the presumptive coverage begins.

(6) The presumptive eligibility period shall end on the earlier of:

(a) the day that the Medicaid agency determines whether the woman is eligible for Medicaid based on her application; or

(b) in the case of a woman who does not file a Medicaid application by the last day of the month following the month the woman was determined presumptively eligible, the last day of that following month.

(7) A pregnant woman may receive medical assistance during only one presumptive eligibility period for any single term of pregnancy.

(8) The Department elects to impose a resource standard on Newborn Medicaid coverage for children age six to the month in which they turn age 19. The resource standard is the same as other Family Medicaid Categories.

(9) The Department elects to provide Prenatal Medicaid coverage to pregnant women whose countable income is equal to or below 133% of poverty.

(10) At the initial determination of eligibility for Prenatal Medicaid applicants who have $5,000 or more of assets, the Department will require the applicant to pay four percent of countable resources to become eligible for Prenatal Medicaid. This payment amount shall not exceed $3,367. The payment must be met with cash; incurred medical bills and medical expenses are not allowed to meet this payment.

(a) In subsequent months, through the 60 day postpartum period, the Department disregards all excess resources.

(b) This resource payment applies only to pregnant women covered under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, 2001.

(c) No resource payment will be required when the

Department makes a determination based on information received from a medical professional that social, medical, or other reasons place the pregnant woman in a high risk category.

(11) Children born after September 30, 1983, may qualify for the newborn program through the month in which they turn 19.

(12) A child who is 18 but not yet 19 and meets the criteria under 1902(l)(1)(D) cannot be made ineligible for coverage under the Newborn program because of deeming income or assets from a parent, even if the child lives in the parent's home.

R414-303-12. Pregnant Women Medicaid.

(1) The Department adopts 42 CFR 435.116 (a), 435.301 (a) and (b)(1)(i) and (iv), 2001 ed. and Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(III) in effect January 1, 2001, which are incorporated by reference.

R414-303-13. DD/MR Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid Eligibility for Developmentally Disabled Mentally Retarded (DD/MR) Home and Community-Based Services is limited to mentally retarded and developmentally disabled individuals. Eligibility is limited to those referred by the Division of Services to People with Disabilities (DSPD) or any DD/MR worker.

(3) Medicaid eligibility for DD/MR Home and Community-Based Services is limited to individuals who qualify for a regular Medicaid coverage group, except for individuals who only qualify for the Primary Care Network.

(4) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(5) All of the client's income is countable unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(6) To determine countable earned income, the Department will deduct from the individual's earned income an amount equal to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect January 1, 2001.

(7) The Department shall allow deductions for any health insurance or medical expenses for the waiver eligible client that are paid by the waiver client.

(8) The spousal impoverishment provisions for Institutional Medicaid income apply.

(9) The client obligation for the contribution to care, which may be referred to as a spenddown, will be the amount of income that exceeds the personal needs allowance after allowable deductions. The contribution to care must be paid to the Department.

(10) The Department shall count parental and spousal income only if the client is given a cash contribution from a parent or spouse.

(11) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

R414-303-14. Aging Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid eligibility for Aging Home and Community-Based Services is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care except that the spousal impoverishment resource limits apply. Eligibility is limited to those referred by the Division of Aging or a county aging worker.

(3) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(4) All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. The client's contribution to care, which may be referred to as a spenddown, is determined counting only the client's income less allowable deductions.

(5) The spousal impoverishment provisions for Institutional Medicaid income apply. Income deductions include health insurance premiums, medical expenses, a percentage of shelter costs and an aging waiver personal needs deduction.

(6) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

(7) The Department shall count a spouse's income only if the client is given a cash contribution from a spouse.

R414-303-15. Technologically Dependent Child Waiver/Travis C. Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver require that the individual meets the medical criteria established by the Department and the Division in Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan effective on January 1, 1995 and renewed effective July 1, 2003 through June 30, 2008, which is incorporated by reference.

(4) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the twenty first birthday falls.

(5) Once admitted to the waiver, the individual can continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department in R414-303-15(3), non-financial Medicaid eligibility criteria in R414-302, a Medicaid category of coverage defined in R414-303, and the income and resource criteria defined in R414-303-13, except that the earned income deduction is limited to $125.

(6) Income and resource eligibility requirements follow the rules for the DD/MR Home and Community Based Services Waiver found in R414-303-13, except that the earned income deduction is limited to $125.

R414-303-16. Persons with Brain Injury Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver requires that the individual has medical needs resulting from a brain injury. This means that the individual must be in need of skilled nursing or rehabilitation services as a result of the damage sustained because of the brain injury. A medical need determination will be established through the Department of Human Services, Division of Services for People with Disabilities.

(4) To qualify for services under this waiver, the individual must be 18 years old or older. The person is considered to be 18 in the month in which the 18th birthday falls.

(5) All other eligibility requirements follow the rules for the Aging Home and Community Based Services Waiver found in R414-303-14.

(6) The spousal impoverishment provisions for Institutional Medicaid income apply, with one exception: An individual who has a dependent family member living in the home is allowed a deduction for a dependent family member even if the individual is not married or is not living with the spouse.

R414-303-17. Personal Assistance Waiver for Adults with Physical Disabilities.

(1) The Department adopts 42 CFR 435.726 and 435.217, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department operates this program statewide with a limited number of slots, and eligibility for this waiver is limited to individuals 18 years of age and over.

(3) The individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(4) A client must qualify for a nursing home level of care. Eligibility is limited to those referred by the Division of Services to People with Disabilities and determined medically eligible by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment.

(5) A client's resources must be equal to or less than $2000. The spousal impoverishment resource provisions for married, institutionalized clients in R414-305-3 apply to this rule.

(6) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. After determining countable income, eligibility is determined counting only the gross income of the client.

(7) The client's income can not exceed three times the SSI benefit amount payable under Section 1611(b)(1) of the Social Security Act, except that individuals with income over this amount can spenddown to the Medicaid Basic Maintenance Standard for a household of one.

(8) Transfer of resource provisions described in R414-305-6 apply to this rule.

R414-303-18. Medicaid Cancer Program.

(1) The Department shall provide coverage to individuals described in 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 2001, as amended by Pub. L. No. 106-354 effective October 24, 2000, which is incorporated by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) Medicaid eligibility for services under this program will be provided to women who have been screened for breast or cervical cancer under the Centers for Disease Control and prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) A woman who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Information Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the woman has insurance coverage but is subject to a pre-existing condition period that prevents her from receiving treatment for her breast or cervical cancer or precancerous condition, she is considered to not have other health insurance coverage until the pre-existing condition period ends at which time her eligibility for the program ends.

(4) A woman who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) A woman must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for a woman with breast or cervical cancer under 1902(a)(10)(A)(ii)(XVIII) ends when she is no longer in need of treatment for breast or cervical cancer. At each eligibility review, eligibility workers determine whether an eligible woman is still in need of treatment based on the woman's doctor's statement or report.

KEY: income, coverage groups
July 1, 2004 26-18-3
Notice of Continuation January 31, 2003 26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-304. Income and Budgeting.
R414-304-1. Definitions.

(1) The definitions in R414-1 and R414-301 apply to this rule. In addition:

(a) "Allocation for a spouse" means an amount of income that is the difference between the SSI federal benefit rate for a couple minus the federal benefit rate for an individual.

(b) "Basic maintenance standard" or "BMS" means the income level for eligibility for 1931 Family Medicaid, and for coverage of the medically needy based on the number of family members who are counted in the household size.

(c) "Benefit month" means a month or any portion of a month for which an individual is eligible for Medicaid.

(d) "Deeming" or "deemed" means a process of counting income from a spouse or a parent, or the sponsor of a qualified alien, to decide what amount of income after certain allowable deductions, if any, must be considered income to the applicant or recipient.

(e) "Federal poverty guideline" or "FPL" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for certain means-tested federal programs. Any usage in this rule of poverty means the federal poverty guideline.

(f) "Household size" means the number of family members, including the client, who are counted based on the criteria of the particular program to decide what level of income to use to determine eligibility.

(g) "Medically needy" means medical assistance coverage under the provisions of 42 CFR 435.301, 2001 ed., and that uses the Basic Maintenance Standard as the income limit for eligibility.

(h) "Poverty-related" refers to any one of a variety of medical assistance programs that use a percentage of the federal poverty guideline for the household size involved as the income limit to determine eligibility.

(i) "Qualified Domestic Relations Order" means a domestic relations order that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a pension plan pursuant to a state domestic relations law.

(j) "Sponsor" means one or more persons who have signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997 for an alien immigrating to the United States on or after December 19, 1997.

(k) "Temporarily absent" means a member of a household is living away from the home for a period of time but intends to return to the home when the reason for the temporary absence is accomplished. Reasons for a temporary absence may include an absence for the purpose of education, medical care, visits, military service, temporary religious service or other volunteer service such as the Peace Corps.

R414-304-2. A, B and D Medicaid and A, B and D Institutional Medicaid Unearned Income Provisions.

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, 416.1163 through 416.1166, and Appendix to Subpart K of 416, 2002 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) and 1612(b)(22) of the Compilation of the Social Security Laws in effect January 1, 2001, which are incorporated by reference. The Department shall not count as income any payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(a) "Eligible spouse" means the member of a married couple who is either aged, blind, or disabled.

(b) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(c) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount shall not exceed 1/3 of the SSI federal benefit rate plus $20.

(3) Only the portion of a VA check to which the client is legally entitled is countable income. VA payments for aid and attendance do not count as income. The portion of a VA payment that is made because of unusual medical expenses is not countable income. Other VA income based on need is countable income, but is not subject to the $20 general income disregard.

(4) The value of special circumstance items is not countable income if the items are paid for by donors.

(5) For A, B and D Medicaid two-thirds of current child support received in a month for the disabled child is countable unearned income. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind. If there is more than one child for whom the payment is made, the amount is divided equally among the children unless a court order indicates a different division. Child support payments that are payments owed for past months or years are countable income to determine eligibility for the parent or guardian receiving the payments.

(6) For A, B and D Institutional Medicaid, court-ordered child support payments must be paid to the Office of Recovery Services (ORS) when the child resides out-of-home in a Medicaid 24-hour care facility. If the child has no income or insufficient income to provide for a personal needs allowance, ORS will allow the parent to retain up to the amount of the personal needs allowance to send to the child for personal needs. All other current child support payments received by the child or guardian that are not subject to collection by ORS shall count as unearned income to the child.

(7) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

(8) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(9) SSA reimbursements of Medicare premiums are not countable income.

(10) Payments under a contract, retroactive payments from SSI and SSA reimbursements of Medicare premiums are not considered lump sum payments.

(11) Educational loans, grants, and scholarships guaranteed by the U.S. Department of Education are not countable income if the recipient is an undergraduate. Income from service learning programs is not countable income if the recipient is an undergraduate. Deductions are allowed from countable educational income if receipt of the income depends on school attendance and if the client pays the expense. Allowable deductions include:

(a) tuition;

(b) fees;
(c) books;
(d) equipment;
(e) special clothing needed for classes;
(f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount;
(g) child care necessary for school attendance.

(12) Except for an individual eligible for the Medicaid Work Incentive Program, the following provisions apply to non-institutional medical assistance:

(a) For A, B, or D Medicaid, the income of a spouse or a parent shall not be considered in determining Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals who meet all other Medicaid eligibility factors shall be eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind, or disabled person has more income after deductions than the allocation for a spouse, that income shall be deemed to be income to the aged, blind, or disabled spouse to determine eligibility.

(c) The Department shall determine household size and whose income counts for A, B or D Medicaid as described below.

(i) If only one spouse is aged, blind or disabled:

(A) income of the ineligible spouse shall be deemed to be income to the eligible spouse when it exceeds the allocation for a spouse. The combined income shall then be compared to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the ineligible spouse's income shall not be counted and the ineligible spouse shall not be included in the household size. Only the eligible spouse's income shall be compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged, blind or disabled, the income of both spouses is combined and compared to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount, and one spouse receives SSI, only the income of the non-SSI spouse, after allowable deductions, shall be compared to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds 100% of the federal poverty guideline, then the income of both spouses, after allowable deductions, shall be compared to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, income of the non-covered spouse shall be deemed to the covered spouse when it exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, then only the covered spouse's income shall be counted. In both cases, the countable income shall be compared to 100% of the two-person poverty guideline. If it exceeds the limit, then income, after allowable deductions, shall be compared to the BMS.

(I) If the non-covered spouse has deemable income, the countable income, after allowable deductions, shall be compared to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have deemable income, then only the covered spouse's income, after allowable deductions, shall be compared to a one-person BMS to calculate the spenddown.

(iii) In determining eligibility under (c) for an aged or disabled person whose spouse is blind, both spouses income is combined.

(A) If the combined income after allowable deductions is under 100% of the federal poverty guideline, the aged or disabled spouse will be eligible under the 100% poverty group defined in 1902(a)(10)(A)(ii) of the Social Security Act, and the blind spouse is eligible without a spenddown under the medically needy group defined in 42 CFR 435.301.

(B) If the combined income after allowable deductions is over 100% of poverty, both spouses are eligible with a spenddown under the medically needy group defined in 42 CFR 435.301.

(iv) If one spouse is disabled and working and the other is aged, blind, or disabled but is neither an SSI recipient nor a 1619(b) eligible individual and is not working, the working disabled spouse may choose to receive coverage under the Medicaid Work Incentive program. If both spouses want coverage, however, the Department shall first determine eligibility for them as a couple. If a spenddown is owed for them as a couple, they must meet the spenddown to receive coverage for both of them.

(e) Except when determining countable income for the 100% poverty-related Aged and Disabled Medicaid programs, income will not be deemed from a spouse who meets 1619(b) protected group criteria.

(f) The Department shall determine household size and whose income counts for QMB, SLMB, and QI-1 assistance as described below.

(i) If both spouses receive Part A Medicare and both want coverage, income shall be combined and compared to the applicable percentage of the poverty guideline for a two-person household.

(ii) If one spouse receives Part A Medicare, and the other spouse is aged, blind, or disabled and that spouse either does not receive Part A Medicare or does not want coverage, then income of the ineligible spouse shall be deemed to the eligible spouse when it exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse shall be counted. In both cases, the countable income shall be compared to the applicable percentage of the federal poverty guideline for a two-person household.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, income of the ineligible spouse shall be deemed to the eligible spouse when it exceeds the allocation for a spouse. The combined countable income shall be compared to the applicable percentage of the federal poverty guideline for a two-person household. If the ineligible spouse's deemable income does not exceed the allocation for a spouse, only the eligible spouse's income shall be counted, and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) SSI income will not be counted to determine eligibility for QMB, SLMB or QI-1 assistance.

(g) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the income of neither parent shall be considered to determine a child's eligibility for B or D Medicaid.

(h) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(13) For institutional Medicaid including home and community based waiver programs, the Department shall only count the client in the household size and only count the client's income, and income deemed from an alien client's sponsor, to determine contribution to cost of care.

(14) Interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No. 105-285

effective October 27, 1998, shall not count as income.

(15) Income, unearned and earned, shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

(16) Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(17) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(18) If income such as retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, only the amount paid to the individual is counted as income.

R414-304-3. Medicaid Work Incentive Program Unearned Income Provisions.

(1) The Department adopts 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, and Appendix to Subpart K of 416, 2002 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) and 1612(b)(22) of the Compilation of the Social Security Laws in effect January 1, 2001. The Department shall not count as income any payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The Department shall allow the provisions found in R414-304-2 (3) through (11), and (14) through (18).

(3) The income from an ineligible spouse or parent shall be determined by the total of the earned and unearned income using the appropriate exclusions in 20 CFR 416.1161, except that court ordered support payments would not be allowed as an income deduction.

(4) For the Medicaid Work Incentive Program, the income of a spouse or parent shall not be considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other Medicaid Work Incentive Program eligibility factors shall be eligible without paying a Medicaid buy-in premium.

(5) The Department shall determine household size and whose income counts for the Medicaid Work Incentive Program as described below:

(a) If the Medicaid Work Incentive Program individual is an adult and is not living with a spouse, count only the income of the individual. Include in the household size, any dependent children under age 18, or who are 18, 19, or 20 and are full-time students. These dependent children must be living in the home or be temporarily absent. After allowable deductions, the net income shall be compared to 250% of the federal poverty guideline for the household size involved.

(b) If the Medicaid Work Incentive Program individual is living with a spouse, combine their income before allowing any deductions. Include in the household size the spouse and any children under age 18, or who are 18, 19, or 20 and are full-time students. These dependent children must be living in the home or be temporarily absent. Compare the net income of the Medicaid Work Incentive Program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the Medicaid Work Incentive Program individual is a child living with a parent, combine the income of the Medicaid Work Incentive Program individual and the parents before allowing any deductions. Include in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students, who are living in the home or temporarily absent. Compare the net income of the Medicaid Work Incentive Program individual and the individual's parents to 250% of the federal poverty guideline for the household size involved.

R414-304-4. Family Medicaid and Institutional Family Medicaid Unearned Income Provisions.

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed., and 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(v), 233.20(a)(3)(xxi), 233.20(4)(ii), and 233.51, 2001 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) of the Compilation of the Social Security Laws in effect January 1, 2001, which is incorporated by reference. The Department shall not count as income any payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(a) A "bona fide loan" is a loan that has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment.

(b) "Unearned income" means cash received for which the individual performs no service.

(c) "Quarter" means any three-month period that includes January through March, April through June, July through September or October through December.

(3) Bona fide loans are not countable income.

(4) Support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services is not countable income.

(5) The value of food stamp assistance is not countable income.

(6) SSI and State Supplemental Payments are income for children receiving Child, Family, Newborn, or Newborn Plus Medicaid.

(7) If rental income is unearned income, deduct $30.If the rental income is consistent with community standards, additional deductions are allowed if the client can prove greater expenses. The following expenses in excess of $30 may be allowed:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property. This includes utility costs.

(c) only the interest can be deducted on a loan or mortgage made for upkeep or repair;

(d) if meals are provided to a boarder, the value of a one-person food stamp allotment.

(8) Cash gifts that do not exceed $30 a quarter per person in the assistance unit are not countable income. A cash gift may be divided equally among all members of the assistance unit.

(9) Deferred income that was not deferred by choice is countable income when it is received by the client if receipt can be reasonably anticipated. If the income was deferred by choice, count it as income when it could have been received.

(10) The value of special circumstance items is not countable income if the items are paid for by donors.

(11) Home energy assistance is not countable income.

(12) Do not count payments from any source that are to repair or replace lost, stolen or damaged exempt property. If the payments include an amount for temporary housing, count only the amount that the client does not intend to use or that is more than what is needed for temporary housing.

(13) SSA reimbursements of Medicare premiums are not countable income.

(14) Payments from trust funds are countable income in the month the payment is received or made available to the individual.

(15) FEP, Working Toward Employment Program payments, and Refugee Cash Assistance are not countable income.

(16) Only the portion of a Veteran's Administration check to which the client is legally entitled is countable income.

(17) If the entitlement amount of a benefit differs from the payment, the full entitlement amount is counted as income unless the amount being withheld from the entitlement is due to an overpayment of such benefits, in which case the entitlement less the amount withheld to repay the overpayment is counted. If deductions are being withheld that are purely voluntary, or are to repay a debt or meet a legal obligation other than an overpayment of the benefit, the full entitlement is counted as income.

(18) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. Clients who dispute ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to them. Funds that are successfully disputed are not countable income.

(19) Income, unearned and earned, shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

(20) Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(21) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(22) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

(23) Interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No.105-285 effective October 27, 1998, shall not count as income.

(24) Current child support payments are countable income to the child for whom the payments are being made. If a payment is for more than one child, the amount is divided equally among the children unless a court order indicates a different division. Child support payments made for past months or years (arrearages) are countable income to determine eligibility of the parent or guardian who is receiving the payment. If ORS is collecting the child support, it is counted as current even if it is mailed late by ORS. Arrearages are payments collected for past months or years that were not paid on time and are like repayments for past-due debts. ORS may be collecting both current child support and arrearages.

(25) Payments from annuities count as unearned income in the month received.

(26) If income such as retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, count only the amount paid to the individual.

R414-304-5. A, B and D Medicaid and A, B and D Institutional Medicaid Earned Income Provisions.

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed., and 20 CFR 416.1110 through 416.1112, 2002 ed., which are incorporated by reference. The department adopts Subsection 1612(b)(4)(A) and (B) of the Compilation of the Social Security Laws, in effect January 1, 2001, which is incorporated by reference.

(2) If an SSI recipient has a plan for achieving self-support approved by the Social Security Administration, the Department shall not count income set aside in the plan that allows the individual to purchase work-related equipment or meet self support goals. This income shall be excluded and may include earned and unearned income.

(3) Expenses relating to the fulfillment of a plan to achieve self-support shall not be allowed as deductions from income.

(4) For A, B and D Medicaid, earned income used to compute a needs-based grant is not countable.

(5) For A, B and D Institutional Medicaid, $125 shall be deducted from earned income before contribution towards cost of care is determined.

(6) For A, B and D Institutional Medicaid impairment-related work expenses shall be allowed as an earned income deduction.

(7) Capital gains shall be included in the gross income from self-employment.

(8) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(9) No deductions shall be allowed for the following business expenses:

(a) transportation to and from work;

(b) payments on the principal for business resources;

(c) net losses from previous tax years;

(d) taxes;

(e) money set aside for retirement;

(f) work-related personal expenses.

(10) Net losses of self-employment from the current tax year may be deducted from other earned income.

(11) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any A, B, or D category programs that use a percentage of the federal poverty guideline as an eligibility income limit.

(12) Deductions from earned income such as insurance premiums, savings, garnishments or deferred income is counted in the month when it could have been received.

R414-304-6. Family Medicaid and Family Institutional Medicaid Earned Income Provisions.

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), 2001 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(b) "Part-time student" means a person who is enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time-period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours a day, whichever is less.

(c) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that will lead to gainful employment.

(d) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(e) "Aid to Families with Dependent Children" (AFDC)

means a state plan for aid that was in effect on June 16, 1996.

(f) "1931 Family Medicaid" means a medical assistance program that uses the AFDC eligibility criteria in effect on June 16, 1996 along with any subsequent amendments in the State Plan, except that 1931 Family Medicaid eligibility for recipients of TANF cash assistance follows the eligibility criteria of the Family Employment Program.

(g) "Temporary Assistance to Needy Families" (TANF) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Family Employment Program (FEP).

(3) The income of a dependent child is not countable income if the child is:

(a) in school or training full-time;

(b) in school or training part-time, if employed less than 100 hours a month;

(c) in JTPA.

(4) For Family Medicaid the 30 and 1/3 deduction is allowed if the wage earner has received a TANF financial payment or 1931 Family Medicaid in one of the four previous months and this disregard has not been exhausted.

(5) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(6) Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(7) For Family Medicaid, the Department shall deduct child-care costs, and the costs of providing care for an incapacitated adult who is included in the Medicaid household size, from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to $200.00 per month per child under age 2 and $175.00 per month per child age 2 and older or incapacitated adult, may be deducted. A maximum of up to $160.00 per month per child under age 2 and $140.00 per month per child age 2 and older or incapacitated adult, may be deducted from the earned income of clients working less than 100 hours in a calendar month.

(8) For Family Institutional Medicaid, the Department shall deduct child-care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to $160 a month per child may be deducted. A maximum of up to $130 a month shall be deducted from the earned income of clients working less than 100 hours in a calendar month.

(9) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any family Medicaid programs that use a percentage of the federal poverty guideline as an eligibility income limit, and for determining eligibility for 1931 Family Medicaid.

(10) Under 1931 Family Medicaid, for households that pass the 185% gross income test, if net income does not exceed the applicable BMS, the household shall be eligible for 1931 Family Medicaid. No health insurance premiums or medical bills shall be deducted from gross income to determine net income for 1931 Family Medicaid.

(11) For Family Medicaid recipients who otherwise meet 1931 Family Medicaid criteria, who lose eligibility because of earned income that does not exceed 185% of the federal poverty guideline, the state shall disregard earned income of the specified relative for six months to determine eligibility for 1931 Family Medicaid. Before the end of the sixth month, the state shall conduct a review of the household's earned income. If the earned income exceeds 185% of the federal poverty guideline, the household will be eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

(12) After the first six months of disregarding earned income, if the average monthly earned income of the household does not exceed 185% of the federal poverty guideline for a household of the same size, the state shall continue to disregard earned income for an additional six months to determine eligibility for 1931 Family Medicaid. In the twelfth month of receiving such income disregard, if the household continues to have earned income, the household will be eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

R414-304-7. A, B and D Medicaid and Family Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.831, 2001 ed., which is incorporated by reference.

(2) For aged, blind and disabled individuals eligible under 42 CFR 435.301(b)(2)(iii),(iv),and (v), described more fully in 42 CFR 435.320, .322 and .324, the Department shall allow an income deduction equal to the difference between 100% of the federal poverty guideline and the current BMS income standard for the applicable household size, to determine the spenddown amount.

(3) The Department shall allow health insurance premiums the client or a financially responsible family member pays providing coverage for any family members living with the client as deductions from income in the month of payment. The Department shall also allow an income deduction for health insurance premiums for the month it is due when the Department is paying the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, 2001 ed., except no deduction is allowed for Medicare premiums the Department pays for recipients.

(a) The entire payment shall be allowed as a deduction in the month it is due and will not be prorated.

(b) The Department shall not allow health insurance premiums as a deduction for determining eligibility for the poverty-related medical assistance programs or 1931 Family Medicaid.

(4) Health insurance premiums the client or a financially responsible family member paid in the application month or during the three month retroactive period which are not fully used as a deduction to reduce a spenddown in the month paid may be allowed as a deduction to reduce a spenddown in any month after the month paid but only through the month of application.

(5) Medicare premiums shall not be allowed as income deductions if the state will pay the premium or will reimburse the client.

(6) Medical expenses shall be allowed as income deductions only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, client's spouse, parent of an unemancipated client or unemancipated sibling of an unemancipated client, a deceased spouse or a deceased dependent child.

(b) The medical bill shall not be paid by Medicaid or be payable by a third party.

(c) The medical bill remains unpaid, or the medical service was received and paid during the month of application or during the three-month time-period immediately preceding the date of application. The date the medical service was provided on an unpaid expense does not matter. Bills for services received and paid during the application month or the three-month time-period preceding the date of application can be used as deductions only through the month of application.

(7) A medical expense shall not be allowed as a deduction more than once.

(8) A medical expense allowed as a deduction must be for a medically necessary service. The Department shall be responsible for deciding if services are not medically necessary.

(9) The Department shall not allow as a medical expense, co-payments or co-insurance amounts required under the State Medicaid Plan that are owed or paid by the client to receive Medicaid-covered services.

(10) For poverty-related medical assistance, an individual or household shall be ineligible if countable income exceeds the applicable income limit. Medical costs are not allowable deductions for determining eligibility for poverty-related medical assistance programs. No spenddown shall be allowed to meet the income limit for poverty-related medical assistance programs.

(11) As a condition of eligibility, clients must certify on a form approved by the Department that medical expenses in the benefit month are expected to exceed the spenddown amount. The client must do this when spenddown starts and at each review when the client continues to be eligible under the spenddown program. If medical expenses are less than or equal to the spenddown, the client shall not be eligible for that month. The client may elect to use allowable medical expenses the client still owes from previous months to reduce the spenddown so that expected medical expenses for the benefit month exceed the remaining spenddown owed, if neither Medicaid nor a third party will pay the bill.

(12) Pre-paid medical expenses shall not be allowed as deductions.

(13) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(14) Clients may choose to meet their spenddown obligation by incurring medical expenses or by paying a corresponding amount to the Department.

(15) For A, B and D Medicaid, institutional costs shall be allowed as deductions if the services are medically necessary. The Department shall be responsible for deciding if services for institutional care are not medically necessary.

(16) No one shall be required to pay a spenddown of less than $1.

(17) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in a Medicaid Health Plan. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

R414-304-8. Medicaid Work Incentive Program Income Deductions.

(1) The Department shall allow the provisions found in R414-304-7 (1), (3) and (5).

(2) The Department shall apply the following deductions from income in determining countable income that is compared to 250% of the federal poverty guideline:

(a) $20 from unearned income. If there is less than $20 in unearned income, deduct the balance of the $20 from earned income;

(b) $65 plus one half of the remaining earned income.

(3) For the Medicaid Work Incentive Program (MWI), an individual or household shall be ineligible if countable income exceeds the applicable income limit. Health insurance premiums and medical costs will not be deducted from income before comparing countable income to the applicable limit.

(4) Health insurance premiums paid by the Medicaid Work Incentive Program individual or a financially responsible household member, to purchase health insurance for himself or other family members in the household shall be deducted from income before determining the MWI buy-in premium.

(5) An eligible individual may meet the MWI buy-in premium with cash, check or money order payable to the Office of Recovery Services.

(6) No one will be required to pay a MWI buy-in premium of less than $1.

R414-304-9. A, B, and D Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.725, 435.726, and 435.832, 2001 ed., which are incorporated by reference. The Department adopts Subsection 1902(r)(1) and 1924 of the Compilation of the Social Security Laws, in effect January 1, 2001, which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse who lives with the spouse.

(b) "Dependent" means earning less than $2,000 a year, not being claimed as a dependent by any other individual, and receiving more than half of one's annual support from the client or the client's spouse.

(3) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the Department shall allow an income deduction for health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. Health insurance premiums shall be allowed as an income deduction in the month due. The payment shall not be pro-rated. The Department also allows an income deduction for health insurance premiums for the month it is due if the Department is paying the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, 2001 ed., except no deduction is allowed for Medicare premiums the Department pays for recipients.

(b) The Department shall allow the portion of a combined premium, attributable to the institutionalized or waiver-eligible client, as an income deduction if the combined premium includes a spouse or dependent family member and is paid from the funds of the institutionalized or waiver eligible client.

(4) Medicare premiums shall not be allowed as income deductions if the state pays the premium or reimburses the client.

(5) Medical expenses shall be allowed as income deductions only if the expenses meet all of the following conditions:

(a) the medical service was received by the client;

(b) the unpaid medical bill shall not be paid by Medicaid or be payable by a third party;

(c) the paid medical bill can be allowed only in the month paid. No portion of any paid bill can be allowed after the month of payment.

(6) A medical expense shall not be allowed as an income deduction more than once.

(7) A medical expense allowed as an income deduction must be for a medically necessary service. The Department of Health shall be responsible for deciding if services are not medically necessary.

(8) Pre-paid medical expenses shall not be allowed as income deductions.

(9) The Department shall not allow as a medical expense, co-payments or co-insurance amounts required under the State

Medicaid Plan that are owed or paid by a client to receive Medicaid-covered services.

(10) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(11) Institutionalized clients are to contribute all countable income remaining after allowable income deductions to the institution as their contribution to the cost of their care.

(12) The personal needs allowance shall be equal to $45.

(13) When a doctor verifies that a single person, or a person whose spouse resides in a medical institution is expected to return home within six months of entering a medical institution or nursing home, the Department shall deduct a personal needs allowance equal to the current Medicaid Income Limit (BMS) for one person, defined in R414-304-11(5), for up to six months to maintain the individual's community residence.

(14) Except for an individual eligible for the Personal Assistance Waiver, an individual receiving assistance under the terms of a Home and Community-Based Services Waiver shall be eligible to receive a deduction for a non-institutionalized, non-waiver-eligible spouse and dependent family member as if that individual were institutionalized.

(a) Income received by the spouse or dependent family member shall be counted in calculating the deduction if that type of income is countable to determine Medicaid eligibility. No income disregards shall be allowed. Certain needs-based income and state supplemental payments shall not be counted in calculating the deduction. Tribal income shall be counted.

(b) If the income of a spouse or dependent family member is not reported, no deduction shall be allowed for the spouse or dependent family member.

(15) A client shall not be eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(16) To determine an income deduction for a community spouse, the standard utility allowance for households with heating costs shall be equal to the standard utility allowance used by the federal food stamp program. For households without heating costs, actual utility costs shall be used. The maximum allowance for a telephone bill is equal to the amount allowed by the federal food stamp program. Clients shall not be required to verify utility costs more than once in a certification period.

(17) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in a Medicaid Health Plan. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

R414-304-10. Budgeting.

(1) The Department adopts 42 CFR 435.601 and 435.640, 2001 ed., which are incorporated by reference. The Department adopts 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, 2001 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(b) "Prospective eligibility" means that eligibility is determined each month for the immediately following month based on a best estimate of income.

(c) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(d) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(e) "Income anticipating" means using current facts regarding rate of pay and number of working hours to anticipate future monthly income.

(f) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(g) "Factoring" means that a monthly amount shall be determined to take into account the months of pay where an individual receives a fifth paycheck when paid weekly or a third paycheck when paid every other week. Weekly income shall be factored by multiplying the weekly amount by 4.3 to obtain a monthly amount. Income paid every other week shall be factored by 2.15 to obtain a monthly amount.

(h) "Reportable income changes" include any change in the source of income and any change that causes income to change by more than $25. All income changes must be reported for an institutionalized individual.

(3) The Department shall do prospective budgeting on a monthly basis.

(4) A best estimate of income based on the best available information shall be an accurate reflection of client income in that month.

(5) The Department shall use the best estimate of income to be received or made available to the client in a month to determine eligibility and spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) The Department shall count income in the following manner:

(a) For QMB, SLMB, QI-1, Medicaid Work Incentive Program, and A, B, D, and Institutional Medicaid income shall be counted as it is received. Income that is received weekly or every other week shall not be factored.

(b) For Family Medicaid programs, income that is received weekly or every other week shall be factored.

(8) Lump sums are income in the month received. Any amount of a lump sum remaining after the end of the month of receipt is a resource, unless otherwise excluded under statute or regulation. Lump sum payments can be earned or unearned income.

(9) Income paid out under a contract shall be prorated to determine the countable income for each month. Only the prorated amount shall be used to determine spenddown or eligibility for a month. If the income will be received in fewer months than the contract covers, the income shall be prorated over the period of the contract. If received in more months than the contract covers, the income shall be prorated over the period of time in which the money will be received.

(10) To determine the average monthly income for farm and self-employment income, the Department shall determine the annual income earned during one or more past years, or other applicable time period, and factor in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income shall be adjusted during the year when information about changes or expected

changes is received by the Department.

(11) Student income received other than monthly shall be prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months that classes are in session.

(12) Income from Indian trust accounts not exempt by federal law shall be prorated to determine the monthly countable income when the income varies from month to month, or it is received less often than monthly. This is done by dividing the total amount by the number of months it covers.

(13) Eligibility for retroactive assistance shall be based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method shall be used for the months in the retroactive period, except when the income was not being received during, and was not intended to cover, those specific months in the retroactive period. Income will not be factored for retroactive months.

R414-304-11. Income Standards.

(1) The Department adopts Sections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f) and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2001, which are incorporated by reference.

(2) The Aged and Disabled poverty-related Medicaid income standard shall be calculated as 100% of the federal non-farm poverty guideline. If an Aged or Disabled person's income exceeds this amount, the current Medicaid Income Standards (BMS) shall apply unless the disabled individual or a disabled aged individual has earned income. In this case, the income standards of either the Medically Needy (BMS) program or the Medicaid Work Incentive program may be applied. The individual may choose coverage under either program if the individual meets all other eligibility criteria for both programs.

(3) The income standard for the Medicaid Work Incentive Program shall be equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) shall apply. The Department shall charge a MWI buy-in premium for the Medicaid Work Incentive Program when the countable income of the eligible individual, or the eligible individual and spouse, when the spouse is also eligible or has deemable income, exceeds 100% of the federal poverty guideline for the Aged and Disabled 100% poverty-related coverage group. When the eligible individual is a minor child, the Department shall charge a MWI buy-in premium when the child's countable income, including income deemed from parents, exceeds 100% of the federal poverty guideline for a one-person household. The premium will be calculated as 15% percent of only the eligible individual's, or eligible couple's, countable income.

(4) The income limit for pregnant women, and children under one year of age, shall be equal to 133% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) shall apply.

(5) The current Medicaid Income Standards (BMS) are as follows:

TABLE

Household Size	Medicaid Income Standard (BMS)
1	382
2	468
3	583
4	683
5	777
6	857
7	897
8	938
9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

R414-304-12. A, B and D Medicaid, Medicaid Work Incentive, QMB, SLMB, and QI-1 Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 2001 ed., which are incorporated by reference. The Department adopts Subsections 1902(l)(1), (2), and (3), 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2001, which are incorporated by reference.

(2) The following individuals shall be counted in the BMS for A, B and D Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for A, B, or D Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemable income above the allocation for a spouse.

(3) The following individuals shall be counted in the household size for the 100% of poverty A or D Medicaid program:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemable income above the allocation for a spouse.

(4) The following individuals shall be counted in the household size for a QMB, SLMB, or QI-1 case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemable income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemable income above the allocation for a spouse.

(5) The following individuals shall be counted in the household size for the Medicaid Work Incentive Program:

(a) the client;

(b) a spouse living in the same home;

(c) parents living with a minor child;

(d) children under age 18;

(e) children age 18, 19, or 20 if they are in school full-time.

(6) Eligibility for A, B and D Medicaid and the spenddown, if any; A and D 100% poverty-related Medicaid; and QMB, SLMB, and QI-1 programs shall be based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on R414-304-2;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(7) Eligibility for the Medicaid Work Incentive Program shall be based on income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(8) If a person is "included" in the BMS, it means that

family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance.

(9) If a person is "included" in the household size, it means that family member shall be counted as part of the household to determine what income limit applies, regardless of whether that family member's income will be counted or whether that family member will receive medical assistance.

R414-304-13. Family Medicaid Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 2001 ed., 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), 2001 ed., which are incorporated by reference.

(2) Except for determinations under 1931 Family Medicaid, any unemancipated minor child may be excluded from the Medicaid coverage group at the request of the specified relative responsible for the children. An excluded child shall be considered an ineligible child and shall not be counted as part of the household size for deciding what income limit will be applicable to the family. Income and resources of an excluded child shall not be considered when determining eligibility or spenddown.

(3) The Department shall not use a grandparent's income to determine eligibility or spenddown for a minor child, and the grandparent shall not be counted in the household size. A cash contribution from the grandparents received by the minor child or parent of the minor child is countable income.

(4) Except for determinations under 1931 Family Medicaid, if anyone in the household is pregnant, the unborn child shall be included in the household size. If a medical authority confirms that the pregnant woman will have more than one child, all of the unborn children shall be included in the household size.

(5) If a child is voluntarily placed in foster care and is in the custody of a state agency, the parents shall be included in the household size.

(6) Parents who have relinquished their parental rights shall not be included in the household size.

(7) If a court order places a child in the custody of the state, and the child is temporarily placed in an institution, the parents shall not be included in the household size.

(8) If a person is "included" in the household size, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS income level or, in the case of poverty-related programs, which poverty guideline income level will apply to determine eligibility for the client or family.

R414-304-14. A, B and D Institutional and Waiver Medicaid and Family Institutional Medicaid Filing Unit.

(1) For A, B, and D institutional, and home and community-based waiver Medicaid, the Department shall not use income of the client's parents or the client's spouse to determine eligibility and the contribution to cost of care, which may be referred to as a spenddown.

(2) For Family institutional, and home and community-based waiver Medicaid programs, the Department adopts 45 CFR 206.10(a)(1)(vii), 2001 ed., which is incorporated by reference.

(3) The Department shall base eligibility and the contribution to cost of care, which may be referred to as a spenddown on the income of the client and the sponsor of an alien who is subject to deeming according to the rules described in 20 CFR 416.1166a, 2002 ed., which is incorporated by reference.

(4) The Department shall base eligibility and the contribution to cost of care, which may be referred to as a spenddown, on the income of the client and the income deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

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Notice of Continuation January 31, 2003

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-501. Preadmission and Continued Stay Review.
R414-501-1. Introduction and Authority.

This rule implements 42 USC 1396r(b)(3), (e)(5), and (f)(6)(B), and 42 CFR 456.1 through 456.23,and 456.350 through 456.380, by requiring the evaluation of each resident's need for admission and continued stay in a nursing facility. 42 USC 1396r, requirements for nursing facilities, and 42 CFR 483, requirements for states and long term care facilities, are adopted and incorporated by reference.

R414-501-2. Definitions.

In addition to the definitions in R414-1-1, the following definitions apply to Rules R414-501 through R414-503:

(1) "Activities of daily living" are defined in 42 CFR 483.25(a)(1), and further includes adaptation to the use of assistive devices and prostheses intended to provide the greatest degree of independent functioning.

(2) "Categorical determination" means a determination made pursuant to 42 CFR 483.130 and ATTACHMENT 4.39-A of the State Plan.

(3) "Code of Federal Regulations (CFR)" means the 1999 edition unless otherwise noted.

(4) "Continued stay review" means a periodic, supplemental, or interim review of a resident performed by a department health care professional either by telephone or on-site review.

(5) "Discharge planning" means planning that ensures that the resident has an individualized planned program of post-discharge continuing care that:

(a) states the medical, functional, behavioral and social levels necessary for the resident to be discharged to a less restrictive setting;

(b) includes the steps needed to move the resident to a less restrictive setting;

(c) establishes the feasibility of the resident's achieving the levels necessary for discharge; and

(d) states the anticipated time frame for that achievement.

(6) "Health care professional" means a duly licensed or certified physician, physician assistant, nurse practitioner, physical therapist, speech therapist, occupational therapist, registered professional nurse, licensed practical nurse, social worker, or qualified mental retardation professional.

(7) "Level I screening" means the preadmission identification screening discussed in R414-503-3.

(8) "Level II evaluation" means the preadmission evaluation and annual resident review for serious mental illness or mental retardation discussed in R414-503-4.

(9) "Medicaid resident" means a resident who is a Medicaid recipient.

(10) "Mental retardation" is defined in 42 CFR 483.102(b)(3) and includes "persons with related conditions" as defined in 42 CFR 435.1009.

(11) "Nursing facility" is defined in 42 USC 1396r(a), and also includes an intermediate care facility for the mentally retarded as defined in 42 USC 1396d(d).

(12) "Resident" means a person residing in a Medicaid-certified nursing facility.

(13) "Serious mental illness" is defined in 42 CFR 483.102(b)(1).

(14) "Significant change" means a major change in the resident's physical, mental, or psychosocial status that is not self limiting, impacts on more than one area of the resident's health status, and requires interdisciplinary review or revision of the care plan.

(15) "Skilled care" means those services defined in 42 CFR 409.32.

(16) "Specialized rehabilitative services" means those services provided pursuant to 42 CFR 483.45 and R432-150-22.

(17) "Specialized services" means those services provided pursuant to 42 CFR 483.120 and ATTACHMENT 4.39 of the State Plan.

(18) "United States Code (USC)" means the 1993 edition unless otherwise noted.

(19) "Working days" means all days except Saturdays, Sundays, and recognized state holidays.

R414-501-3. Preadmission Authorization.

(1) A nursing facility shall perform a preadmission assessment when admitting an applicant, including an applicant who will be reclassified from Medicare skilled care to Medicaid nursing facility care, or who is currently funded from another source but anticipates applying for Medicaid within 90 days of admission, and has been referred by a mental health center or civilly committed to the mental health system. Preadmission authorization is not transferable from one nursing facility to another.

(2) A nursing facility may perform a preadmission assessment on any other person who applies for nursing facility care.

(3) A nursing facility must obtain prior approval from the department before admitting an applicant. A request for prior approval may be in writing or by telephone and shall include:

(a) the name, age, and Medicaid eligibility of the applicant;

(b) the date of transfer or admission to the nursing facility;

(c) the date of the surgical procedure or traumatic incident, if any, that caused the need for care;

(d) the reason for acute care inpatient hospitalization or emergency placement, if any, and the care and services needed;

(e) the applicant's current functional and mental status;

(f) the established diagnoses;

(g) the medications and treatments currently ordered for the applicant;

(h) the projected level of care placement and an evaluation of alternative care resources and support services previously used, currently in use, and available through the community and family;

(i) the name of the individual requesting the prior approval;

(j) the Level I screening, except the screening is not required for admission to an intermediate care facility for the mentally retarded; and

(k) the Level II determination, if required by the department.

(4) If the department gives prior approval, the nursing facility shall submit to the department within five working days a preadmission transmittal for the applicant, and shall begin preparing the complete contact for the applicant. The complete contact is a written application containing all the elements of a request for prior approval plus:

(a) the preadmission continued stay transmittal;

(b) a signed release of information;

(c) a history and physical;

(d) the physician's orders;

(e) a nursing assessment;

(f) a social evaluation;

(g) a discharge plan;

(h) a resident assessment instrument completed no later than 14 calendar days after the resident is admitted to a nursing facility; and

(i) the completed comprehensive plan of care that includes measurable objectives and timetables to treat medical and psychosocial needs that are identified in a comprehensive assessment of significant impairments in the resident's functional capacity and his capabilities to perform daily life functions.

(5) When a Medicaid resident is admitted to a hospital, the department may not require preadmission authorization when the Medicaid resident returns to the original nursing facility not later than three consecutive days after the date of discharge from the nursing facility. If the readmission occurs four or more days after the date of discharge from the nursing facility, the nursing facility shall complete the preadmission authorization process again. However, if a Medicaid resident returns to a nursing facility for the mentally retarded within the three day period and may require skilled care or services, then the nursing facility shall immediately request prior approval from the department.

(6) The department shall reimburse a nursing facility for the five days allowed in Subsection R414-501-3(6)(c) if the department, without full assessment, gives prior approval for a resident who is an immediate placement.

(a) An immediate placement shall meet one of the following criteria:

(i) The resident exhausted acute care benefits or was discharged by a hospital;

(ii) A Medicare fiscal intermediary changed the resident's level of care, or the Medicare benefit days terminated and there is a need for continuing services reimbursed under Medicaid;

(iii) Protective services in the Department of Human Services placed the resident for care;

(iv) A tragedy, such as fire or flood, has occurred in the home, and the resident is injured, or an accident leaves a dependent person in imminent danger and requires immediate institutionalization;

(v) A family member who has been providing care to the resident dies or suddenly becomes ill;

(vi) A nursing facility terminated services, either through an adverse certification action or closure of the facility, and the resident must be transferred to meet his medical or habilitation needs; or

(vii) In the previous placement, the resident presented a clear danger to himself, others, or property.

(b) The department shall deny an immediate placement unless the Level I screening is completed and the department determines a Level II evaluation is not required, or if the Level II evaluation is required, then the Level II evaluation is completed and the department determines the applicant qualifies for placement in a nursing facility and Medicaid reimbursement. The three exceptions to this requirement are when the applicant is a provisional placement for less than seven days, the applicant has previously been screened and the determinations will be reviewed on his annual resident review, or when the placement is after an acute hospital stay and the physician certifies that the placement will be for less than 30 days.

(c) Prior approval for an immediate placement shall be effective for no more than five working days. During that period the nursing facility shall submit a preadmission transmittal, and shall begin preparing the complete contact for the applicant. If the nursing facility fails to timely submit the preadmission transmittal, the department may not make any payments until the department receives the preadmission transmittal and the nursing facility again complies with all preadmission requirements.

(7) If a nursing facility accepts a resident who elects not to apply for Medicaid coverage, and the nursing facility can prove that it gave the resident or his legal representative written notice of Medicaid eligibility and preadmission requirements, then the resident or legal representative shall be solely responsible for payment for the services rendered. However, if a nursing facility cannot prove it gave the notice to a resident or his legal representative, then the nursing facility shall be solely responsible for payment for the services rendered during the time when the resident was eligible for Medicaid coverage.

(8) The department shall refer medically ineligible applicants to appropriate health-related agencies when the preadmission assessment identifies such a need.

(9) The department shall deny payment to a nursing facility for services provided before the earliest of (a) the date of the verbal prior approval, (b) the date postmarked on the envelope containing the written application, or (c) the date the department receives the written application.

R414-501-4. Continued Stay Review.

(1) The department shall conduct a continued stay review to determine the need for continued stay in a nursing facility and to determine whether the resident has shown sufficient improvement to implement discharge planning and to refer the resident to one or more representatives for follow-up contact with the resident. Within 90 days after the department authorizes Medicaid reimbursement for a Medicaid resident, the department shall commence the continued stay review. This review must be completed no later than the last day of the calendar month in which it is due.

(2) If a question regarding placement or level of care for a Medicaid resident arises, the department may request additional information from the nursing facility. If the question remains unresolved, a department health care professional may perform a supplemental on-site review. The department or the nursing facility can also initiate an interim review because of a change in the Medicaid resident's condition or medical needs.

(3) A nursing facility shall make appropriate personnel and information reasonably accessible so the department can conduct the continued stay review.

(4) A nursing facility shall inform the department by telephone or in writing when the needs of a Medicaid resident change to possibly require discharge, a different level of care, or a change from the findings in the Level I screening or Level II evaluation. A nursing facility shall also inform the department of newly acquired facts relating to the resident's diagnosis, medications, treatments, care or service needs, or plan of care that may not have been known when the department determined medical need for admission or continued stay.

(5) The department shall deny payment to a nursing facility for services provided to a Medicaid resident who, against medical advice, leaves a nursing facility for more than two consecutive days, or who fails to return within two consecutive days after an authorized leave of absence. A nursing facility shall report all such instances to the department. The resident shall complete all preadmission requirements before the department may approve payment for further nursing facility services.

R414-501-5. General Provisions.

(1) The department is solely responsible for approving or denying a preadmission or continued stay authorization for payment for nursing facility services provided to a Medicaid resident. The department is ultimately responsible for determining the level of care for a Medicaid resident in a nursing facility. If a nursing facility complies with all preadmission and continued stay requirements for a Medicaid resident then the department shall provide coverage consistent with the state plan.

(2) If a nursing facility fails to comply with all preadmission or continued stay requirements, the department shall deny payment to the nursing facility for services provided to the applicant. The nursing facility is liable for all expenses incurred for services provided to the applicant on or after the date the applicant applied for Medicaid. The nursing facility may not bill the applicant or his legal representative for services not reimbursed by the department due to the nursing facility's failure to follow preadmission or continued stay rules.

(3) If the department denies a claim, then the department shall comply with 42 CFR 431.200 through 431.246, and also send written notice to the nursing facility administrator, the

attending physician, and, if possible, the next-of-kin or legal representative of the applicant. If the department denies a claim, then the nursing facility can resubmit additional documentation not later than 60 calendar days after the date the department receives the initial preadmission or continued stay transmittal. If the nursing facility fails to submit additional documentation that corrects the claim deficiencies within the 60 calendar day period, then the denial becomes final and the nursing facility waives all rights to Medicaid reimbursement from the time of admission until the department approves a subsequent request for authorization submitted by the nursing facility.

(4) The department adopts the standards and procedures for conducting a fair hearing set forth in 42 USC 1396a(a)(3) and 42 CFR 431.200 through 431.246, which are incorporated by reference. Those laws are implemented in Title 63, Chapter 46b and in R410-14.

R414-501-6. Grace Days.

The department grants to each nursing facility 30 grace days in each fiscal year (July 1 to June 30). A nursing facility may use these grace days if an otherwise eligible recipient is admitted to the nursing facility or returns to the nursing facility after a hospital admission and the nursing facility fails to comply with preadmission or continued stay rules and is thus denied payment by the department. The nursing facility may use these grace days for one recipient or many recipients. To use these grace days the nursing facility shall contact the department in order to change the payment document in the computer system. The department shall keep a record of the grace days used by each nursing facility and shall provide this information to a nursing facility upon request.

R414-501-7. Safeguarding Information of Applicants and Residents.

(1) The department adopts the standards and procedures for safeguarding information of applicants and recipients set forth in 42 USC 1396a(a)(7) and 42 CFR 431.300 through 431.307, which are incorporated by reference.

(2) Standards for safeguarding a resident's private records are set forth in Section 63-2-302.

R414-501-8. Free Choice of Providers.

Subject to certain restrictions outlined in 42 CFR 431.51, 42 USC 1396a(a)(23) requires that recipients have the freedom to choose a provider. A recipient who believes his freedom to choose a provider has been denied or impaired may request a hearing from the department, as outlined in 42 CFR 431.200 through 431.221.

R414-501-9. Alternative Services Evaluation and Referral.

While reviewing a preadmission assessment for admission to a nursing care facility, other than an ICF/MR, the Department may evaluate the potential for the applicant to receive alternative Medicaid services in a home or community-based setting that are appropriate for the needs of the individual identified in the preadmission submittals. If, in the judgement of the reviewer, there is a potential for alternative Medicaid services, the Department shall refer the name of the applicant to one or more designated Medicaid home and community services program representatives for follow-up contact with the applicant.

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63-46a-7(1)(a)

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-502. Nursing Facility Levels of Care.
R414-502-1. Introduction and Authority.

This rule defines the levels of care provided in nursing facilities.

R414-502-2. Definitions.

The definitions in R414-1-1 and R414-501-2 apply to this rule.

R414-502-3. Approval of Level of Care.

(1) In determining whether the applicant has mental or physical conditions that can only be cared for in a nursing facility, or equivalent care provided through an alternative Medicaid health care delivery program, the department shall document that at least two of the following factors exist:

(a) Due to diagnosed medical conditions, the applicant requires at least substantial physical assistance with activities of daily living above the level of verbal prompting, supervising, or setting up;

(b) The attending physician has determined that the applicant's level of dysfunction in orientation to person, place, or time requires nursing facility care; or equivalent care provided through an alternative Medicaid health care delivery program; or

(c) The medical condition and intensity of services indicate that the care needs of the applicant cannot be safely met in a less structured setting, or without the services and supports of an alternative Medicaid health care delivery program.

(2) The department shall assign a level of care based upon the severity of illness, intensity of service needed, anticipated outcome, and setting for the service. The department shall not assign a more intense level of care if, as a practical matter, the applicant's care and treatment needs can be met at a less intense level of care. Levels of care, ranked in order of intensity from the least intense to the most intense, are:

(a) nursing facility III care;
(b) nursing facility II care;
(c) nursing facility I care; and
(d) intensive skilled care.

R414-502-4. Criteria for Nursing Facility III Care.

The following criteria must be met before the department may authorize Medicaid coverage for an applicant at the nursing facility III care level:

(1) A physical examination was completed within 30 days before or seven days after admission;

(2) A registered nurse completed, coordinated, and certified a comprehensive resident assessment;

(3) A person licensed as a social worker, or higher degree of training and licensure, completed a social services evaluation that meets the criteria in 42 CFR 456.370;

(4) A physician established a written plan of care;

(5) All less restrictive alternatives or services to prevent or defer nursing facility care have been explored; and

(6) When the department has determined necessary, health care professionals completed and submitted to the department a psychological or psychiatric evaluation in accordance with 42 CFR 483.20(f). If an applicant is diagnosed with a condition related to a code within the International Classification of Diseases, 9th revision, Clinical Modification (ICD-9-CM) psychiatric code range, the inter-disciplinary team shall submit its determinations to the department, including the behavior intervention program if the team determined one to be necessary. If the team determined that behavior intervention is unnecessary, it shall include evidence supporting the determination. All behavior intervention programs shall:

(a) be a precisely planned systematic application of the methods and experimental findings of behavioral science with the intent of reducing observable negative behaviors;

(b) incorporate processes and methodologies that are the least restrictive alternatives available for producing the desired outcomes;

(c) be conducted only following identification and, if feasible, remediation of environmental and social factors that are likely to be precipitating or reinforcing the inappropriate behavior;

(d) incorporate a process for identifying and reinforcing a desirable replacement behavior;

(e) include a program data sheet;

(f) include a behavior baseline profile consisting of all of the following: the applicant's name; the date, time, location, and specific description of the undesirable behavior exhibited; the persons present and the conditions existing prior to and at the time of the undesirable behavior; the interventions used and their results; and the recommendations for future action; and

(g) include a behavior intervention plan consisting of all of the following: the applicant's name; the date the plan is prepared and when it will be used; the objectives stated in terms of specific behaviors; the names, titles, and signatures of the persons responsible for conducting the plan; and the methods and frequency of data collection and review.

R414-502-5. Criteria for Nursing Facility II Care.

The following criteria must be met before the department may authorize Medicaid coverage for an applicant at the nursing facility II care level:

(1) The applicant meets all the criteria for nursing facility III care;

(2) The required intensity of services needed is less than that for skilled care; and

(3) The applicant has documented service needs for at least one of the following:

(a) Daily rehabilitative or restorative services provided under the direction of licensed professional staff, with documented measurable outcomes of treatment;

(b) Close observation, documentation, and follow-through to establish the impact of specified services, such as services to applicants with neurological involvement, hospice services, diabetes control, or dialysis, any one of which may utilize laboratory services and physician intervention;

(c) Training in personal care services to minimize dependency on staff for completion of activities of daily living;

(d) A behavior intervention program established because of specified aberrant behavior such as wandering, excessive sexual drive, destructive or aberrant acting out, prolonged depression leading to self-isolation or violent acts;

(e) Specialized nursing services for skin and wound care;

(f) Extensive interaction with professional staff to assist the applicant and family through the final three months of his anticipated life expectancy;

(g) Any skilled services ordered and given more frequently than two times each week, but less frequently than required for skilled care;

(h) Alzheimer's disease, senile dementia, organic brain disorder, and other diagnosed disease processes that use specialized documented programs that increase staff intervention in an effort to enhance the applicant's quality of life and functional and cognitive status;

(i) Multi-drug resistant, non-compliant tuberculosis applicants in the active phases of tuberculosis who are court ordered as a public health or communicable disease placement; or

(j) A diagnosis of mental retardation with a Level II determination indicating that the applicant can benefit from specialized rehabilitative services. The department shall pay a provider for services provided for an applicant in this category

an individual add-on rate depending on the specialized rehabilitative services provided to meet his needs.

R414-502-6. Criteria for Nursing Facility I Care.

The following criteria must be met before the department may authorize Medicaid coverage for an applicant at the nursing facility I care level:

(1) The applicant meets all the criteria for nursing facility II care;

(2) The services are provided by a nursing facility certified pursuant to 42 CFR 409.20 through 409.35, or a swing bed hospital approved by the federal Health Care Financing Administration to furnish nursing facility I care in the Medicare program;

(3) The applicant has exhausted Medicare benefits or has been denied by Medicare for reasons other than level of care requirements;

(4) The applicant requires specialized and complex care documented in the applicant's medical record; and

(5) The criteria in 42 CFR 409.31 through 409.35, requirements for coverage of post-hospital skilled nursing facility care, are satisfied.

R414-502-7. Criteria for Intensive Skilled Care.

The following criteria must be met before the department may authorize Medicaid coverage for an applicant for intensive skilled care:

(1) The applicant meets all the criteria for nursing facility I care. However, the following routine skilled care does not qualify as intensive skilled care under R414-502-6(5) in making a determination under this section:

(a) skilled nursing services described in 42 CFR 409.33(b);

(b) skilled rehabilitation services described in 42 CFR 409.33(c);

(c) routine monitoring of medical gases after a therapy regimen;

(d) routine levin tube and gastrostomy feedings; and

(e) routine isolation room and techniques.

(2) The applicant has exhausted Medicare benefits or has been denied by Medicare for reasons other than level of care requirements;

(3) The applicant requires and receives at least five hours daily of direct licensed professional nursing care, including a combination of specialized care and services, and assessment by a registered nurse and observation on a 24-hour basis;

(4) The attending physician has made any one of the following determinations:

(a) there is presently no reasonable expectation that the applicant will benefit further from any care and services available in an acute care hospital that are not available in a nursing facility;

(b) the applicant's condition requires physician follow-up at the nursing facility at least once every 30 days; or

(5) An interdisciplinary team may indicate a therapeutic leave of absence from the nursing facility is appropriate either to facilitate discharge planning or to enhance the applicant's medical, social, educational, and habilitation potential;

(6) Except in extraordinary circumstances, the applicant has been hospitalized immediately prior to admission to the nursing facility;

(7) The applicant has been continuously approved for skilled care, either through Medicare or Medicaid, since admission to the nursing facility;

(8) The attending physician has written and signed progress notes at the time of each physician visit reflecting the current medical condition of the applicant; and

(9) If an applicant was previously approved for intensive skilled care and later downgraded to a lower care level, then, even though he was not discharged from a hospital, he may return to intensive skilled care instead of being hospitalized in an acute care setting if:

(a) a complication occurs involving the condition for which he was originally approved for intensive skilled care; and

(b) it has been less than 30 days since the termination of the previous intensive skilled care.

R414-502-8. Criteria for Intermediate Care for the Mentally Retarded.

The following criteria must be met before the department may authorize Medicaid coverage for an applicant in an intermediate care facility for the mentally retarded:

(1) The applicant is mentally retarded, except that even if the applicant is mentally retarded, he will not qualify for care in an intermediate care facility for the mentally retarded if the applicant is ambulatory, continent, only moderately or mildly mentally retarded without complicating conditions, is in need of less than weekly intervention by or under the supervision of a health care professional or trained habilitative personnel, and is capable of daily attendance in work settings or day treatment. Day treatment is training and habilitation services outside the nursing facility that are:

(a) intended to aid the self-help and self-sufficiency skill development of a mentally retarded resident;

(b) sufficient to meet the specialized rehabilitative service requirements of 42 CFR 435.1009 for the mentally retarded; and

(c) coordinated with the active treatment program of the intermediate care facility for the mentally retarded.

(2) The appropriate local office of the Department of Human Services:

(a) informs the applicant or his legal representative of any feasible alternatives available under the home and community based services waiver, and gives him the choice of either nursing facility or home and community based services; and

(b) states in writing that without home and community based services, the applicant would require the level of care provided in an intermediate care facility for the mentally retarded; and

(3) The applicant has at least one of the following conditions:

(a) Is severely or profoundly retarded;

(b) Is under six years of age;

(c) Is severely multiply handicapped in that he has at least two of the conditions identified in the definition of mental retardation found in the Diagnostic and Statistical Manual of Mental Disorders IV, Revised, 1994;

(d) More than once per week is physically aggressive or assaultive towards himself or others;

(e) Is a security risk or wanders away at least once per week;

(f) Is diagnosed as severely hyperactive;

(g) Demonstrates psychotic-like behavior; or

(h) Has conditions requiring at least weekly intervention by or under the supervision of a health care professional or trained habilitative personnel.

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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-503. Preadmission Screening and Annual Resident Review.
R414-503-1. Introduction and Authority.

This rule implements 42 USC 1396r(b)(3) and (e)(7) that require preadmission screening and annual review of nursing facility residents with serious mental illness or mental retardation.

R414-503-2. Definitions.

The definitions in R414-1-1 and R414-501-2 apply to this rule.

R414-503-3. Preadmission Level I Screening for All Persons.

The purpose of the preadmission Level I screening is to determine if a person seeking admission to a nursing facility has serious mental illness or mental retardation and is therefore subject to a Level II evaluation.

(1) A nursing facility may not admit a person unless a health care professional has completed a Level I screening. The department shall deny reimbursement for a resident if a nursing facility fails to assure that the resident's Level I screening is completed as required.

(2) A health care professional shall complete a Level I screening on a form supplied by the department and shall include the date of the screening and the signature of the health care professional completing the screening.

(3) If the Level I screening identifies a positive response to all of the following three criteria, then the screening shall conclude that the person may have a serious mental illness. The Level I screening criteria for serious mental illness are whether the person has:

(a) A diagnosis falling within the diagnostic groupings of serious mental illness, as described in the Diagnostic and Statistical Manual of Mental Disorders IV, Revised, 1994;

(b) Experienced a functional limitation in a major life activity within the last six months in that the person has serious difficulty on a continuing or intermittent basis in interpersonal functioning, concentration and persistence and pace, or adaptation to change, and which is due to the serious mental illness diagnosis;

(c) A treatment history indicating psychiatric treatment more intensive than outpatient care occurring more than once within the last two years; or experienced, within the last two years, significant disruption to his normal living situation to the degree that he required supportive services to maintain his current level of functioning at home or in a residential treatment environment; or required intervention by housing or law enforcement officials.

(4) If the Level I screening identifies at least one positive response to any of the following criteria then the screening shall conclude that the person may have mental retardation. The Level I screening criteria for mental retardation is whether the person has:

(a) A diagnosis of mental retardation;

(b) A current prescription for anti-convulsant medications for epilepsy with an onset prior to age 22;

(c) A history of mental retardation, or cognitive or behavioral indicators that the person has mental retardation; or

(d) Been referred by any agency specializing in the care of persons with mental retardation;

(5) If the screening does not indicate the person may have serious mental illness or mental retardation, or if the screening determines the person has a diagnosis of dementia (including Alzheimer's disease or an organic mental disorder) based on criteria in the Diagnostic and Statistical Manual of Mental Disorders IV, Revised, 1994, then no further evaluation is necessary.

(6) If the person is admitted to a nursing facility, the nursing facility shall submit a copy of the Level I screening to the department and shall retain a copy of the Level I screening in the resident's medical record.

(7) If the Level I screening indicates the person may have serious mental illness or mental retardation, then the Level I screener shall complete a notice of referral to the state authority that shall conduct the Level II evaluation. The notice shall be on a form provided by the department. The screener shall give the notice to the person, his legal representative, and the nursing facility.

R414-503-4. Preadmission Level II Evaluation.

(1) The purposes of the preadmission Level II evaluation are to determine whether a person with serious mental illness or mental retardation who seeks admission to a nursing facility requires the level of services provided by a nursing facility and whether the person requires specialized services.

(2) If a Level I screening indicates a Level II evaluation is required, then a nursing facility may not admit the person unless the Level II evaluation is completed and determines that it is appropriate to place the person in a nursing facility. The Level II evaluation is not required for a person who is any one of the following:

(a) A provisional admission in which the person has delirium where an accurate diagnosis cannot be made until the delirium clears, or in emergency situations where the nursing facility placement will not exceed seven days. However, if the placement exceeds seven days, the Level II evaluation shall be completed;

(b) Readmitted to a nursing facility after being transferred to a hospital, or for a person who is transferred from one nursing facility to another, with or without an intervening hospital stay; or

(c) Admitted to a nursing facility directly from a hospital where the person received acute inpatient care, and the person requires nursing facility services for the condition treated in the hospital, and the attending physician certifies before admission to the nursing facility that the person is likely to require a stay of less than 30 days. If a resident enters a nursing facility through such an exempted hospital discharge and then remains in the nursing facility for more than 30 days, then the resident shall be referred to the state mental health or mental retardation authority for an annual resident review within 40 calendar days of admission.

(3) The department shall deny reimbursement for a resident if the nursing facility fails to assure that the resident's Level II evaluation is completed as required.

(4) If the Level I screening indicates the person may have mental retardation, then the person shall be referred to the Department of Human Services Division of Services for People with Disabilities for the Level II determination. If the Level I screening indicates the person may have a serious mental illness, then the person shall be referred to the Department of Human Services Division of Mental Health for the Level II determination. If the Level I screening indicates the person may have both a serious mental illness and mental retardation, then the person shall be referred to both divisions.

(5) The Level II evaluation shall be based on the criteria established pursuant to 42 USC 1396r(f)(8), and addressing the level of nursing services, specialized services, and specialized rehabilitative services needed. Based on those criteria, the Level II evaluation shall make one of the following seven determinations:

(a) The person does not need nursing facility services. This determination disqualifies the person for placement in a nursing facility and Medicaid reimbursement;

(b) The person does not need nursing facility services but needs specialized services. This determination disqualifies the

person for placement in a nursing facility and Medicaid reimbursement;

(c) The person needs nursing facility services but does not need specialized services. This determination qualifies the person for placement in a nursing facility and Medicaid reimbursement;

(d) The person is not a danger to himself or others and is being released from an acute care setting and requires a medically prescribed period of convalescent care in a nursing facility. This determination qualifies the person for placement in a nursing facility and Medicaid reimbursement for a period not to exceed 120 days with a categorical Level II evaluation. However, if the placement exceeds 120 days, the Level II evaluation shall be completed;

(e) The person is not a danger to himself or others and is certified by a physician to be terminally ill (a medical prognosis of a life expectancy of less than six months) and requires continuous nursing care or medical supervision or treatment due to a physical condition. The nature and extent of the person's need for nursing care, medical supervision, and medical treatment shall be the determining factors, and the existence of a chronic mental or physical disability shall be incidental considerations. This determination qualifies the person for placement in a nursing facility and Medicaid reimbursement with a categorical Level II evaluation; or

(f) The person has a severe physical illness that results in a level of impairment so severe that the recipient could not be expected to benefit from specialized services, like a categorical determination such as coma, ventilator dependence, or functioning at brain stem level, or a diagnosis such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, or congestive heart failure. This determination qualifies the person for placement in a nursing facility and Medicaid reimbursement with a categorical Level II evaluation.

(g) The person has a 14 day or less stay to provide respite to in-home care givers to whom the individual with MI or MR is expected to return following the brief Nursing Facility stay.

(6) If at any time during the Level II evaluation the evaluator determines that the person does not have serious mental illness or mental retardation, or has a primary diagnosis of dementia without mental retardation, then the Level II evaluation may be stopped.

(7) The person or agency doing the evaluation shall provide a copy of the Level II determination and findings to the person evaluated, his legal representative, his attending physician, the discharging hospital, the nursing facility for retention in the person's medical record, if admitted, and to the department prior to Medicaid reimbursement.

R414-503-5. Annual Resident Review.

(1) As long as a resident who requires a preadmission Level II evaluation continues to reside in a nursing facility, he shall have an annual resident review subject to the same requirements as the preadmission Level II evaluation. The Level II evaluator shall establish the annual review date at the time the preadmission Level II evaluation is completed. For administrative purposes, the annual review shall be defined as occurring within every fourth quarter after the previous preadmission screen or annual resident review. In order to avoid duplicative testing and effort, the annual resident review shall be coordinated with the routine resident assessments that are otherwise required.

(2) If a Level II evaluation determines a resident is no longer qualified for continued placement in a nursing facility, the nursing facility, in consultation with the resident and his legal representative, shall arrange for the safe and orderly discharge of the resident from the nursing facility, and prepare and orient the resident for the discharge.

R414-503-6. Significant Change of Condition.

(1) The Nursing Facility shall notify the State mental health authority or mental retardation/developmental disability authority, as applicable, after a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded when there is a significant change in a resident's health status which has a bearing on his or her active treatment needs.

(2) The State mental health or mental retardation authorities must complete a review and determination after the notification by the Nursing facility of a significant change in the resident's physical or mental condition which has a bearing on his or her active treatment needs.

R414-503-7. Out-of-State Arrangements.

The state in which the person is a resident (or would be a resident at the time he becomes eligible for Medicaid), as defined in 42 CFR 435.403, shall pay for the Level II evaluation in accordance with 42 CFR 431.52(b).

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63-46a-7(1)(a)

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-100. Child Care Center.
R430-100-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-100-2. Purpose.

The purpose of this rule is to establish standards for the operation and maintenance of a child care center. This rule provides minimum requirements to ensure health and safety for children in child care centers.

R430-100-3. Definitions.

(1) "Accessible" means records are available for Department review within 10 days.

(2) "Direct supervision" means that the care giver can see and hear the children under age six, and is near enough to intervene when needed. Care givers must be able to hear school-age children and be near enough to intervene.

(3) "Conditional enrollment" means that a child is admitted to a child care program and has received at least one dose of each required vaccine prior to enrollment and is on a schedule for subsequent vaccinations.

(4) "Group" means a number of children assigned to one or two care givers, occupying an individual classroom or an area segregated by furniture or other structure within a large room.

(5) "Immediately Accessible Records" means information contained within the client children's and staff members files, currently enrolled or employed, which shall be made available for Department review on-site or within a 24 hour period.

(6) "Infant" means any child 12 months of age and younger.

(7) "Toddler" means a child 13 to 24 months.

R430-100-4. License Required.

A person who provides child care in a place other than the person's home for five or more children for less than 24 hours per day, having a regularly scheduled, ongoing enrollment, for direct or indirect compensation must be licensed as a child care center program.

R430-100-5. General Variance Provisions.

(1) The Department may grant a variance to an individual rule when:

(a) A requirement does not apply to the center program; or

(b) The center program can satisfy the intent of the rule by other methods.

(2) The owner or director shall request a variance to a rule on a form provided by the Department. The request shall include:

(a) A justification for the requested variance; and

(b) An explanation of how the center program will satisfy the intent of the rule.

(3) The Department may not grant a variance to the rule:

(a) If the requirement is established by Title 26, Chapter 39; or other statute; or

(b) Unless the health, safety and well being of the children are ensured.

(4) The granting of a variance to a rule does not set a precedent, and the Department shall evaluate each request on its own merits.

(5) The time period for granting a variance shall be specified in the letter from the Department and shall be kept on site by the licensee.

R430-100-6. Administration and Organization.

(1) The licensee shall exercise supervision over the affairs of the facility and establish policies to comply with this rule.

(2) Duties and responsibilities of the licensee include the following:

(a) Compliance with federal, state, and local laws and for the overall organization, management, operation, and control of the facility;

(b) Establishment of written policies and procedures for the health and safety of children in the facility shall be available for review by parents and staff. The Department shall provide templates for all required policies and procedures and if the licensee elects to use the approved templates the rule is considered met. The policies and procedures shall address at least each of the following areas:

(i) training and education levels of care giver positions;

(ii) exclusion of care givers and children with infectious and communicable diseases;

(iii) supervision and protection of children when they are sleeping, using the bathroom, in a special mixed group activity, on the playground, and during off-site activities;

(iv) releasing children to authorized individuals;

(v) administration and storage of medications;

(vi) discipline of children;

(vii) transportation to and from school and to and from off-site activities;

(viii) emergency and disaster plans;

(ix) the use and presence of tobacco, alcohol, illegal substances and sexually explicit material; and

(x) hand washing

(xi) firearms; and

(xii) food service.

(c) Appoint, in writing, a qualified director who shall assume responsibility for the day-to-day operation and management of the facility.

(d) Keep the Department informed of the current center phone number.

(3) The director or designee of a child care center shall have sufficient freedom from other responsibilities to manage the facility and shall be on the premises during operating hours.

(4) The director of the child care center shall have the following qualifications:

(a) Be at least 21 years of age;

(b) Have knowledge of applicable laws and rules; and

(c) Except for directors of child care centers who are listed as director on a child care license before January 1, 1998, the child care center director must have a high school diploma or GED equivalent and one of the following:

(i) A bachelor's or associate's degree in Early Childhood or Child Development, or a bachelor's degree in a related field and proof of passing four higher education courses in child development; or

(ii) A national or state certification such as a Certified Childcare Professional (CCP), National Administrator Credential, Child Development Associate (CDA), or other credential that the licensee demonstrates to the Department as equivalent.

(5) Duties and responsibilities of the director, or the owner if the duties and responsibilities have not been delegated to the director, include the following:

(a) Designate, in writing, a competent care giver who is at least 21 years of age to act as director in his temporary absence;

(b) Recruit, employ, and train staff to meet the needs of the children;

(c) On the day of discovery, notify the local health department of any reportable communicable diseases among children or care givers, and any sudden or extraordinary occurrence of serious or unusual illness in accordance with Section R386-702-2; and

(d) Conduct regular inspections of the facility to ensure it is safe from potential hazards to children.

(6) The director, or the owner if the duties and responsibilities have not been delegated to the director, shall

establish and enforce policies to ensure that the following are prohibited anywhere on the premises during the hours of operation:

(a) the use of tobacco;

(b) the use of alcohol;

(c) the use or possession of illegal substances; and

(d) the use or possession of sexually explicit material.

R430-100-7. Personnel.

(1) The director shall ensure that adequate direct supervision is maintained whenever the center is operating. The care giver-to-child ratios established in R430-100-9 are minimum requirements only. The director shall ensure that policies exist to adjust these ratios when the age and the number of children require additional care givers to maintain adequate levels of supervision and care.

(2) The director shall train all care givers to be able to service the needs of the children in their care, and organize staff efforts to achieve that end.

(3) All care givers who provide direct services in a child care center shall be at least 18 years of age or have completed high school or a GED. In addition to the required staff ratios, child care services may be provided by an individual who is 16 years old, if he works under the direct supervision of a care giver at least 18 years old, who has completed 20 hours of in-service training and meets all licensing requirements.

(a) All care givers shall have access to and have read and documented their understanding of the facility's policies and procedures;

(b) Each new care giver shall receive orientation training prior to being left unsupervised with children. Training shall be documented to show topic, date of completion, and the first date of working unsupervised with the children. Training shall cover the following topics:

(i) Job description;

(ii) Introduction and orientation to the children, which includes special conditions, e.g., allergies and medical conditions;

(iii) Procedures for releasing children to parents or guardians;

(iv) Center policies and procedures;

(v) Reporting requirements for witnessing or suspicion of abuse, neglect and exploitation, according to Section 62A-4a-403(1) and 62A-4a-411 and how to make necessary reports; and

(vi) Department Informational Guide to Parents which identifies the areas inspected annually and a contact telephone number for parents to report concerns.

(4) Each director shall ensure that all care givers are screened for tuberculosis by the Mantoux tuberculin skin test method within 30 days of assuming care giver responsibilities.

(a) If the Mantoux test is positive, the care giver will provide documentation of a negative chest radiograph.

(b) Tuberculin skin testing does not need to be repeated during the employment period unless the employee develops signs and symptoms of the disease, as determined by a health care professional.

(5) All care givers shall receive a minimum of 20 hours of documented in-service training annually. At least 10 hours of the in-service training shall be in person. The training shall include the following:

(a) Principles of good nutrition;

(b) Proper hand washing, OSHA requirements and sanitation techniques;

(c) Proper procedures in administration of medications;

(d) Recognizing early signs of illness and determining when there is a need for exclusion from the facility;

(e) Accident prevention and safety principles;

(f) Reporting requirements for communicable and infectious diseases;

(g) Reporting requirements for abuse, neglect and exploitation according to Section 62A-4a-403(1) and 62A-4a-411; and

(h) Positive guidance for the management of children.

(6) If the center provides infant care, the following in-service training is required as part of the required in-service hours:

(a) Preventing Shaken Baby Syndrome;

(b) Preventing Sudden Infant Death Syndrome;

(c) Coping with crying babies; and

(d) Development of the brain.

R430-100-8. Records.

(1) Records shall be appropriately stored and protected against access by unauthorized individuals.

(a) Care givers shall not disclose or discuss personal information regarding children and their relatives with any unauthorized person.

(b) Confidential information shall only be seen and discussed with care givers who need the information to provide services.

(c) The director shall obtain written permission from parents or legal guardians before sharing information except as provided in paragraph a and b above.

(2) The licensee and director shall maintain written records.

(a) The following records shall be maintained on-site:

(i) Policies and procedures;

(ii) Records for each enrolled child to include:

(A) Utah School Immunization record;

(B) transportation and medical treatment releases;

(C) an admission agreement that includes the child's name, date of birth, date of enrollment; the parent or guardian's name, address and phone number; the name, address and phone number of a person to be notified in the event of an emergency when the parent or guardian cannot be located; and the names of people authorized to pick up the child; and

(D) current medication administration release form.

(iii) Personnel records for each currently employed care giver and staff, which shall include:

(A) Employment application with emergency contact information; and

(B) Food Handler's permit for care givers who prepare or serve meals or snacks, obtained within 30 days of hire.

(iv) A log of the results of the past 12 months fire and disaster drills;

(v) A current Local Health Department inspection;

(vi) A current Local Fire Department inspection;

(vii) Required current animal vaccination records.

(b) The following records shall be available within 24 hours:

(i) For every enrolled child:

(A) a six week child attendance record;

(B) a six week record of injuries, incident, and accident reports; and

(C) a six week record of medications administered.

(ii) For each currently employed care giver and staff:

(A) date of employment;

(B) initial health evaluation form;

(C) criminal background screening initial clearance form or the waiver for annual renewal;

(D) a six week record of hours worked;

(E) results of TB screening, obtained within 30 days of hire;

(F) documented in-service training hours;

(G) documentation of orientation training completion; and

(H) first aide and CPR course completion.

(iii) All variance requests granted by the Department.

R430-100-9. Care Giver to Child Ratio.

(1) The licensee must maintain minimum care giver to child ratios as provided in Tables 1 and 2.

TABLE 1
Minimum Care Giver to Child Ratios

Staff	Number of Children	Group Size	Ages
1	4	8	0 to 12 months
1	4	8	13 to 24 months
1	7	14	2 year old
1	12	24	3 year old
1	15	30	4 year old
1	20	35	5 years and over

(2) There shall be at least two care givers at the center at all times when there are more than six children present or more than two infants present;

(3) Centers may maintain mixed age groups, and shall comply with Table 2 requirements and the following ratio requirements:

(a) Ratios and group size for mixed age groups shall be determined by averaging the ratios of the ages represented in the group;

(b) The ratio for the youngest children shall be utilized if more than half of the group is composed of children in the youngest age group.

TABLE 2
Minimum Care Giver to Child Ratios - Mixed Age Groups

Ages	Ratio	Group Size
Two Ages Mixed		
Infant and Toddlers	1:4	8
Toddlers and two year olds	1:5	10
Two and three year olds	1:9	18
Three and four year olds	1:14	25
Four years and older	1:18	25
Three Ages Mixed		
Toddlers, two and three year olds	1:7	14
Two, three and four year olds	1:11	22
Three, four and school age	1:16	25
Four Ages Mixed		
Toddlers, two, three and four year olds	1:9	18
Two, three, four and school age	1:13	25

(4) During nap time the child ratio may double for not more than two hours for children 24 months and older, if the children are in a restful or non-activity state and, if a means of communication is maintained with another care giver who is also on-site.

(5) A child of an employee or owner age four or older will not be counted for determining care giver to child ratios.

(6) If child to care giver ratios are maintained an exception is granted to group size requirements when a center program has a planned activity and during transition times not to exceed two hours daily.

(7) A child care center constructed prior to January 1, 2004, and licensed and operated as a child care center continuously since January 1, 2004, may apply for a variance from the department for group size restrictions, if the child to care giver ratios are maintained and adequate square footage is maintained for the specific classroom. A variance granted under (7) is transferrable to subsequent licensed operators at the center if a licensed center is continuously maintained at the center.

R430-100-10. Child Health.

(1) Children admitted to the center shall have immunizations as required by the Utah School Immunization Law, Utah Code Section 53A-11-301. The director may not admit a child without proof of immunization, or evidence of conditional enrollment, or evidence of a personal, medical or religious exemption.

(a) The director shall have a current Utah School Immunization Record (USIR -Pink card) on file for each child.

(b) The director shall submit the Child Care Facilities Annual Summary Report to the Department of Health Immunization Program by November 30 of each year.

(2) The care givers shall not care for ill children except when the child shows signs of illness after arrival.

(a) The director shall ensure that children who develop signs of illness at the center are kept separate from other children.

(b) The director shall contact the parents of ill children and request that they be removed immediately from the center.

(c) The director shall inform parents in writing of communicable illnesses or parasites that are discovered at the center the same day the illness or parasite is discovered.

(d) The care giver shall convey information of illnesses in a manner that protects the confidentiality of care givers and children.

(3) The director shall require the parent or guardian to complete and sign a health assessment for each child in care. This form must be obtained upon enrollment of the child and be reviewed with the parent or guardian annually. The annual review shall be signed or initialed on the day of the review. The Health Assessment shall include the following:

(a) allergies and food sensitivities;
(b) chronic illnesses;
(c) medical conditions;
(d) disabilities;
(e) date of last physical examination;
(f) instructions for routine daily care;
(g) current medications; and
(h) instructions for emergency care.

R430-100-11. Parent Notification/Child Security.

(1) The Director shall distribute to parents and post a copy of the Department Informational Guide for Parents.

(2) The center shall be open to parents and guardians of enrolled children at all times during business hours.

(3) The director shall establish a procedure for ensuring that each child's attendance is accounted for which shall include:

(a) Persons bringing or picking up a child who is not school aged shall sign the child in and out of the center,

(i) The time of day shall be recorded on the sign-in and sign-out form, and

(ii) Personal identifiers, such as a signature, initials or electronic identification may be used to sign in and out.

(b) Care givers may sign-in and sign-out a child who is school-aged.

(4) Only parents or persons with written authorization from parents shall be allowed to take any child from the center, except that verbal authorization may be used in emergency situations, if the identity of the person giving verbal authorization can be confirmed.

(5) The director or owner shall review reports of every injury, incident, and accident to a child and document the corrective action taken. The report shall be signed by the director, care giver involved, and the parent of the child.

(6) In the case of a life threatening injury to a child, the director shall contact emergency personnel before contacting the parents or legal guardians. If the parents or legal guardians cannot be reached, the director shall then attempt to contact the child's emergency contact person.

(7) The director shall call the Department within 24 hours to report any fatality, hospitalization or emergency medical response unless the emergency medical transport was part of a child's medical treatment plan identified by the parents and licensee. A written report shall be mailed or faxed to the Department within five days of the incident.

R430-100-12. Activities.

(1) The director and care givers shall develop and follow a daily activity plan that is designed for the age, health, safety

and welfare of the children. No activity plan is required for infant or toddler groups. The toys and equipment needed to carry out the plan shall be present.

(2) The activity plan shall be posted for parent and care giver review.

(3) There shall be areas for indoor play.

(a) Indoor play areas shall have at least 35 square feet per child of usable play space for each child utilizing the play area at any specific time. The space requirement includes licensee and care giver children who are not counted in the ratios. Usable floor space includes space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used by children, for the care of children, or to store classroom materials.

(b) Bathrooms, closets, lockers, staff desks, stationary storage units, hallways, corridors, alcoves, vestibules, kitchens or offices may not be included in calculating indoor play space.

(i) Play space does not include areas which are designated as a napping room.

(ii) Centers licensed prior to the effective date of the rule change 2001, may request a permanent variance to this rule as required by R430-100-5. The exception or variance will be assumable if a change of ownership occurs and the license is not interrupted.

(c) All indoor playground equipment, for example slides and climbers, shall be surrounded by cushioning materials, such as mats, in a six foot fall zone. The cushioning material shall meet the standards of the American Society for Testing and Materials (ASTM), current edition for all equipment over three feet.

(d) If children between the ages of three and six have access to indoor play equipment then the maximum height of any piece of indoor playground equipment shall not exceed five and one-half feet. If children under age three have access to indoor play equipment, then the maximum height of the equipment may not exceed three feet.

(4) Daily activities shall include outdoor play if weather permits.

(5) Outdoor play areas shall:

(a) have at least 40 square feet for each child, which may include space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used by children, for the care of children, or to store classroom materials to accommodate at least 33 percent of the licensed capacity at one time;

(b) be directly adjacent to the building;

(c) be enclosed with a four foot high fence, or have a natural barrier that provides protection from unsafe areas including water hazards;

(i) gaps in the fence shall not be more than three and one half inches.

(ii) the bottom edge of the fence shall not be more than three and one-half inches above the ground.

(d) be free of animal excrement and harmful objects such as trash, broken toys and equipment with rusty or sharp edges, glass, tools and standing water;

(e) have a shaded area to protect children from excessive sun and heat; and

(f) have a source of drinking water in the play area during play time when the outside air temperature is 75 degrees or higher.

(6) Outdoor play equipment shall:

(a) be surrounded by a resilient surface of loose cushioning consistent with the guidelines of the Consumer Product Safety Commission and standards of ASTM; and

(b) have a six foot fall zone surrounding all playground equipment.

(c) All variances granted to any facility granting relief from compliance with the Consumer Product Safety Commission Playground Safety guidelines or the ASTM standards expire by operation of this rule on December 31, 2004. A facility not in compliance with the Consumer Product Safety Commission Playground Safety guidelines or the ASTM standards of as December 31, 2004, shall submit a written phase-in plan to the Department by December 31, 2004.

(i) The facility phase-in plan must provide that some part of the playground come into compliance by June 30, 2005, and establish a plan for an orderly progression toward remediation of all out-of-compliance equipment and grounds by May 30, 2009.

(ii) The facility must submit verification of its compliance with its plan annually by June 1.

(7) Any particulate cushioning material, such as sand or gravel, within the fall zone of playground equipment shall be checked for packing due to rain or snow, and if compressed, weather permitting, shall be loosened to a depth of nine inches. If the cushioning material cannot be loosened, children shall not play on the equipment.

(8) If off-site activities are offered, care giver ratios must be maintained and:

(a) at least one of the care givers shall have a current first aid and CPR course completion;

(b) written parental consent shall be obtained for each type of activity in advance;

(c) the director shall notify the parents of any schedule changes;

(d) care givers shall take with them the emergency numbers and emergency treatment releases for each of the children in the group;

(e) children shall wear or carry with them the name and phone number of the center;

(f) children's names shall not be used on name tags;

(g) care givers shall provide a way for children to wash hands.

(9) If swimming activities are scheduled, care givers shall remain with the children during the activity. Lifeguards and pool personnel may not be counted towards care giver to child ratios.

R430-100-13. Medications.

(1) If medications are given, medications shall be administered to children only by a trained, designated care giver. A care giver who administers medication shall be trained to:

(a) check the label and confirm the name of the child,

(b) read the directions regarding measured doses, frequency, expiration date, and other administration guidelines, and

(c) properly document administration of medication records according to Subsection R430-100-13(3).

(2) The parent or guardian must complete a medication release form for each child receiving medications at the center that contains:

(a) the name of the medication;

(b) the dosage;

(c) the route of administration;

(d) the times and dates to be administered;

(e) the illness or condition being treated; and

(f) the parent or guardian signature.

(3) Medication records shall be maintained that include:

(a) The times, dates, and dosages of the medications given;

(b) The signature or initials of the care giver who administered the medication; and

(c) Documentation of any errors in administration or adverse reactions.

(4) The center director or designee shall report any adverse reaction to a medication or error in administration to the parent or legal guardian immediately upon recognizing the error or reaction.

(5) Medications shall be secured from access to children.

(6) The oral over-the counter and all prescription medications must be in the original or pharmacy container, have the original label, include the child's name, have child proof caps and have written instructions for administration provided by the parents.

(7) Medications stored in refrigerators shall be in a covered container with a tight fitting lid.

(8) The director shall return unused prescription and over the counter medications to the parent or guardian. The director shall destroy out-of-date medications or return the medications to the parent or guardian.

R430-100-14. Infection Control.

(1) The director shall keep on-site and maintain a portable blood and bodily fluid clean-up kit. All care givers shall know the location and how to use the kit.

(a) The kit shall include: a portable container, disposable gloves, absorbent powder or clumping kitty litter, a plastic garbage bag, a miniature dustpan and hand broom, a paper towel and a small container of disinfectant.

(b) All care givers shall comply with the universal blood and bodily fluid precautions according to the OSHA Bodily Fluid Blood-Borne Pathogen standard.

(2) Personal hygiene items such as combs, hair accessories, and toothbrushes may not be shared between children.

(3) Indoor activity equipment, such as climbing structures and play houses, and toys shall be cleaned and sanitized weekly or more often as necessary. If some equipment is not cleanable the director or owner shall ensure children and care givers wash hands prior to using the equipment, card board puzzles, books, etc.

(4) Stuffed animals and dress-up clothes shall be machine washed weekly.

(5) If water play tables are used, the care giver shall wash and sanitize the table daily and children shall wash their hands prior to engaging in the activity.

(6) In child care centers, hand washing procedures shall be posted at all hand washing sinks and followed.

(7) Written hand washing policies shall be established to include:

(a) Care givers and children shall wash and scrub their hands for 20 seconds with liquid soap and warm running water. A variance to using liquid soap may be requested as required by R430-100-5.

(b) The use of hand sanitizers shall not replace hand washing, except during off-site activities.

(c) Care givers shall teach children proper hand washing techniques and oversee hand washing whenever possible.

(d) Care givers and children shall wash their hands after using the toilet, before and after eating, upon returning from outdoor playtime, after wiping noses, after handling animals and before and after food preparation.

(e) Only single use towels from a covered dispenser or electric hand-drying device may be used to dry hands.

R430-100-15. Diapering.

(1) Diapering procedures shall be posted by each diapering station and followed.

(2) Each diapering station shall be equipped with railings to prevent a child from falling. Children shall not be left unattended on the diapering surface.

(3) The diapering surface shall be non-absorbent, cleaned and sanitized after each diaper change.

(a) If a disposable paper covering is used, it shall be placed between the child and the diapering surface, and shall be disposed of following each diaper change.

(b) Sanitizers shall be used per product instruction or be commercially prepared. Sanitizer containers shall be labeled and stored in the diaper changing area, out of the reach of children.

(4) Soiled disposable diapers shall be placed in a container that is lined and has a tightly fitting lid.

(5) Diaper containers shall be cleaned and disinfected daily.

(6) Care givers shall wash their hands directly after changing a diaper and in between diaper changes.

(7) If cloth diapers are used for children, the following applies:

(a) Cloth diapers shall not be rinsed at the center;

(b) After a diaper change, the cloth diaper shall be placed directly into a container labeled with the child's name or diapering service container.

(8) Care givers whose designated responsibility is the care of diapered children, shall not prepare food for children or staff outside of the classroom area used by infants and toddlers.

(9) Staff who prepare food in the kitchen shall not change diapers or assist in toilet training.

R430-100-16. Safety.

(1) Spaces, toys, grounds, and equipment shall be maintained in a safe manner to prevent injury to children.

(2) Toys and equipment used by children must be in compliance with the guidelines of the Consumer Product Safety Commission.

(3) There shall be no firearms or other weapons accessible to children. Firearms and other weapons shall be stored separately from ammunition and all shall be in a locked cabinet or area, unless the use is in accordance with UCA 53-5-701 Concealed Weapons Act, UCA 76-10-523 Persons Exempt from Weapons Laws or as otherwise authorized by law.

(4) Electrical outlets accessible to children four years of age or younger shall have protective caps or safety devices when not in use.

(5) Glass surfaces within 36 inches from the floor shall be of safety glass or have a protective barrier in place.

(6) Care givers and staff shall store toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials in a locked or protected area to prevent access to children. All toxic or hazardous chemicals shall be stored in the original container, or labeled in the container.

(7) The center may not have portable space heaters, Fireplaces and wood burning stoves that are accessible to children when in use.

(8) Children shall not have access to poisonous plants.

(9) Strings and cords long enough to choke a child, such as those found on pull toys, window blinds, or drapery cords, shall be inaccessible to children four years of age and younger.

(10) Any structure built prior to 1978 which has peeling, flaking, chalking, or failing paint on the interior or exterior shall be tested for lead-based paint. If paint lead levels are equal to or exceed 0.06% by weight, the structure must be remodeled by encapsulation or enclosure when possible or by complete removal of lead-based paint by trained individuals.

(11) Hot water accessible to children shall not exceed the scalding standard of 120 degrees Fahrenheit.

R430-100-17. Child Discipline.

(1) The licensee shall inform all care givers, parents or guardians and children of conduct expected by setting clear and understandable rules.

(2) Disciplinary measures shall be implemented so as to encourage the child's self-control to reduce risk of injury and any adverse health effects to self or others. Positive discipline measures include but are not limited to:

(a) positive behavioral rewards;

(b) other forms of positive guidance;

(c) redirection; or

(d) time out.

(3) Discipline measures shall not include any of the following:

(a) corporal punishment, including hitting, shaking, biting, pinching, or spanking;

(b) restraint of a child's movement by binding or tying;

(c) use of abusive, demeaning or profane language;

(d) force or withholding of food, rest or toileting; or

(e) confining a child in a locked closet, room, or similar area.

(4) The director shall provide each parent and legal guardian a copy of the discipline methods used at the center.

R430-100-18. Food Service.

(1) If food service is provided, the child care center's food service shall comply with the Utah Department of Health Food Service Sanitation Regulations, Rule R392-100, and with the local health department food service regulations.

(2) All food served in the center, including food brought in by parents or care givers, for service to other children, shall be commercially prepared.

(3) Food and drink brought in by parents for an individual child's use must be labeled with the child's full name and refrigerated if needed.

(4) All care givers who prepare or serve food and snacks must have a current food handlers permit approved for child care facilities by the local Health Department.

(5) Children's food shall be served on plates, napkins or other sanitary holders, which includes a high chair tray. Food shall not be placed on a bare table or eating surface.

(6) Facilities that provide food service shall meet the following requirements:

(a) A different menu shall be planned for each day of the week;

(b) Menus may be cycled;

(c) The current week's menu shall be posted for review by parents and guardians and all substitutions shall be noted on the menu and retained for one week. If substitutions are made, the menu must meet the requirement of the United States Department of Agriculture (USDA) Child Care Food Program guidelines;

(d) Menus shall comply with the USDA Child and Adult Care Food Program guidelines. Centers may use Department standard approved menus. Menus shall be individually approved by the Department, or be approved by a registered dietitian. Dietitian approval shall be noted on the menu;

(e) The director shall post a list of children's food allergies and sensitivities in the food preparation area and communicate special needs to staff serving food to the children unless otherwise requested in writing by the parents.

(f) The care givers shall provide meals and snacks according to the center policy but at least once every three hours.

R430-100-19. Animals.

(1) Any animal on the premises shall be clean and in good health.

(2) Dogs, cats and other animals shall have current immunization records available at the center for all diseases transmissible to humans.

(3) Animals not confined in enclosures shall be hand held, under leash control, or under voice control.

(4) No dangerous or aggressive animals are allowed on center premises.

(5) Animals are not allowed in food preparation, storage or dining areas.

(6) Animal cages, equipment, and surrounding areas shall be clean and sanitary. Animal cages and equipment shall not be cleaned in food preparation, food storage or dining areas at any time. Children shall not assist with the cleaning of animals, animal cages, pens or animal equipment.

(7) The director shall inform the parent or guardian of all animals kept at the center.

(8) Children shall not be permitted to handle reptiles, including turtles and lizards.

R430-100-20. Transportation.

(1) Any vehicle used for transporting children shall have a current vehicle registration and safety inspection.

(2) The director shall maintain all vehicles used to transport children in a safe and clean condition.

(3) Each vehicle shall:

(a) Contain a first aid and a body fluid clean-up kit;

(b) Be able to maintain temperatures between 60-90 degrees Fahrenheit;

(c) Be equipped with individual, size-appropriate safety restraints such as car seats and seat belts, which are defined in the federal motor vehicle safety standards contained in the Code of Federal Regulations, Title 49, Section 571.213, for each child that are appropriate to the vehicle type and are installed and used in the manner prescribed by the manufacturer;

(d) Be enclosed; and

(e) Be locked during transport.

(4) One person accompanying children during transport shall have current CPR and first aid course completion.

(5) The child care center shall have written policies and procedures to address transportation of children to and from school that are distributed to parents or posted that include:

(a) How long the children will be unattended at each school before the vehicle arrives or after the vehicle leaves in the morning;

(b) What steps staff will take if children fail to meet the vehicle; and

(c) When and how parents will be notified of delays or problems with transportation to and from school.

(6) Smoking in vehicles is prohibited at all times that children are present.

(7) Any vehicle used for transporting children shall be driven by an adult who holds a current state driver's license that authorizes the driver to operate the type of vehicle driven.

(8) No child shall be permitted to remain unattended in the vehicle. Children shall remain seated while the vehicle is in motion. Keys shall be removed from the vehicle at all times when the driver is not in the driver's seat.

R430-100-21. Housekeeping and Maintenance.

(1) There shall be adequate housekeeping services to maintain a clean and sanitary environment in the center.

(2) Laundry shall be washed with soap and water and be thoroughly dried in a clothes dryer.

(3) Clean laundry shall be stored in a manner that protects it from contamination.

(4) The center shall take effective and safe measures to prevent, control and eliminate the presence of insects, rodents, and other vermin on the premises.

(5) Draperies, carpets, and furniture shall be maintained in good repair.

(6) Cracks in plaster, peeling wallpaper or paint, damaged floor coverings, and missing tile shall be repaired promptly.

(7) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow and other hazards.

R430-100-22. Physical Environment.

(1) All rooms and occupied areas in the facility shall have provisions for ventilation. Windows with screens may be used for ventilation when weather conditions permit, but mechanical ventilation shall be provided during periods of temperature

extremes.

(2) The cooling system shall be capable of maintaining temperatures of 80 degrees Fahrenheit (F) in areas occupied by children.

(3) The heating system shall be capable of maintaining temperatures of 72 degrees F. in areas occupied by children.

(4) Adequate light intensity in all facilities shall be maintained by keeping lighting equipment in good working order.

(5) There shall be one toilet and one lavatory for every 15 children, excluding diapered children.

(6) For centers constructed after July 1, 1997, there shall be a hand washing sink in play areas.

R430-100-23. Sleep Areas and Equipment.

(1) A separate crib, cot, bed, or mat shall be provided for each child who will be present in the child care center during nap or rest periods.

(2) Sleeping equipment shall be spaced a minimum of two feet apart to allow for easy access, adequate ventilation and ease of exiting.

(3) Mats and mattresses shall be at least two inches thick and have waterproof, cleanable coverings.

(4) Mats and sleeping equipment shall be cleaned and sanitized as needed, but at least weekly, and prior to use by another child or there shall be a procedure to assign a mat or cot to each child.

(5) Each child shall have a sheet and a blanket, or an acceptable alternative, that are:

(a) used daily;

(b) clearly assigned to a child;

(c) stored separately from other children's when not in use, and

(d) laundered at least once weekly, and prior to use by another child.

(6) The center shall provide children with an opportunity for rest and sleep in an environment for sleeping that includes subdued lighting, low noise level, and freedom from distractions.

R430-100-24. Emergency and Disaster.

(1) The licensee shall have a written emergency and disaster plan for reporting and evacuating in cases of fire, flood, earthquake, blizzard, power failure or other disasters that could create structural damage or pose a health or safety hazard. The center shall have a written emergency plan that addresses steps to be followed by staff in case of:

(a) a missing child;

(b) a medical emergency or injury involving a child or staff person;

(c) the death of a child or staff person.

(2) The written plans shall be on site and immediately accessible to all staff.

(3) As required by R710-8, Public Safety, Fire Marshal, Day Care Rules the director shall hold simulated disaster drills semi-annually and simulated fire drills shall be held monthly for care givers and children.

(a) The director shall document all drills, including date and time of the drill, the time it took to evacuate, the number of participants, and any problems encountered.

(b) Drills shall be held on a variety of days and at various times of the day.

(4) Each child care center shall maintain a telephone in working order, unless there is a utility failure.

(5) The emergency plan shall contain:

(a) The names of the person in charge and persons with decision-making authority;

(b) The names of persons who shall be notified in an emergency in order of priority;

(c) The names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, poison control and other appropriate agencies.

(d) Assignment of personnel to specific tasks during an emergency;

(e) The procedure to transport and evacuate children and staff to other locations; and

(f) Procedures to turn off gas, electricity, and water.

(6) The director shall post evacuation plans in prominent locations in each room or area of the center. The plan shall include evacuation routes, location of fire alarm boxes, and fire extinguishers.

(7) The licensee shall ensure that the center is inspected annually by the local fire authority and shall maintain a copy of the most recent inspection report at the center. Each fire extinguisher shall have a current tag and annual inspection.

(8) There shall be at least one care giver on duty in the center during business hours who has a current department approved course completion or certification in basic child and infant first-aid and Cardiac Pulmonary Resuscitation (CPR).

(9) Each center shall maintain two accessible first aid kits, one kit for the center and one kit to be taken on field trips.

(a) Each first aid kit shall contain supplies as recommended by the American Red Cross First Aid Handbook, current edition, or the department provided list of contents.

(b) Each first aid kit shall contain a first aid manual.

(c) First aid kits shall be restocked after use and shall be stored in an area inaccessible to children.

R430-100-25. Infant Care.

(1) Infants and toddlers shall be cared for in separate areas and shall not use outdoor play areas at the same time as older children. Infant and toddler areas shall not be used as access to other areas or rooms by children and parents, unless the Department has given variance approval.

(2) Infants may be included in mixed age groups only when eight or fewer children are present in the center. No more than two infants shall be included in the mixed age group unless there are two care givers with the group.

(3) Each infant shall be allowed to follow his or her own pattern of sleeping and eating.

(4) Diapers shall be checked as needed but diaper checks shall not exceed every three hours. The child shall be changed when he is found to be wet or soiled.

(5) The center shall maintain a record of diapering activities, sleeping and feeding times for each infant. The care giver shall record each activity as it occurs. The records shall be maintained on site for the current month and be immediately accessible for Department review.

(6) If an infant is unable to sit upright and hold his own bottle, a care giver shall hold the infant during bottle feeding to prevent choking, baby bottle tooth decay, etc. Bottles shall not be propped.

(7) Each infant shall receive physical stimulation and positive verbal interaction at least every 30 minutes. Awake infants shall not be confined for more than 30 minutes in one piece of equipment, including but not limited to swings, high chairs, or cribs. Infants shall have freedom of movement in a safe area.

(8) Infant walkers with wheels are not permitted.

(9) High chairs will have T-shaped safety straps that are used whenever children are placed in the chair.

(10) High chair trays shall be washed, rinsed, and sanitized prior to each use. The sanitizer shall meet the standards in R392-100 for food contact surfaces.

(11) Baby food, infant formula, and breast milk for infants that are brought from home for an individual child's use shall be:

(a) marked with the child's name;

(b) marked with the date of preparation or opening of the container, such as a jar of baby food;

(c) kept refrigerated, if needed; and

(d) discarded within 24 hours of preparation or opening.

(12) Infant formula shall be discarded after feeding or within two hours of initiating a feeding. Powdered formula or dry foods which are opened, but not mixed, is not considered prepared.

(13) Infants shall sleep in equipment designed for them such as a crib, bassinet, porta-crib, or play pen.

(a) Only one infant shall occupy any one piece of equipment at any time.

(b) Infants shall be placed on their backs for sleeping, unless parents document a medical treatment requirement for a clinical condition.

(c) Infants less than 12 months shall not sleep on mats or cots.

(14) There shall be two sinks in each infant and toddler care area. Centers whose infant and toddler areas were constructed and licensed prior to July, 1997, shall be exempt from this rule.

(a) One sink shall be adjacent to the diapering areas and shall be used exclusively for hand washing after diapering and non-food activities.

(b) One sink shall be used exclusively for the preparation of food and bottles.

(15) Infant care areas shall maintain temperature at 70 degrees Fahrenheit at floor level.

(16) All toys used by infants and toddlers shall be washed daily and after being placed in a child's mouth or being contaminated by bodily fluids.

R430-100-26. Penalty.

The department may impose civil monetary penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of a child, the department may impose a civil money penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a child, the department may impose a civil money penalty of $1,050 to $5,000 per day.

KEY: child care facilities
August 27, 2004 **26-39**
Notice of Continuation January 15, 2003

R432. Health, Health Systems Improvement, Licensing.
R432-32. Licensing Exemption for Non-Profit Volunteer End-of-Life Care.
R432-32-1. Purpose and Authority.

This rule establishes the exemption from licensure requirements for non-profit facilities that provide volunteer end-of-life care pursuant to Utah Code Section 26-21-7(6).

R432-32-2. Requirements for Designation as a Non-Profit Facility Providing End-of-Life Care Using Only Volunteers.

A non-profit facility that provides end-of-life care using only volunteers is exempt from licensure if it meets all of the following requirements:

(1) The facility operates as a non-profit facility with a board of trustees to oversee its direction and operation.

(2) No more than six unrelated individuals reside in the facility.

(3) The residents of the facility do not pay for room or board.

(4) Each facility resident has a terminal illness and contracts with a licensed hospice agency to receive medical care.

(5) There is no direct compensation for direct care staff at the facility; however, administrative staff to coordinate volunteer staff may be compensated.

(6) Each resident signs an admission agreement that:

(a) indicates the level of service to be provided by volunteers;

(b) provides notice that the facility is not a regulated health care facility under Title 26, Chapter 21.

(c) provides procedures to report grievances to the Board of Directors

(8) The facility screens each staff, including volunteer staff, for criminal convictions through the Department of Public Safety and no staff serves who has a conviction for any of the crimes identified in R432-35-4.

(9) The facility provides in-service training on the reporting requirements for adult abuse, neglect and exploitation to each staff, including volunteer staff.

(10) Each resident has a self-directed medical care plan for end-of-life treatment decisions.

(11) The facility provides each resident a form for a Physician Order for Life-Sustaining Treatment.

(12) The facility complies with local zoning, health and fire inspection requirements.

(13) The facility offers adult immunizations for staff and residents as required in R432-40.

(14) The facility has an infection control program, which includes universal precautions, reporting communicable diseases, and OSHA standards.

KEY: health care facilities
September 1, 2004 26-21-7(6)

R444. Health, Epidemiology and Laboratory Services, Laboratory Improvement.
R444-14. Rule for the Certification of Environmental Laboratories.
R444-14-1. Introduction.

(1) This rule is authorized by Utah Code Section 26-1-30(2)(m).

(2) This rule applies to laboratories that analyze samples for compliance with Federal Safe Drinking Water Act, Federal Clean Water Act, and the Federal Resource Conservation and Recovery Act.

(3) A laboratory that analyzes samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory, must become certified under this rule and comply with its provisions.

(4) A laboratory that, under subcontract with another laboratory, analyzes samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory, must become certified under this rule and comply with its provisions.

(5) A laboratory certified under this rule to analyze samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory must also obtain approval under this rule for each analyte analyzed by a specific method.

R444-14-2. Definitions.

(1) "Analyte" means the substance or thing for which a sample is analyzed to determine its presence or quantity.

(2) "Approved" means the determination by the department that a certified laboratory may analyze for an analyte under this rule.

(3) "Clean Water Act" means U.S. Public Law 92-500, as amended, governing water pollution control programs.

(4) "Department" means the Utah Department of Health.

(5) "Revoke" means to withdraw a certified laboratory's certification or the approval for a certified laboratory to perform one or more specified methods.

(6) "Resource Conservation and Recovery Act" means U.S. Public Law 94-580, as amended, governing solid and hazardous waste programs.

(7) "Safe Drinking Water Act" means U.S. Public Law 93-523 94-580, as amended, governing drinking water programs.

R444-14-3. Laboratory Certification.

(1) A laboratory is the organization and facilities established for testing samples.

(2) A laboratory that conducts tests that are required by Department of Environmental Quality rules to be conducted by a certified laboratory must be certified under this rule.

(3) To become certified, to renew certification, or to become recertified under this rule, a laboratory must adhere to the requirements found in Chapter 4, "Accreditation Process", of the National Environmental Laboratory Accreditation Conference Standards approved July 2002, which are incorporated by reference.

R444-14-4. Analytical Methods.

(1) The department may only approve a certified laboratory to analyze an analyte by specific method. The department may approve a certified laboratory for an analyte using methods described in the July 1, 1992 through 2004, editions of 40 CFR Parts 141, 142, and 143 (Safe Drinking Water Act); 40 CFR Parts 136 and 503.8 (Clean Water Act); 40 CFR Parts 260 and 261 (Resource Conservation and Recovery Act).

(2) In analyzing a sample for compliance with the Safe Drinking Water Act, the Clean Water Act, or the Resource Conservation and Recovery Act, a certified laboratory must follow the method that it reports on its final report to have used.

R444-14-5. Proficiency Testing.

For a certified laboratory to become approved and to maintain approval for an analyte by a specific method, the certified laboratory must, at its own expense, meet the proficiency testing requirements of this rule. A certified laboratory must adhere to the requirements found in Chapter 2, "Proficiency Testing", of the National Environmental Laboratory Accreditation Conference Standards approved July 2003, which are incorporated by reference.

R444-14-6. Quality System.

(1) A certified laboratory must adhere to the requirements found in Chapter 5, Quality Systems, of the National Environmental Laboratory Accreditation Conference Standards approved July 2002, which are incorporated by reference.

R444-14-7. Recognition of NELAP Accreditation.

The department may certify a laboratory that is NELAP-accredited. A laboratory seeking certification because of its NELAP accreditation must provide evidence of its accreditation and apply for certification on that basis. A laboratory certified on the basis of NELAP accreditation must obtain approval from the department for each analyte and meet the approval requirements of this rule.

R444-14-8. Penalties.

A laboratory violates this rule and is subject to the penalties provided in Title 26, Chapter 23, including administrative and civil penalties of up to $5,000.00 for each offense, criminal sanctions of a class B misdemeanor on the first offense and a class A misdemeanor on the second offense, and criminal penalties of up to $5,000.00 for each offense if it:

(1) without being certified under this rule, holds itself out as one capable of testing samples for compliance with Federal Safe Drinking Water Act, Federal Clean Water Act, Federal Resource Conservation and Recovery Act; or

(2) without being approved to analyze for the analyte , analyzes samples for the analyte for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory.

KEY: laboratories
August 9, 2004 **26-1-30(2)(m)**
Notice of Continuation June 13, 2002

R501. Human Services, Administration, Administrative Services, Licensing.
R501-7. Child Placing Adoption Agencies.
R501-7-1. Authority and Purpose.

A. This rule is authorized under Section 62A-2-106.

B. This rule establishes standards for licensing agencies to provide child placing adoption services.

R501-7-2. Definitions.

A. "Adoption" is defined in Section 78-30-16.

B. "Child placing adoption agency" means an individual, agency, firm, corporation, association or group children's home that engages in child placing.

C. "Adoption Services" means evaluating, advising, or counseling children, birth parents or adoptive families, placing children for adoption; monitoring or supervising placements until the adoption is finalized; conducting adoption studies or preparing adoption reports; or arranging for foster care.

D. "Birth Parent" is defined in Section 78-30-16.

E. "Child placing" means receiving, accepting, or providing custody or care for a child for the purpose of finding a person to adopt the child or placing a child in a home for adoption.

F. "Confinement" means the time period when a woman is hospitalized or medically restricted due to her pregnancy and childbirth.

G. "Disruption" means the termination of an adoptive placement prior to the issuance of a final decree of adoption.

H. "Foster Care" means family care in the residence of a foster parent who is licensed or certified pursuant to R501-12.

I. "Genetic and Social History" is defined in Section 78-30-16.

J. "Health History" is defined in Section 78-30-16.

K. "Intercountry Adoption" means the adoption of a child from a foreign country, whether the adoption is completed in the child's native country or in this State.

L. "Legal risk placement" means at the time the placement is made, one or more of the child's biological parents or putative legal parents has not executed a legal relinquishment or consent to the adoption, their parental rights have not been lawfully terminated, or they have expressed their intention to exercise parental rights or contest the adoption.

M. "Mental Health Therapist" is defined in Section 58-60-102.

N. "Sliding Scale" means an established fee schedule that varies according to an individual's annual income.

O. "Special needs" is defined in Section 62a-4a-902(2).

P. "Unmarried biological father" is defined in Section 78-30-4.11.

R501-7-3. Legal Requirements.

A. In addition to this rule, all child placing adoption agencies shall comply with R495-876, R501-1, R501-2-1 through 501-2-5, R501-2-8 through R501-2-14, R501-14, R501-18; Title 58, Chapter 60; title 62A, Chapters 2 and 4a: Section 76-7-203; Title 78; Chapters 3a, 30, 45a, and 45e; and other applicable local, State and Federal laws.

B. Child placing adoption agencies that do not provide housing for birth mothers are exempt from R501-2-5, 10, 11, and 12.

C. A child placing adoption agency shall not:

a. delay or deny the placement of a child or the opportunity to become an adoptive parent on the basis of race, color, ethnicity, cultural heritage, or national origin. A child placing adoption agency shall comply with all State and Federal laws regarding discrimination.

D. A child placing adoption agency shall be legally responsible for the child following relinquishment of the child to the adoption agency until the adoption is finalized, unless a court of competent jurisdiction places legal responsibility with another party, in accordance with Section 78-30-4.22.

E. A child placing adoption agency which serves Indian children shall comply with the Indian Child Welfare Act.

F. A child placing adoption agency that provides foster care shall comply with R501-12.

H. A child placing adoption agency shall comply with the Interstate Compact for Placement of Children, in accordance with Section 62A-4a-701 et seq.

R501-7-4. Administrative Requirements.

A. A child placing adoption agency shall have at least one social work supervisor responsible for directly supervising all staff and volunteers who provide adoption services to clients.

1 Each social work supervisor shall be licensed in this state as a mental health therapist, shall comply with the Utah Mental Health Professional Practice Act, and shall have at least one year of full time, paid, professional experience in a licensed child placing adoption agency.

2. A social work supervisor may not supervise more than eight staff and volunteers who provide adoption services to clients.

3. An Executive Director who is licensed in this state as a mental health therapist, complies with the Utah Mental Health Professional Practice Act, and has at least one year of full time, paid, professional experience in a licensed child placing agency may serve as a social work supervisor, but may not supervise more than four staff and volunteers who provide adoption services to clients.

B. Individuals who provide adoption services to birth parents, children, or adoptive applicants shall maintain a current professional license as required by the Utah Mental Health Professional Practice Act and shall comply with the Utah Mental Health Professional Practice Act.

C. A child placing adoption agency shall notify the Office Of Licensing of any changes it makes to its policies or procedures and shall provide a written copy of any changes no later than five business days after the change.

D. A child placing adoption agency shall provide at least 30 days' prior written notice to the Office of Licensing that the agency is:

1. dissolving or ceasing to provide child placing services,

2. adding or eliminating in-state, out-of-state, special needs, or international services, or

3. changing ownership or name.

R501-7-5. Ethical Conduct.

A. A child placing adoption agency shall:

1. not give preferential treatment to its board members, employees, volunteers, agents, consultants, independent contractors, donors, or their respective families with regard to child placing decisions;

2. not provide or accept any payment or other considerations for any referral;

3. work only with agencies, entities or individuals that are authorized to provide child placing adoption services by the laws of this state or the jurisdiction in which that agency, entity or individual performs child placing adoption services;

4. not permit its employees, volunteers, agents, consultants, or independent contractors to provide adoption services to both the birth parents and the adoptive parents unless all parties are made aware of potential conflicts of interest and sign a voluntary consent;

5. not require its clients to use or pay for specified attorneys or other service providers, shall inform clients that they are free to select independent attorneys and other service providers, and shall not charge clients fees for services that clients obtain independently; and

6. not refer or steer any individual to any private practice

in which the agency's board members, volunteers, employees, agents, consultants, independent contractors, or their respective families are engaged, without first disclosing any potential conflicts of interest and informing said individuals that they are free to select independent service providers.

B. The members of the governing body of a child placing adoption agency shall disclose, in writing, to the chairperson of the governing body, any direct or indirect financial interest in the agency.

C. The child placing adoption agency, its board members, volunteers, employees, or agents shall not solicit donations from an adoptive family that is under consideration for placement of a child. A generalized mass solicitation through newsletters or the media shall not constitute a violation under this rule.

D. The child placing adoption agency, its board members, volunteers, employees, or agents shall not accept donations from an adoptive family that is under consideration for placement of a child.

R501-7-6. Fees.

A. A child placing adoption agency shall provide a written disclosure of all fees and expenses prospective adoptive parents may incur before the agency accepts any payments or processes any application from, or enters any agreement with, the prospective adoptive parents.

1. The disclosure shall identify the services associated with each fee, and specify both the average cost for that service for the preceding two fiscal years, and the maximum fee that may be charged for each service.

2. A child placing adoption agency shall not charge adoptive parents for any fees or expenses that exceed or were not included in the written disclosure.

3. A child placing adoption agency shall identify which fees may be non-refundable.

B. A child placing adoption agency may charge adoptive parents an agency fee, which shall include all administrative and professional services provided on behalf of the adoptive parents, including but not limited to pre-adoption evaluations, home studies, personnel, counseling, overhead, and training.

C. A child placing adoption agency may charge adoptive parents for the actual and reasonable costs of maternity, medical, and necessary pre-natal living expenses of the birth mother in accordance with Section 76-7-203.

1. The agency shall retain receipts documenting the actual costs of goods and services provided which exceed twenty-five dollars.

2. A child placing adoption agency shall not charge adoptive parents for the travel expenses of any person other than the birth mother.

3. A child placing adoption agency shall not charge the adoptive parents for the living expenses of any person other than the birth parents.

4. A child placing adoption agency shall not charge the adoptive parents for the birth parents' post-confinement living expenses.

D. The agency shall maintain an itemized accounting of the actual expenditures made on behalf of a birth mother. The accounting shall be verified and signed by the agency and adoptive parents , and filed with the court and the Office of Licensing in accordance with Section 78-30-15.5.

1. The agency shall utilize an affidavit form provided by the Office of Licensing or a substantially similar form including the same information.

2. The agency shall require the birth mother to verify that she received all of the itemized goods and services by signing a file copy of the accounting.

E. The agency may delegate the responsibility for a child's care, maintenance, and support to the adoptive applicant only when the applicant has received the child into the applicant's home, in accordance with Section 78-30-4.22.

F. A birth mother who decides not to place her child shall not be responsible for reimbursing the costs of any goods or services provided to her by the prospective adoptive parents or the child placing adoption agency during her pregnancy unless she is first convicted of fraud.

R501-7-7. Documentation.

A. A child placing adoption agency shall maintain a policy and procedure manual describing how it shall comply with all licensing rules and local, state and federal laws applicable to the type of services offered.

B. A child placing adoption agency shall maintain a policy and procedure manual demonstrating how it shall:

1. train and supervise employees and volunteers;

2. identify a child who may be available for adoption;

3. identify or refer a person who is considering relinquishing a child for adoption;

4. provide services in cases where the agency does not obtain legal custody of a child;

5. verify the credentials of other individuals and agencies it works with to obtain relinquishments and place a child;

6. offer counseling services by a licensed mental health therapist to a person who is considering relinquishing a child for adoption or adopting a child;

7. inform birth parents and adoptive parents of their rights and responsibilities in writing;

8. monitor who has legal and physical responsibility for the child at all times;

9. secure the necessary relinquishments and facilitate the termination of parental rights;

10. recruit and assist adoptive families to meet the needs of available children, including but not limited to special needs children;

11. obtain a background study on a child or a home study on a prospective adoptive parent;

12. evaluate prospective adoptive parents;

13. process appeals of home study denials;

14. assess the best interests of a child and the appropriate adoptive placement for the child;

15. monitor a case post-placement until the adoption is final;

16. ensure the child is receiving all necessary services prior to finalization of adoption;

17. assume custody and provide any needed services for the child when necessary because of disruption;

18. arrange to provide foster care prior to placing the child in an adoptive home;

19. preserve the confidentiality of client files;

20. respond to requests for information from birth families, adoptees, adoptive families, and others;

21. preserve client records when a case is closed and in the event that the agency changes ownership or ceases to provide child placement adoption services, and notify the Office of Licensing and each client where the records shall be stored; and

22. enable record retrieval by individuals with a right to access them;

C. A child placing adoption agency shall provide documentation demonstrating its compliance with each subsection in R501-7-7(B).

D. A child placing adoption agency shall maintain a case file for the birth parents, and the prospective adoptive parents, and for each child who is more than 90 days old at the time of placement or who has been in the legal custody of someone other than the birth mother. Each case file shall cross-reference related files. Each case file shall include:

1. application for service,

2. all studies and evaluations, whether or not finalized, including but not limited to those required by Section 78-30-

3.5;

3. needs assessment;

4. case notes describing services provided;

5. the individual's adjustments, interactions and relationships;

6. original or certified copies of government and religious birth records;

7. original or certified copies of relinquishment or transfer of birth mother's and birth father's rights;

8. original or certified copies of decree of termination of birth mother's and birth father's rights;

9. certified copies of marriage certificates, divorce papers, custody and visitation orders, if any;

10. certified copies of death certificates, if any, of birth parents;

11. original or certified copy of affidavit that birth mother's husband is not the child's father, if applicable;

12. waiver of confidentiality or release of information authorization, if applicable;

13. statements of birth and adoptive parents regarding any agreements to exchange information or maintain contact;

14. current and historical physical, psychological, genetic and developmental health information;

15. original or certified copy of the order of adoption; and

16. in the event that any records identified in this rule are not obtained, the child placing adoption agency shall provide documentation of its efforts to obtain those records.

E. A child placing adoption agency shall maintain current health, fire, zoning, business, and other permits, certificates, or licenses at each facility it operates, as required by state or local law;

F. All case files shall be retained for a minimum of 100 years from the date the case is closed.

G. All adoption records shall be confidential and shall be maintained in a locked file when not in active use. Adoption records shall be accessible only by authorized agency employees. No information shall be shared with any person without the appropriate consent forms, except as required by law.

H. A child placing adoption agency shall maintain and provide accurate annual statistics describing the number of applications received, services provided, the number of children, birth parents, and adoptive parents served, and the number of adoptions and disruptions, and the number of children in agency custody.

R501-7-8. Services for Birth Parents.

A. Child placing adoption agencies shall offer counseling sessions prior to consent or relinquishment. Prior to consent or relinquishment, the agency shall inform birth parents that:

1. their decision to sign the consent or relinquishment must be voluntary; and

2. their decision is permanent and may not be revoked after the consent or relinquishment is signed.

B. Birth parents shall be provided complete and accurate information and their decision to consent or relinquish, or not to consent or relinquish their child shall be supported.

1. Child placing adoption agencies shall not induce or persuade a birth parent to consent to adoption or to relinquish a child through duress, undue influence, misrepresentation, or deception.

C. A child placing adoption agency shall wait at least 24 hours after the birth of a child before taking the birth mother's relinquishment of parental rights or legal consent to the adoption of her child, in accordance with Section 78-30-4.19.

D. Birth parents shall be assisted in considering whether they want to disclose their identity to the adoptee or the adoptive family, or hear about or from the child, directly or indirectly, in the future.

E. Birth parents shall be offered non-identifying information on the potential adoptive parents, such as age, physical characteristics, educational achievement, family members, profession, nationality, health, and reason for adopting.

F. A child placing adoption agency shall inform birth parents that a detailed, non-identifying health history and a genetic and social history of the child shall be provided to the adoptive parents in accordance with Section 78-30-17, and shall inform birth parents of Utah's Mutual Consent Voluntary Adoption Registry, Section 78-30-18.

G. A child placing adoption agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial consultation with birth parents and shall also be clearly stated in writing on the birth parents' application for services forms.

H. A child who has already established some identification with a particular religious faith shall have the right to have such identification respected in any adoptive placement. Efforts shall be made to place the child within that religious faith. This information shall be documented.

I. A child placing adoption agency shall initiate proceedings to terminate or determine parental rights when required by Utah law.

J. Child placing adoption agencies that provide housing for expectant birth mothers shall assure that such housing complies with the following minimum standards:

1. housing is in compliance with health, fire, zoning, and other applicable laws and regulations;

2. housing is clean, well-maintained and adequately furnished;

3. birth mothers shall have private bedrooms;

4. laundry equipment and supplies shall be available; and

5. adequate nutritious food, or resources to obtain food, is available.

K. Child placing adoption agencies that provide or pay for birth mothers' transportation to the State of Utah shall also ensure that the birth mothers' return transportation to their home state is provided, regardless of whether the birth mother decides to relinquish parental rights.

L. The placement decision shall be in writing, signed by the child placing adoption agency and the birth parents, and a copy shall be maintained in the case record of the birth parents, the adoptive parents, and the child.

R501-7-9. Services for Children.

A. After the birth parents determine that adoption is the best plan for their child, an assessment shall be made within 30 days, or within the timeframe ordered by the court, to obtain information to assist in the placement process.

B. A determination shall be made regarding what kind of adoptive family should be selected for the child. The selection of the adoptive family for a specific child shall be based on the family's ability to meet the individual needs of the child. The wishes of the birth parents, the adoptive parents, and when applicable, the child, shall be considered.

C. The assessment shall be used to assist prospective adoptive families to make their decision about the child and birth family.

D. A complete developmental history of the child shall be obtained from the birth parent. If the child has been in an out-of-home placement prior to being placed in an adoptive home, information obtained from caseworker observation, pediatrician, foster parents, nurses, psychologists, and other consultants shall be included. The developmental history shall include:

1. birth and health history, and all evaluations;

2. descriptions of fine and gross motor skills, social, emotional, and cognitive development;

3. the child's adaptation to previous living experiences and

situations;

4. the child's experience prior to adoptive placement, particularly maternal attitudes during the pregnancy and early infancy, continuity of care and affection, foster placements, description of the child's behavior and separation experiences;

5. a description of the child's cultural and ethnic background;

6. the child's language skills, educational records, talents and interests.

E. A medical examination by a qualified physician shall be conducted to determine the state of the child's health, and any known or potentially significant factors that may interfere with normal development or may signal any potential medical problems. At a minimum, the following shall be documented and shared with parents, potential adoptive parents, and the assigned agency caseworker prior to placement:

1. evaluation of the child that includes a correlation and interpretation of all available information, including but not limited to genetic and laboratory test results;

2. the medical care and immunizations received to date;

3. the nature and degree of any disability,

4. treatment and support programs that should be provided to the child and adoptive parents, extra costs of medical care that can be anticipated, and plans to subsidize the health care.

F. Psychological testing for children should be used selectively and as a tool for observation and diagnosis.

G. A child placing adoption agency shall obtain information about the birth parents and their family backgrounds to:

1. provide the adoptive family with the birth family's medical, genetic, social, and mental health history;

2. provide the adoptive family with information about the talents, interests, and education of the birth parents;

3. provide the adoptive family with non-identifying information about other children born to either of the birth parents; and

4. identify characteristics which should be given consideration in selecting and preparing a child for an adoptive family.

H. An interdisciplinary approach based upon the needs of the child is to be used in the selection of a placement either by asking other professionals to submit written recommendations or by inviting them to participate as a member of the placement committee. A child placing adoption agency shall attempt to place siblings together.

I. A child shall be placed with the adoptive family at the earliest time possible after being freed for adoption.

J. A child's needs shall be assessed and a written plan shall be developed to ensure that the adoptive parents are prepared to meet the child's needs and necessary services are provided.

K. A child awaiting placement with an adoptive family shall be placed in a licensed foster or residential home or facility.

1. A child placing adoption agency shall contract with a licensed foster care program or obtain a license to provide foster care services for children in its custody, in accordance with R501-12.

2. A child awaiting adoptive placement shall be placed in a licensed group or residential treatment program when the child's needs can be met only in such a setting.

3. A child placing adoption agency shall obtain a copy of the foster home or facility license prior to placing a child, and shall retain the license in the child's case file.

L. A child placing adoption agency shall have an individualized written adoptive placement plan for each child, which shall include:

1. providing the family and child services or service referrals after the adoption is finalized; and

2. the financial and social service responsibilities of each agency and individual.

M. A social worker shall supervise the child's placement until finalization of the adoption to assist with the transition and assist the family in obtaining any needed services.

1. A minimum of one supervisory visit shall be made prior to finalization of the adoption.

N. A child placing adoption agency having a child available for adoption who has not been placed within 60 days after relinquishment or after being determined to be available for adoption by the court shall document its efforts to screen the child with other child placing agencies and shall list the child with local, regional, and inter-state adoption exchanges.

O. The needs of the child shall determine the amount of time taken to prepare the child for placement. The child shall be counseled regarding the adoptive placement and shall be protected from emotional disturbances associated with sudden separation from a known situation.

P. A child placing adoption agency shall develop a written plan with the child's current caregivers, the adoptive parents, and the child, to facilitate the child's transition into the adoptive family. The child's stated preferences shall be considered and if possible, honored.

R501-7-10. Services to Adoptive Parents.

A. Child placing adoption agencies shall provide prospective adoptive parents with a written description of their services, policies and procedures.

B. A child placing adoption agency shall explain the adoption process and the birth parents' rights, including the status of the putative father, to the prospective adoptive parents.

C. A child placing adoption agency shall provide all available non-identifying information on children who may be available for adoptive placement and their birth families, including but not limited to physical descriptions, special abilities, developmental and behavioral history, personality and temperament, medical and genetic history, ethnic and cultural background, and prior placement history.

D. A child placing adoption agency shall inform prospective adoptive parents of the availability of non-identifying health, genetic and social histories in accordance with Section 78-30-17, and Utah's Mutual Consent Voluntary Adoption Registry, Section 78-30-18.

E. A child placing adoption agency shall provide individual or group counseling to help the prospective adoptive parents evaluate and develop their capacities to meet the ongoing needs of the child.

F. A child placing adoption agency shall review all available information about the birth parents and child with the prospective adoptive parents and encourage the selection of a child whose needs the adoptive parents will be able to meet.

G. A child placing adoption agency shall prepare the child and adoptive family for the placement of the child in the home.

H. A child placing adoption agency shall inform each prospective adoptive parent that information about individual children in the custody of the state who are available for adoption may be obtained by contacting the Division of Child and Family Services or its internet site and shall provide a pamphlet prepared by the Division of Child and Family Services regarding adoption of children in the State's custody. The agency shall inform each prospective adoptive parent that assistance may be available when adopting children in the custody of the state, including:

1. Medicaid coverage for medical, dental, and mental health services;

2. tax benefits, adoption subsidies, or other financial assistance to defray the costs of adoption; and

3. training and ongoing support for the adoptive parents.

I. A child placing adoption agency shall inform adoptive parents when a child may be eligible for an adoption subsidy or

benefit, including but not limited to SSI, and shall coordinate with Division of Child and Family Services to apply for the subsidy or benefit.

J. A child placing adoption agency shall have written procedures and standards for the evaluation and approval or denial of applications from prospective adoptive parents.

K. The home study shall include:

1. interviews with the adoptive applicants, their children, and other individuals living in the home;

2. criminal background and child abuse screening of adoptive applicants and other adults living in the home in accordance with R501-14, R501-18, and Sections 53-10-108(4) and 78-30-3.5

3. written statements from references identified by the applicants. The applicants shall supply names of at least two non-related and one related individuals who shall provide information directly to the agency regarding the applicant's qualifications for parenting an adoptive child;

4. a medical history and a doctor's report, based upon a doctor's physical examination of each applicant, made within six months prior to the date of the application; and

5. inspections of the home, to determine whether sufficient space and facilities to meet the needs of the child exist and whether basic health and safety standards are maintained.

L. The adoptive applicants shall be informed, in writing, and within five business days after the decision is made, as to the acceptance or the reasons for the denial of their home study. The agency shall provide applicants with a written copy of the agency's appeal process, which shall include the right to submit a written appeal and request for reconsideration, and the right to request an additional evaluation, upon order of the court in accordance with Section 78-30-3.5.

M. A child placing adoption agency shall select applicants who:

1. are able to provide the continuity of a caring relationship

2. are informed with regard to a child's ethnic, religious, cultural, and racial heritage; and

3. understand the needs of a child at various developmental stages.

N. A child placing adoption agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial consultation with prospective adoptive parents. This disclosure shall also be clearly stated in writing on the adoptive parents' application for services forms.

O. A child placing adoption agency shall verify that an applicant's income is sufficient to provide for a child's needs.

P. A child placing adoption agency shall not reject an applicant solely based upon the applicant's choice to work outside the home. Applicants who work outside the home shall provide a written plan describing how they shall provide security and responsible child care to meet the individual child's needs.

Q. A child placing adoption agency shall not make a legal risk placement unless the prospective adoptive parents have first given their written consent, indicating that they have been fully informed of the specific risks involved.

R. Except when authorized by court order pursuant to Section 78-30-3.5(1)(b), a child placing adoption agency shall not place a child in an adoptive home until the home study and each adult's criminal and abuse background screenings have been approved.

S. A child placing adoption agency shall provide continuing support to the child and the adoptive family after placement and before finalization of the adoption, including but not limited to:

1. providing or making referrals to services such as counseling, crisis intervention, respite care, and support groups;

2. monitoring the child's adjustment and development;

3. assisting the family in helping the child, friends, family members, extended family members, neighbors, schools, and others understand the adoption process; and

4. assisting the family in understanding their feelings, understanding the child, and adjusting to the family composition.

T. The frequency of home visits, office contacts, telephone calls, and other contacts by the child placing adoption agency shall depend on the needs of the child and the adoptive family and may vary depending whether the child is an infant, an older child, or a child with medical or other difficulties, and whether the adoptive parents are faced with unanticipated problems.

1. The first contact after placement shall take place within two weeks of placement.

2. A minimum of one face-to-face supervisory home visit shall take place before finalization.

U. A child placing adoption agency shall provide assistance in finalizing the adoption, unless the agency removes the child due to circumstances that may impair the child's security in the family or jeopardize the child's physical and emotional development, including but not limited to incompatibility; mental illness; seriously incapacitating illness; the death of one of the adoptive parents; the separation or divorce of the adoptive parents; the abuse, neglect, or rejection of the child; the lack of attachment to the child; or a request by the adopting parents to remove the child.

1. If a child is removed from an adoptive home by a child placing adoption agency, the adoptive parents shall be entitled to appeal the removal decision. The agency shall provide the adoptive parents written notice of their right to appeal and the procedure for appeal.

R501-7-11. Intercountry Adoptions.

A. In addition to complying with all other rules regarding adoption, a child placing adoption agency that provides inter-country adoption services shall document that it has complied with all applicable laws and regulations of the United States and the child's country of origin, and shall document that:

1. the child is legally freed for adoption in the country of origin;

2. information was provided to the adopting parents about naturalization proceedings;

B. A child placing adoption agency that provides intercountry adoption services shall:

1. establish an official and recorded method of fund transfers to avoid, when possible, the use of direct cash transactions to pay for adoption services in other countries;

2. identify, in writing and in advance of accepting any payment or signing any agreement, the total cost of providing adoption services in the child's country, including but not limited to the cost of care for the child, personnel, overhead, training, communication, obtaining any necessary documents, translation, the child's passport, notarizations and certifications, with disclosure of whether the prospective adoptive parents shall pay such costs directly in the child's country or indirectly through the child placing adoption agency;

3. itemize the costs, if any, of mandatory payments to child protection or child welfare programs in the child's country of origin, including but not limited to a description of:

a. a fixed contribution amount identified in advance and in writing to the prospective adoptive parents;

b. the intended use of the payment; and

c. the manner in which the transaction will be recorded and accounted for;

4. provide all applicants with written policies governing refunds.

C. A child placing adoption agency that provides intercountry adoption services shall notify adoptive applicants

within ten business days when information is received that a foreign country is suspending its adoption program.

D. A child placing adoption agency that provides intercountry adoption services shall verify and maintain documentation regarding the credentials and qualifications of agents working in their behalf in foreign countries.

KEY: licensing, human services, child placing
July 1, 2004 62A-2-101 et seq.
Notice of Continuation November 25, 2002

R510. Human Services, Aging and Adult Services.
R510-107. Title V Senior Community Service Employment Program Standards and Procedures.
R510-107-1. Purpose.

(1) Provide useful part-time community service employment for persons with low incomes who are 55 years old or older and provide useful community services.

R510-107-2. Program Standards and Procedures.

(1) The Division's standards and procedures for this program are incorporated by reference to be 20 CFR Part 641 as published April 9, 2004.

KEY: elderly, employment
August 17, 2004 62A-3-104
Notice of Continuation November 1, 2002

R512. Human Services, Child and Family Services.
R512-41. Qualifying Adoptive Families and Adoption Placement.
R512-41-1. Purpose and Authority.

A. As authorized by Sections 62A-4a-105 and 62A-4a-205.6, the Division qualifies adoptive parents and individuals for the adoption of children in the custody of the Division. This rule specifies the requirements used to qualify adoptive parents or individuals and the criteria for adoption placement.

R512-41-2. Definitions.

A. For the purpose of this rule the following definitions apply:

1. Adoptive Parent(s) means a family or individual who completes Division training for prospective adoptive parent(s) and is approved by a licensed child placement agency or by the Division.

2. Cohabiting means residing with another person and being involved in a sexual relationship.

3. Involved in a sexual relationship means any sexual activity and conduct between persons.

4. Permanency means the establishment and maintenance of a permanent living situation for a child to give the child an internal sense of family stability and belonging and a sense of self that connects the child to his or her past, present and future.

5. Residing means living in the same household on an uninterrupted or an intermittent basis.

R512-41-3. Requirements for Adoptive Parent(s).

A. Prospective adoptive Parent(s) who apply to adopt a child in the custody of the Division, including kin, Section 62A-4a-108, or Division employees, Utah Administrative Code, Human Services, R512-40-4, must meet all of the following requirements:

1. complete the adoption training program approved by the Division;

2. be assessed and approved as adoptive parent(s)following completion of a home study by a licensed child placement agency or by the Division;

3. obtain a foster care license issued by the Department of Human Services, Office of Licensure, or meet the same standards, or receive a written waiver from the Division of a standard;

4. receive a determination by the Division that no conflict of interest exists in the adoption process.

R512-41-4. Adoption Assessment Requirements.

A. An adoption assessment must be consistent with the standards of the Child Welfare League of America (the assessment may be done by a licensed child placement agency or the Division) and must include the following:

1. an autobiography of prospective adoptive parent(s) and family members;

2. a behavioral assessment of parent(s) and children living at home;

3. a declaration that applicants are not cohabiting in a relationship that is not a legal marriage and in compliance with Section 78-30-9(3)(a and b)

4. a health status verification of parent(s) and children living at home;

5. a verification of financial status;

6. an assessment of home safety and health;

7. A criminal background check of all adults present in the home;

8. a screening of all adults present in the home against the child abuse data base;

9. an assessment of prospective adoptive parent(s) parenting skills;

10. recommendation of the types of children that may be appropriate for the prospective adoptive parent(s).

R512-41-5. Matching the Child and the Adoptive Parent(s).

A. In the matching process, the selection of adoptive parent(s) will be in the best interest of the child.

B. The decision must be based on a thorough assessment of the child's current and potential development, medical, emotional, and educational needs.

C. The capacity of the prospective adoptive parent(s) to successfully meet the child's needs and to love and accept the child as a fully integrated member of the family must be considered.

D. The child's preference may be considered, if the child has the capacity to express a preference.

E. When possible and appropriate, sibling groups should not be separated.

F. Foster care parent(s)(or other care giver with physical custody) of the child may be given preferential consideration for adoption if the child has substantial emotional ties with the foster parent(s)/care giver and if removal of the child from the foster parent(s)/care giver would be detrimental to the child's well-being.

G. Geographic boundaries alone should not present barriers or delays to the selection of adoptive parent(s).

H. The Indian Welfare Act (Public Law 95-608) takes precedent for an adoption of an Indian child who is a member of a federally recognized tribe or Alaskan native village.

I. Placements will be made in accordance with the Interethnic Adoption Act, 42 USC 1996b.

J. The division observes the following priorities for adoption of children in the division's custody:

1. Beginning May 1, 2000, the division gives priority for adoptive placements to families in which both a man and a woman are legally married under the laws of this state or valid proof that a court or administrative order has established a valid common law marriage as specified in Section 30-1-4.5. An individual who is not cohabiting may also be considered as an adoptive parent, if the Region Director determines it is in the best interest of the child.

R512-41-6. Adoption Decision.

A. Permanency decisions should be made in a timely manner recognizing the child's developmental needs and sense of time. The Division shall make intensive efforts to place the child with adoptive parent(s) within 30 days after the court has freed the child for adoption.

B. The Division will appoint and convene an adoption committee or committees to select adoptive parent(s) in the best interest of the child and to determine the level of adoption assistance, if any. The committee is also responsible for recommending removal of the child from a placement.

C. The adoption committee will consist of at least three members to include senior-level Division staff and one or more members from an outside agency with expertise in adoption or foster care.

D. Anyone who has information regarding the child and the potential matching families may be invited by the committee to present information but not to participate in the deliberations. The committee will reach its decision through consensus. If consensus cannot be reached, the committee will submit their recommendation to the Regional Director. The Regional Director may confer with the Division Director for the final decision.

E. The committee will make and retain a written record of their proceedings. All proceedings are confidential.

F. Any member of the committee who has a potential conflict of interest must recuse himself or herself from the proceeding.

G. The Division will send written notification of selection

to the adoptive parent(s).

H. The Division shall provide detailed information about the child to the prospective adoptive parent(s), allowing sufficient time for the prospective adoptive parent(s) to make an informed decision regarding placement of the child. The information given to the adoptive parent(s) must be a full disclosure of all information available and committed to writing. Release of all documents is subject to the Government Records Management Act. The adoptive parent(s) shall be advised of possible financial and medical assistance available to meet the special needs of the child. The Division and the prospective adoptive parent(s) will acknowledge receipt of the information by signing the Division's information disclosure form. The Division shall respond to questions or concerns of the potential adoptive parent(s). The prospective adoptive parent(s) shall have the opportunity to meet the child prior to permanent placement.

I. A family or individual that is not selected for an adoption placement of a specific child shall have no right to appeal the decision, unless the parent(s)not selected for the adoptive placement is the child's current foster parent(s)and the foster parent(s) have completed all requirements. If the foster parent(s) are not selected for the adoptive placement, the foster parent(s) due process rights for removal of a child apply. Foster Parents Due Process, Utah Administrative Code, Human Services Rule, R512-31.

J. When approved adoptive parent(s) agree to accept the placement of a child for adoption, the adoptive parent(s) and a representative from the Division shall sign an adoption agreement on a form provided by the Division.

K. When adoptive parent(s) agree to accept the placement of a child who is not free for adoption, the parent(s) shall sign the Division's Foster Child Adoption agreement.

R512-41-7. Information Regarding the Adoptive Parent(s).

A. No identifying information regarding adoptive parent(s) shall be released to birth families without the written consent of the adoptive parent(s).

R512-41-8. Placement.

A. The Division will make every effort to make a smooth and effective transition of the child to the adoptive parent(s) with the cooperation of the foster family and others who have a supportive relationship with the child. All out-of-home requirements continue to be applicable until the adoption is finalized.

B. Adoptive parent(s) will have access to all relevant information in the case record to help them understand and accept the child and preserve the child's history. The Division will inform adoptive parent(s)of community services and adoption assistance available before and after the adoption is final.

C. The Division will develop a service plan within 30 days of placement and supervise adoptive parent(s), including frequent visits with the child for at least the first six months after placement.

D. Division supervision will continue until the adoption is final.

R512-41-9. Adoption Disruption/Removal of a Child from Adoptive Parent(s) Prior to Finalization.

A. The Division shall consider removal of a child before an adoption is finalized if adoptive parent(s) request removal or if serious circumstances impair the child's security or development.

B. Prior to removal, the Division shall respond to adoptive parent(s)' concerns in a timely manner, counsel with the adoptive parent(s) and, if possible and appropriate, offer further treatment, including intensive in-home services or temporary removal of the child from the home for respite purposes.

C. When removal is recommended, the adoption committee shall review the placement progress, present situation, and decide to either continue placement with further services or to remove the child from the home. The Regional Director will review and approve the decision.

D. If the adoption committee decides to remove the child, a Notice of Agency Action shall be sent to adoptive parent(s) notifying them of their due process rights. The adoptive parent(s) shall be offered the same rights as those offered a foster family regarding removal of a child, Utah Administrative Code, Human Services, Rule R512-31.

R512-41-10. Adoption Finalization and Post Adoption.

A. Before an adoption is final, the adoption committee shall review the placement, authorize finalization, and approve adoption assistance, when appropriate. Utah Administrative Code, Human Services, R512-43.

R512-41-11. Adult Adoptee or Adoptive Parent(s) Request for Records.

A. The adoption records of the Division shall be made available to the adoptive parent(s) or adult adoptee upon written request in accordance with the Government Records Access Management Act, Title 63, Chapter 2. An adult adoptee may also register with the Utah Department of Health Adoption Registry, Section 78-30-18.

KEY: child welfare, adoption
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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.

R523-1-22. Rural Mental Health Scholarship and Grants.

The State Division of Substance Abuse and Mental Health hereby establish by rule an eligibility criteria and application process for the recipients of rural mental health scholarship funds, pursuant to the requirements of Section 62A-15-103.

(1) Eligibility criteria. The following criteria must be met by an applicant to qualify for this program.

(a) An applicant must be a current employee at an eligible Employment Site or have a firm commitment from an Eligible Employment Site for full time employment. Any sites that provide questionable or controversial mental health and /or substance abuse treatment methodologies will not be approved as eligible employment sites. Eligible Employment sites must be one of the following:

(i) Primary Employment Sites are community mental health centers and/or substance abuse providers that receive federal funds through a contract with the Division to provide mental health or substance treatment services.

(ii) Secondary Employment Sites are mental health or substance abuse providers that are licensed to provide mental health/substance treatment services by the Utah Division of Occupational and Professional Licensing, and serve more than 75% of Utah residents in their programs.

(b) An applicant must also agree to work in a designated eligible underserved rural area. Underserved rural areas must be classified as a Health Professional Shortage Areas (HPSA). The State Division of Substance Abuse and Mental Health can be contacted for a current list of HPSA sites.

(c) For Scholarship Grants; show registration in a course leading to a degree from a educational institution in the United States or Canada that will qualify them to receive licensure in Utah as a Mental Health Therapist s defined in Section 62A-13-102(4).

(d) For Loan Repayment Grants; show the amount of loans needing repayment, verify that the loans are all current, licensure as a Mental Health Therapist as defined in Section 62A-13-102(4).

(2) Grants. Two types of grants are available to eligible applicants.

(a) A loan Repayment Grant is to repay bona fide loans for educational expenses at an institution that provided training toward an applicant's degree, or to pay for the completion of specified additional course work that meets the educational requirements necessary for licensure as a Mental Health Therapist.

(b) A Scholarship is to pay for current educational expenses from an Educational Program that meets the educational requirements necessary for licensure as a Mental Health Therapist, at a school within the United States.

(3) Funding. Grants for applicants will be based upon the availability of funding the matching of community needs (i.e., how critical the shortage of Mental Health Therapists), the applicant's field of practice, and requested employment site. Primary employment sites are given priority over secondary employment sites.

(a) The award for each applicant may not exceed $5,000 per person. The Division will notify the grantee of the award amount. Exceptions in the amount of the award may be made due to unique circumstances as determined by the Division.

(b) An applicant may receive multiple awards, as long as the total awards do not exceed the recommended amount of $5,000, unless the Division approves an exception.

(4) Grantee obligation.

(a) The service obligation for applicants consists of 24 continuous months of full time (40) hours per week) employment as a Mental Health Therapist at an approved eligible employment site. The Division may change this service obligation if the Division Director determines that due to unforeseen circumstances, the completion of the obligation would be unfair to the recipient.

(b) Failure to finish the education program or complete the service obligation results in a repayment of grant funds according to Section-62A13-108.

(5) Application forms and instructions for grants or scholarships can be obtained from the Division of Substance Abuse and Mental Health, 120 North 200 West, Room 209, Salt Lake City, Utah. Only complete applications supported by all necessary documents will be considered. All applicants will be notified in writing of application disposition with in 60 days. A written appeal may be made to the Division Director within 30 days from the date of notification.

KEY: bed allocations, due process, prohibited items and devices, fees

July 15, 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)

R527. Human Services, Recovery Services.
R527-38. Unenforceable Cases.
R527-38-1. Unenforceable Case Criteria.

1. This rule establishes the criteria which a support case must satisfy to be categorized as unenforceable. All of the following criteria must be met:

a. The case is currently not a paying case; in that payments shall not have been posted to the case during the last 12 months; and payments are not expected to be posted in the near future.

b. No federal offset money has been received by the Office of Recovery Services (ORS) during the last two years.

c. No state tax money shall have been received by ORS within the most recent two years.

d. ORS shall have collected $1,000 or less on the case over the last two years by methods other than federal offset or state tax.

e. There are no financial institution accounts belonging to the non-custodial parent that can be attached.

f. No executable assets belonging to the non-custodial parent have been identified.

g. A credit bureau report has been accessed within the past six months indicating income or asset information is unavailable.

h. If the matter concerns a Title IV-E case, all of the children identified as being part of the case shall have been emancipated or parental rights shall have been terminated.

KEY: child support
August 5, 2004 **45 CFR 303.11**

R539. Human Services, Services for People with Disabilities.
R539-1. Eligibility.
R539-1-1. Purpose.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for Division services as required by Subsection 62A-5-102(3); and

(b) notice to Applicants of hearing rights and the hearing process.

R539-1-2. Authority.

(1) This rule establishes procedures and standards for the determination of eligibility for Division services as required by Subsection 62A-5-102(3).

(2) The procedures of this rule constitute the minimum requirements for eligibility for Division funding. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R539-1-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101.

(2) In addition:

(a) "Agency Action" means an action taken by the Division that denies, defers, or changes services to an Applicant applying for, or a person receiving, Division funding;

(b) "Applicant" means an individual or a representative of an individual applying for determination of eligibility;

(c) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as Multiple Sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident;

(d) "Department" means the Department of Human Services;

(e) "Developmental Disability" means mental retardation and related conditions;

(f) "Division" means the Division of Services for People with Disabilities;

(g) "Form" means a standard document required by Division rule or law;

(h) "Guardian" means someone appointed by a court to be a substitute decision maker for a person deemed to be incompetent of making informed decisions;

(i) "Hearing Request" means an oral or written request made by a person or a person's representative for a hearing concerning a denial, deferral or change in service;

(j) "ICF/MR" means Intermediate Care Facility for Persons with Mental Retardation;

(k) "Person" means someone who has been found eligible for Division funding for support services due to a disability and who is waiting for or receiving services at the present time;

(l) "Region" means one of four geographical areas of the state of Utah referred to as central, eastern, northern or western;

(m) "Region Office" means the place Applicants apply for services and where support coordinators, supervisors and region directors are located;

(n) "Related Conditions" means a severe, chronic disability that meets the following conditions:

(i) It is attributable to:

(A) Cerebral palsy or epilepsy; or

(B) Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons.

(ii) It is manifest before the person reaches age 22.

(iii) It is likely to continue indefinitely.

(iv) It results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care.

(B) Understanding and use of language.

(C) Learning.

(D) Mobility.

(E) Self-direction

(F) Capacity for independent living.

(o) "Representative" means the person's legal representative including the person's parents if the person is a minor child, a court appointed guardian or a lawyer retained by the person;

(p) "Resident" is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah.;

(q) "Support" is assistance for portions of a task allowing a person to independently complete other portions of the task or to assume increasingly greater responsibility for performing the task independently;

(r) "Support Coordinator" means an employee of the Division who completes written documentation of supports and determination of eligibility and support needs;

(s) "Team Member" means members of the person's circle of support who participate in the planning and delivery of services and supports with the Person. Team members may include the Person applying for or receiving services, his or her parents, Guardian, the support coordinator, friends of the Person, and other professionals and Provider staff working with the Person; and

(t) "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to persons with disabilities in lieu of institutionalization in a Title XIX facility, the Division administers three such waivers; the developmental disabilities and mental retardation waiver, the brain injury waiver and physical disabilities waiver.

R539-1-4. Eligibility for Non-Waiver Developmental Disability Services.

(1) The Division will serve those Applicants who meet the definition of disabled in Subsections 62A-5-101(4)(a)(i) through (iv) and 62A-5-101(4)(b).

(2) When determining limitations in the areas listed below, age appropriate abilities must be considered.

(a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.

(b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.

(c) Learning - An Applicant who has a valid diagnosis of mental retardation based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency.

(e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(f) Self-direction - An Applicant (age 7-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial,

habilitative, or residential issues and/or who has been declared legally incompetent. A person who is a significant danger to self or others without supervision.

(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with mental retardation as per 62A-5-101(6) or related conditions as per 42CFR435.1009.

(4) Applicants who have a disability due to mental illness, hearing impairment and/or visual impairment, learning disability, behavior disorder, substance abuse or personality disorder do not qualify for services under this rule.

(5) The Applicant, parent of a minor child, or the Applicant's Guardian must be a resident of the state of Utah prior to the Division's final determination of eligibility.

(6) The Applicant or Applicant's Representative shall be provided with information about all service options available through the Division as well as a copy of the Division's Guide to Services.

(7) It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the intake worker to determine eligibility.

(8) The following documents are required to determine eligibility for non-waivered developmental disabilities services.

(a) A Division Eligibility for Services Form 19 completed by the designated staff within each region office. For children under seven years of age, Eligibility for Services Form 19C, completed by the designated staff within each region office, will be accepted in lieu of the Eligibility for Services Form 19. The staff member will indicate on the Eligibility for Services Form 19C that the child has substantial functional limitation in three areas of major life activity; that the limitations are likely to continue indefinitely; and what assessment provides the basis of this determination.

(b) Inventory for Client and Agency Planning (ICAP) assessment shall be completed by the Division;

(c) Social History completed by or for the Applicant within one year of the date of application;

(d) Psychological Evaluation provided by the Applicant or, for children under seven years of age, a Developmental Assessment may be used as an alternative; and

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in Applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the above-required documentation. Examples of supporting documentation include, but are not limited to, mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

(9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(10) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Region staff shall determine the Applicant eligible or ineligible for funding for non-waiver developmental disabilities services within 90 days of receiving the required documentation.

(11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(12) People receiving services will have their eligibility re-determined on an annual basis. If people are determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are meet.

(13) This rule does not apply to Applicants who meet the separate eligibility criteria for physical disability and brain injury outlined in Rule 539-1-6 and Rule 539-1-8 respectively.

(14) Persons not participating in a Waiver or Persons participating in a Waiver but receiving non-Waiver services may have reductions in service packages or be discharged from services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-5. Eligibility for Developmental Disabilities / Mental Retardation Waiver Services.

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Mental Retardation and Developmental Disabilities to provide an array of home and community-based services that an eligible individual needs.

(a) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

(2) Applicants who are found eligible for Waiver funding may choose to participate in the Medicaid Waiver. If the Applicant chooses not to participate in the Waiver, their funding will be equivalent to the State portion of the Waiver budget they would have received had they participated in the Waiver.

R539-1-6. Eligibility for Non-Waivered Physical Disabilities Services.

(1) The Division will serve those Applicants who meet the eligibility requirements for physical disabilities services. To be determined eligible for non-waivered Physical Disabilities Services, the Applicant must:

(a) Have the functional loss of two or more limbs;

(b) Be 18 years of age or older;

(c) Have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that is safe and can accommodate the personnel and equipment (if any) needed to adequately and safely care for the Person; and

(d) Be medically stable, have a physical disability and require in accordance with the Person's physician's written documentation, at least 14 hours per week of personal assistance services in order to remain in the community and prevent unwanted institutionalization.

(e) Have their physician document that the Person's qualifying disability and need for personal assistance services are attested to by a medically determinable physical impairment which the physician expects will last for a continuous period of not less than 12 months and which has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order to accomplish activities of daily living/instrumental activities of daily living;

(f) Be capable, as certified by a physician, of selecting, training and supervising a personal attendant;

(g) Be capable of managing personal financial and legal affairs; and

(h) Be a resident of the State of Utah.

(2) Applicants seeking non-Waiver funding for physical disabilities services from the Division shall apply directly to the Division's State Office, by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

(3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant indicating that the intake case will be placed in inactive status.

(a) The Applicant may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant shall be required to update information.

(4) When all necessary eligibility documentation is received from the Applicant and the Applicant is determined eligible, the Applicant will be assessed by a Nurse Coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing a Person into services. The Physical Disabilities Nurse Coordinator shall:

(a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each Person's level of need;

(b) determine and prioritize needs scores;

(c) rank order the needs scores for every Person eligible for service, and

(d) if funding is unavailable, enter the Person's name and score on the Physical Disabilities wait list.

(5) The Physical Disabilities Nurse Coordinator assures that the needs assessment score and ranking remain current by updating the needs assessment score as necessary. A Person's ranking may change as needs assessments are completed for new Applicants found to be eligible for services.

(6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant of eligibility determination and placement on the pending list. The Applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) This does not apply to Applicants who meet the separate eligibility criteria for developmental disability/mental retardation and brain injury outlined in Rule 539-1-4 and Rule 539-1-8 respectively.

(8) Persons not participating in a waiver or Persons participating in a waiver but receiving non-waiver services may have reductions in service packages or be discharged from services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-7. Eligibility for Physical Disabilities Waiver Services.

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Physical Disabilities funding but who choose not to participate in the Home and Community-Based Waiver for People with Physical Disabilities, will receive only the state paid portion of services.

R539-1-8. Eligibility for Non-Waiver Brain Injury Services.

(1) The Division will serve those Applicants who meet the eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

(a) have a documented acquired neurological brain injury;

(b) Be 18 years of age or older;

(c) score between 40 and 120 on the Brain Injury Comprehensive Assessment Form 4-1.

(2) Applicants with substance abuse or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer as a primary diagnosis are ineligible for these non-waiver services.

(3) The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

(4) The Applicant or the Applicant's Guardian must be a resident of the state of Utah prior to the Division's final determination of eligibility.

(5) It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

(6) The intake worker will complete or compile the following documents:

(a) Brain Injury Intake, Screening and Comprehensive Assessment Form 4-1, Part I through Part VII; and

(b) Brain Injury Social History Summary Form 824BI, completed or updated within one year of eligibility determination;

(7) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(8) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, region staff shall determine the Applicant eligible or ineligible for funding for brain injury supports.

(9) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

R539-1-9. Eligibility for Acquired Brain Injury Waiver Services.

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Brain Injury funding but who choose not to participate in the Home and Community-Based Waiver for People with Brain Injury, will receive only the state paid portion of services.

(3) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an

administrative hearing before the Department of Health.

R539-1-10. Graduated Fee Schedule.

(1) Pursuant to Utah Code 62A-5-105 the Division establishes a graduated fee schedule for use in assessing fees to individuals. The graduated fee schedule shall be applied to Persons who do not meet the Medicaid eligibility requirements listed in the Developmental Disabilities/Mental Retardation Waiver, the Traumatic Brain Injury Waiver or the Physical Disabilities Waiver. Family size and gross income shall be used to determine the fee. This rule does not apply to Persons who qualify for Medicaid waiver funding but who choose to have funding reduced to the state match per R539-1-2 rather than participate in the Medicaid Waiver.

(a) Persons who do not participate in a Medicaid Waiver who do not meet Waiver level of care must apply for a Medicaid Card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver who meet Waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver shall provide the Support Coordinator or Nurse Coordinator with the financial determination letter within 10 days of the receipt of such documentation. Persons who do not participate in a Medicaid Waiver and who fail to comply with these requirements shall have funding reduced to the state match rate.

(b) Persons who do not participate in a Medicaid Waiver due to financial eligibility, must be reduced to the state match rate.

(c) Persons who only meet the general eligibility requirements, as per R539-1-4, R539-1-6, and R539-1-8, must report all cash assets (stocks, bonds, certified deposits, savings, checking and trust amounts), annual income and number of family members living together using Division Form 2-1G. Persons with Discretionary Trusts are exempt from the Graduated Fee Schedule as per Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning meeting. The Person / family shall return Form 2-1G to the support coordinator prior to delivery of new services. Persons / families currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the Division. Persons / families who complete the Division Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the Person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members will be used to calculate available income (using the formula: (assets + income) / by the total number of family members = available income). Available income will be used to determine the fee percent (0 percent to 3 percent). The annual fee amount will be calculated by multiplying available income by the fee percent. Persons who do not participate in a Medicaid Waiver, who only meet general eligibility requirements, and have available incomes below 300 percent of the poverty level will not be assessed a fee. Persons with available incomes between 300 and 399 percent of poverty will be assessed a 1 percent fee, Persons with available incomes between 400 and 499 percent of poverty will be assessed a 2 percent fee and those with available income over 500 percent of poverty will be assessed a 3 percent fee.

(e) No fee shall be assessed for a Person who does not participate in a Medicaid Waiver and who receives funding for less than 31 percent of their assessed need. A multiplier shall be applied to the fee of Persons who do not participate in a Medicaid Waiver and who receive 31 to 100% percent of their assessed need.

(f) If a Person's annual allocation is at the state match rate, they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. Persons who do not participate in a Medicaid Waiver under the age of 18 shall be assessed a fee based upon parent income. Persons who do not participate in a Medicaid Waiver over the age of 18 shall be assessed a fee based upon individual income and assets.

(h) If the Person is assessed a fee, the Person shall pay the Division of Services for People with Disabilities or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the Person.

(i) If the Person fails to pay the fee for six months, the Division may reduce the Person's next year annual allocation to recover the amount due. If a Person can show good cause, the Division Director may grant exceptions on a case-by-case basis.

KEY: human services, disability
August 19, 2004 62A-5-103
Notice of Continuation December 18, 2002 62A-5-105

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 (4)(a).

(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

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronyum of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "Hearing" means a proceeding conducted by the commission.

S. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

T. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

U. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

V. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

W. "Publish" means publication in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

X. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

Y. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

Z. "Secretary" means the Secretary of the United States Department of Labor.

AA. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

BB. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

CC. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

DD. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

EE. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2002, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2001, is incorporated by

reference.

3. 29 CFR 1904, July 1, 2001, is incorporated by reference.

4. FR Vol. 67, No. 126, Monday, July 1, 2002, Pages 44037 to and including 44048, "29 CFR Part 1904 Occupational Injury and Illness Recording and Reporting Requirements; Final Rule" is incorporated by reference.

5. FR Vol. 67, No. 216, Thursday, November 7, 2002, Pages 67949 to and including 67965, "Exit Routes, Emergency Action Plans, and Fire Protection Plans; Final Rule" is incorporated by reference.

6. FR Vol. 67, No. 242, Tuesday, December 17, 2002, Pages 77165 to and including 77170, "Occupational Injury and Illness Recording Requirements: Final Rule" is incorporated by reference.

7. FR Vol. 68, No. 105, Monday, June 2, 2003, Pages 32637 to and including 32638, "29 CFR Part 1910.178 Powered Industrial Trucks; Final Rule" technical amendment in incorporated by reference.

8. FR Vol. 68, No. 125, Monday June 30, 2003, Pages 38601 to and including 38607, "29 CFR Part 1904 Occupational Injury and Illnesses Recording and Reporting Requirements; Final Rule" is incorporated by reference.

9. FR Vol. 68, No. 250, Wednesday, December 31, 2003, Pages 75776 to and including 75780, "Respiratory Protection for M. Tuberculosis"; Final Rule is incorporated by reference.

10. FR Vol. 69, No. 31, Tuesday, February 17, 2004, Pages 7351 to and including 7366, "Commercial Diving Operations"; Final Rule is incorporated by reference.

11. FR Vol. 69, No. 110, Thursday June 8, 2004, Pages 31880 to and including 31882, "29 CFR 1910/1926; "Mechanical Power-Transmission Apparatus; Mechanical Power Presses; Telecommunications; Hydrogen"; Final Rule; technical amendments Final Rule" is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2002, edition is incorporated by reference.

2. FR Vol. 67, No. 177, Thursday, September 12, 2002, Pages 57722 to and including 57736, "Safety Standards for Signs, Signals, and Barricades; Final Rule" is incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

2. Each employer shall within 8 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

3. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational diseases which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

4. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

5. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational diseases resulting in medical treatment, loss of consciousness, loss of work, restriction of work, or transfer to another job.

6. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor Commission or one of its Compliance Officers.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or

her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can

be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the

office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his

reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of

proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

NOTE: Utah has adopted and will enforce the Federal Recordkeeping Standard 29CFR1904.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

4. FR Vol. 66, No. 13, Friday, January 19, 2001, Pages 5916 to and including 6135. "Occupational Injury and reporting Requirements; Final Rule" is incorporated by reference.

Utah Specific Recordkeeping requirements follow:

B. Supplementary record.

Each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 301, Utah Industrial Accidents Form 122. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 301, Utah Industrial Accidents Form 122. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 301, Utah Industrial Accidents Form 122 shall be used or the necessary information shall be otherwise maintained.

C. Retention of records.

Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

D. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall

pertain to all logs retained under requirements of R614-1-8.G.

E. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

F. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

G. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63, Chapter 46b, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities

rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63, Chapter 46a, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself

to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept

secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee

medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the

information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation

and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific

employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records

(and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety
July 2, 2004 **34A-6**
Notice of Continuation November 25, 2002

R651. Natural Resources, Parks and Recreation.
R651-611. Fee Schedule.
R651-611-1. Use Fees.

All fees required under this fee schedule are to be paid in advance of occupancy or use of facilities.

A. Fees for services covering one or more months, for docks and dry storage, must be paid in advance for the season as determined by the Division.

B. Fee permits and passes are not refundable or transferable. Duplicate annual permits and special fun tags will be issued only upon completion of an affidavit and payment of the required fee. Inappropriate use of fee permits and passes may result in confiscation by park authorities.

C. Fees shall not be waived, reduced or refunded unless authorized by Division guideline; however, park or unit managers may determine and impose equitable fees for unique events or situations not covered in the current fee schedule. The director has the prerogative to waive or reduce fees.

D. The Multiple Park Permit, Senior Multiple Park Permit, Special Fun Tag, Camping Permit and Daily Private Vehicle Permit are good for one (1) private vehicle with up to eight (8) occupants, with the exception of any special charges. Multiple Park Permits, Senior Multiple Park Permits, and Special Fun Tags, are not honored at This Is The Place State Park.

E. No charge for persons five years old and younger.

F. With the exception of the Multiple Park Permit, Senior Multiple Park Permit, and Special Fun Tag, fees are applicable only to the specific park or facility where paid and will not be honored at other parks or facilities, unless otherwise stated in division guideline.

G. The contract operator, with the approval of the Division Director, will set fees for This Is The Place State Park.

H. A "senior" is defined as any resident of the State of Utah 62 years of age or older. Residency and proof of age are verified by presentation of a valid driver's license or a valid Utah identification card.

R651-611-2. Day Use Entrance Fees.

Permits the use of all day activity areas in a state park. These fees do not include overnight camping facilities or special use fees.

A. Annual Permits

1. $70.00 Multiple Park Permit (good for all parks)
2. $35.00 Senior Multiple Park Permit (good for all parks)
3. Snow Canyon Specialty Permits
a. $15.00 Family Pedestrian Permit
b. $5.00 Commuter Permit
4. Duplicate Annual Permits may be purchased if originals are lost, destroyed, or stolen, upon payment of a $10.00 fee and the submittal of a signed affidavit to the Division office. Only one duplicate is allowed.

B. Special Fun Tag - Available free to Utah residents, who are disabled, as defined by the Special Fun Tag permit affidavit.

C. Daily Permit - Allows access to a specific state park on the date of purchase.

1. $9.00 ($5.00 for seniors) per private motor vehicle or $5.00 per person ($3.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 1

Deer Creek	Jordanelle - Hailstone
Utah Lake	Willard Bay

2. $7.00 ($4.00 for seniors) per private motor vehicle or $4.00 per person ($2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 2

Bear Lake - Marina	Bear Lake - Rendezvous
Dead Horse Point	East Canyon
Jordanelle - Rockcliff	Quail Creek
Rockport	Sand Hollow
Yuba	

3. $6.00 per adult, $3.00 per child (a child is defined as any person between the ages of six (6) and twelve (12) years old inclusively), and $3.00 for seniors at Utah Field House State Park.

4. $2.00 per person ($1.00 for seniors), or $6.00 per family (up to eight (8) individuals ($3.00 for seniors), at the following parks:

TABLE 3

Anasazi	Camp Floyd
Edge of the Cedars	Great Salt Lake
Fremont	Territorial
Iron Mission	

5. $5.00 ($3.00 for seniors) per private motor vehicle or $3.00 per person ($2.00 for seniors),for pedestrians or bicycles at the parks not identified above, including the east side of Bear Lake.

6. $10.00 per OHV rider at the Jordan River OHV Center.

7. $2.00 per person for commercial groups or vehicles with nine (9) or more occupants ($15.00 per group at Great Salt Lake).

D. Group Site Day Use Fee - Advance reservation only. $2.00 per person, age six (6) and over, for sites with basic facilities. Minimum $50.00 fee established for each facility.

E. Educational Groups - No charge for group visits by Utah public or parochial schools with advance notice to park. When special arrangements or interpretive talks are provided, a fee of $.50 per person may be charged at the park manager's discretion.

F. Antelope Island Wildlife Management Program: A $1.00 fee will be added to the entrance fee at Antelope Island. This additional fee will be used by the Division to fund the Wildlife Management Program on the Island.

R651-611-3. Camping Fees.

Permits overnight camping and day use for the day of arrival until 2:00 p.m. of the following day or each successive day. Camp sites must be vacated by 12:00 noon following the last camping night at Dead Horse Point. Camping is limited to 14 consecutive days at all campgrounds with the exception of Snow Canyon State Park, with a five (5) consecutive day limit.

A. Individual Sites -- One (1) vehicle with up to eight (8) occupants and any attached recreational equipment as one (1) independent camp unit. Fees for individual sites are based on the following schedule:

1. $8.00 with pit or vault toilets; $11.00 with flush toilets; $14.00 with flush toilets and showers or electrical hookups; $17.00 with flush toilets, showers and electrical hookups; $20.00 with full hookups.

2. Primitive camping fees may be decreased at the park manager's discretion dependent upon the developed state of the facilities to be used by park visitors. Notification of the change must be made to the Division's financial manager and reservations manager before the reduced fee can be made effective.

3. Special Fun Tag holders may receive a $2.00 discount for individual camping sites Monday through Thursday nights, excluding holidays.

4. One-half the campsite fee rounded up to the nearest dollar will be charged per vehicle at all parks and individual camping sites for all additional transportation vehicles that are separate and not attached to the primary vehicle, but are dependent upon that unit. No more than one additional vehicle is allowed at any individual campsite. This fee is not applicable at primitive campsites.

B. Group Sites - (by advance reservation for groups)
1. $2.00 per person, age six (6) and over at sites with vault toilets. Minimum $50.00 fee for each facility.
2. $3.00 per person, age six (6) and over at sites with flush toilets and/or pavilions. Minimum $75.00 fee for each facility.

R651-611-4. Special Fees.
A. Golf Course Fees
1. Palisade rental and green fees.
a. Nine holes general public - weekends and holidays - $10.00
b. Nine holes weekdays (except holidays) - $9.00
c. Nine holes Jr/Sr weekdays (except holidays) $8.00
d. 20 round card pass - $140.00
e. 20 round card pass (Jr only)- $100.00
f. Promotional pass - single person (any day) - $400.00
g. Promotional pass - single person (weekdays only) - $275.00
h. Promotional pass - couples (any day) - $650.00
i. Promotional pass - family (any day) - $850.00
j. Companion fee - walking, non -player - $4.00
k. Motorized cart (18 holes) - $10.00
l. Motorized cart (9 holes) - $5.00
m. Pull carts (9 holes) - $2.00
n. Club rental (9 holes) - $5.00
o. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.
p. Driving range - small bucket - $2.50
q. Driving range - large bucket - $3.50
2. Wasatch Mountain and Soldier Hollow rental and green fees.
a. Nine holes general public - $12.00
b. Nine holes general public (weekends and holidays) - 13.00
c. Nine holes Jr/Sr weekdays (except holidays) - $11.00
d. 20 round card pass - $220.00 - no holidays or weekends
e. Companion fee - walking, non-player - $4.00
f. Motorized cart (9 holes - mandatory on Mt. course) - $12.00
g. Motorized cart (9 holes single rider - $6.00)
h. Pull carts (9 holes) - $2.25
i. Club rental (9 holes) - $6.00
j. School teams - No fee for practice rounds with coach and team roster (Wasatch County only).
Tournaments are $3.00 per player.
k. Tournament fee (per player) - $5.00
l. Driving range - small bucket - $2.50
m. Driving range - large bucket - $5.00
n. Advance tee time booking surcharge - $15.00
3. Green River rental and green fees.
a. Nine holes general public - $9.00
b. Nine holes Jr/Sr weekdays (except holidays) - $8.00
c. Eighteen holes general public - $16.00
d. 20 round card pass - $140.00
e. Promotional pass - single person (any day) - $350.00
f. Promotional pass - personal golf cart - $350.00
g. Promotional pass - single person (Jr/Sr weekdays) - $275.00
h. Promotional pass - couple (any day) - $600.00
i. Promotional pass - family (any day) - $750.00
j. Companion fee - walking, non-player - $4.00
k. Motorized cart (9 holes) - $8.00
l. Motorized cart (9 holes single rider) - $4.00
m. Pull carts (9 holes) - $2.25
n. Club rental (9 holes) - $5.00
o. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.
4. Golf course hours are daylight to dark
5. No private, motorized golf carts are allowed, except where authorized by existing contractual agreement.
6. Jr golfers are 17 years and under. Sr golfers are 62 and older.
B. Boat Mooring and Dry Storage
1. Mooring Fees:
a. Day Use - $5.00
b. Overnight Boat Parking - $7.00 (until 8:00 a.m.)
c. Overnight Boat Camping - $15.00 (until 2:00 p.m.)
d. Monthly - $4.00/ft.
e. Monthly with Utilities - (Bear Lake) $6.00/ft.
f. Monthly with Utilities - (Other Parks) $5.00/ft.
g. Monthly Off Season - $2.00/ft
h. Monthly (Off Season with utilities) - $3.00/ft
2. Dry Storage Fees:
a. Overnight (until 2:00 p.m.) - $5.00
b. Monthly During Season - $75.00
c. Monthly Off Season - $50.00
d. Monthly (unsecured) - $25.00
C. Meeting Rooms and Buildings
1. Day Use: 1-4 hours between 8:00 a.m. and 6:00 p.m.
a. Up to 50 persons - $50.00
b. 51 to 100 persons - $70.00
c. 101 to 150 persons - $90.00
d. Add 50% for after 6:00 p.m.
e. Fees include day use fee
2. Overnight Use 2:00 p.m. until 2:00 p.m., up to 100 people. Minimum Fee $250.00
3. Territorial Statehouse
a. Legislative Hall (per hour) - $30.00
b. School or Grounds (per hour) - $20.00
4. Utah Field House of Natural History
a. Training room per session - $75.00
b. Theater per session - $100.00
c. Lobby area per session - $500.00
d. Dinosaur garden per session - $500.00
e. Entire museum per day - $2,000.00
D. Roller Skating Fees:
1. Adults - $2.00
2. Children 6 through 11 - $1.00
3. Skate Rental - $1.00
4. Ice Skate Sharpening
5. Group Reservations
a. First Hour - $30.00
b. Every Hour Thereafter - $20.00
E. Other Miscellaneous Fees
1. Canoe Rental (includes safety equipment).
a. Up to one (1) hour - $ 5.00
b. Up to four (4) hours - $10.00
c. All day to 6:00 p.m. $20.00
2. Paddle boat Rental (includes safety equipment).
a. Up to one (1) hour $10.00
b. Up to four (4) hours $20.00
c. All day to 6:00 p.m. $30.00
3. Cross Country Skiing Trails.
a. $4.00 per person, twelve (12) and older.
b. $2.00 per person, six (6) through eleven (11).
4. Pavilion - 8:00 a.m. - 10:00 p.m. (non -fee areas).
a. $10.00 per day - (single unit).
b. $30.00 per day - (group unit).
5. Wagon Rental per day - $50.00
6. Recreation Field (non-fee areas) - $25.00.
7. Sports Equipment Rental - $10.00.
8. Life Jacket Rental - $1.00
9. Day Use Shower Fee - $2.00.
(where facilities can accommodate)
10. Cleaning Deposit (where applicable) - $100.00
11. Application Fees - Non -refundable PLUS Negotiated Costs.
a. Grazing Permit - $20.00

b. Easement - $ 200.00
c. Construction/Maintenance - $50.00
d. Special Use Permit - $50.00
e. Commercial Filming - $50.00
f. Waiting List - $10.00
12. Assessment and Assignment Fees.
a. Duplicate Document - $10.00
b. Contract Assignment - $20.00
c. Returned checks - $20.00
d. Staff time - $40.00/hour
e. Equipment - $30.00/hour
f. Vehicle - $20.00/hour
g. Researcher - $5.00/hour
h. Photo copy - $ .10/each
i. Fee collection - $10.00
13. Curation Fees.
a. Annual curation agreement $75.00
b. Curation storage Edge of Cedars $400.00/cubic foot.
c. Curation storage other parks $350.00/cubic foot
d. All curation storage fees are one time only.
14. Snowmobile Parking Fee - Monte Cristo Trail head.
a. Day use (6:00 a.m. to 10:00 p.m.) - $5.00
b. Overnight (10:00 p.m. to 10:00 p.m.) - $5.00
c. Season Pass (Day use only) - $30.00
d. Season Pass (Overnight) - $50.00

R651-611-5. Reservations.

A. Camping Reservation Fees.
1. Individual Campsite $7.00
2. Group site or building rental $10.25
3. Fees identified in #1 and #2 above are to be charged for both initial reservations and for changes to existing reservations.

B. All park facilities will be allocated on a first-come, first-serve basis.

C. Selected camp and group sites are reservable in advance by calling 322-3770, 1-800-322-3770 or on the Internet at: www.stateparks.utah.gov.

D. Applications for reservation of skating rinks, meeting rooms, buildings, mooring docks, dry storage spaces and other sites not covered above, will be accepted by the respective park personnel beginning on the first business day of February for the next 12 months. Application forms and instructions are available at the park.

E. All unreserved mooring docks, dry storage spaces and camp picnic sites are available on a first-come, first-serve basis.

F. The park manager for any group reservation or special use permit may require a cleanup deposit.

G. Golf course reservations for groups of 20 or more and tournaments will be accepted for the calendar year beginning the first Monday of March. Reservations for up to two starting times (8 persons) may be made for Saturday, Sunday and Monday, the preceding Monday; and for Tuesday through Friday, the preceding Saturday. Reservations will be taken by phone and in person during golf course hours.

H. One party will reserve park facilities for more than fourteen (14) consecutive days in any 30-day period.

KEY: parks, fees
September 1, 2004 **63-11-17(8)**
Notice of Continuation August 7, 2001

R651. Natural Resources, Parks and Recreation.
R651-634. Snowmobile User Fee - Non-Residents.
R651-634-1. User Fees.

Except as provided below, any nonresident owning an off-highway vehicle, who operates or gives another person permission to operate the off-highway vehicle on any public land, trail, street or highway in this state, shall pay an annual off-highway vehicle user fee

1. A decal will be issued which proves payment has been made. The decal will then be displayed on the off-highway vehicle as follows: On snowmobiles, the decal shall be mounted on the left side of the hood, pan or tunnel. On motorcycles, the decal shall be mounted on the left fork, or on the left side body plastic. On all-terrain vehicles, the decal shall be mounted on the rear of the vehicle. Vehicle types are defined in 41-22-2 UCA. In all instances, the decal shall be mounted in a visable location. The decal shall be non-transferable.

2. A receipt will be issued with the decal indicating the fee paid, the Vehicle Identification Number (VIN) of the off-highway vehicle, and the off-highway vehicle owner's name and address. This receipt shall remain with the off-highway vehicle at all times.

3. Fees charged will be in accordance with S.B. 14 (1999 Utah Laws 1, effective July 1, 1999, and HB 51 (2004 Utah Laws, effective July 1, 2004) which state that the off-highway vehicle user annual fee will be $30 per year.

4. Nonresident OHV user permits shall expire December 31, annually.

Applicants for a nonresident OHV user permit shall provide evidence that the applicant is the owner of the off-highway vehicle, and is not a resident of Utah. Such evidence shall include:

a. A government issued identification card showing the state of residency of the off-highway vehicle owner, and one of the following:

(1) A title or certificate of registration from a state other than Utah.

(2) An original bill of sale; or

b. A sworn affidavit stating that the off-highway vehicle is owned by a nonresident of the State of Utah. The affidavit must state the name and address of the vehicle owner, and a description of the off-highway vehicle, including the Vehicle Identification Number (VIN).

Off-highway vehicles currently registered in a state offering reciprocal operating privileges to Utah residents shall be exempt from the nonresident user fee requirements of this rule. The Division shall maintain a list of states offering reciprocal operating privileges to Utah residents. This list shall be updated at least annually.

Provisions of this rule shall not apply to off-highway vehicles exempt under 41-22-35(1)(b)(i), or to off-highway vehicles participating in scheduled competitive events sponsored by a public or private entity, or in noncompetitive events sponsored in whole or in part by any governmental entity.

KEY: parks
September 1, 2004 **41-22-35**
63-11-17

R657. Natural Resources, Wildlife Resources.
R657-6. Taking Upland Game.
R657-6-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2003 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the Upland Game Proclamation and the Turkey Addendum to the Upland Game Proclamation of the Wildlife Board for taking upland game.

R657-6-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "Baited area" means any area on which shelled, shucked or unshucked corn, wheat or other grain, salt or other feed has been placed, exposed, deposited, distributed or scattered, if that shelled, shucked or unshucked corn, wheat or other grain, salt or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take migratory game birds. Any such area will remain a baited area for ten days following the complete removal of all such shelled, shucked or unshucked corn, wheat or other grain, salt or other feed.

(c) "Baiting" means the direct or indirect placing, depositing, exposing, distributing, or scattering of shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that could serve as a lure or attraction for migratory game birds to, on, or over any areas where hunters are attempting to take migratory game birds.

(d) "CFR" means the Code of Federal Regulations.

(e) "Closed season" means the days on which upland game shall not be taken.

(f) "Commercial hunting area" means private land operated under Rule R657-22, where hatchery or artificially raised or propagated game birds are released for the purpose of hunting during a specified season and where a fee is charged.

(g) "Falconry" means the sport of taking quarry by means of a trained raptor.

(h) "Field possession limit" means no person may possess, have in custody, or transport, whichever applies, more than the daily bag limit of migratory game birds, tagged or not tagged, at or between the place where taken and either:

(i) his or her automobile or principal means of land transportation;

(ii) his or her personal abode or temporary or transient place of lodging;

(iii) a migratory bird preservation facility; or

(iv) a post office or common carrier facility.

(i) "Immediate family" means the landowner's lessee, or landowner's or lessee's spouse, children, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchildren, and grandchildren.

(j) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(k) "Migratory game bird" means, for the purposes of this rule, Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

(l) "Nontoxic shot" means soft iron, steel, copper-plated steel, nickel-plated steel, zinc-plated steel, bismuth, and any other shot types approved by the U.S. Fish and Wildlife Service. Lead, nickel-plated lead, copper-plated lead, copper and lead/copper alloy shot have not been approved.

(m) "Open season" means the days when upland game may lawfully be taken. Each period prescribed as an open season shall include the first and last days thereof.

(n) "Personal abode" means one's principal or ordinary home or dwelling place, as distinguished from a temporary or transient place of abode or dwelling, such as a hunting club, cabin, tent, or trailer house used as a hunting club or any hotel, motel, or rooming house used during a hunting, pleasure, or business trip.

(o) "Cooperative Wildlife Management Unit" means a generally contiguous area of private land open for hunting small game, waterfowl, or big game by permit that is registered in accordance with Rules R657-21 and R657-37.

(p) "Possession limit" means, for purposes of this rule, the number of upland game birds one individual may have in possession at any one time.

(q) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(r) "Upland game" means pheasant, quail, Chukar Partridge, Hungarian Partridge, Sage-grouse, Ruffed Grouse, Blue Grouse, Sharp-tailed Grouse, cottontail rabbit, snowshoe hare, White-tailed Ptarmigan, and the following migratory game birds: Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

R657-6-3. Migratory Game Bird Harvest Information Program.

(1) A person must obtain a Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds (Band-tailed Pigeon, Mourning Dove, White-winged Dove and Sandhill Crane).

(2)(a) A person may call the telephone number published in the proclamation of the Wildlife Board for taking upland game or register online at www.wildlife.utah.gov to obtain their HIP registration number. Use of a public pay phone will not allow access to the telephone number published in the proclamation of the Wildlife Board for taking upland game.

(b) A person must write their HIP registration number on their current year's hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;

(b) hunting license code key;

(c) name;

(d) address;

(e) phone number;

(f) birth date; and

(g) information about the previous year's migratory game bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the Division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory game birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

R657-6-4. Permits for Band-tailed Pigeon, Sage-grouse, Sharp-tailed Grouse and White-tailed Ptarmigan.

(1)(a) A person may not take or possess:

(i) Band-tailed Pigeon without first obtaining a Band-tailed Pigeon permit;

(ii) Sage-grouse without first obtaining a Sage-grouse permit;

(iii) Sharp-tailed Grouse without first obtaining a Sharp-tailed Grouse permit; or

(iv) White-tailed Ptarmigan without first obtaining a White-tailed Ptarmigan permit.

(b) A person may obtain only one permit for each species listed in Subsection (1)(a), except a falconer with a valid Falconry Certificate of Registration may obtain one additional two-bird Sage-grouse permit beginning on the date published in the proclamation of the Wildlife Board for taking upland game, if any permits are remaining.

(2)(a) A limited number of two-bird Sage-grouse permits are available in the areas published in the proclamation of the Wildlife Board for taking upland game.

(b) A Sage-grouse permit may only be used in one of the open areas as published in the proclamation of the Wildlife Board for taking upland game.

(c) Sage-grouse permits will be issued on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game free of charge.

(d) Sage-grouse permit request forms must be submitted with a handling fee.

(3)(a) A limited number of two-bird, Sharp-tailed Grouse permits are available.

(b) A Sharp-tailed Grouse permit may only be used in one of open areas as published in the proclamation of the Wildlife Board for taking upland game.

(c) Sharp-tailed Grouse permits will be issued on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game free of charge.

(d) Sharp-tailed Grouse permit request forms must be submitted with a handling fee.

(4)(a) Band-tailed Pigeon and White-tailed Ptarmigan permits are available from Division offices, through the mail, and through the Division's Internet address by the first week in August, free of charge.

(5) Sage-grouse, Sharp-tailed Grouse, Band-tailed Pigeon and White-tailed Ptarmigan permit forms are available from Division offices and through the Division's Internet address.

R657-6-5. Application Procedure for Sandhill Crane.

(1)(a) Applications will be available from Division offices and license agents. Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking upland game.

(b) Residents and nonresidents may apply.

(c) The application period for Sandhill Crane is published in the proclamation of the Wildlife Board for taking upland game.

(2)(a) Applications completed incorrectly or received after the date prescribed in the upland game proclamation may be rejected.

(b) If an error is found on the application, the applicant may be contacted for correction.

(3)(a) Late applications, received by the date published in the proclamation of the Wildlife Board for taking upland game, will not be considered in the drawing, but will be processed for the purpose of entering data into the Division's draw database to provide:

(i) future pre-printed applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of Division or third-party errors.

(b) The handling fee will be used to process the late application. Any license fees submitted with the application will be refunded.

(c) Late applications, received after the date published in the proclamation of the Wildlife Board for taking upland game, shall not be processed and shall be returned to the applicant.

(4) Group applications for Sandhill Crane will not be accepted.

(5)(a) A person may obtain only one Sandhill Crane permit each year.

(b) A person may not apply more than once annually.

(6) Each application must include:

(a) a $5 nonrefundable handling fee; and

(b) the small game or combination license fee, if it has not yet been purchased.

(7) A small game license or combination license may be purchased before applying, or the small game license or combination license will be issued upon successfully drawing a permit. Fees must be submitted with the application.

(8) The posting date of the drawing results is published in the proclamation of the Wildlife Board for taking upland game.

(9) Any permits remaining after the drawing are available by mail-in application on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game.

(10) To apply for a resident permit or license, a person must establish residency at the time of purchase.

(11) The posting date of the drawing shall be considered the purchase date of a permit.

(12)(a) An applicant may withdraw their application for the Sandhill Crane Drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking upland game.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(c) An applicant may reapply in the Sandhill Crane Drawing provided:

(i) the original application is withdrawn;

(ii) the new application is submitted with the request to withdraw the original application;

(iii) both the new application and request to withdraw the original application are received by the initial application deadline; and

(iv) both the new application and request to withdraw the original application are submitted to the Salt Lake Division office.

(d) Handling fee will not be refunded.

(13)(a) An applicant may amend their application for the Sandhill Crane Drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

(c) The applicant must identify in their statement the requested amendment to their application.

R657-6-6. Application Procedure, Waiting Period and Bonus Points for Wild Turkey.

(1)(a) Applications are available from Division offices, license agents, and the Division's Internet address. Applications must be mailed by the date prescribed in the Turkey Addendum to the Upland Game Proclamation of the Wildlife Board for taking upland game.

(b) Residents and nonresidents may apply.

(c) The application period for wild turkey is published in the Turkey Addendum to the Upland Game Proclamation of the Wildlife Board for taking upland game.

(2)(a) Applications completed incorrectly or received after the date prescribed in the Turkey Addendum to the Upland Game Proclamation may be rejected.

(b) If an error is found on the application, the applicant may be contacted for correction.

(3)(a) Late applications, received by the date published in the Turkey Addendum to the Upland Game Proclamation of the Wildlife Board for taking upland game, will not be considered

in the drawing, but will be processed for the purpose of entering data into the Division's draw database to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) reevaluation of Division and third-party errors.

(b) The $5 handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications, received after the date published in the Turkey Addendum to the Upland Game Proclamation of the Wildlife Board for taking upland game shall not be processed and shall be returned to the applicant.

(4)(a) Group applications for wild turkey will not be accepted.

(b) Applicants may select up to three hunt choices when applying for limited entry turkey permits. Hunt unit choices must be listed in order of preference.

(5)(a) A person may obtain only one wild turkey permit each year, except a person may obtain wild turkey conservation permits in addition to obtaining a limited entry or remaining wild turkey permit.

(b) A person may not apply for wild turkey more than once annually.

(c) A turkey permit allows a person using any legal weapon to take one male turkey within the area and season specified on the permit.

(6) A small game license or combination license may be purchased before applying or the small game license or combination license will be issued upon successfully drawing a permit. Fees must be submitted with the application.

(7) Each application must include:

(a) the nonrefundable handling fee;

(b) the limited entry turkey permit fee; and

(c) the small game or combination license fee, if it has not yet been purchased.

(8) The posting date of the drawing results is published in the Turkey Addendum to the Upland Game Proclamation of the Wildlife Board for taking upland game.

(9)(a) Any permits remaining after the drawing are available only by mail-in request.

(b) Requests for remaining permits must include:

(i) full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, and driver's license number (if available);

(ii) proof of hunter education certification, if applicable;

(iii) small game or combination license number or fees; and

(iv) the permit fee.

(c) Requests must be submitted to the Salt Lake Division office as published in the Turkey Addendum to the Upland Game proclamation of the Wildlife Board for taking upland game.

(d) Requests shall be filled on a first-come, first-served basis beginning on the date published in the Turkey Addendum to the Proclamation of the Wildlife Board for taking upland game.

(10) Unsuccessful applicants will receive a refund in March.

(11)(a) Any person who obtained a Rio Grande turkey permit during the preceding two years may not apply for or obtain a Rio Grande or Merriam's turkey permit for the current year, except as provided in Subsections (c) and (d).

(b) Any person who obtained a Merriam's turkey permit during the preceding year, may not apply for or obtain a Merriam's or Rio Grande turkey permit for the current year, except as provided in Subsections (c) and (d).

(c) Waiting periods do not apply to the purchase of turkey permits remaining after the drawing. However, waiting periods are incurred as a result of purchasing remaining permits. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in the following two years.

(d) Waiting periods do not apply to conservation permits or landowner permits.

(12)(a) A bonus point is awarded for:

(i) a valid unsuccessful application when applying for a permit in the turkey drawing; or

(ii) a valid application when applying for a bonus point in the turkey drawing.

(b)(i) A person may not apply for a bonus point if that person is ineligible to apply for a permit.

(ii) A person may apply for one turkey bonus point each year, except a person may not apply in the drawing for both a turkey permit and a turkey bonus point in the same year.

(iii) Group applications will not be accepted when applying for bonus points.

(c) A bonus point shall not be awarded for an unsuccessful landowner application.

(d) Each applicant receives a random drawing number for:

(i) the current valid turkey application; and

(ii) each bonus point accrued.

(iii) The applicant will retain the lowest random number for the drawing.

(e)(i) Fifty percent of the permits for each hunt unit will be reserved for applicants with bonus points.

(ii) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points.

(iii) If reserved permits remain, the reserved permits will be designated by random number to eligible applicants with the next greatest number of bonus points.

(iv) The procedure in Subsection (iii) will continue until all reserved permits have been issued or no applications for that hunt unit remain.

(v) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the drawing.

(f) Bonus points are forfeited if a person obtains a wild turkey permit, except as provided in Subsection (f).

(g) Bonus points are not forfeited if:

(i) a person is successful in obtaining a Conservation Permit or Sportsman Permit;

(ii) a person obtains a Landowner Permit; or

(iii) a person obtains a Poaching-Reported Reward Permit.

(h) Bonus points are not transferable.

(i) Bonus points are tracked using social security numbers or Division-issued hunter identification numbers.

(13)(a) An applicant may withdraw their application for the wild turkey permit drawing by requesting such in writing by the date published in the Turkey Addendum to the Proclamation of the Wildlife Board for taking upland game.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake division office.

(c) Handling fees will not be refunded.

(14)(a) An applicant may amend their application for the wild turkey permit drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) An amendment may cause rejection if the amendment causes an error on the application.

R657-6-7. Landowner Permits.

(1)(a) Up to an additional 20 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys are available to private landowners through a drawing.

(b) Landowners interested in obtaining landowner permits must contact the regional Division office in their area November 15 through December 15 to be eligible for the landowner permit drawing and to obtain an application.

(c) Landowner permit applications that are not signed by the local Division representative will be rejected.

(d) Landowner permit applications must be received by the date published in the Turkey Addendum to the Upland Game Proclamation of the Wildlife Board for taking upland game.

(2)(a) A landowner who owns at least 640 acres of essential habitat that supports wild Merriam's turkeys or at least 20 acres of essential habitat that supports wild Rio Grande turkey within any of the open limited entry areas for wild turkeys is eligible to participate in the drawing for available landowner turkey permits.

(b) Land qualifying as essential habitat and owned by more than one landowner may qualify for a landowner permit. However, the landowners who own the qualifying land must determine the landowner who will be participating in the drawing.

(c) "Essential habitat" means areas where wild turkeys regularly and consistently roost, feed, loaf, nest or winter.

(3)(a) A landowner who applies for a landowner permit may:

(i) be issued the permit; or

(ii) designate a member of the landowner's immediate family or landowner's regular full-time employee to receive the permit.

(b) At the time of application, the landowner must identify the designee who will receive the permit.

(c) The landowner permit may be used only on the open limited entry area in which the landowner's property is located during the open season established for hunting wild turkeys.

(4) The posting date of the drawing results for landowner permits is published in the Turkey Addendum to the Upland Game Proclamation of the Wildlife Board for taking upland game.

(5)(a) Any landowner permits remaining after the landowner drawing shall be converted to public limited entry permits for that specific unit.

(b) These permits shall be issued through the limited entry drawing. Therefore, the number of public permits listed in the Turkey Addendum to the Upland Game Proclamation of the Wildlife Board for taking upland game, may increase.

(6)(a) A waiting period does not apply to landowners applying for landowner permits.

(b) A landowner may apply once annually for a landowner permit and a limited entry permit, but may only draw or obtain one permit.

R657-6-8. Purchase of License, or Permit by Mail.

(1) A person may obtain a license by mail by sending the following information to any Division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver's license number (if available), proof of hunter education certification and fees.

(2) A person may obtain a Band-tailed Pigeon, Sage-grouse, Sharp-tailed Grouse, or White-tailed Ptarmigan permit by mail by sending the following information to any Division office: full name, complete mailing address, phone number, and hunting license number.

(3)(a) Personal checks, cashier's checks, or money orders are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(4) Checks must be made payable to Utah Division of Wildlife Resources.

R657-6-9. Firearms and Archery Tackle.

(1) A person may not use any weapon or device to take upland game except as provided in this section.

(2)(a) Upland game may be taken with archery equipment, a shotgun no larger than 10 gauge, or a handgun. Loads for shotguns and handguns must be one-half ounce or more of shot size between no. 2 and no. 8, except:

(i) migratory game birds may not be taken with a shotgun capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

(ii) wild turkey may be taken only with a bow and broadhead tipped arrows or a shotgun no larger than 10 gauge and no smaller than 20 gauge, firing shot sizes between BB and no. 6;

(iii) cottontail rabbit and snowshoe hare may be taken with any firearm not capable of being fired fully automatic;

(iv) a person hunting upland game on a temporary game preserve as defined in Rule R657-5 may not use or possess any broadheads unless that person possesses a valid big game archery permit for the area being hunted;

(v) only shotguns, firing shot sizes no. 4 or smaller, may be used on temporary game preserves as specified in the Big Game Proclamation; and

(vi) Sandhill Crane may be taken with any size of nontoxic shot.

(b) Crossbows are not legal archery equipment for taking upland game.

(3) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

R657-6-10. Nontoxic Shot.

(1) Only nontoxic shot may be used to take Sandhill Crane.

(2) Except as provided in Subsection (3), nontoxic shot is not required to take any species of upland game, except Sandhill Crane.

(3) A person may not possess or use lead shot or any other shot that has not been approved by the U.S. Fish and Wildlife Service for taking migratory game birds while hunting Sandhill Crane or while on federal refuges or the following state wildlife management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, and Timpie Springs.

R657-6-11. Use of Firearms and Archery Tackle on State Wildlife Management Areas.

(1) A person may not possess a firearm or archery tackle, except during the specified hunting seasons or as authorized by the Division on the following wildlife management areas: Bear River Trenton Property Parcel, Bud Phelps, Castle Dale, Huntington, James Walter Fitzgerald, Mallard Springs, Manti Meadows, Montes Creek, Nephi, Pahvant, Redmond Marsh, Richfield, Roosevelt, Scott M. Matheson Wetland Preserve, Vernal, and Willard Bay.

(2) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-12. Use of Firearms and Archery Tackle on State Waterfowl Management Areas.

(1) A person may not possess a firearm or archery tackle, except during the specified waterfowl hunting seasons or as authorized by the Division on the following waterfowl management areas: Bicknell Bottoms, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be held in possession.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-13. Shooting Hours.

(1)(a) Except as provided in Subsection (b), shooting hours for upland game are as follows:

(i) Band-tailed Pigeon, Mourning Dove, White-winged Dove, and Sandhill Crane may be taken only between one-half hour before official sunrise through official sunset.

(ii) Sage-grouse, Ruffed Grouse, Blue Grouse, Sharp-tailed Grouse, White-tailed Ptarmigan, Chukar Partridge, Hungarian Partridge, pheasant, quail, wild turkey, cottontail rabbit, and snowshoe hare may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the proclamation of the Wildlife Board for taking upland game.

(2) Pheasant and quail may not be taken prior to 8 a.m. on the opening day of the pheasant and quail seasons.

(3) A person may not discharge a firearm on state owned lands adjacent to the Great Salt Lake, state waterfowl management areas or on federal refuges between official sunset through one-half hour before official sunrise.

R657-6-14. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas, except those areas designated open to hunting by the Division of Parks and Recreation in Rule R651-614-4.

(2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns or archery tackle is prohibited within one quarter mile of the above stated areas.

R657-6-15. Falconry.

(1)(a) Falconers must obtain an annual small game or combination license and a valid falconry certificate of registration or license to hunt upland game and must also obtain:

(b) a Band-tailed Pigeon permit before taking Band-tailed Pigeon;

(c) a Sage-grouse permit before taking Sage-grouse;

(d) a Sharp-tailed Grouse permit before taking Sharp-tailed Grouse;

(e) a White-tailed Ptarmigan permit before taking White-tailed Ptarmigan; or

(f) a Sandhill Crane permit before taking Sandhill Crane.

(2) Areas open and bag and possession limits for falconry are provided in the proclamation of the Wildlife Board for taking upland game.

R657-6-16. Live Decoys and Electronic Calls.

A person may not take a wild turkey by the use or aid of live decoys, records or tapes of turkey calls or sounds, or electronically amplified imitations of turkey calls.

R657-6-17. Baiting.

(1) A person may not hunt upland game by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any migratory game bird, except waterfowl, coots and cranes, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-6-18. Turkeys.

A person may not take or attempt to take any turkey sitting or roosting in a tree.

R657-6-19. Use of Motorized Vehicles.

Motorized vehicle travel on all state wildlife management areas is restricted to county roads and improved roads that are posted open.

R657-6-20. Possession of Live Protected Wildlife.

A person may not possess live, protected wildlife. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

R657-6-21. Tagging Requirements.

(1) The carcass of a Sandhill Crane, Sharp-tailed Grouse, or turkey must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue Sandhill Crane, Sharp-tailed Grouse or turkey after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-6-22. Identification of Species and Sex.

(1) One fully feathered wing must remain attached to each upland game bird and migratory game bird taken, except wild turkey, while it is being transported to allow species identification.

(2) The head must remain attached to the carcass of wild turkey while being transported to permit species and sex identification.

R657-6-23. Waste of Upland Game.

A person shall not kill or cripple any upland game without making a reasonable effort to retrieve the animal.

R657-6-24. Utah Pheasant Project.

(1) Boy Scouts, Girl Scouts, or youth enrolled in 4-H or FFA may collect and rear pheasants from eggs in nests destroyed by normal hay mowing operations. The 4-H club leader, FFA adviser or Scout Master shall first apply for and obtain a certificate of registration for this activity.

(2) Landowners or operators of mowing equipment may collect the eggs and possess them for no more than 24 hours for pick up by a person with a certificate of registration.

(3) Pheasants must be released by 16 weeks of age.

(4) These pheasants remain the property of the state of Utah.

R657-6-25. Use of Dogs.

(1) Dogs may be used to locate and retrieve upland game during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the Division.

(3) State wildlife management and waterfowl management areas are listed under Sections R657-6-11 and R657-6-12.

R657-6-26. Closed Areas.

A person may not hunt upland game in any area posted closed by the Division or any of the following areas:

(1) Salt Lake Airport boundaries as posted.

(2) Incorporated municipalities: Most of the incorporated areas of Alta, a portion of Davis County, Garland City, Layton, Logan, Pleasant View City, South Ogden City, West Jordan, and West Valley City are closed to the discharge of firearms. Check with the respective city officials for specific boundaries. Other municipalities may have additional firearm restrictions.

(3) Wildlife Management Areas:

(a) Waterfowl management areas are open for hunting upland game only during designated waterfowl hunting seasons, including: Bear River National Wildlife Refuge, Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Ouray National Wildlife Refuge, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(b) Fish Springs National Wildlife Refuge is closed to upland game hunting.

(c) Goshen Warm Springs is closed to upland game hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

R657-6-27. Live Decoys and Electronic Calls.

A person may not take migratory game birds by the use or aid of live decoys, records or tapes of migratory bird calls or sounds, or electronically amplified imitations of bird calls.

R657-6-28. Baiting Migratory Game Birds.

Migratory game birds may not be taken by the aid of baiting, or on or over any baited area. However, nothing in this paragraph shall prohibit:

(1) the taking of Band-tailed Pigeon, Mourning Dove, White-winged Dove, and Sandhill Crane on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shucked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; or

(2) the taking of Band-tailed Pigeon, Mourning Dove, White-winged Dove and Sandhill Crane on or over any lands where feed has been distributed or scattered solely as the result of bona fide agricultural operations or procedures, or as a result of manipulation of a crop or other feed on the land where grown for wildlife management purposes.

R657-6-29. Transporting Another Person's Birds.

(1) No person may receive, transport, or have in custody any migratory game birds belonging to another person unless such birds have a tag attached that states the total number and species of birds, the date such birds were killed, and the address, signature, and license number of the hunter.

(2) No person shall import migratory game birds belonging to another person.

R657-6-30. Gift of Migratory Game Birds.

No person may receive, possess, or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunters address, the total number and species of birds and the date such birds were taken.

R657-6-31. Shipping or Exporting.

(1) No person may transport upland game by the Postal Service or a common unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds contained therein clearly and conspicuously marked on the outside of the container.

(2) A shipping permit issued by the Division must accompany each package containing upland game within or from the state.

(3) A person may export upland game or their parts from Utah only if:

(a) the person who harvested the upland game accompanies it and possess a valid license or permit corresponding to the tag, if applicable; or

(b) the person exporting the upland game or its parts, if it is not the person who harvested the upland game, has obtained a shipping permit from the Division.

R657-6-32. Importation Limits.

No person shall import during any one calendar week beginning on Sunday more than 25 doves, singularly or in the aggregate, or ten Band-tailed Pigeons from any foreign country, except Mexico. Importation of doves and Band-tailed Pigeons from Mexico may not exceed the maximum number permitted by Mexican authorities to be taken in any one day.

R657-6-33. Transfer of Possession.

(1) A person may not put or leave any migratory game bird at any place other than at his personal abode or in the custody of another person for picking, cleaning, processing, shipping, transporting, or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt, or transportation slip signed by the hunter stating his address, the total number and species of birds, and the date such birds were killed.

(2) A migratory bird preservation facility may not receive or have in custody any migratory game bird without the documents required in Subsection (1).

R657-6-34. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-35. Wild Turkey Poaching Reported Reward Permits.

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a wild turkey under Section 23-20-4, within any limited entry area may receive a permit from the Division to hunt wild turkey in the following year on the same limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a Poaching-Reported Reward Permit would exceed 5 percent of the total number of limited entry permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the Division may issue a permit as outlined in Subsection (b).

(b) A permit for a wild turkey, on an alternative limited entry area that has been allocated more than 20 permits, may be issued.

(3)(a) The Division may issue only one Poaching-Reported Reward Permit for any one wild turkey illegally taken.

(b) No more than one Poaching-Reported Reward Permit shall be issued to any one person per successful prosecution.

(c) No more than one Poaching-Reported Reward Permit shall be issued to any one person in any one calendar year.

(4)(a) Poaching-Reported Reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the Division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the Poaching-Reported Reward Permit.

(5) Any person who receives a Poaching-Reported Reward Permit must be eligible to hunt and obtain wild turkey permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

(6) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

R657-6-36. Invalid Permits.

(1) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit card is invalid or refused.

(2) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

R657-6-37. Season Dates, Bag and Possession Limits, and Areas Open.

(1) Season dates, bag and possession limits, areas open, and number of permits for taking upland game are provided in the proclamation of the Wildlife Board for taking upland game.

(2) Season dates, bag and possession limits, areas open, and number of permits for taking wild turkey are provided in the Turkey Addendum of the proclamation of the Wildlife Board for taking upland game.

R657-6-38. Youth Hunting.

(1)(a) Up to 15 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys are available to youth hunters.

(b) For purposes of this section "youth" means any person 12 to 18 years of age on the posting date of the wild turkey drawing.

(2)(a) Youth hunters who wish to participate in the youth limited entry wild turkey permit drawing must submit an application in accordance with Section R657-6-6.

(b) Youth who apply for a turkey permit in accordance with Section R657-6-6, will automatically be considered in the youth permit drawing based on their birth date.

(3)(a) Bonus points shall be used when applying for youth turkey permits in accordance with Section R657-6-6.

(b) Waiting periods will be incurred in accordance with Section R657-6-6.

KEY: wildlife, birds, rabbits, game laws
September 1, 2004 23-14-18
Notice of Continuation June 16, 2002 23-14-19

R657. Natural Resources, Wildlife Resources.
R657-42. Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents.
R657-42-1. Purpose and Authority.

(1) Under the authority of Sections 23-19-1 and 23-19-38 the division may issue wildlife documents in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

(a) exchange of permits;
(b) surrender of wildlife documents;
(c) refund of wildlife documents;
(d) reallocation of permits; and
(e) assessment of late fees.

R657-42-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules and proclamations of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Deployed or mobilized" means that a person provides military or emergency services in the interest of national defense or national emergency pursuant to the demand, request or order of their employer.

(c) "Landowner association operator" for purposes of this rule, means:

(i) a landowner association or any of its members eligible to receive limited entry landowner permits as provided in Rule R657-43; or

(ii) Cooperative Wildlife Management Unit (CWMU) landowner association or its designated operator as provided in Rule R657-37.

(d) "Wildlife document" means any license, permit, tag, or certificate of registration issued by the division.

R657-42-3. Exchanges.

(1)(a) Any person who has obtained a general buck deer or a general bull elk permit may exchange that permit for any other available general permit if both permits are for the same species and sex.

(b) A person must make general buck deer and general bull elk permit exchanges at any division office prior to the season opening date of the permit to be exchanged.

(2) Any person who has obtained a cougar harvest objective unit permit may exchange that permit for any other available cougar harvest objective unit permit as provided in Rule R657-10.

(3) Any person who has obtained a limited entry bear any weapon or limited entry bear archery permit may exchange that permit for a limited entry bear archery or limited entry bear any weapon permit, respectively.

(4) The division may charge a handling fee for the exchange of a permit.

R657-42-4. Surrenders.

(1) Any person who has obtained a wildlife document and decides not to use it, may surrender the wildlife document to any division office.

(2)(a) Any person who has obtained a wildlife document may surrender the wildlife document prior to the season opening date of the wildlife document for the purpose of:

(i) waiving the waiting period normally assessed and reinstating the number of bonus points, including a bonus point for the current year as if a permit had not been drawn, if applicable; or

(ii) purchasing a reallocated permit or any other permit available for which the person is eligible.

(b) Preference points shall not be reinstated when surrendering the applicable permits.

(3) A CWMU permit must be surrendered before the following dates, except as provided in Section R657-42-11:

(a) the opening date for the respective general archery season for buck deer, bull elk or spike bull elk;

(b) September 1 for pronghorn and moose;

(c) August 15 for antlerless deer and elk;

(d) prior to the applicable season date for small game and waterfowl; and

(e) prior to the applicable season date of any variance approved by the Wildlife Board in accordance with Rules R657-21 and R657-37.

(4) Dedicated hunter participants must surrender their permits prior to the general archery deer season.

(5) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-5. Refunds.

(1) The refund of a license, certificate of registration or permit shall be made in accordance with:

(a) Section 23-19-38 and Rule R657-50;
(b) Section 23-19-38.2 and Subsection (3); or
(c) Section 23-19-38 and Subsection (4).

(2)(a) An application for a refund may be obtained from any division office.

(b) All refunds must be processed through the Salt Lake Division office.

(3) A person may receive a refund in accordance with Subsection (3) for a wildlife document if that person was deployed or mobilized on or after September 11, 2001, in the interest of national defense or national emergency and is thereby completely precluded from participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) the refund request is made to the division within one year of the end of the hunting or fishing season authorized by the wildlife document;

(b) the person surrenders the wildlife document to the division, or signs an affidavit stating the wildlife document is no longer in the person's possession; and

(c) the person verifies that the deployment or mobilization completely precluded them from participating in the activity authorized by the wildlife document, except as provided in Subsection (5); and

(d) the person provides military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(i) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which they were deployed or mobilized; and

(ii) the nature and length of their duty while deployed or mobilized.

(4) The division may issue a refund for a wildlife document if the person to whom it was issued dies prior to participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) The person legally entitled to administer the decedent's estate provides the division with:

(i) picture identification;

(ii) letters testamentary, letters of administration, or such other evidence establishing the person is legally entitled to administer the affairs of the decedent's estate;

(iii) a photocopy of the decedent's certified death certificate; and

(iv) the wildlife document for which a refund is requested.

(5) The director may determine that a person deployed or mobilized, or a decedent did not have the opportunity to participate in the activity authorized by the wildlife document.

(6) The division may reinstate a bonus point or preference point, whichever is applicable, and waive waiting periods, if applicable, when issuing a refund in accordance with Subsection (3).

R657-42-6. Reallocation of Permits.

(1)(a) The division may reallocate surrendered limited entry, once-in-a-lifetime and CWMU permits.

(b) The division shall not reallocate resident and nonresident big game general permits.

(2) Permits shall be reallocated through the Salt Lake Division office.

(3)(a) Any limited entry, once-in-a-lifetime or public CWMU permit surrendered to the division shall be reallocated through the drawing process by contacting the next person listed on the alternate drawing list or as provided in Subsection (b).

(b) A person who is denied a permit due to an error in issuing permits may be placed on the alternate drawing list to address the error, if applicable, in accordance with the Rule R657-50.

(c) The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

(d) The division shall make a reasonable effort to contact the next person on the alternate list by telephone or mail.

(e) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit, does not accept the permit or the division is unable to contact that person, the reallocation process will continue until the division has reallocated the permit or the season closes for that permit.

(4) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit has obtained a permit, that person may be required to surrender the previously obtained permit in accordance with Section R657-42-4(2) and any other applicable rules and proclamations of the Wildlife Board.

(5) Any private CWMU permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the division in accordance with Rule R657-37.

(6)(a) The division may allocate additional general deer permits and limited entry permits, if it is consistent with the unit's biological objectives, to address errors in accordance with Rule R657-50.

(b) The division shall not allocate additional CWMU and Once-In-A-Lifetime permits.

(c) The division may extend deadlines to address errors in accordance with Rule R657-50.

R657-42-7. Reallocated Permit Cost.

(1) Any person who accepts the offered reallocated permit must pay the applicable permit fee.

(2) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-8. Accepted Payment of Fees.

(1) Personal checks, business checks, money orders, cashier's checks, and credit or debit cards are accepted for payment of wildlife documents.

(2) Personal or business checks drawn on an out-of-state account are not accepted.

(3) Third-party checks are not accepted.

(4) All payments must be made payable to the Utah Division of Wildlife Resources.

(5)(a) Credit or debit cards must be valid at least 30 days after any drawing results are posted.

(b) Checks, and credit or debit cards will not be accepted as combined payment on single or group applications.

(c) If applicable, if applicants are applying as a group, all fees for all applicants in that group must be charged to one credit or debit card.

(d) Handling fees and donations are charged to the credit or debit card when the application is processed.

(e) Permit fees may be charged to the credit or debit card prior to the posting date of the drawings, if successful.

(f) The division shall not be held responsible for bank charges incurred for the use of credit or debit cards.

(6)(a) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The division charges a returned check collection fee for any check returned unpaid.

(7)(a) A license or permit is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The Division may make attempt to contact the successful applicant by phone or mail to collect payment prior to voiding the license or permit.

(c) The Division shall reinstate the applicant's bonus points or preference points, whichever is applicable, and waive waiting periods, if applicable, when voiding a permit in accordance with Subsection (b).

(d) A permit which is deemed void in accordance with Subsection (b) may be reissued by the Division to the next person listed on the alternate drawing list.

(8)(a) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit or debit card is invalid or refused.

(b) A person must notify the division of any change of credit or debit card numbers if the credit or debit card is invalid or refused.

(9) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(10) The division may require a money order or cashier's check to correct payment for a license, permit, or certificate of registration.

(11) Any person who fails to pay the required fee for any wildlife document, shall be ineligible to obtain any other wildlife document until the delinquent fees and associated collection costs are paid.

R657-42-9. Assessment of Late Fees.

(1) Any wildlife application submitted under the Utah Administrative Code Rules provided in Subsection (a) through (e), within 30 days of the applicable application deadline established in such rules, in the proclamations of the Wildlife Board, or by the division may be processed only upon payment of a late fee as provided by the approved fee schedule.

(a) R657-52, Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs;

(b) R657-21, Cooperative Wildlife Management Units for Small Game;

(c) R657-22, Commercial Hunting Areas;

(d) R657-37, Cooperative Wildlife Management Units for Big Game; or

(e) R657-43, Landowner Permits.

R657-42-10. Duplicates.

(1) Whenever any unexpired wildlife document is destroyed, lost or stolen, a person may obtain a duplicate from a division office, for five dollars or half of the price of the original wildlife document, whichever is less.

(2) The division may waive the fee for a duplicate unexpired wildlife document provided the person did not receive the original wildlife document.

(3) To obtain the duplicate wildlife document, the

applicant must complete an affidavit testifying to such loss, destruction or theft pursuant to Section 23-19-10.

R657-42-11. Surrender of Cooperative Wildlife Management Unit or Limited Entry Landowner Permits.

(1) A person who has obtained a CWMU or limited entry landowner permit may surrender the permit after the deadlines provided in Subsections R657-42-4(3)(a), (b), and (c) for CWMU permits and after the season opening date for limited entry landowner permits for the purpose of:

(a) death in accordance with Section 23-19-38, Subsection (2) and Section R657-42-5(4);

(b) injury or illness in accordance with Section 23-19-38 and Subsection (2);

(c) deployment or mobilization in the interest of national defense or national emergency in accordance with Section 23-19-38.2 and Subsection (2); or

(d) an error occurring in issuing the permit in accordance with Subsection (2) and Rule R657-50.

(2)(a) The permittee and the landowner association operator must sign an affidavit stating that the permittee has not participated in any hunting activity.

(b) The permittee and landowner association operator signatures must be notarized.

(c) The affidavit and unused permit must be submitted to the division.

(3)(a) The division may reissue a voucher to a landowner association operator, or reallocate a surrendered permit in accordance with Section 23-19-38 and as provided in Subsections (b) and (c).

(b) The division may reallocate a surrendered permit:

(i) originally issued by the division through the big game drawing process in accordance with Section R657-42-6; or

(ii) originally issued by the division through a voucher redemption in the form of a new voucher issued to the landowner association operator.

(c) Reissuance of vouchers or reallocation of permits under this section may only occur in the year in which the surrendered permit was valid.

KEY: wildlife, permits

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Notice of Continuation May 14, 2003	**23-19-38**
	23-19-38.2

R657. Natural Resources, Wildlife Resources.
R657-50. Error Remedy.
R657-50-1. Purpose and Authority.

(1) Under the authority of Sections 23-14-19, 23-19-1, and 23-19-38 this rule is established to provide guidelines for identifying and resolving errors resulting in the:

(a) rejection of a wildlife document application;

(b) denial of a wildlife document; or

(c) incorrect issuance of a wildlife document.

(2) This rule provides standards and procedures in the identification and resolution of division errors, third party errors and petitioner errors.

R657-50-2. Policy.

(1)(a) The Division receives hundreds of thousands of applications and issues tens of thousands of wildlife documents each year through a variety of distribution methods, including:

(i) drawings;

(ii) over-the-counter sales;

(iii) license agent sales; and

(iv) online sales.

(b) The application procedures and eligibility requirements for wildlife documents are set forth in Utah Code, Title 23, and Utah Administrative Code Rules, Title R657.

(c) The public must comply with the procedures and requirements set forth in the statutes and rules identified in Subsection (1)(b).

(d) The Division recognizes, however, that errors may be made by the Division in processing and issuing wildlife documents. Therefore, procedures are needed for evaluation, identification and resolution of errors.

(2)(a) The Division may notify petitioners of rejection status for wildlife document applications completed incorrectly as provided under the applicable application correction procedures set forth in the respective statutes and rules identified in Subsection (1)(b).

(b) The Division may use the data on file to correct rejection status applications. Ultimately, however, it is the responsibility of the petitioner to provide all necessary information as required on the application.

(3)(a) The Division may mitigate division and third party errors when issuing wildlife documents by:

(i) extending a deadline;

(ii) issuing a refund on an erroneously collected fee;

(iii) issuing the correct wildlife document; or

(iv) authorizing an incorrectly issued wildlife document.

(b) Any mitigation efforts shall be subject to the Division's determination that the petitioner shall not receive an unfair benefit from the mitigation.

(c) The Division may not mitigate errors caused in whole or part by the petitioner's knowing violation of statute, rule or proclamation.

(d) This rule applies only to errors adversely effecting a petitioner that cannot be remedied through compliance with existing processes and procedures set in statute, rule or proclamation.

(e) The Division may refund any fee collected in error.

R657-50-3. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2, and the applicable rules as provided in Section R657-50-1(b).

(2) In addition:

(a)(i) "Division error" means the Division or one of its license agents erroneously:

(A) provides information to the petitioner, which the petitioner relied upon to their detriment in obtaining, or attempting to obtain a wildlife document;

(B) rejects a properly completed and accurate wildlife document application;

(C) incorrectly issues a wildlife document; or

(D) incorrectly denies issuing a wildlife document.

(ii) "Division error" does not include any error made by the Division or its agents acting in reliance upon inaccurate information provided by the petitioner or any other individual acting in the petitioner's behalf.

(b) "Error Committee" means a committee established by the Director consisting of the Wildlife Chief, Administrative Services Chief, Licensing Coordinator, and Rules Coordinator, or their designees.

(c) "Landowner association operator" for purposes of this rule, means:

(i) a landowner association or any of its members eligible to receive limited entry landowner permits as provided in Rule R657-43; or

(ii) Cooperative Wildlife Management Unit (CWMU) landowner association or its designated operator as provided in Rule R657-37.

(d) "Landowner association operator error" means a landowner association operator whose error or mistake results in an incorrect voucher redemption.

(e) "Petitioner" means the person directly impacted by an error adversely effecting the opportunity to obtain or use a wildlife document.

(f) "Petitioner error" means the petitioner did not comply with the procedures and requirements to apply for or obtain a wildlife document. Petitioner error includes errors made by a person acting on the petitioner's behalf.

(g) "Rejection status" means the application will not be considered for a wildlife document due to:

(i) a petitioner error on the application;

(ii) the application lacking required information; or

(iii) the petitioner does not meet a specific requirement.

(h) "Third party error" means the petitioner has satisfied the procedures and requirements for obtaining a wildlife document, but the opportunity is lost due to an error by mail carrier services or financial institutions.

(i) "Voucher" means a document issued by the division to a landowner association member or landowner association operator, to designate who may purchase a CWMU big game hunting permit or a limited entry landowner permit from a division office.

(j) "Wildlife document" means any license, permit, tag, or certificate of registration issued by the Division.

R657-50-4. Division Error Procedures.

(1) A Division error, which results in the rejection or incorrect processing of an application to obtain a wildlife document through a drawing, may be handled as provided in Subsections (a) through (d).

(a) If the drawing has not been held, the Division may extend the application deadline and evaluate the application as though filed timely.

(b) If the drawing is over and the wildlife document applied for is available, the Division may issue the wildlife document.

(c) If the drawing is over and the wildlife document applied for is not available, the Division must follow the procedures set forth in Subsection (6).

(d) If an application is for one or more persons applying as a group, the Division may treat the remaining members of the group the same as the petitioner.

(2) A Division error, which results in an application denial for wildlife documents other than those issued through a drawing, may be resolved by extending the application deadline and evaluating the application as though filed timely.

(3) A Division error, which results in an impermissible surrender or exchange of a wildlife document may be resolved by extending the deadline necessary to validate the surrender or

exchange, provided:

(a) the petitioner has not participated in the activity authorized by the surrendered wildlife document; and

(b) the petitioner shall be substantially prejudiced if relief under this section is not granted.

(4) A Division error, which results in the improper denial of a wildlife document, may be resolved as provided in Subsections (a) through (b).

(a) If the wildlife document erroneously denied is available, the Division may issue the wildlife document.

(b) If the wildlife document erroneously denied is not available, the Division must follow the procedures set forth in Subsection (6).

(5) A Division error, which results in the erroneous issuance of a wildlife document may be resolved as provided in Subsections (a) through (b).

(a) If the wildlife document requested by the petitioner prior to or at the time of the error is currently available, the Division may issue the wildlife document.

(b) If the wildlife document requested by the petitioner prior to or at the time of the error is currently not available, the Division must follow the procedures set forth in Subsection (6).

(6) Procedures for issuing wildlife documents otherwise unavailable for distribution are as follows:

(a) If the petitioner would have received a wildlife document absent an error, or if the petitioner received a wildlife document because of an error, the Division shall determine if an additional wildlife document beyond the applicable quota may be issued without detriment to the particular wildlife species in a specific hunt area.

(i) If issuing the additional wildlife document is not detrimental to the species in the hunt area, the Division may issue the wildlife document, except as provided in Subsection (A).

(A) Only the Wildlife Board may approve issuing an additional permit for a once-in-a-lifetime hunt.

(B) Additional CWMU permits may not be issued.

(ii) If a wildlife document cannot be issued, the petitioner may be placed at the top of the alternate drawing list.

(iii) If a wildlife document is not issued under Subsection (i) or (ii), the Division may issue a bonus point or preference point, whichever is applicable.

(iv) If a bonus point or preference point does not apply, the Division may issue a refund of the wildlife document and handling fee.

(b) If the petitioner would not have received a wildlife document in a drawing, absent an error, the Division may issue a bonus point or preference point, where applicable.

(c) If the wildlife document was applied for through a Division drawing and the hunting season for that wildlife document is over, the Division may:

(i) issue a bonus point or preference point for which the application was submitted, where applicable; or

(ii) issue a refund of the wildlife document and handling fee where bonus points or preference points do not apply.

R657-50-5. Third Party Errors.

(1) The Division shall not be held responsible for third party errors, including those of a financial institution or postal service, however, the Division may mitigate a third party error as provided under this section.

(2)(a) The petitioner must:

(i) provide proof to the satisfaction of the Division that the error was due to a third party; and

(ii) provide written documentation from the third party verifying the error.

(b) If the petitioner cannot prove to the satisfaction of the Division that the error was due to a third party, no mitigating action will be taken.

(3) Third party errors which result in the rejection or incorrect processing of an application to obtain a wildlife document through a drawing shall be handled as provided in Subsections (a) through (c).

(a) If the error is found prior to the drawing and there is sufficient time to complete the processing of the application before the drawing for which the application was submitted, the application shall be included in the drawing as though filed timely.

(b) If the error is found after the drawing or there is not sufficient time to complete the processing of the application before the drawing, and the petitioner's application is rejected because of the error, or the petitioner otherwise fails to obtain the wildlife document applied for, the Division may issue a bonus point or preference point for the hunt applied for, where applicable.

(c) A refund of handling fees shall not be made for third party errors.

(4) A third party error, which results in a rejected application for a wildlife document issued outside of a drawing process, may be handled by extending the application deadline and evaluating the application as though filed timely.

(5) If an application is for one or more persons applying as a group, the Division may treat the remaining members of the group the same as the petitioner.

R657-50-6. Landowner Association Operator Errors.

(1)(a) The Division shall not be held responsible for landowner association operator errors, however, the Division may mitigate a landowner association operator error as provided under this section.

(b) The petitioner must provide proof to the satisfaction of the Division that the error was due to a landowner association operator.

(c) If the petitioner cannot prove to the satisfaction of the Division that the error was due to a landowner association operator, the division will take no mitigating action.

(2) A landowner association operator error, which results in the incorrect processing of a voucher to obtain a wildlife document, shall be mitigated as provided in Rule R657-42-11(3).

R657-50-7. Petitioner Errors.

A petitioner error will not be corrected, except as provided in the applicable proclamations and rules under the Utah Administrative Code, Title R657.

R657-50-8. Limitations.

An error may be reviewed at any time, but a wildlife document may not be issued or exchanged after the season closure for the activity authorized by the particular wildlife document.

R657-50-9. Error Committee.

(1) The error committee shall:

(i) review complaints of errors on applications, vouchers, wildlife documents, and fees;

(ii) determine facts;

(iii) apply the provisions of this rule; and

(iv) recommend resolutions to the Director's Office or Wildlife Board.

(2) Any relief granted and decisions made pursuant to this rule shall be reviewed and approved by the Error Committee and is subject to review by the Division Director.

KEY: wildlife, permits

August 3, 2004 **23-14-19**
23-19-1
23-19-38

R704. Public Safety, Comprehensive Emergency Management.

R704-1. Search and Rescue Financial Assistance Program.

R704-1-1. Purpose.

The purpose of this rule is to set forth the process whereby the Division of Comprehensive Emergency Management administers the Search and Rescue Financial Assistance Program in accordance with Title 53, Chapter 2, Part 1, "Comprehensive Emergency Management Act", as amended.

R704-1-2. Authority.

This rule is authorized under Section 53-2-107 which requires the Division to administer the Search and Rescue Financial Assistance Program, and, with the approval of the Search and Rescue Advisory Board, make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

R704-1-3. Definitions.

Terms used in this rule shall be defined as follows:

A. "Adjusted reimbursable expenses" means reimbursable expenses which have been adjusted by application of the formula set forth in R704-1-7.

B. "Board" means the Search and Rescue Advisory Board created in Section 53-2-108.

C. "Director" means the director of the Division of Comprehensive Emergency Management.

D. "Division" means the Division of Comprehensive Emergency Management of the Utah Department of Public Safety.

E. "Expense monies" means money in the SAR Fund used primarily to reimburse expenses under the program.

F. "Outstanding reimbursable expenses" means the difference, after the first review, between a county's adjusted reimbursable expenses and its reimbursable expenses.

G. "Program" means the Search and Rescue Financial Assistance Program.

H. "Reimbursable expenses" means those expenses incidental to SAR activities, determined by the board to be reasonable under R704-1-6, for rental of fixed wing aircraft, helicopters, snowmobiles, boats and generators, and other equipment or expenses necessary or appropriate for conducting SAR activities. Said expenses do not include any salary or overtime paid to any person on a regular or permanent payroll, including permanent part-time employees, of any agency or political subdivision of the state.

I. "Reimbursable replacement costs" means those costs incidental to SAR activities determined by the board to be reasonable under R704-1-6, for replacement and upgrade of SAR equipment.

J. "Reimbursable training costs" means those costs incidental to SAR activities determined by the board to be reasonable under R704-1-6, for training of SAR volunteers.

K. "Reimbursement cap" means an artificial limit on the amount of reimbursement allowed to a county on first review of its application as determined by the board pursuant to R704-1-6B.

L. "Replacement monies" means money in the SAR Fund used primarily to reimburse replacement costs under the program.

M. "SAR" means search and rescue.

N. "SAR Fund" means all funds generated under the Search and Rescue Financial Assistance Program.

O. "Training monies" means money in the SAR Fund used primarily to reimburse training costs under the program.

R704-1-4. Application Process.

A. It is the purpose of this section to set forth the procedure for obtaining reimbursements of SAR costs and expenses from the program in accordance with Title 53, Chapter 2, Part 1.

B. As soon as possible after each incident, but no later than March 31of each year, each county sheriff seeking reimbursement of SAR costs and expenses under the program which were incurred during the first half of that fiscal year, shall submit to the director a separate application package for each SAR incident. The application package shall include:

1. A completed "Utah Search and Rescue Financial Assistance Application" form provided by the division; and

2. All receipts and other documentation supporting the costs and expenses.

C. Not later than May 1 of each year, the board shall review all timely submitted applications, apply the formula set forth below, and determine a fair and equitable distribution of all monies then available in the fund.

D. As soon as possible after each incident, but not later than July 20 of each year, each county sheriff seeking reimbursement of SAR costs and expenses under the program which were incurred during the second half of the previous fiscal year, shall submit to the director a separate primary application package for each SAR incident.

E. Not later than July 31 of each year, the board shall review all timely submitted applications, apply the formula set forth in Rule 704-1-5 below, and determine a fair and equitable distribution of all monies available in the fund at the close of the previous fiscal year.

R704-1-5. Distribution Process - Division Responsibilities.

A. Prior to the time the board meets to determine distribution, the division shall organize all applications and shall provide them to the board, along with the following information required under Subsection 53-2-107(7)(c):

1. The total amount of SAR funds available in the program from the first half of the fiscal year for applications received prior to April 1; and from the second half of the fiscal year for applications received prior to October 1. One-half of the money appropriated by the legislature as dedicated credit for the program shall be available for each application period.

2. The total costs and expenses requested by each county;

3. The total number of search and rescue incidents occurring per each county population. Said information shall be presented in the form of a ratio (i.e., 1 incident per 500 residents, written as 1:500);

4. The number of victims residing outside of the subject county. Said information shall be presented in the form of a percentage (i.e., if 10 out of 20 victims resided outside of the county, it would be presented to the board as 50%);

5. The number of volunteer hours spent in each county in emergency response and SAR related activities per county population. Said information shall be presented in the form of a ratio (i.e., 1 volunteer hour per 25 residents, written as 1:25); and

6. Which applications were received after the deadline.

R704-1-6. Distribution Process - Determination of Reimbursable Expenses and Reimbursement Caps.

A. Upon meeting to determine distribution, the board shall first make a determination which costs and expenses sought are reimbursable expenses under the program. In so determining, the board shall consider whether the costs and expenses are:

1. Reasonable in light of the types of services and equipment provided and the then existing market value of said services and equipment;

2. Incidental to search and rescue activities;

3. Excludable as salary or overtime pay; and

4. Necessary or appropriate for conducting the type of SAR operations for which reimbursement is sought. For example, Wasatch County might apply for a total of $45,000 for

costs and expenses, but the board could determine that only $40,000 met the criteria of reimbursable expenses.

B. After determining the amount of reimbursable expenses for each county, the board shall determine reimbursement caps to provide a fair distribution of monies available in the fund:

1. If the total amount of reimbursable expenses is less than the amount available in the fund, each county shall be awarded the amount determined to be reimbursable expenses.

2. If the total amount of reimbursable expenses is more than the amount available in the fund, the board shall apply the following formula in determining reimbursement caps:

a. From the total amount available in the fund for the subject application period, the board shall first set aside as 10% for replacement costs, and 10% for training costs. For example, if $280,000 were available, $28,000 would be set aside as replacement monies, and $28,000 would be set aside as training monies, leaving an available balance of $224,000.

b. From the remaining 80% of available funds, the board will calculate reimbursement caps per county by dividing the available amount equally between the 29 counties. Using the above example, if $224,000 were available, a first review maximum of $7,724.14 would be available for each county. To determine how much of that maximum will be awarded, the board must determine the adjusted reimbursable expenses based on the formula set forth in R704-1-7.

R704-1-7. Formula for Determining Adjusted Reimbursable Expenses.

A. For the purpose of determining a fair and equitable distribution of monies available in the fund, on its first review of applications, the board shall adjust the amount of equitable expenses each county will be awarded by applying the following point system formula:

1. To award full payment of a county's reimbursable expenses, said county would have to achieve all of the 100 percentage points possible. The formula is based on the criteria set forth in Subsection 53-2-107(7)(c). By applying this formula, the board will determine adjusted reimbursable expenses by calculating a percentage point value for each county, and will then award each county that percent of their reimbursable expenses up to the reimbursement cap set under R704-1-6. In calculating the percentage, the following point totals are possible:

a. Each county which submits its application packages on time shall receive 25 points.

b. There will be a possible 25 points based on the number of SAR incidents occurring per county population.

c. There will be a possible 25 points based on the percentage of victims residing outside of the subject county; and

d. There will be a possible 25 points based on the number of volunteer hours spent in each county in emergency response and SAR related activities per county population.

2. The following ratios will determine the points awarded based on the number of SAR incidents occurring per county population:

a. 5 points if the ratio is greater than 1:1000 but less than 1:750.

b. 10 points if the ratio is equal to or greater than 1:750 but less than 1:500.

c. 15 points if the ratio is equal to or greater than 1:500 but less than 1:250.

d. 20 points if the ratio is equal to or greater than 1:250 but less than 1:100.

e. 25 points if the ratio is equal to or greater than 1:100.

3. The following ratios will determine the points awarded based on the percentage of victims residing outside of the subject county:

a. 5 points if up to 20% of the victims are from outside the county.

b. 10 points if between 20% and 40% of the victims are from outside the county.

c. 15 points if between 40% and 60% of the victims are from outside the county.

d. 20 points if between 60% and 80% of the victims are from outside the county.

e. 25 points if more than 80% of the victims are from outside the county.

4. The following ratios will determine the points awarded based on the number of volunteer hours spent in each county in emergency response and SAR related activities per county population:

a. 5 points if the ratio is greater than 1:100 but less than 50.

b. 10 points if the ratio is equal to or greater than 1:50 but less than 1:25.

c. 15 points if the ratio is equal to or greater than 1:25 but less than 1:10.

d. 20 points if the ratio is equal to or greater than 1:10 but less than 1:5.

e. 25 points if the ratio is equal to or greater than 1:5.

5. The total awarded points will be multiplied by the reimbursable expenses to determine the adjusted reimbursable expenses for each county. For example, if the board awarded 85 points to Wasatch County, the $40,000 in reimbursable expenses would be adjusted to $34,000 ($40,000 x .85). Since the cap is $7,724.14, Wasatch County would be entitled to only that amount on first review. However, on second review it could receive some or all of the remaining $32,275.86.

R704-1-8. Second Review of Applications.

A. If, after the first review and determination of the adjusted reimbursable expenses for each county, reduced as necessary to the reimbursement caps, there are expenses funds remaining from that half of the fiscal year, the board shall throw out the reimbursement caps, and determine distribution as follows.

B. If there are enough expense funds remaining to cover the outstanding reimbursable expenses of all counties, the board shall reimburse those amounts.

C. If there are not enough expense funds to pay the outstanding reimbursable expenses, the board shall apply the same percentage point value established for each county under R704-1-7 to the outstanding reimbursable expenses. If there are enough expense monies remaining to cover all adjusted reimbursable expenses, the board shall reimburse those amounts.

D. If there are not enough expense monies to cover all adjusted reimbursable expenses, the board shall determine by majority vote how the remaining expense funds are to be distributed among the counties. In so ruling, the board should give consideration to the equities sought to be established by the percentage point values determined under the forgoing formula. In addition, the board may, by a majority vote, elect to utilize reimbursement and training monies to cover reimbursable expenses.

R704-1-9. Reimbursement of Replacement Costs.

A. If after determining distribution of expense monies, there are any remaining, they may be added to the funds set aside for reimbursement of replacement and upgrade of SAR equipment under Subsection 53-2-107(1)(b).

B. The board shall then make a determination which replacement costs sought are reimbursable under the program. In so determining, the board shall consider whether the said costs are:

1. Reasonable in light of the type and extent of replacement or upgrade sought and the then existing market value of said costs;

2. Reasonably related to and/or caused by the utilization of the subject equipment in SAR activities; and

3. Not considered an unjust or improper enrichment of the owner of the subject equipment.

C. The board shall then apply the same percentage point value established for each county under R704-1-7 to the replacement costs determined by the board to be reimbursable. If there are enough replacement monies to cover all reimbursable replacement costs sought, the board shall reimburse those amounts.

D. If there are not enough replacement monies to cover all reimbursable replacement costs, the board shall determine by majority vote how the remaining replacement monies are to be distributed among the counties. In so ruling, the board should give consideration to the equities sought to be established by the percentage point values determined under R704-1-7. In addition, the board may, by a majority vote, elect to utilize any training monies and remaining expense monies to cover replacement costs.

R704-1-10. Reimbursement of Training Costs.

A. If after determining distribution of expense and replacement monies, there are funds remaining, they may be added to the monies set aside for reimbursement of training costs under Subsection 53-2-107(1)(c).

B. The board shall then make a determination which training costs sought are reimbursable under the program. In so determining, the board shall consider whether the said costs are:

1. Reasonable in light of the type and extent of training and the then existing market value of said costs;

2. Reasonably related to the training of search and rescue volunteers; and

3. Excludable as salary or overtime pay to instructors.

C. The board shall then apply the same percentage point value established for each county under R704-1-7 to the training costs determined by the board to be reimbursable. If there are enough training monies to cover all reimbursable training costs sought, the board shall reimburse those amounts.

D. If there are not enough training monies to cover all reimbursable training costs, the board shall determine by majority vote how the remaining training monies are to be distributed among the counties. In so ruling, the board should give consideration to the equities sought to be established by the percentage point values determined under R704-1-7. In addition, the board may, by a majority vote, elect to utilize any remaining expense and replacement monies to cover training costs.

E. The board may also elect to carry over any monies remaining from the first half of the fiscal year to the second half. However, on review of the applications from the second half of the fiscal year, the board shall, pursuant to Subsection 53-2-109(1)(e) award all program monies remaining in the fund for that fiscal year.

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R708. Public Safety, Driver License.
R708-2. Commercial Driver Training Schools.
R708-2-1. Purpose.

Sections 53-3-501 through 509, requires the Driver License Division to administer the Commercial Driver Training Schools Act by licensing and regulating commercial driver training schools and instructors of such schools. This rule assists the division in doing that.

R708-2-2. Authority.

This rule is authorized by Section 53-3-505.

R708-2-3. Definitions.

(1) "Behind-the-wheel instruction" means instruction a student receives while driving a commercial driver training vehicle.

(2) "Branch office" means an approved location where the business of the driver training school is conducted other than the principal place of business.

(3) "Business plan" means a plan that contains written acknowledgment of expectations, as outlined by this rule and a detailed explanation of how these expectations will be accomplished.

(4) "Classroom instruction" means that part of the driver training course which takes place in a classroom and which utilizes effective teaching methods such as lecture, discussion, and audio-visual aids.

(5) "Commercial driver training school" or "school" means a business enterprise conducted by an individual, association, partnership, or corporation for the education and training of persons, either practically or theoretically, or both, to drive motor vehicles, including motorcycles, and to prepare an applicant for an examination given by the state for a license or learner permit, and charging a consideration or tuition for those services.

(6) "Commercial driver training vehicle" means a motor vehicle equipped with a second functioning foot brake and inside mirrors which are positioned for use by the instructor for the purpose of observing rearward.

(7) "Commissioner" means the Commissioner of the Department of Public Safety.

(8) "Corporation" means a business incorporated under the laws of a state or other jurisdiction.

(9) "Department" means the Department of Public Safety.

(10) "Division" means the Driver License Division.

(11) "Driver training" means behind-the-wheel instruction, extended learning, observation time, and classroom instruction provided by a driver training school for the purpose of teaching students to safely operate motor vehicles.

(12) "Extended learning course" means a home-study course in driver education offered by a school and approved and operated under the direction of an institution of higher learning. The division must also approve the course.

(13) "Fraudulent practices" means any misrepresentation on the part of a licensee or any partner, officer, agent, or employee of a licensee tending to induce another to part with something of value or to surrender a legal right.

(14) "Higher education" means a university or college currently accredited by an appropriate accreditation agency recognized by the U.S. Dept. of Education and the Utah State Board of Regents.

(15) "Instructor" means any person, whether acting for himself as operator of a commercial driver training school or for any school for compensation, who teaches, conducts classes of, gives demonstrations to, or supervises practice of persons learning to drive motor vehicles, including motorcycles, or preparing to take an examination for a license or learner permit.

(16) "Instructor demonstration" means a demonstration of the operation of a motor vehicle performed by the instructor, which may be included as a part of the required six clock hours of observation time for a student for which credit is designated as hour for hour.

(17) "Observation time" means the time a student is riding in the commercial driver training vehicle to observe the driver instructor, other student drivers, and other road users.

(18) "Operator" means any person who is certified as an instructor, has met requirements for operator status as outlined in this rule, is authorized or certified to operate or manage a driver training school, and who may supervise the work of any other instructor.

(19) "Partnership" means an association of two or more persons who co-own and operate a commercial driver training school or testing only school.

(20) "Permanent record book" means a permanently bound book with pages consecutively numbered, setting forth the name, address, date of birth, enrollment date, and completion date of every person receiving lessons, lectures, tutoring, instruction of any kind or any other services relating to instruction in the operation of motor vehicles. A computerized file that is printed and permanently bound at the end of the calender year will be accepted as a permanent record book upon approval by the division.

(21) "Probation" means action taken by the department which includes a period of close supervision as determined by the division.

(22) "Reinstatement" means the process for an instructor, operator, commercial driver training school or testing only school to re-license following revocation.

(23) "Revocation" means the removal of certification of an instructor license, operator license, commercial driver training school or testing only school for a period of six months.

(24) "Student record book" means a book or other record showing the name, date of birth for each student, and also the date, type, time, and duration of all lessons, lectures, tutoring, instructions or other services relating to instruction in the operation of motor vehicles. It will also contain the names of the instructors giving such lessons or instructions and identification of the vehicle in which any behind-the-wheel instruction is given.

(25) "Testing only school" means a school that has been designated by the division as a commercial testing only school, employs instructors who are certified in accordance with R708-37, and engages only in testing students for the purpose of obtaining a driver license. A testing only school may conduct behind-the-wheel and/or observation instruction upon approval by the division. A testing only school may not engage in education or training of persons, either practically or theoretically, or both, to drive motor vehicles, except when counseling the driver following a test in reference to errors made during the administration of the test or when conducting behind-the-wheel or observation instruction as approved by the division. A tester may not test an individual who has completed any behind-the-wheel or observation instruction through the school with which the tester is employed.

R708-2-4. Licensing Requirement for a Commercial Driver Training School.

(1) Every corporation, partnership or person who owns a commercial driver training school shall obtain a school license from the division. School license applications may be obtained from the Driver License Division at 4501 South 2700 West, Salt Lake City, Utah. Applicants are also responsible for obtaining any business licenses required by the municipality or county in which they are located. School and business licenses must be conspicuously displayed in the licensee's principal place of business and branch offices. Each school shall be inspected by a division representative before it can be licensed.

(2) A license is valid for the calendar year and expires on

December 31 of the year issued. The fee for an original license is $100. The annual fee for a renewal license is $100. The annual fee for each branch license is $30. Fees shall be payable to the Department of Public Safety. If a license is revoked, or refused issuance or reinstatement, no part of the fee will be refunded.

(3) Licenses are not transferable.

(4) If a license is lost or destroyed, a duplicate will be issued upon payment of a fee of $10. A notarized affidavit setting forth the date the license was lost or destroyed and the circumstances of such loss or destruction must be provided.

(5) Whenever any school or branch office is discontinued, the school or branch office license must be surrendered to the division within five days. In such cases, the licensee shall state in writing the reason for such surrender.

(6) Any branch office or classroom facility in a location other than the school's principal place of business shall be separately licensed. A branch office shall meet the same requirements as the school's principal place of business and shall be similarly equipped and perform substantially the same services. Application for a branch office license shall be made on an application form provided by the division. Branch offices shall be inspected by a division representative before they can be licensed.

(7) Each school must employ a licensed operator to operate the school and each branch office before it may become licensed. The current licensed operator must be identified on the application maintained by the division for each school or branch office. It is permissible for a single operator to operate multiple branch offices of the same school. If at any time the operator discontinues employment with the school, a new operator must be employed before continuation of operation of the school, including any branch offices for which the individual has been identified as the operator, may occur.

(a) It is not permissible for an individual to maintain employment with more than one commercial driver training school or testing only school at a time.

(8) Only one school may be operated from a branch office or a classroom facility. It is not permissible for two or more schools owned by separate individuals and owned under different school names to operate from the same facility or office space unless one school has been designated by the division as a testing only school. One commercial driver training school and one testing only school may be operated from the same school or branch office. A clear separation of the schools must be identified, and each school must comply with standards set forth in R708-2.

(9) Each school or classroom facility must be posted with signage that will identify the school by name as the school is listed on the school certification.

R708-2-5. Licensing Requirement for a Testing Only School.

(1) Every corporation, partnership or person who owns a testing only school shall obtain a school license from the division. School license applications may be obtained from the Driver License Division at 4501 South 2700 West, Salt Lake City, Utah. Applicants are also responsible for obtaining any business licenses required by the municipality or county in which they are located. School and business licenses must be conspicuously displayed in the licensee's principal place of business and branch offices. Each school shall be inspected by a division representative before it can be licensed.

(2) A license is valid for the calendar year and expires on December 31 of the year issued. The fee for an original license is $100. The annual fee for a renewal license is $100. The annual fee for each branch license is $30. Fees shall be payable to the Department of Public Safety. If a license is revoked, or refused issuance or reinstatement, no part of the fee will be refunded.

(3) Licenses are not transferable.

(4) If a license is lost or destroyed, a duplicate will be issued upon payment of a fee of $10. A notarized affidavit setting forth the date the license was lost or destroyed and the circumstances of such loss or destruction must be provided.

(5) Whenever any school or branch office is discontinued, the school or branch office license must be surrendered to the division within five days. In such cases, the licensee shall state in writing the reason for such surrender.

(6) Any branch office in a location other than the school's principal place of business shall be separately licensed. A branch office shall meet the same requirements as the school's principal place of business and shall be similarly equipped and perform substantially the same services. Application for a branch office license shall be made on an application form provided by the division. Branch offices shall be inspected by a division representative before they can be licensed.

(7) It is not permissible for an individual to maintain employment with more than one commercial driver training school or testing only school at a time.

(8) Only one school may be operated from a branch office. It is not permissible for two schools owned by separate individuals and owned under different school names to operate from the same facility or office space unless one school has been designated by the division as a testing only school. One commercial driver training school and one testing only school may be operated from the same school or branch office. A clear separation of the schools must be identified, and each school must comply with standards set forth in R708-2.

(9) Each school must be posted with signage that will identify the school by name as the school is listed on the school certification.

(10) It is not required that a testing only school maintain a classroom facility in the school or branch office location. It is required that the testing only school location or branch office have a designated area in which to maintain required files and records.

R708-2-6. Application for a Commercial Driver Training School License or a Testing Only School License.

(1) Application for an original or renewal commercial driver training school license or a testing only school license must be made on forms provided by the division, signed by the applicant, and notarized. In the case of a partnership, the application must be signed by all partners. In the case of a corporation, the application must be signed by an officer of the corporation. Applications must be submitted at least 30 days prior to licensing. An appointment should be made when the application is filed to have the school inspected by a division representative.

(2) Every application must be accompanied by the following supplementary documents:

(a) in the case of a corporation, a certified copy of a certificate of incorporation;

(b) samples of all forms and receipts to be used by the school;

(c) a schedule of fees for all services to be performed by the school;

(d) a fingerprint record for each applicant, partner or corporate officers. A Bureau of Criminal Identification check will be done by the division on all applicants, partners, and corporate officers. Fingerprints may be taken by any law enforcement agency. The division may require renewal applicants to submit new fingerprint records;

(e) a certificate of insurance for each vehicle used for driver training or testing purposes;

(f) a copy of all tests and criteria which the school requires in order for a student to satisfactorily complete the driver training course all of which are subject to approval of the

division; including copies of translations; and

(g) evidence that a surety bond has been obtained by the school. The amount of the surety bond will be determined by the division with the use of a formula that incorporates the number of students that the school is capable of instructing over a period of three months based on its facility, equipment, personnel, and the tuition that would be collected from each student, with a minimum requirement of $10,000.00 coverage and a maximum requirement of $60,000.00 coverage. If, at any time, there is a change in the number of instructors, the number of vehicles, or the size of the classroom facility, the required surety bond amount will be reevaluated by the division and adjusted accordingly. Cancellation of the surety bond is grounds for revocation, probation, or refusal to issue or renew the school license. A school designated by the department as a testing only school will not be required to obtain a surety bond unless it has been authorized by the division to conduct behind-the-wheel training. A school may enter into an agreement with the division that will outline a method for determining the amount of the required surety bond in lieu of the formula specified in this section. Noncompliance with the terms of the agreement may result in the revocation of school, operator, and or instructor licenses issued by the division for use by the school or its employees. A school that does not charge tuition for driver education is not required to maintain a surety bond.

(3) The division may require that a credit check be performed for each applicant. Based on the results of the credit check, the division may deny certification.

R708-2-7. Application Requirements for a Commercial Driver Training School Instructor License.

(1) Every person who serves as an instructor in a commercial driver training school, including the owner, operator, partner or corporate officer of the licensee, substitute or part-time instructor, shall obtain an instructor's license from the division. Such license shall be valid only for the specific driver training school listed on the license.

(2) A license is valid for the calendar year and expires on December 31 of the year issued. The fee for an original license is $30. The annual fee for a renewal license is $20. Fees shall be payable to the Department of Public Safety. If a license is revoked or refused issuance, or refused renewed, no part of the fee will be refunded.

(3) Licenses are not transferable.

(4) If an instructor license is lost or destroyed, a duplicate will be issued upon payment of a fee of $6. A notarized affidavit setting forth the date the license was lost or destroyed and the circumstances of such loss or destruction must be provided.

R708-2-8. Application Requirements for a Commercial Driver Training School Operator License.

(1) Every person who serves as an operator of a commercial driver training school, including the owner, operator, partner or corporate officer of the licensee, substitute or part-time instructor, shall obtain an operator license from the division. Such license shall be valid only for the specific driver training school listed on the license.

(2) A school operator license is not valid unless accompanied by a valid instructor license.

(a) Requirements for licensure as a school operator include six college semester credit hours or eight college quarter credit hours in business related courses through an accredited college or university; or two years experience operating a business, or a combination thereof.

(b) Prior to licensure, a potential school operator must submit a business plan to the division for approval.

(c) Individuals who are functioning in the capacity of a commercial driver training school operator prior to January 1, 2003, will not be required to comply with section (a) of this section.

(3) An operator license is valid for the calendar year and expires on December 31 of the following year issued.

(4) Licenses are non-transferable.

(5) If an operator license is lost or destroyed, a duplicate will be issued upon request. A notarized affidavit setting forth the date the license was lost or destroyed and the circumstances of such loss or destruction must be provided.

R708-2-9. Additional Requirements for Commercial Driver Training School Instructors.

(1) In addition to obtaining a license, a commercial driver training school instructor must:

(a) have a valid Utah driver license;

(b) be at least twenty one years of age;

(c) have at least three years of driving experience in the United States, Canada, or a country with which the state of Utah has established a license reciprocity agreement;

(d) have a driving record free of conviction for a moving violation or chargeable accident resulting in suspension or revocation of the driver license for the two year period immediately prior to application and during employment and be checked to determine if there is an unsatisfactory driving record in any state;

(e) be in acceptable physical condition as required by Section 10 of this rule;

(f) complete specialized professional preparation in driver safety education consisting of not less than 21 quarter hours, or 14 semester hours of credit as approved by the division. Of the 21 quarter hours or 14 semester hours, one class must be in teaching methodology and another class must include basic driver training instruction or organization and administration of driver training instruction;

(g) pass a written test given by the division. The test may cover commercial driver training school rules, traffic laws, safe driving practices, motor vehicle operation, teaching methods and techniques, statutes pertaining to commercial driver training schools, business ethics, office procedures and record keeping, financial responsibility, no fault insurance, procedures involved in suspension or revocation of an individual's driving privilege, material contained in the "Utah Driver Handbook", and traffic safety education programs;

(h) pass a practical driving test;

(i) pass the same standard eye test that is given to applicants who apply for a Utah operator or commercial driver license; and

(j) submit a fingerprint record for a criminal history record check.

(2) Instructors shall be sponsored by a commercial driver training school which shall be responsible for controlling and supervising the actions of the instructors. No school may knowingly employ any person as an instructor or in any other capacity if such person has been convicted of a felony or any crime involving moral turpitude.

(3) The instructor's license must be in the possession of the instructor at all times while providing behind-the-wheel or classroom instruction.

R708-2-10. Application and Medical Requirements for a Commercial Driver Training School Instructor License.

(1) Application for an original or renewal instructor's license must be made on forms provided by the division, signed by the applicant in front of a division employee authorized to administer oaths. Applications must be submitted at least 30 days prior to licensing. The original and each yearly renewal application must be accompanied by a medical profile form provided by the division and completed by a health care professional as defined in Subsection 53-3-302(2).

(2) The medical profile form shall indicate any physical or

mental impairments which may preclude service as a commercial driver training school instructor. The physical examinations must take place no more than three months prior to application.

(3) The commercial driver training school desiring to employ the applicant as an instructor must sign the application verifying that the applicant will be employed by the school.

(4) When deemed necessary by the division, an applicant seeking to renew an instructor's permit may be required to take a driving skills test.

R708-2-11. Re-certification.

All holders of school licenses, operator licenses, and instructor licenses may at the discretion of the division be required to re-certify every three years. Re-certification may be obtained by submitting proof of completion of classes, seminars, and workshops approved by the division.

R708-2-12. Classroom and Behind-The-Wheel Instruction.

(1) Classroom instruction for students shall meet or exceed 18 clock hours and shall be conducted in not less than nine separate class sessions on nine separate days of two hours per class. Classroom curriculum may not be repeated in any of the nine sessions provided to a student except in the form of a review of materials covered in a previous classroom session. The time frame allotted for review is not to exceed 10 minutes per classroom session. Not more than five of the classroom hours may be devoted to showing slides or films. Classroom instruction shall cover the following areas:

(a) attitudes and physical characteristics of drivers;

(b) driving laws with special emphasis on Utah law;

(c) driving in urban, suburban, and rural areas;

(d) driving on freeways;

(e) maintenance of the motor vehicle;

(f) affect of drugs and alcohol on driving;

(g) motorcycles, bicycles, trucks, and pedestrian's in traffic;

(h) driving skills;

(i) affect of the motor vehicle on modern life;

(j) Utah's motor vehicle laws regarding financial responsibility and no fault insurance, and a driver's responsibility when involved in an accident; and

(k) suspension or revocation of a driver license.

(2) Behind-the-wheel instruction shall include a minimum of six clock hours of instruction in a dual-control vehicle with a licensed instructor. Each student will be limited to a maximum of two hours of behind-the-wheel instruction per day. An instructor may not conduct more than 10 hours of behind-the-wheel instruction within a period of 24 hours and must have at least eight consecutive hours of off-duty time between each ten hour shift. The front seat of the vehicle shall be occupied by the instructor and no more than one student. Under no circumstances shall there be more than five individuals in the vehicle.

(a) Behind-the-wheel instruction shall include student practice in using vehicle controls to start, shift gears, make right and left turns, stop, backup, and park. This instruction shall begin under relatively simple conditions and progress until the student has acquired reasonable skill in operating the vehicle under varying traffic conditions.

(b) Students shall receive experience in driving on urban streets, open highways, or freeways. Behind-the-wheel instruction shall include the experience of driving under variable conditions which may be used by the instructor at different times of the day and year. Special emphasis should be given to teaching students to show courtesy to other drivers and pedestrians.

(c) Students shall receive a minimum of six clock hours of observation time. This instruction may include instructor demonstrations, for which hour for hour credit will be given, and may not exceed two hours per day. Students observing from the rear seat, as well as the student driver, should benefit from time in the vehicle. The instructor's role is not merely to provide driving experience for the student behind-the-wheel, but to make the vehicle a practical classroom on wheels where all students may learn about the problems which face a driver and the appropriate solution to such problems.

(d) Behind-the-wheel instruction may not be conducted for a student unless the division has issued an instruction permit for the student and the instruction permit issued for the student is in the vehicle at the time the instruction is conducted, unless the student is in possession of a valid Utah driver license, a learner permit or temporary permit issued by the division, or a valid out of state or out of country driver license.

(3) All classroom and behind-the-wheel instruction will be conducted by an individual who is licensed as a commercial driver training school instructor as specified in this rule.

(a) It is a violation of this rule to conduct classroom or behind-the-wheel instruction or to allow another individual to conduct classroom or behind-the-wheel instruction without an instructors license unless a school has obtained prior approval from the division for classroom instruction to be provided by experts, such as a police officer, on a limited basis.

(4) Instructors shall screen students for visual acuity and physical or emotional conditions which may compromise public safety before allowing students to participate in behind-the-wheel instruction. Screening may not be performed over the telephone. An employee of the school who is not certified as an instructor may not perform medical or visual screening unless approved by the division in writing. Screening results shall be maintained on a form approved by the division.

(a) Students must have 20/40 visual acuity or better in one eye and a visual field of 90 degrees. Students with less than the required visual acuity and/or visual field shall be referred to a licensed medical practitioner for further consideration.

(b) Students must answer all questions on a health questionnaire approved by the Driver License Medical Advisory Board and sign a statement of affirmation of truth. Students indicating a physical or emotional condition on the questionnaire shall be referred to a licensed medical practitioner for further consideration. Health questionnaires shall be provided by the division.

(5) Commercial driver training schools shall provide each student a copy of the current Utah Driver Handbook. The handbook shall not be used as the sole text of the course, but as an essential aid when Utah traffic laws are studied. Handbooks may be obtained by the schools from the division.

R708-2-13. Monthly Reports.

(1) Each commercial driver training school shall submit a monthly report of the number of students completing both classroom and behind-the-wheel instruction.

(2) Monthly reports shall be submitted on forms supplied by the division and must be received by the division no later than the 15th day of each month.

(3) Failure to submit monthly reports within the prescribed time is grounds for revocation of the school's license.

(4) Monthly reports may be submitted electronically with division approval.

R708-2-14. Extended Learning Course.

(1) A commercial driver training school may offer an extended learning course of instruction as a substitute for the classroom instruction set forth in Section 10 of this rule provided such course is approved by an institution of higher learning and the division.

(2) An extended learning course must be operated under the direction of an institution of higher learning. The institution

of higher learning shall notify the division in writing when it has approved a school's extended learning course. The institution of higher learning will monitor any extended learning course approved by them to ensure the course is run as originally planned. They will notify the division of any substantive changes in the course as well as their approval of such changes. An institution of higher learning can approve the extended learning course of more than one school.

(3) An extended learning course shall consist at a minimum of a text, a workbook, and a 50 question competency test which addresses the subjects described in Section 10 of this rule.

(a) All materials, including texts, workbooks, and tests, used in the course must be submitted by the school to the division for approval.

(b) The average study time required to complete the workbook exercises must meet or exceed 30 clock hours.

(c) An extended learning student must complete all workbook exercises.

(d) An extended learning student must pass the 50 question written competency test at 80% or better. Testing shall occur under the following conditions:

(i) the test shall be taken at the school or at a proctored testing facility approved by the division;

(ii) the identity of the student will be verified by the licensed instructor prior to testing;

(iii) the test shall be completed by the student without any outside help;

(iv) the school shall maintain at least three separate 50 question competency tests created from a test pool of at least 200 questions;

(v) the extended learning student will be given a minimum of three opportunities to pass the test. After each failure the school will provide the student with additional instruction to assist the student to pass the next test;

(vi) the original fees for the course must include the three opportunities to pass the test and any additional instruction that is required;

(vii) an extended learning student must pass the test in order to complete driver training; and

(viii) the school will maintain for three years records of all tests administered by the school. Test records shall include the results of all tests taken by every student.

R708-2-15. Instruction Permits.

(1) A commercial driver training school must obtain from the division an instruction permit for each student enrolled in the school for the purpose of meeting licensing requirements as set forth in Section 53-3-204 (1). An instruction permit provides proof that the student is enrolled in a driver training course and is licensed to receive behind-the-wheel instruction with a licensed instructor. Instruction permits shall be retained by the instructor and shall be available in the vehicle at all times while the student is driving. Information shall be included on the instruction permit in a manner specified by the division.

(a) It is the responsibility of the school to ensure that the instruction permit application contains the correct name and date of birth of the student, by means of a birth certificate or other official form of identification.

(b) Application for an instruction permit must be typed or printed in ink. Duplicate instruction permits may not be issued unless the student's name and date of birth are the same as those on the original application.

(c) Instruction permits shall not be issued for persons under the age of 15 years and six months.

(d) All unused instruction permits issued between January 1 and September 30 of each year shall be returned to the division prior to December 31 of that year. Unused permits issued during October, November, and December shall be submitted with the unused permits of the following year.

(2) Upon completion of the requirements of the driver training course, the commercial driver training school shall release to the student a form consisting of an instruction permit, a certificate of training which must be signed by the student, and a certificate of completion which must be signed by the instructor and the school owner.

(3) The student shall present the certificate of completion to the division when the student makes application for a driver license.

(4) Duplicate certificates of completion may be obtained for $5.

(5) Following notice of intent to take agency action, suspension of issuance of instruction permits to a school or instructor may occur whenever the division has reason to believe that a school or instructor is in non-compliance with this rule.

(6) After notice of intent to take agency action is sent to a school, and after allowing sufficient time for the school to have received the notice, the division will no longer issue instruction permits to the school.

(7) Suspension of issuance of instruction permits will remain in effect until such times as the school, operator or instructor is in compliance with requirements as stipulated in the notice of intent to take agency action and reinstatement of the school license, instructor license, and /or operator license has occurred. The subject of intended action may request a hearing regarding the agency's intent to take action. If a hearing is requested, suspension of issuance of instruction permits will remain in effect pending the outcome of the hearing.

(8) After a school has received notice from the division of intent for agency action to occur, it is a violation of this rule for the school to allow students to enroll in a driver training course at the school or to accept money from students for whom the school will be unable to obtain an instruction permit or for whom the school will be unable to provide a completion slip if the school license is revoked or refused renewal or reinstatement following a hearing as requested by the school.

(9) In the event that a school license is revoked or refused renewal, all incomplete instruction permits shall be returned to the division.

R708-2-16. Students Transferring from the Utah Public School System.

(1) Students transferring from the Utah public school system will not be given credit by the division for any previous partial driver education instruction unless authorized in writing by the State Office of Education.

(2) Students who have successfully completed the classroom portion of driver training in the public school system in the State of Utah or in another state, but who have not completed behind-the-wheel driving instruction and observation time, may receive credit for the classroom instruction if they provide an authorized letter or certificate from the school which provided the training. The letter or certificate must be prepared on the school's letterhead, signed by a school representative, and state the number of classroom hours completed.

R708-2-17. Commercial Driver Training Vehicles.

(1) Commercial driver training vehicles used for behind-the-wheel instruction shall be properly registered, maintained in safe mechanical condition, and equipped with the following:

(a) functioning dual control brakes;

(b) outside and inside mirrors for both the driver and the instructor for the purpose of observing rearward;

(c) a separate seat belt for each occupant;

(d) functioning heaters and defrosters; and

(e) a functioning fire extinguisher, first aid kit, safety flares and/or reflectors.

(2) Students shall receive instruction in either standard shift or automatic transmission vehicles. The school shall have the option of choosing the type of transmission.

(3) If instruction is given in snow or on icy road surfaces tire chains or snow tires shall be used in compliance with local police or highway patrol recommendations.

(4) Vehicles must be capable of passing a state safety inspection at all times during their instructional use. Failure to maintain a vehicle in safe operating condition is grounds for the revocation of the license of the school operating the vehicle.

(5) Vehicles unable to meet safety standards shall be replaced by the school.

(6) It is the responsibility of the school to notify the division of any vehicle added to or deleted from their fleet. No vehicle may be used for driver training until it passes inspection by the division.

(7) Each vehicle used by a school for driver training shall be properly identified to safeguard against accidents. A vehicle is properly identified when the words "STUDENT DRIVER" are displayed on the front and rear and on both the left and right sides of the vehicle. The letters shall be at least three inches in height.

(8) Advertising or other markings on the vehicle for identifying or advertising the school shall be approved by the division.

R708-2-18. Notification of Accident.

If any driver training vehicle is involved in an accident during the course of instruction, the school shall notify the division in writing within five working days of the date of the accident and submit to the division a copy of the investigating law enforcement officer's accident report as soon as it is available.

R708-2-19. Insurance.

(1) Each commercial driver training school or testing only school must file with the division evidence of the minimum required insurance with an insurance company authorized to do business in Utah. Schools shall maintain suitable insurance coverage on each vehicle used in the driver training program sufficient to protect the instructor, students, and the public. The minimum insurance coverage is that required by the Utah Insurance Code, in Title 31A, Chapter 22, Part 3.

(2) The insurance company supplying the policy shall furnish to the division a certificate of insurance and shall notify the division immediately upon cancellation of said insurance. Operation of a vehicle without the required minimum insurance coverage shall be grounds for revocation of the licensee's license.

R708-2-20. Contracts.

(1) A student shall not be given lessons, lectures, tutoring or any other service relating to instruction in driver training, unless a written contract approved by the division has been executed by the school and the student.

(a) The contract must be signed by both the student and a representative of the school who is employed by the school, is authorized to enter into a contract with the student on behalf of the school and who is listed as school representative on the school application. If the student is under 18 years of age, the contract must also be signed by a parent or legal guardian.

(2) A copy of the contract must be given to the student and the original retained by the school.

(3) A school shall not agree orally or in writing to give an unlimited number of lessons, to give instruction until the driver license is obtained, or to give free lessons, or a premium or discount if a driver license is not obtained.

(4) The term "no refund" or similar phrase is not permitted in contracts.

(5) It is required that the student shall be provided with a receipt each time that money is paid by the student to the school. It is also required that the school shall maintain a copy of all receipts.

R708-2-21. Records.

(1) Every commercial driver training school shall maintain the following records:

(a) A permanent record book, defined as: a permanently bound book, with pages consecutively numbered, setting forth the name, address, date of birth, enrollment date, course type, and completion date of every person receiving lessons, lectures, tutoring, instruction of any kind or any other services relating to instruction in the operation of motor vehicles. The permanent record book must be updated upon both enrollment and course completion of each student. The division must approve the format of the permanent record book.

(b) A student record book, defined as: a book or other record showing the name, date of birth, and course type for each student; and the date, type, exact time of day including a.m. and p.m. for the beginning and ending of all training administered in the operation of motor vehicles. It will also contain the names of the instructors giving such lessons or instructions and identification of the vehicle in which any behind-the-wheel and/or observation instruction is given. The student record book must be updated within 24 hours of the time that instruction is conducted for each student. The division must approve the format of the student record book.

(c) Computerized files may be substituted for the permanently bound book and student record book if the format to be used has been approved by the division. It is a violation of this rule to maintain computerized files that have not been approved by the division.

(d) Each school shall maintain accurate, up to date records. Failure to do so is a violation of this rule.

(2) The division shall review the records of all schools at least annually and may observe the instruction given both in the classroom and behind the wheel. The division shall have the right to review the operation of the schools whenever the division deems it necessary to insure compliance with this rule.

(3) The loss, mutilation or destruction of any records which a school is required to maintain, must be immediately reported by the school to the division by affidavit stating:

(a) The date such records were lost, mutilated or destroyed; and

(b) The circumstances involving such loss, mutilation or destruction.

(4) All records must be retained by the schools for three years, with the exception of the permanently bound book or computerized file there of, which is to be kept permanently, during which time they shall be subject to inspection by the division during reasonable business hours. In the event that the school closes permanently, the permanent record book will be submitted by the school to the division.

(5) When deemed necessary by the division, the school records will be removed from the school location for the purpose of conducting an audit.

(a) When records are removed from the school location, a receipt will be provided to the school operator which will include the name of the school, location of the school, date of removal of records from the school location, information that specifies all records removed from the school location, the signature of the school operator, and the signature of a division representative.

(b) Upon return of the school records, the receipt will be updated to reflect the date that the records were returned to the school, the signature of the school operator, and the signature of the division designate returning the records.

(c) Records will be held by the division for the minimum

amount of time necessary so that an audit can occur without creating an unnecessary hardship or inconvenience to the school.

(d) All records, including computerized records, must be provided to the division when requested for the purpose of an audit or review of the school's records. Failure to provide all records as requested by the division is a violation of this rule. In the event that a hearing occurs subsequent to an audit, records not provided by the school at the time of the audit may not be considered as evidence during the hearing.

R708-2-22. Advertising and School Location.

(1) Commercial driver training schools and testing only schools may not imply or expressly guarantee that a driver license is guaranteed or assured. The display of a sign such as "Driver License Secured Here" is forbidden.

(2) A Commercial driver training school or testing only school may display on its premises a sign reading, "This School is Licensed by the State of Utah".

(3) No Commercial driver training school or testing only school may solicit business directly or indirectly or display or distribute any advertising material within 1500 feet of a building in which vehicle registrations or driver licenses are issued to the public.

(4) In municipalities having a population of 50,000 or more, no license will be issued for a commercial driver training school or testing only school if the school's place of business is located within 1500 feet of a facility in which vehicle registrations or driver licenses are issued to the public. If a school is established in a location prior to the origination of a facility located within 1500 feet of the school in which vehicle registrations or driver licenses are issued to the public, the school will be authorized to continue operation; however, the school's location may not be transferred to another corporation, partnership, or owner, under the same school name or a different school name.

(5) No commercial driver training school or testing only school may change its place of business or location without prior approval from the division.

(6) Each commercial driver training school shall provide classroom space, either in their own building or in any other building approved by the division. The classroom shall have seating for all students, access to sanitary facilities, and appropriate training aids, such as blackboards, charts, projectors, etc. Classroom facilities and buildings shall comply with federal, state, and local building, fire, safety and health codes.

R708-2-23. Change of Address and Officers.

(1) The commercial driver training school or testing only school shall immediately notify the division in writing if there is a change in the residence or business address of any individual owner, partner, officer or employee of the school.

(2) The commercial driver training school or testing only school shall immediately notify the division in writing of any change in officers, directors or employees, and shall provide the same information that would be required on an original application by the corporation.

(3) Failure to notify the division of a change of address, or of a change in the officers, directors, employees or controlling stockholders of any corporation, or change in the members of a partnership, may be considered grounds for the revocation of the school license.

R708-2-24. Change in Ownership.

(1) In the event of any ownership change in the commercial driver training school or testing only school, the division must be notified immediately in writing by the new owner and a new application must be submitted. Such application shall be considered a renewal if one or more of the original licensees remain as part owner of the school. In the event the change in ownership is to any person or persons not named in the application for the last current license or renewal license of the school, such license shall be considered a new application.

(2) The division may permit continuance of the commercial driving training school or testing only school by the current licensee, pending processing of the application made by the person or persons to whom ownership of the school is to be transferred.

(3) Upon issuance of the new license, the prior license must be immediately surrendered to the division. Refund of any part of the license fee is not permitted.

R708-2-25. Grounds for Revocation, Probation or Refusal to Issue or Renew Instructor License, Operator License, or School License.

(1) Following a hearing, the division may revoke, place on probation, or refuse to renew a license for either an instructor, operator, commercial driver training school or a testing only school. The division may also refuse to issue a license for an instructor, operator, commercial driver training school or a testing only school. A license may be revoked, placed on probation or refused for renewal for any of the following reasons:

(a) failure to comply with any of the provisions of Title 53, Chapter 3, Part 5;

(b) failure to comply with any of the provisions of this rule;

(c) cancellation of surety bond as required in Section 6(2)(g) of this rule;

(d) providing false information in an application or form required by the division;

(e) commission of a violation of Section 7(1)(d) of this rule pertaining to moving violations or chargeable accident that results in a suspension or revocation of one's driver license;

(f) failure to permit the division or its representatives to inspect the school, classrooms, records, or vehicles used in the instruction of the school's students;

(g) conviction of any crime involving violence, dishonesty, deceit, indecency, degeneracy, drug or alcohol abuse, fraud, or moral turpitude;

(h) conviction of any fraudulent acts or practices by any partner, officer, agent or employee in relation to the business conducted under the license; or

(i) failure to appear for a hearing on any of the above charges; and

(j) violation of any of the provisions of this rule.

(2) Any proceeding to revoke, place on probation, or refuse to issue or renew an instructor license, operator license, commercial driver training school license or a testing only school license is hereby designated as an informal adjudicative proceeding under the Utah Administrative Procedures Act, Section 63-46b-4.

(3) Any licensee who has had a license revoked shall not be eligible to reapply for a license until six months have elapsed since the date of the revocation. The applicant will be required to complete an application for an original license and meet all applicable requirements for an original license as stated herein. In addition to the other fees provided for in section 4(2), the licensee shall be required to pay a $25.00 reinstatement fee for each license that was revoked to the division at the time of application for reinstatement.

(a) Upon receipt of a completed application for an instructor license, operator license, commercial driver training school license or a testing only school, and applicable documentation and fees, the division will conduct a review process as established by the division director in order to determine eligibility for reinstatement or re-licensure. Notice of

a final decision will be made in writing by the division within twenty days of receipt of evidence that all applicable requirements have been met for reinstatement or re-licensure.

(b) In the event that a request for reinstatement is denied, the applicant will have an opportunity to request a hearing in writing within five days of receipt of the final decision made by the division.

(4) The following procedures will govern informal adjudicative proceedings:

(a) Action by the division to revoke, place on probation or refuse to issue or renew a license will be commenced by the division by the issuance of a notice of agency action. The notice of agency action will comply with the provisions of Section 63-46b-3.

(b) No response is required to the notice of agency action.

(c) An opportunity for a hearing will be granted on a revocation, probation or refusal to issue or renew a license if, within five days, the division receives in writing a request for a hearing.

(d) The licensee or applicant will receive written notice of the hearing at least ten days prior to the date of the hearing.

(e) No discovery, either compulsory or voluntary, will be permitted prior to the hearing except that all parties shall have access to information contained in the division's files, and to investigatory information and materials not restricted by law.

(f) The hearing shall be conducted by an individual, or panel, designated by the division.

(g) Within twenty days after the close of the hearing or after the failure of a party to appear for the hearing, the individual conducting the hearing shall issue a written decision which shall constitute final agency action. The written decision shall state the decision, the reason for the decision, notice of right to request reconsideration under Section 63-46b-13, notice of right of judicial review under Section 63-46b-15, and the time limits for filing an appeal to the appropriate district court.

(5) When a commercial driver training school license or a testing only school is under investigation by the division or when a commercial driver training school license or a testing only school license has been revoked, placed on probation or refused renewal, or reinstatement the school license may not be transferred to another party.

(6) If a commercial driver training school license is revoked, placed on probation or refused renewal, the existing incomplete instruction permits and or classroom, behind-the-wheel, and observation training hours may not be transferred to another school for completion.

(7) If a commercial driver training school license is revoked or refused renewal under the emergency provisions of UAPA, Section 63-46b-20, all remaining incomplete instruction permits will be confiscated from the school and the school will not be authorized to conduct business unless otherwise determined at a hearing.

(8) If an instructor license is revoked, placed on probation, or refused renewal under the emergency provisions of UAPA, Section 63-46b-20, and the school license is valid, the school may continue operation provided that there is an instructor employed by the school with a valid instructor license, and that to allow operation will not compromise public safety.

(9) If an operator license is revoked, placed on probation, or refused renewal under the emergency provisions of UAPA, Section 63-46b-20, and the school license is valid, the school may continue operation provided that there is an operator employed by the school with a valid operator license, and that to allow operation will not compromise public safety.

(10) An instructor license, operator license, commercial driver training school license or a testing only school may be placed on probation upon approval of the director of the division in the event that a violation of this section has occurred and it has been determined that the violation was not committed maliciously or with intent to defraud the department or the public. During a period of probation, provided that the terms of the probation agreement are adhered to by the subject, the instructor license, operator license, commercial driver training school license or a testing only school license shall remain intact and the instructor, operator, or school will be allowed to continue operation.

KEY: driver education, schools, rules and procedures
August 17, 2004 53-3-505
Notice of Continuation November 25, 2002

R708. Public Safety, Driver License.
R708-3. Driver License Point System Administration.
R708-3-1. Purpose.

The purpose of this rule is to establish procedures for the administration of a point system for drivers age 21 and older as mandated by Subsection 53-3-221(4) and a point system for drivers age 20 and younger as mandated by Subsection 53-3-209(2).

R708-3-2. Authority.

This rule is authorized by Subsections 53-3-209(2), 53-3-221(4), and 63-46b-5(1).

R708-3-3. Definitions.

(1) "Defensive driving course" means a course sponsored and conducted by a certified designee of the National Safety Council which allows the division to grant a 50 point reduction from the driving records of drivers who successfully complete the course.

(2) "Division" means the Driver License Division of the Utah Department of Public Safety.

(3) "License" means the privilege to drive a motor vehicle.

(4) "Probation" means a division sanction whereby a driver is permitted to drive by complying with certain terms and conditions established by the division.

(5) "Provisional license" means a driving privilege issued by the division to a person younger than 21 years of age.

R708-3-4. Point Assignment.

(1) In compliance with Subsection 53-3-221(4), the division shall determine a number of points to be assigned to each moving traffic violation as a measure of the violation's seriousness.

(2) In compliance with Subsection 53-3-221(4)(c), the driving record of the driver will be assessed 35 points for minimum speeding violations, 55 points for intermediate speeding violations, and 75 points for maximum speeding violations. Since excessive speed has been demonstrated by the National Safety Council and the Department of Public Safety's Utah Traffic Accident Summary to be a leading contributing factor in causing vehicular accidents, the division has determined that the assessing of no points for minimum speeding violations would be detrimental to public safety.

(3) The Driver License Division, Utah Department of Public Safety, shall make available for public review and inspection at the division office, reception desk, 4501 South 2700 West, Salt Lake City, Utah 84130-0560 a listing of the number of points assigned to moving traffic violations and the length of time that the violations remain on the record.

(4) Moving traffic violations which require mandatory sanction by law or rule are assigned 0 points.

R708-3-5. Point Increase or Decrease.

(1) Total points accumulated will be increased or decreased by the following means:

(a) a 10% increase or decrease in points assigned to any moving violation, except speed violations in accordance with Subsection 53-3-221(4)(b);

(b) a 50 point decrease once in a three year period after successfully completing a defensive driving course as defined in this rule;

(c) a 50% point decrease after one year of violation free driving in accordance with Subsection 53-3-221(4)(d); and

(d) a 100% point decrease after two years of violation free driving in accordance with Subsection 53-3-221(4)(d).

(2) The assigned points for any moving traffic violation will be dropped three years after the violation occurred in accordance with Subsection 53-3-221(4)(d).

(3) The point total after a sanction for drivers under age 21 will decrease to 35 points except when the point total is already below 35.

(4) The point total after a sanction for drivers age 21 and older will decrease to 125 points except when the point total is already below 125 in accordance with this rule.

R708-3-6. Point System Thresholds for Drivers Age 21 and Older.

(1) Upon receiving notice of a court conviction of a moving traffic violation, the division will post the violation to the driving record of the individual convicted, along with the points assigned to the violation, as designated in the code violation table.

(2) The division will use the following point thresholds to determine the severity of the sanction to be levied against the driver:

(a) 150 to 199 points: driver is sent a warning letter;

(b) 200 points: driver must appear for a hearing;

(c) 200 to 299 points: driver may be placed on probation or suspended for three months;

(d) 300 to 399 points: driver is suspended for 3 months;

(e) 400 to 599 points: driver is suspended for 6 months; and

(f) 600 or more points: driver is suspended for 1 year.

(3) A driver who is within a designated threshold may be considered for action at a lower threshold if completion of the defensive driving course has lowered the point total to that lower threshold.

(4) The suspension time is doubled, up to a maximum of one year, for a second or subsequent suspension within a three year period.

R708-3-7. Separate Point System for Provisional Licensed Drivers.

(1) In compliance with Subsection 53-3-209(2), a separate point system is established to facilitate behavioral influence upon drivers age 20 and younger. The point thresholds are designed to take remedial action earlier than is provided for drivers who are age 21 and older.

(2) In compliance with Subsection 53-3-209(2), and in conjunction with the consideration of point totals, the division may counsel a driver with regards to the development of safe driving attitudes, habits, and skills.

R708-3-8. Point System Thresholds for Provisional Licensed Drivers.

(1) Upon receiving notice of a court conviction of a moving traffic violation, the division will post the violation to the driving record of the individual convicted, along with the points assigned to the violation, as designated in the code violation table.

(2) The division will use the following point thresholds to determine the severity of the sanction to be levied against the driver:

(a) 35 to 69 points: driver is sent a warning letter;

(b) 70 points: driver must appear for a hearing;

(c) 70 to 139 points: driver may be placed on probation or denied for 30 days;

(d) 140 to 199 points, or violation of probation for the first time in a three year period: driver may be denied for 30 days;

(e) 140 to 199 points for a second time in a three year period or a second probation violation in a three year period: driver may be denied for 60 days;

(f) 140 to 199 points for a third time in a three year period or a third probation violation in a three year period: driver may be suspended for 90 days;

(g) 200 to 249 points: driver is suspended for 60 days;

(h) 250 to 349 points: driver is suspended for 90 days;

(i) 350 to 449 points: driver is suspended for 6 months;

and

(j) 450 or more: driver is suspended for 1 year.

(3) A driver who is within a designated threshold may be considered for action at a lower threshold if completion of the defensive driving course has lowered the point total to that lower threshold.

(4) In accordance with Subsection 53-3-209(2)(b)(iii), the first two sanctions within a three year period will deny a driving privilege unless the point total is 200 or more. A third or additional sanction within a three year period will result in a suspension at the next highest threshold, which doubles in length for each succeeding sanction within the three year period up to a maximum of one year.

R708-3-9. Hearing.

Drivers who are sanctioned under the provisions of this point system rule are entitled to a hearing in accordance with Subsection 53-3-221(5)(a)(i) and R708-35.

KEY: traffic violations, point-system
August 17, 2004 53-3-209(2)
Notice of Continuation July 25, 2002 53-3-221(4)

R708. Public Safety, Driver License.
R708-10. Classified License System.
R708-10-1. Authority.

This rule is authorized by Section 53-3-401 et seq.

R708-10-2. Specifications for Utah License Classifications.

Class A Commercial Driver - (must be at least 18 years of age). Every person operating any combination of vehicles over 26,000 lbs. GVWR (Gross Vehicle Weight Rating) where the towed unit is more than 10,000 lbs. GVWR.

Class B Commercial Driver - (must be at least 18 years of age). Every person operating a straight truck or bus (single vehicle) more than 26,000 lbs. GVWR or any combination of vehicles over 26,000 lbs. GVWR where the towed unit is less than 10,001 lbs. GVWR.

Class C operator - (must be at least 21 years of age). Every person operating a vehicle or combination of vehicles less than 26,001 GVWR which transports amounts of hazardous materials requiring placarding or which transports more than 15 occupants including the driver, or which is used as a school bus.

All commercial operators (Class A, B, or C), must obtain a commercial driver license no later than April 1, 1992.

Class D operator - (must be at least 16 years of age). Every person operating vehicles not defined above except motorcycles.

Class M operator - (must be at least 16 years of age). Every person operating a two (2) or three (3) wheel motor-driven cycle designed and registered for highway use.

R708-10-3. Endorsements.

H = Hazardous materials
M = Motorcycle.
N = Tank vehicle.
P = Passengers.
S = School bus. (includes P)
T = Double or triple trailers.
X = Hazardous material and tank combination.
Z = Taxis.

R708-10-4. Restrictions.

A = None.
B = Corrective lenses.
C = Mechanical aid.
D = Prosthetic aid.
E = Automatic transmission.
F = Outside mirror.
G = Daylight only.
I = Limit - other.
J = Other.
K = Restricted to intrastate operation of commercial vehicles.
L = Restricted to vehicles not equipped with air brakes.
O = 90 cc or less motorcycle.
U = a 3 wheel cycle.
V = 40 mph or less.
W = medical.

KEY: classified license, licensing
1989 **53-3-401 et seq.**
Notice of Continuation August 25, 2004

R708. Public Safety, Driver License.
R708-22. Commercial Driver License Administrative Proceedings.
R708-22-1. Authority.

This rule is authorized by Subsection 53-3-221(5)(a)(i).

R708-22-2. Commercial Driver License Administrative Proceedings.

All adjudicative proceedings for commercial driver license (CDL) holders, including but not limited to, the application for and denial, disqualification, suspension or revocation of authorization to operate any particular class or classes of vehicles, shall be conducted according to applicable rules for administrative proceedings as specified in section R708-17.

KEY: administrative proceedings
1989 53-3-221(5)(a)(i)
Notice of Continuation August 25, 2004 63-46b-1

R708. Public Safety, Driver License.
R708-24. Renewal of a Commercial Driver License (CDL).
R708-24-1. Authority.

This rule is promulgated pursuant to Section 53-3-413.

R708-24-2. Procedure for Renewal of a CDL.

(1) When applying for a CDL renewal, applicants shall use the same procedure used to obtain an original CDL. The applicant shall comply with Sections 53-3-105, 53-3-407, and 49 CFR 383 and 391.

(2) All knowledge tests and/or skills tests will be waived by the Driver License Division except:

(a) the hazardous materials knowledge test which is required by 49 CFR 383.73;

(b) when changes in an applicant's medical condition may require further testing/evaluation;

(c) if there are factors, including lack of knowledge, which indicate the applicant may have an inability to operate commercial vehicles in a reasonable, prudent and safe manner.

(3) Applicants whose CDL has expired for a period of more than six months, or whose driving privileges are disqualified, suspended, or revoked, are required to complete appropriate knowledge and skills tests.

(4) Applicants shall comply with Federal Highway Administration requirements contained in 49 CFR 383.71, 383.73 and 391.

KEY: licensing
July 17, 1995 **53-3-401**
Notice of Continuation August 25, 2004

R708. Public Safety, Driver License.
R708-26. Temporary Learner Permit Rule.
R708-26-1. Purpose.

The purpose of the rule is to set forth the restrictions to be imposed on a person driving a motor vehicle with a temporary learner permit.

R708-26-2. Authority.

This rule is authorized by Subsection 53-3-104(1)(b).

R708-26-3. Definitions.

"Learner" a person who has been issued a temporary learner permit.

"Adult Spouse" means any married person who is at least 18 years old.

"Temporary learner permit" means a temporary permit issued by the Driver license Division to a qualified person to drive on public roads as per the restrictions of this rule.

R708-26-4. Restrictions.

The restrictions in connection with a temporary learner permit are:

(1) A person who has completed a driver license education program and who qualifies for a driver license, except for passing the skills test, may obtain a temporary learner permit. The permit will allow the learner to drive a vehicle provided a parent, legal guardian, adult spouse, or anyone else who is at least 21 years of age, and who has a valid driver license, is riding in the vehicle with the learner. The person riding with the learner shall be there to coach and assess the driving skills of the learner prior to the time the learner receives full driving privileges;

(2) The permit must be in the learner's possession while the learner is learning to drive; and

(3) The permit is valid for 6 months;

R708-26-5. Motorcycle Learner Permit.

A person who has been issued a motorcycle learner permit may drive a motorcycle only during daylight hours and only without passengers.

KEY: learner permit
November 16, 1999 **53-3-210**
Notice of Continuation August 25, 2004

R708. Public Safety, Driver License.
R708-31. Ignition Interlock Systems.
R708-31-1. Authority.

(1) This rule establishes standards for the certification of ignition interlock systems as required by Section 41-6-44.7.

R708-31-2. Purpose.

(1) The purpose of this rule is to provide:

(a) standards and requirements for certifying ignition interlock systems.

(b) procedure for supplying an ignition interlock system for those individuals who are impecunious.

R708-31-3. Standards.

(1) All vendors who want to certify and provide ignition interlock systems shall:

(a) apply to the Driver License Division of the Department of Public Safety.

(b) provide an independent laboratory report showing evidence that their ignition interlock system meets the requirements of NHTSA (Federal Register Vol. 57. No. 67) which is incorporated by reference, and the standards as specified in Section 41-6-44.7.

(c) meet the requirements of Section 4 of this rule in order to be placed on an approved vendor's list.

R708-31-4. Requirements.

(1) To be included on an approved vendor's list, each vendor must:

(a) be certified by the Department of Public Safety to operate in Utah.

(b) show evidence that there is adequate product liability insurance.

(c) pay all applicable fees.

R708-31-5. Procedure for Impecuniosity.

(1) The Driver License Division may award a sole source contract to a vendor to provide an ignition interlock system to individuals for whom payment of costs has been waived or deferred on the grounds of impecuniosity.

KEY: ignition interlock systems
1994 41-6-44.7
Notice of Continuation August 25, 2004

R714. Public Safety, Highway Patrol.
R714-600. Performance Standards for Tow-Truck Motor Carriers.
R714-600-1. Authority and Purpose.

Pursuant to Subsection 41-6-102(1) which directs law-enforcement officers to remove vehicles found upon a road or highway, and Subsections 41-6-102(4) and 53-1-106(1) which require that rules set performance standards for towing companies used by the department, this rule sets a procedure for coordinated dispatch services.

R714-600-2. Definitions.

As used in this rule:

(1) "Participating Carrier" means a tow-truck motor carrier as defined in Section 72-9-102 and certified under Section 72-9-601, that agrees to accept a rotation-dispatch notification to provide non-preference vehicle towing services, as requested by law-enforcement officers.

(2) "Contractor" means a tow-truck motor carrier owner/operator authorized by the department to operate a rotation-dispatch service to coordinate non-preference vehicle towing service in accordance with this rule.

(3) "Department" means the Utah Department of Public Safety.

(4) "Non-preference vehicle-towing service" means the removal and towing of motor vehicles by tow-truck motor carriers when requested by a law-enforcement officer, at times when a vehicle's owner/operator has not consented to, nor selected a tow-truck motor carrier to provide towing services in response to a:

(a) law-enforcement officer's call for rotation-dispatched non-preference vehicle towing;

(b) call initiated by a governmental entity, in accordance with Chapter 41-1(a), or

(c) notification or call for non-consent towing services.

R714-600-3. Non-Preference Vehicle Towing.

(1) The department may authorize rotation-dispatch towing services in specific areas of the state.

(2) The contractor shall operate a rotation-dispatch program by agreement with carriers who agree to accept rotation-dispatch notifications to provide non-preference vehicle towing services.

(3) In addition to fees provided under rules promulgated by the Utah Department of Transportation, the contractor may charge participating carriers a coordinated rotation-dispatch fee of up to $10 per/call.

(4) The department may rescind this rule at any time as deemed necessary.

KEY: towing, motor carrier, law enforcement

April 15, 1999	**41-6-102(1)**
Notice of Continuation August 6, 2004	**41-6-102(4)**
	53-1-106(1)

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.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

A. The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

B. For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

C. Information that may be disclosed under Section 59-1-404(3) includes:

1. the following information related to the property's tax exempt status:

a) information provided on the application for property tax exempt status;

b) information used in the determination of whether a property tax exemption should be granted or revoked; and

c) any other information related to a property's property tax exemption;

2. the following information related to penalty or interest relating to property taxes that the county legislative body determines should be abated:

a) the amount of penalty or interest that is abated;

b) information provided on an application or request for abatement of penalty or interest;

c) information used in the determination of the abatement of penalty or interest; and

d) any other information related to the amount of penalty or interest that is abated; and

3. the following information related to the amount of property tax due on property:

a) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

b) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

c) any other information related to the amount of taxes refunded or deducted under 3.a).

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements

August 2, 2004 **41-1a-209**
Notice of Continuation April 22, 2002 **59-1-205**
59-1-207
59-1-210
59-1-301
59-1-403
59-1-404
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
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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

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;
b) transportation costs;
c) installation charges and construction costs; and
d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;
(b) actual sales of like mineral by other taxpayers; or
(c) posted prices of like mineral; or
(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.

A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.

B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.

2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.

3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.

5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of

the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

A. The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

B. After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor and the Tax Commission a notice of the preservation easement containing the following information:

1. the property owner's name;

2. the address of the property; and

3. the serial number of the property.

C. The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-25.

A. Definitions:

1. "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

2. "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-25.

3. "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

4. "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 2. of the Constitution of Utah from the payment of ad valorem property tax.

5. "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

6. "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

7. "Sold," for the purpose of interpreting D, means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

8. "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

9. All definitions contained in the Interlocal Cooperation Act, Section 11-13-3, as in effect on December 31, 1989, apply to this rule.

B. The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

1. The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

2. The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

3. In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to B.2., a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

a) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

b) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

C. If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

D. Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

E. For purposes of calculating the amount of the fee payable under Section 11-13-25(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

F. In computing its tax rate pursuant to the formula specified in Section 59-2-913(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-25(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-913.

G. B.1. and B.2. are retroactive to the lien date of January 1, 1984. B.3. is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-302, and 59-2-704.

A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county.

1. Conduct a preliminary survey and plan.

a) Compile a list of properties to be appraised by property class.

b) Assemble a complete current set of ownership plats.

c) Estimate personnel and resource requirements.

d) Construct a control chart to outline the process.

2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.

3. Obtain a copy of all probable transactions from the recorder's office for the three-year period ending on the effective date of reappraisal.

4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.

a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.

b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per parcel basis.

c) Enter land class information and the calculated agricultural land use value on the appraisal form.

5. Develop a land valuation guideline.

6. Perform an appraisal on improved sold properties considering the three approaches to value.

7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price of sold properties.

8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.

9. Collect data on all nonsold properties.

10. Develop capitalization rates and gross rent multipliers.

11. Estimate the value of income-producing properties using the appropriate capitalization method.

12. Input the data into the automated system and generate preliminary values.

13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.

14. Develop an outlier analysis program to identify and correct clerical or judgment errors.

15. Perform an assessment/sales ratio study. Include any new sale information.

16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.

17. Calculate the final values and place them on the assessment role.

18. Develop and publish a sold properties catalog.

19. Establish the local Board of Equalization procedure.

20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.

B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

A. "State Licensed Appraiser", "State Certified General Appraiser," and "State Certified Residential Appraiser" are as defined in Section 61-2b-2.

B. The ad valorem training and designation program consists of several courses and practica.

1. Certain courses must be sanctioned by either the International Association of Assessing Officers (IAAO) or the Western States Association of Tax Administrators (WSATA).

2. Most courses are one week in duration, with an examination held on the final day. The courses comprising the basic designation program are:

a) Course A - Assessment Practice in Utah;

b) Course B - Fundamentals of Real Property Appraisal (IAAO 101);

c) Course C - Mass Appraisal of Land;

d) Course D - Building Analysis and Valuation;

e) Course E - Income Approach to Valuation (IAAO 102);

f) Course G - Development and Use of Personal Property Schedules;

g) Course H - Appraisal of Public Utilities and Railroads (WSATA); and

h) Course J - Uniform Standards of Professional Appraisal Practice (USPAP).

3. The Tax Commission may allow equivalent appraisal education to be submitted in lieu of Course B, Course E, and Course J.

C. Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

D. There are four recognized ad valorem designations: Ad Valorem Residential Appraiser, Ad Valorem General Real Property Appraiser, Ad Valorem Personal Property Auditor/Appraiser, and Ad Valorem Centrally Assessed Valuation Analyst.

1. These designations are granted only to individuals working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

2. An assessor, county employee, or state employee must

hold the appropriate designation to value property for ad valorem taxation purposes.

E. Ad Valorem Residential Appraiser.

1. To qualify for this designation, an individual must:

a) successfully complete Courses A, B, C, D, and J;

b) successfully complete a comprehensive residential field practicum; and

c) attain and maintain state licensed or state certified appraiser status.

2. Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

F. Ad Valorem General Real Property Appraiser.

1. In order to qualify for this designation, an individual must:

a) successfully complete Courses A, B, C, D, E, and J;

b) successfully complete a comprehensive field practicum including residential and commercial properties; and

c) attain and maintain state licensed or state certified appraiser status.

2. Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

G. Ad Valorem Personal Property Auditor/Appraiser.

1. To qualify for this designation, an individual must successfully complete:

a) Courses A, B, G, and J; and

b) a comprehensive auditing practicum.

2. Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

H. Ad Valorem Centrally Assessed Valuation Analyst.

1. In order to qualify for this designation, an individual must:

a) successfully complete Courses A, B, E, H, and J;

b) successfully complete a comprehensive valuation practicum; and

c) attain and maintain state licensed or state certified appraiser status.

2. Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

I. If a candidate fails to receive a passing grade on a final examination, one re-examination is allowed. If the re-examination is not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

J. A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

1. Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

2. The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

K. An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

1. has completed all Tax Commission appraiser education and practicum requirements for designation under E., F., and H.; and

2. has not completed the requirements for licensure or certification under Title 71, Chapter 2b, Real Estate Appraiser Licensing and Certification.

L. An individual holding a specified designation can qualify for other designations by meeting the additional requirements outlined above.

M. Maintaining designated status requires completion of 28 hours of Tax Commission approved classroom work every two years.

N. Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

1. Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

2. If more than four years elapse between termination and rehire, and

a) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

b) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

O. All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

P. If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met.

1. The private sector appraisers contracting the work must hold the State Certified Residential Appraiser or State Certified General Appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only State Certified General Appraisers may appraise nonresidential properties.

2. All appraisal work shall meet the standards set forth in Section 61-2b-27.

Q. The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

1. There are no specific licensure, certification, or educational requirements related to this function.

2. An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the

project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and

Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.

A. The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

1. If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

a) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax changes.

b) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

2. The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

B. The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

1. New property is created by a new legal description; or

2. The status of the improvements on the property has changed.

3. In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

4. If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in A.

C. Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

D. All completion dates specified for the disclosure of property tax information must be strictly observed.

1. Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in A.

E. If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

F. If the cost of public notice required under Sections 59-2-918 and 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

G. Calculation of the amount and percentage increase in property tax revenues required by Sections 59-2-918 and 59-2-919, shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

H. If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

I. The value of property subject to the uniform fee under Section 59-2-405 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

J. The value and taxes of property subject to the uniform fee under Section 59-2-405, as well as tax increment distributions and related taxable values of redevelopment agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

K. The following formulas and definitions shall be used in determining new growth:

1. Actual new growth shall be computed as follows:

a) the taxable value for the current year adjusted for redevelopment minus year-end taxable value for the previous year adjusted for redevelopment; then

b) plus or minus changes in value as a result of factoring; then

c) plus or minus changes in value as a result of reappraisal; then

d) plus or minus any change in value resulting from a legislative mandate or court order.

2. Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

3. New growth is equal to zero for an entity with:

a) an actual new growth value less than zero; and

b) a net annexation value greater than or equal to zero.

4. New growth is equal to actual new growth for:

a) an entity with an actual new growth value greater than or equal to zero; or

b) an entity with:

i) an actual new growth value less than zero; and

ii) the actual new growth value is greater than or equal to the net annexation value.

5. New growth is equal to the net annexation value for an entity with:

a) a net annexation value less than zero; and

b) the actual new growth value is less than the net annexation value.

6. Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

L.1. Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

a) the valuation bases for the funds are contained within identical geographic boundaries; and

b) the funds are under the levy and budget setting authority of the same governmental entity.

2. Exceptions to L.1. are the county assessing and collecting levy, as described in Section 59-2-906.1(3), and the additional levies for property valuation and reappraisal, as described in Section 59-2-906.3.

a) These levies may not be included as part of a county's aggregate certified rate. Instead, they must be segregated into a separate aggregate certified rate.

b) The separate aggregate certified rate representing these levies is subject to the proposed tax increase requirements of Sections 59-2-918 and 59-2-919.

M. For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

N. No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

A. Definitions.

1. "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

2. "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

3. "Division" means the Property Tax Division of the State Tax Commission.

4. "Nonparametric" means data samples that are not normally distributed.

5. "Parametric" means data samples that are normally distributed.

6. "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

B. The Tax Commission adopts the following standards of assessment performance.

1. For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures.

a) The measure of central tendency shall be within 10 percent of the legal level of assessment.

b) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

2. For uniformity of the property being appraised under the cyclical appraisal plan for the current year, the measure of dispersion shall be within the following limits.

a) In urban counties:

(1) a COD of 15 percent or less for primary residential and commercial property, and 20 percent or less for vacant land and secondary residential property; and

(2) a COV of 19 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property.

b) In rural counties:

(1) a COD of 20 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property; and

(2) a COV of 25 percent or less for primary residential and commercial property, and 31 percent or less for vacant land and secondary residential property.

3. Statistical measures.

a) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

b) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

c) To achieve statistical accuracy in determining assessment level under B.1. and uniformity under B.2. for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

C. Each year the Division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in B.

1. To meet the minimum sample size, the study period may be extended.

2. A smaller sample size may be used if:

a) that sample size is at least 10 percent of the class or subclass population; or

b) both the Division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

3. If the Division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

a) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

b) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

c) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

d) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

4. All input to the sample used to measure performance shall be completed by March 31 of each study year.

5. The Division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

6. The Division shall complete the final study immediately following the closing of the tax roll on May 22.

D. The Division shall order corrective action if the results of the final study do not meet the standards set forth in B.

1. Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

a) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in B.2.; or

b) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in B.2.

2. Uniformity adjustments, or reappraisal orders, shall only apply to the property being appraised under the cyclical appraisal plan for the current year. A reappraisal order shall be issued if the property fails to meet the standards outlined in B.2. Prior to implementation of reappraisal orders, counties shall submit a preliminary report to the Division that includes the following:

a) an evaluation of why the standards of uniformity outlined in B.2. were not met; and

b) a plan for completion of the reappraisal that is approved by the Division.

3. A corrective action order may contain language requiring a county to create, modify, or follow its cyclical appraisal plan.

4. All corrective action orders shall be issued by June 10 of the study year.

E. The Tax Commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

1. Prior to the filing of an appeal, the Division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without Tax Commission approval. Any stipulation by the Division subsequent to an appeal is subject to Tax Commission approval.

2. A county receiving a corrective action order resulting from this rule may file and appeal with the Tax Commission pursuant to Tax Commission rule R861-1A-11.

3. A corrective action order will become the final Tax Commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

4. The Division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

a) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

b) Other corrective action, including reappraisal orders, shall be implemented prior to May 22 of the year following the study year. The preliminary report referred to in D.2. shall be completed by November 30 of the current study year.

5. The Division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in E.4. as practical. The Division shall

review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the Tax Commission for any necessary action.

6. The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-2-306.

A. The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

1. On forms or diskette provided by the Tax Commission, the owner of leased or rented heavy equipment shall file semi-annual reports with the Tax Commission for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

a) a description of the leased or rented equipment;

b) the year of manufacture and acquistion cost;

c) a listing, by month, of the counties where the equipment has situs; and

d) any other information required.

2. For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

3. The completed report shall be submitted to the Property Tax Division of the Tax Commission within thirty days after each reporting period.

a) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

A. Household furnishings, furniture, and equipment are subject to property taxation if:

1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

2. the abode is held out as available for the rent, lease, or use by others.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2004 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

A. Definitions.

1. "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.

a) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

b) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

2. "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

a) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

3. "Cost new" means the actual cost of the property when purchased new.

a) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(1) documented actual cost of the new or used vehicle; or

(2) recognized publications that provide a method for approximating cost new for new or used vehicles.

b) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(1) class 6 heavy and medium duty trucks;

(2) class 9 off-highway vehicles;

(3) class 11 street motorcycles;

(4) class 13 heavy equipment;

(5) class 14 motor homes;

(6) class 17 boats;

(7) class 18 travel trailers/truck campers;

(8) class 21 commercial and utility trailers;

(9) class 23 aircraft subject to the aircraft uniform fee and not listed in the aircraft bluebook price digest; and

(10) class 26 personal watercraft.

4. "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

a) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

b) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as NADA.

B. Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

1. Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

2. A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

3. County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

4. A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

C. Other taxable personal property that is not included in the listed classes includes:

1. Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of

business. Supplies are assessed at total cost, including freight-in.

2. Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

3. Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

D. Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

E. All taxable personal property is classified by expected economic life as follows:

1. Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

a) Examples of property in the class include:

(1) barricades/warning signs;
(2) library materials;
(3) patterns, jigs and dies;
(4) pots, pans, and utensils;
(5) canned computer software;
(6) hotel linen;
(7) wood and pallets;
(8) video tapes, compact discs, and DVDs; and
(9) uniforms.

b) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

(1) retail price of the canned computer software;

(2) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or

(3) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

d) Video tapes, compact discs, and DVDs are valued at $15.00 per tape or disc for the first year and $3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
03	69%
02	40%
01 and prior	10%

2. Class 2 - Computer Integrated Machinery.

a) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(1) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(2) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(3) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(4) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(5) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

b) Examples of property in this class include:

(1) CNC mills;
(2) CNC lathes;
(3) MRI equipment;
(4) CAT scanners; and
(5) mammography units.

c) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
03	85%
02	71%
01	59%
00	51%
99	43%
98	34%
97	25%
96 and prior	16%

3. Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

a) Examples of property in this class include:

(1) office machines;
(2) alarm systems;
(3) shopping carts;
(4) ATM machines;
(5) small equipment rentals;
(6) rent-to-own merchandise;
(7) telephone equipment and systems;
(8) music systems;
(9) vending machines;
(10) video game machines; and
(11) cash registers and point of sale equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
03	82%
02	66%
01	50%
00	34%
99 and prior	17%

4. Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

a) Examples of property in this class include:

(1) furniture;
(2) bars and sinks:
(3) booths, tables and chairs;
(4) beauty and barber shop fixtures;
(5) cabinets and shelves;
(6) displays, cases and racks;
(7) office furniture;
(8) theater seats;
(9) water slides; and
(10) signs, mechanical and electrical.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
03	88%
02	80%
01	70%
00	61%
99	51%

98	41%
97	31%
96	21%
95 and prior	11%

5. Class 6 - Heavy and Medium Duty Trucks.
a) Examples of property in this class include:
(1) heavy duty trucks;
(2) medium duty trucks;
(3) crane trucks;
(4) concrete pump trucks; and
(5) trucks with well-boring rigs.
b) Taxable value is calculated by applying the percent good factor against the cost new.
c) Cost new of vehicles in this class is defined as follows:
(1) the documented actual cost of the vehicle for new vehicles; or
(2) 75 percent of the manufacturer's suggested retail price.
d) For state assessed vehicles, cost new shall include the value of attached equipment.
e) The 2004 percent good applies to 2004 models purchased in 2003.
f) Trucks weighing two tons or more have a residual taxable value of $1,750.

TABLE 6

Model Year	Percent Good of Cost New
04	90%
03	65%
02	60%
01	55%
00	50%
99	46%
98	41%
97	36%
96	31%
95	26%
94	21%
93	16%
92	11%
91 and prior	6%

6. Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.
a) Examples of property in this class include:
(1) medical and dental equipment and instruments;
(2) exam tables and chairs;
(3) high-tech hospital equipment;
(4) microscopes; and
(5) optical equipment.
b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
03	90%
02	83%
01	75%
00	68%
99	60%
98	51%
97	43%
96	35%
95	27%
94	19%
93 and prior	10%

7. Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.
a) Examples of property in this class include:
(1) manufacturing machinery;
(2) amusement rides;
(3) bakery equipment;
(4) distillery equipment;
(5) refrigeration equipment;
(6) laundry and dry cleaning equipment;
(7) machine shop equipment;
(8) processing equipment;
(9) auto service and repair equipment;
(10) mining equipment;
(11) ski lift machinery;
(12) printing equipment;
(13) bottling or cannery equipment; and
(14) packaging equipment.
b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
03	90%
02	83%
01	75%
00	68%
99	60%
98	51%
97	43%
96	35%
95	27%
94	19%
93 and prior	10%

8. Class 9 - Off-Highway Vehicles.
a) Examples of property in this class include:
(1) dirt and trail motorcycles;
(2) all terrain vehicles;
(3) golf carts; and
(4) snowmobiles.
b) Taxable value is calculated by applying the percent good factor against the cost new.
c) The 2004 percent good applies to 2004 models purchased in 2003.
d) Off-Highway Vehicles have a residual taxable value of $500.

TABLE 9

Model Year	Percent Good of Cost New
04	90%
03	66%
02	62%
01	58%
00	54%
99	50%
98	46%
97	41%
96	37%
95	33%
94	29%
93	25%
92	21%
91 and prior	17%

9. Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.
a) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of	Percent Good

Year of Acquisition	Percent Good of Acquisition Cost
03	91%
02	86%
01	80%
00	74%
99	68%
98	62%
97	56%
96	49%
95	43%
94	37%
93	31%
92	23%
91	16%
90 and prior	8%

10. Class 11 - Street Motorcycles.

a) Examples of property in this class include:

(1) street motorcycles;

(2) scooters;

(3) mopeds; and

(4) low-speed electric vehicles.

b) Taxable value is calculated by applying the percent good factor against the cost new.

c) The 2004 percent good applies to 2004 models purchased in 2003.

d) Street motorcycles have a residual taxable value of $500.

TABLE 11

Model Year	Percent Good of Cost New
04	90%
03	67%
02	65%
01	62%
00	60%
99	57%
98	54%
97	52%
96	49%
95	46%
94	44%
93	41%
92	39%
91	36%
90	33%
89	31%
88	28%
87 and prior	25%

11. Class 12 - Computer Hardware.

a) Examples of property in this class include:

(1) data processing equipment;

(2) personal computers;

(3) main frame computers;

(4) computer equipment peripherals;

(5) cad/cam systems; and

(6) copiers.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
03	70%
02	57%
01	36%
00	23%
99	14%
98 and prior	9%

12. Class 13 - Heavy Equipment.

a) Examples of property in this class include:

(1) construction equipment;

(2) excavation equipment;

(3) loaders;

(4) batch plants;

(5) snow cats; and

(6) pavement sweepers.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) 2004 model equipment purchased in 2003 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
03	54%
02	51%
01	48%
00	45%
99	42%
98	39%
97	36%
96	33%
95	30%
94	27%
93	24%
92	21%
91	17%
90 and prior	14%

13. Class 14 - Motor Homes.

a) Taxable value is calculated by applying the percent good against the cost new.

b) The 2004 percent good applies to 2004 models purchased in 2003.

c) Motor homes have a residual taxable value of $1,000.

TABLE 14

Model Year	Percent Good of Cost New
04	90%
03	69%
02	66%
01	62%
00	59%
99	56%
98	53%
97	50%
96	47%
95	44%
94	41%
93	37%
92	34%
91	31%
90	28%
89	25%
88 and prior	22%

14. Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

a) Examples of property in this class include:

(1) crystal growing equipment;

(2) die assembly equipment;

(3) wire bonding equipment;

(4) encapsulation equipment;

(5) semiconductor test equipment;

(6) clean room equipment;

(7) chemical and gas systems related to semiconductor manufacturing;

(8) deionized water systems;

(9) electrical systems; and

(10) photo mask and wafer manufacturing dedicated to semiconductor production.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
03	47%
02	34%
01	24%
00	15%
99 and prior	6%

15. Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

a) Examples of property in this class include:

(1) billboards;

(2) sign towers;

(3) radio towers;

(4) ski lift and tram towers;

(5) non-farm grain elevators; and

(6) bulk storage tanks.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
03	93%
02	89%
01	85%
00	81%
99	77%
98	72%
97	68%
96	63%
95	60%
94	56%
93	52%
92	47%
91	41%
90	36%
89	31%
88	26%
87	20%
86	14%
85 and prior	7%

16. Class 17 - Boats.

a) Examples of property in this class include:

(1) boats; and

(2) outboard boat motors.

b) Taxable value is calculated by applying the percent good factor against the cost new of the property.

c) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

(1) the following publications or valuation methods:

(a) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(b) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(c) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

i) the manufacturer's suggested retail price for comparable property; or

ii) the cost new established for that property by a documented valuation source; or

(2) the documented actual cost of new or used property in this class.

d) The 2004 percent good applies to 2004 models purchased in 2003.

e) Boats have a residual taxable value of $500.

TABLE 17

Model Year	Percent Good of Cost New
04	90%
03	68%
02	66%
01	63%
00	61%
99	59%
98	57%
97	55%
96	53%
95	50%
94	48%
93	46%
92	44%
91	42%
90	40%
89	37%
88	35%
87	33%
86	31%
85	29%
84 and prior	27%

17. Class 18 - Travel Trailers/Truck Campers.

a) Examples of property in this class include:

(1) travel trailers;

(2) truck campers; and

(3) tent trailers.

b) Taxable value is calculated by applying the percent good factor against the cost new.

c) The 2004 percent good applies to 2004 models purchased in 2003.

d) Trailers and truck campers have a residual taxable value of $500.

TABLE 18

Model Year	Percent Good of Cost New
04	90%
03	68%
02	65%
01	62%
00	58%
99	55%
98	52%
97	49%
96	45%
95	42%
94	39%
93	36%
92	32%
91	29%
90	26%
89	23%
88 and prior	20%

18. Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

a) Examples of property in this class include:

(1) oil and gas exploration equipment;

(2) distillation equipment;

(3) wellhead assemblies;

(4) holding and storage facilities;

(5) drill rigs;

(6) reinjection equipment;

(7) metering devices;

(8) cracking equipment;

(9) well-site generators, transformers, and power lines;

(10) equipment sheds;

(11) pumps;

(12) radio telemetry units; and

(13) support and control equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
03	92%
02	86%
01	79%
00	74%
99	67%
98	60%
97	53%
96	46%
95	40%
94	33%
93	25%
92	17%
91 and prior	8%

19. Class 21 - Commercial and Utility Trailers.

a) Examples of property in this class include:

(1) commercial trailers;

(2) utility trailers;

(3) cargo utility trailers;

(4) boat trailers;

(5) converter gears;

(6) horse and stock trailers; and

(7) all trailers not included in Class 18.

b) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

c) The 2004 percent good applies to 2004 models purchased in 2003.

d) Commercial and utility trailers have a residual taxable value of $500.

TABLE 21

Model Year	Percent Good of Cost New
04	95%
03	71%
02	67%
01	63%
00	59%
99	55%
98	51%
97	47%
96	43%
95	39%
94	35%
93	31%
92	27%
91	23%
90	19%
89	15%
88 and prior	11%

20. Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

a) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

b) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary for this class.

21. Class 23 - Aircraft Subject to the Aircraft Uniform Fee and Not Listed in the Aircraft Bluebook Price Digest.

a) Examples of property in this class include:

(1) kit-built aircraft;

(2) experimental aircraft;

(3) gliders;

(4) hot air balloons; and

(5) any other aircraft requiring FAA registration.

b) Aircraft subject to the aircraft uniform fee, but not listed in the Aircraft Bluebook Price Digest, are valued by applying the percent good factor against the acquisition cost of the aircraft.

c) Aircraft requiring Federal Aviation Agency registration and kept in Utah must be registered with the Motor Vehicle Division of the Tax Commission.

TABLE 23

Year of Acquisition	Percent Good of Acquisition Cost
03	75%
02	71%
01	67%
00	63%
99	59%
98	55%
97	51%
96	47%
95	43%
94	39%
93	35%
92 and prior	31%

22. Class 24 - Leasehold Improvements.

a) This class includes leasehold improvements to real property installed by a tenant. The Class 24 schedule is to be used only with leasehold improvements that are assessed to the lessee of the real property pursuant to Tax Commission rule R884-24P-32. Leasehold improvements include:

(1) walls and partitions;

(2) plumbing and roughed-in fixtures;

(3) floor coverings other than carpet;

(4) store fronts;

(5) decoration;

(6) wiring;

(7) suspended or acoustical ceilings;

(8) heating and cooling systems; and

(9) iron or millwork trim.

b) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

c) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
03	94%
02	88%
01	82%
00	77%
99	71%
98	65%
97	59%
96	54%
95	48%
94	42%
93	36%
92 and prior	30%

23. Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

a) Examples of property in this class include:

(1) aircraft parts manufacturing jigs and dies;

(2) aircraft parts manufacturing molds;

(3) aircraft parts manufacturing patterns;

(4) aircraft parts manufacturing taps and gauges;

(5) aircraft parts manufacturing test equipment; and

(6) aircraft parts manufacturing fixtures.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
03	82%
02	67%
01	51%
00	35%
99	18%
98 and prior	4%

24. Class 26 - Personal Watercraft.

a) Examples of property in this class include:

(1) motorized personal watercraft; and

(2) jet skis.

b) Taxable value is calculated by applying the percent good factor against the cost new.

c) The 2004 percent good applies to 2004 models purchased in 2003.

d) Personal watercraft have a residual taxable value of $500.

TABLE 26

Model Year	Percent Good of Cost New
04	90%
03	62%
02	59%
01	55%
00	52%
99	48%
98	45%
97	41%
96	38%
95	34%
94	31%
93	27%
92	23%
91 and prior	20%

25. Class 27 - Electrical Power Generating Equipment and Fixtures

a) Examples of property in this class include:

(1) electrical power generators; and

(2) control equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
03	97%
02	95%
01	92%
00	90%
99	87%
98	84%
97	82%
96	79%
95	77%
94	74%
93	71%
92	69%
91	66%
90	64%
89	61%
88	58%
87	56%
86	53%
85	51%
84	48%
83	45%
82	43%
81	40%
80	38%
79	35%
78	32%
77	30%
76	27%
75	25%
74	22%
73	19%
72	17%
71	14%
70	12%
69 and prior	9%

F. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2004.

R884-24P-34. Use of Sales or Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704.

A. Market data gathered for purposes of an assessment/sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program whereby all similar properties are given equitable and uniform treatment.

B. Sales or appraisal data gathered in conjunction with a ratio study shall not be used for an isolated reappraisal of the sold or appraised properties.

C. Information derived from ratio studies regarding the values assigned to real property and personal property shall not be used to establish the apportionment between real and personal property in future assessments.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

A. The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Section 59-2-1101 (2)(d) or (e).

B. The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

1. the owner of record of the property;

2. the property parcel, account, or serial number;

3. the location of the property;

4. the tax year in which the exemption was originally granted;

5. a description of any change in the use of the real or personal property since January 1 of the prior year;

6. the name and address of any person or organization conducting a business for profit on the property;

7. the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;

8. a description of any personal property leased by the owner of record for which an exemption is claimed;

9. the name and address of the lessor of property described in B.8.;

10. the signature of the owner of record or the owner's authorized representative; and

11. any other information the county may require.

C. The annual statement shall be filed:

1. with the county legislative body in the county in which the property is located;

2. on or before March 1; and

3. using:

a) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or

b) a form that contains the information required under B.

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of

taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;

2. property identification number;

3. description and location of the property; and

4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201(4).

A. Definitions.

1. "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

a. RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

b. RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

B. Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method which has been determined to be nonoperating, and which is not necessary to the conduct of the business, shall be assessed separately by the local county assessor. For purposes of this rule:

C. Assessment procedures.

1. Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

2. RR-ROW is considered as operating and as necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered as railroad operating revenues.

3. Real property outside of the RR-ROW which is necessary to the conduct of the railroad operation is considered as part of the unitary value. Some examples are: company homes occupied by superintendents and other employees on 24-hour call, storage facilities for railroad operations, communication facilities, and spur tracks outside of RR-ROW.

4. Abandoned RR-ROW is considered as nonoperating and shall be reported as such by the railroad companies.

5. Real property outside of the RR-ROW which is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are: land leased to service station operations, grocery stores, apartments, residences, and agricultural uses.

6. RR-ROW obtained by government grant or act of Congress is deemed operating property.

D. Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so the property may be placed on the roll for local assessment.

E. Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Utah Code Ann. Title 63, Chapter 46b.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-41. Adjustment or Deferral of Property Taxes Pursuant to Utah Code Ann. Section 59-2-1347.

A. Requested adjustments to taxes for past years may not be made under Utah Code Ann. Section 59-2-1347 if the requested adjustment is based only on property valuation.

B. Utah Code Ann. Section 59-2-1347 applies only to taxes levied but unpaid and may not serve as the basis for refunding taxes already paid.

C. Utah Code Ann. Section 59-2-1347 may only be applied to taxes levied for the five most recent tax years except where taxes levied remain unpaid as a result of administrative action or litigation.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508(2), and Section 59-2-705.

A. The Tax Commission is responsible for auditing the

administration of the Farmland Assessment Act to verify proper listing and classification of all properties assessed under the act. The Tax Commission also conducts routine audits of personal property accounts.

1. If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

2. A revised assessment notice or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

3. The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

B. Assessors shall not alter results of an audit without first submitting the changes to the Tax commission for review and approval.

C. The Tax Commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-47. Uniform Tax on Aircraft Pursuant to Utah Code Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303.

A. Registration of aircraft requires payment of a uniform tax in lieu of ad valorem personal property tax. This tax shall be collected by the county assessor at the time of registration at the rate prescribed in Section 59-2-404.

B. The average wholesale market value of the aircraft is the arithmetic mean of the average low wholesale book value and the average high wholesale book value. This average price will be used as the basis for the initial assessment. These amounts are obtained from the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of registration for all aircraft listed in that publication.

1. The average wholesale market value of aircraft subject to registration but not shown in the Aircraft Bluebook Price Digest will be assessed according to the annual depreciation schedule for aircraft valuation set forth in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules."

2. Instructions for interpretation of codes are found inside the Aircraft Bluebook Price Digest.

a) Average low wholesale values are found under the heading "Average equipped per base avg change/invtry."

b) Average high wholesale values are found under the heading "change mktbl."

c) Aircraft values not in accordance with "average" may be adjusted by the assessor following the instructions in the Bluebook. Factors that have the greatest impact on value include: high engine time, air worthiness directives not complied with, status of annual inspection, crash damage, paint condition, and interior condition.

C. The uniform tax is due each year the aircraft is registered in Utah. If the aircraft is sold within the same registration period, no additional uniform tax shall be due. However, the purchaser shall pay any delinquent tax as a condition precedent to registration.

D. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the uniform tax shall be prorated based on the number of months remaining in the registration period.

1. Any portion of a month shall be counted as a full month. For example, if registration is required during July, 50 percent of the uniform tax shall be paid as a condition of registration.

2. If the aircraft is moved to Utah during the year, and property tax was paid to another state prior to moving the aircraft into Utah, any property tax paid shall be allowed as a credit against the prorated uniform tax due in Utah.

a) This credit may not be refunded if the other state property tax exceeds the uniform tax due in Utah for the comparable year.

b) Proof of payment shall be submitted before credit is allowed.

E. The uniform tax collected by county assessors shall be distributed to the taxing districts of the county in which the aircraft is located as shown on the registration application. If the aircraft is registered in a county other than the county of the aircraft location, the tax collected shall be forwarded to the appropriate county within five working days.

F. The Tax Commission shall supply registration forms and numbered decals to the county assessors. Forms to assess the uniform tax shall be prepared by the counties each year. The Tax Commission shall maintain an owners' data base and supply the counties with a list of registrations by county after the first year and shall also supply registration renewal forms preprinted with the prior year's registration information.

G. The aircraft owner or person or entity in possession thereof shall immediately provide access to any aircraft hangar or other storage area or facility upon request by the assessor or the assessor's designee in order to permit the determination of the status of registration of the aircraft, and the performance of any other act in furtherance of the assessor's duties.

H. The provisions applicable to securing or collecting personal property taxes set forth in Sections 59-2-1302 and 59-2-1303 shall apply to the collection of delinquent uniform taxes.

I. If the aircraft owner and the county assessor cannot reach agreement concerning the aircraft valuation, the valuation may be appealed to the county board of equalization under Section 59-2-1005.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;

(2) multiplied by the appropriate percent good factors

contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

A. "Household" is as defined in Section 59-2-1202.

B. "Primary residence" means the location where domicile has been established.

C. Except as provided in D. and F.3., the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.

D. An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;

2. the length of any continuous residency in the location claimed as domicile;

3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

4. the presence of family members in a given location;

5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

6. the physical location of the individual's place of business or sources of income;

7. the use of local bank facilities or foreign bank institutions;

8. the location of registration of vehicles, boats, and RVs;

9. membership in clubs, churches, and other social organizations;

10. the addresses used by the individual on such things as:

a) telephone listings;

b) mail;

c) state and federal tax returns;

d) listings in official government publications or other correspondence;

e) driver's license;

f) voter registration; and

g) tax rolls;

11. location of public schools attended by the individual or the individual's dependents;

12. the nature and payment of taxes in other states;

13. declarations of the individual:

a) communicated to third parties;

b) contained in deeds;

c) contained in insurance policies;

d) contained in wills;

e) contained in letters;

f) contained in registers;

g) contained in mortgages; and

h) contained in leases.

14. the exercise of civil or political rights in a given location;

15. any failure to obtain permits and licenses normally

required of a resident;

16. the purchase of a burial plot in a particular location;

17. the acquisition of a new residence in a different location.

F. Administration of the Residential Exemption.

1. Except as provided in F.2., F.4., and F.5., the first one acre of land per residential unit shall receive the residential exemption.

2. If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

4. A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

7.a) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

(1) the owner of record of the property;

(2) the property parcel number;

(3) the location of the property;

(4) the basis of the owner's knowledge of the use of the property;

(5) a description of the use of the property;

(6) evidence of the domicile of the inhabitants of the property; and

(7) the signature of all owners of the property certifying that the property is residential property.

b) The application under F.7.a) shall be:

(1) on a form provided by the county; or

(2) in a writing that contains all of the information listed in F.7.a).

R884-24P-53. 2004 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

A. Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

1. The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

2. Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

3. County assessors may not deviate from the schedules.

4. Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

B. All property defined as farmland pursuant to Section 59-2- 501 shall be assessed on a per acre basis as follows:

1. Irrigated farmland shall be assessed under the following classifications.

a) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	830
2)	Cache	680
3)	Carbon	550
4)	Davis	815
5)	Emery	530
6)	Iron	805
7)	Kane	475
8)	Millard	790
9)	Salt Lake	705
10)	Utah	740
11)	Washington	665
12)	Weber	775

b) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	730
2)	Cache	580
3)	Carbon	450
4)	Davis	715
5)	Duchesne	495
6)	Emery	430
7)	Grand	410
8)	Iron	705
9)	Juab	430
10)	Kane	375
11)	Millard	690
12)	Salt Lake	605
13)	Sanpete	540
14)	Sevier	575
15)	Summit	470
16)	Tooele	440
17)	Utah	640
18)	Wasatch	510
19)	Washington	565
20)	Weber	675

c) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1)	Beaver	565
2)	Box Elder	580
3)	Cache	430
4)	Carbon	300
5)	Davis	565
6)	Duchesne	345
7)	Emery	280
8)	Garfield	210
9)	Grand	260
10)	Iron	555
11)	Juab	280
12)	Kane	225
13)	Millard	540
14)	Morgan	380
15)	Piute	355
16)	Rich	210
17)	Salt Lake	455
18)	San Juan	185
19)	Sanpete	390
20)	Sevier	425
21)	Summit	320
22)	Tooele	290
23)	Uintah	370
24)	Utah	490
25)	Wasatch	360
26)	Washington	415
27)	Wayne	365
28)	Weber	525

d) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	465
2)	Box Elder	480
3)	Cache	330
4)	Carbon	200
5)	Daggett	230
6)	Davis	465
7)	Duchesne	245
8)	Emery	180
9)	Garfield	110
10)	Grand	160
11)	Iron	455
12)	Juab	180
13)	Kane	125
14)	Millard	440
15)	Morgan	280
16)	Piute	255
17)	Rich	110
18)	Salt Lake	355
19)	San Juan	85
20)	Sanpete	290
21)	Sevier	325
22)	Summit	220
23)	Tooele	190
24)	Uintah	270
25)	Utah	390
26)	Wasatch	260
27)	Washington	315
28)	Wayne	265
29)	Weber	425

2. Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1)	Beaver	600
2)	Box Elder	650
3)	Cache	600
4)	Carbon	600
5)	Davis	640
6)	Duchesne	600
7)	Emery	600
8)	Garfield	600
9)	Grand	600
10)	Iron	600
11)	Juab	600
12)	Kane	600
13)	Millard	600
14)	Morgan	600
15)	Piute	600
16)	Salt Lake	600
17)	San Juan	600
18)	Sanpete	600
19)	Sevier	600
20)	Summit	600
21)	Tooele	600
22)	Uintah	600
23)	Utah	630
24)	Wasatch	600
25)	Washington	760
26)	Wayne	600
27)	Weber	640

3. Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	230
2)	Box Elder	240
3)	Cache	255
4)	Carbon	130
5)	Daggett	170
6)	Davis	260
7)	Duchesne	160
8)	Emery	125
9)	Garfield	95
10)	Grand	125
11)	Iron	225
12)	Juab	140
13)	Kane	100
14)	Millard	190
15)	Morgan	175
16)	Piute	160
17)	Rich	110
18)	Salt Lake	225
19)	Sanpete	185
20)	Sevier	200
21)	Summit	195
22)	Tooele	175
23)	Uintah	180
24)	Utah	230
25)	Wasatch	210
26)	Washington	215
27)	Wayne	160
28)	Weber	285

4. Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

a) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	40
2)	Box Elder	70
3)	Cache	65
4)	Carbon	40
5)	Davis	50
6)	Duchesne	40
7)	Garfield	40
8)	Grand	40
9)	Iron	40
10)	Juab	40
11)	Kane	40
12)	Millard	45
13)	Morgan	50
14)	Rich	45
15)	Salt Lake	40
16)	San Juan	40
17)	Sanpete	40
18)	Summit	40
19)	Tooele	40
20)	Uintah	40
21)	Utah	40
22)	Washington	40
23)	Weber	45

b) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	5
2)	Box Elder	35
3)	Cache	30
4)	Carbon	5
5)	Davis	15
6)	Duchesne	5
7)	Garfield	5
8)	Grand	5
9)	Iron	5
10)	Juab	5
11)	Kane	5
12)	Millard	10
13)	Morgan	15
14)	Rich	10
15)	Salt Lake	5
16)	San Juan	5
17)	Sanpete	5
18)	Summit	5
19)	Tooele	5
20)	Uintah	5
21)	Utah	5
22)	Washington	5
23)	Weber	10

5. Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

a) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1)	Beaver	57
2)	Box Elder	56
3)	Cache	61

4)	Carbon	56
5)	Daggett	65
6)	Davis	60
7)	Duchesne	64
8)	Emery	56
9)	Garfield	58
10)	Grand	67
11)	Iron	57
12)	Juab	62
13)	Kane	71
14)	Millard	70
15)	Morgan	52
16)	Piute	54
17)	Rich	65
18)	Salt Lake	65
19)	San Juan	56
20)	Sanpete	62
21)	Sevier	60
22)	Summit	52
23)	Tooele	72
24)	Uintah	58
25)	Utah	50
26)	Wasatch	51
27)	Washington	56
28)	Wayne	63
29)	Weber	61

b) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1)	Beaver	16
2)	Box Elder	16
3)	Cache	17
4)	Carbon	16
5)	Daggett	18
6)	Davis	17
7)	Duchesne	18
8)	Emery	16
9)	Garfield	16
10)	Grand	19
11)	Iron	16
12)	Juab	18
13)	Kane	20
14)	Millard	20
15)	Morgan	15
16)	Piute	15
17)	Rich	18
18)	Salt Lake	18
19)	San Juan	16
20)	Sanpete	17
21)	Sevier	17
22)	Summit	15
23)	Tooele	20
24)	Uintah	17
25)	Utah	14
26)	Wasatch	14
27)	Washington	16
28)	Wayne	18
29)	Weber	17

c) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1)	Beaver	10
2)	Box Elder	10
3)	Cache	11
4)	Carbon	10
5)	Daggett	12
6)	Davis	11
7)	Duchesne	12
8)	Emery	10
9)	Garfield	11
10)	Grand	12
11)	Iron	10
12)	Juab	11
13)	Kane	13
14)	Millard	13
15)	Morgan	10
16)	Piute	10
17)	Rich	12
18)	Salt Lake	12
19)	San Juan	10
20)	Sanpete	11
21)	Sevier	11
22)	Summit	10
23)	Tooele	13
24)	Uintah	11
25)	Utah	9
26)	Wasatch	9
27)	Washington	10
28)	Wayne	12
29)	Weber	11

d) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1)	Beaver	5
2)	Box Elder	5
3)	Cache	5
4)	Carbon	5
5)	Daggett	5
6)	Davis	5
7)	Duchesne	5
8)	Emery	5
9)	Garfield	5
10)	Grand	6
11)	Iron	5
12)	Juab	5
13)	Kane	6
14)	Millard	6
15)	Morgan	5
16)	Piute	5
17)	Rich	5
18)	Salt Lake	5
19)	San Juan	5
20)	Sanpete	5
21)	Sevier	5
22)	Summit	5
23)	Tooele	6
24)	Uintah	5
25)	Utah	5
26)	Wasatch	5
27)	Washington	5
28)	Wayne	5
29)	Weber	5

6. Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

a)	Nonproductive Land	
	1) All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;

10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:
1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.
2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.
B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.
C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

A. Definitions.
1. "Issued" means the date on which the judgment is signed.
2. "One percent of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.
B. A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.
C. The judgment levy public hearing required by Section 59- 2-918.5 shall be held as follows:
1. For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.
2. For taxing entities operating under a January 1 through December 31 fiscal year:
a) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;
b) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.
3. If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by C.1. and C.2.b) shall be held at the same time as the hearing required under Section 59-2-919.
D. If the Section 59-2-918.5 advertisement is combined with the Section 59-2-918 or 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.
E. In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.
F. All taxing entities imposing a judgment levy shall file with the Tax Commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.
1. The signed statement shall contain the following information for each judgment included in the judgment levy:
a) the name of the taxpayer awarded the judgment;
b) the appeal number of the judgment; and
c) the taxing entity's pro rata share of the judgment.
2. Along with the signed statement, the taxing entity must provide the Tax Commission the following:
a) a copy of all judgment levy newspaper advertisements required;
b) the dates all required judgment levy advertisements were published in the newspaper;
c) a copy of the final resolution imposing the judgment levy;
d) a copy of the Notice of Property Valuation and Tax Changes, if required; and
e) any other information required by the Tax Commission.
G. The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:
1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;
2. time series models, weighted 40 percent; and
3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:
1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and
2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.
B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.
C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.
D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:
1. vintage vehicles;
2. state-assessed commercial vehicles not classified under

Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2- 405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall

become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2- 217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2- 104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Purpose. The purpose of this rule is to:

1. specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

2. identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

B. Definitions:

1. "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

2. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

3. "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

4. "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

a) Unitary properties include:

(1) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(2) all property of public utilities as defined in Section 59-2-102.

b) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(1) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(2) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(3) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

C. All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

D. General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

1. The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See

Beaver County v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

2. The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in E.

a) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

b) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in E.4.

c) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

3. Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

E. Appraisal Methodologies.

1. Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

a) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(1) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(2) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(a) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(b) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(c) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

b) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

c) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

d) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

e) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

2. Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

a) Yield Capitalization. The yield capitalization formula is CF/(k-g), where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(1) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(a) NOI is defined as net income plus interest.

(b) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(c) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

i) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

ii) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(2) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(a) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(b) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

i) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

ii) The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk

free rate.

a. The risk free rate shall be the current market rate on 20-year Treasury bonds.

b. The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

c. The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(3) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(a) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

b) A discounted cash flow (DCF) method is impractical to implement in a mass appraisal environment, but may be used to value individual properties.

c) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

3. Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

a) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

b) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

4. Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

F. Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

1. Cost Regulated Utilities.

a) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(1) subtracting intangible property;

(2) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(3) adding any taxable items not included in the utility's net plant account or rate base.

b) Deferred Income Taxes, also referred to as DFIT,is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

c) Items excluded from rate base under F.1.a)(2) or b) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

2. Railroads.

a. The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Disabled Veterans and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

A. For purposes of Sections 59-2-1104 and 59-2-1106, taxable value of vehicles subject to the Section 59-2-405.1 uniform fee shall be calculated by dividing the Section 59-2-405.1 uniform fee the vehicle is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property"means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10

days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. Appeal to County Board of Equalization Pursuant to Utah Code Ann. Section 59-2-1004.

A.1. "Factual error" means an error that is:

a) objectively verifiable without the exercise of discretion, opinion, or judgment, and

b) demonstrated by clear and convincing evidence.

2. Factual error includes:

a) a mistake in the description of the size, use, or ownership of a property;

b) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

c) an error in the classification of a property that is eligible for a property tax exemption under:

(1) Section 59-2-103; or

(2) Title 59, Chapter 2, Part 11;

d) valuation of a property that is not in existence on the lien date; and

e) a valuation of a property assessed more than once, or by the wrong assessing authority.

B. Except as provided in D., a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

1. During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

2. During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

3. The county did not comply with the notification requirements of Section 59-2-919(4).

4. A factual error is discovered in the county records pertaining to the subject property.

5. The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

C. Appeals accepted under B.4. shall be limited to correction of the factual error and any resulting changes to the property's valuation.

D. The provisions of B. apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

E. The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

A. The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

B. The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

1. for each low-income housing project in the state that is eligible for a low-income housing tax credit:

a) the Utah Housing Corporation project identification number;

b) the project name;

c) the project address;

d) the city in which the project is located;

e) the county in which the project is located;

f) the building identification number assigned by the Internal Revenue Service for each building included in the project;

g) the building address for each building included in the project;

h) the total apartment units included in the project;

i) the total apartment units in the project that are eligible for low-income housing tax credits;

j) the period of time for which the project is subject to rent restrictions under an agreement described in B.2.;

k) whether the project is:

(1) the rehabilitation of an existing building; or

(2) new construction;

l) the date on which the project was placed in service;

m) the total square feet of the buildings included in the project;

n) the maximum annual federal low-income housing tax credits for which the project is eligible;

o) the maximum annual state low-income housing tax credits for which the project is eligible; and

p) for each apartment unit included in the project:

(1) the number of bedrooms in the apartment unit;

(2) the size of the apartment unit in square feet; and

(3) any rent limitation to which the apartment unit is subject; and

2. a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

3. construction cost certifications for the project received from the low-income housing project owner.

C. The Utah Housing Corporation shall provide the commission the information under B. by January 31 of the year following the year in which a project is placed into service.

D. 1. Except as provided in D.2., by April 30 of each year, the owner of a low-income housing project shall provide the county assessor of the county in which the project is located the following project information for the prior year:

a) operating statement;

b) rent rolls; and

c) federal and commercial financing terms and agreements.

2. Notwithstanding D.1., the information a low-income project housing owner shall provide by April 30, 2004 to a county assessor shall include a 3-year history of the information required under D.1.

E. A county assessor shall assess and list the property described in this rule using the best information obtainable if the property owner fails to provide the information required under D.

KEY: taxation, personal property, property tax, appraisals
August 2, 2004 **Art. XIII, Sec 2**
Notice of Continuation April 5, 2002 **9-2-201**
11-13-25
41-1a-202
41-1a-301
59-1-210
59-2-102
59-2-103
59-2-103.5
59-2-104
59-2-201
59-2-210
59-2-211
59-2-301
59-2-301.3
59-2-302
59-2-303
59-2-305
59-2-306
59-2-401
59-2-402
59-2-404
59-2-405
59-2-405.1
59-2-406
59-2-508
59-2-515
59-2-701
59-2-702
59-2-703
59-2-704
59-2-704.5
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1004
59-2-1005
59-2-1006
59-2-1101
59-2-1102
59-2-1104
59-2-1106
59-2-1107 through 59-2-1109
59-2-1113
59-2-1202
59-2-1202(5)
59-2-1302
59-2-1303
59-2-1317
59-2-1328
59-2-1330
59-2-1347
59-2-1351
59-2-1365

R994. Workforce Services, Workforce Information and Payment Services.
R994-305. Collection of Contributions.
R994-305-101. General Definition.

Under Subsections 35A-4-305(1)(d) and 35A-4-305(1)(f) the Department will implement a write off policy as set forth in the following paragraphs.

R994-305-102. Policy Governing the Filing of Warrants.

Warrants shall be issued on accounts receivable overpayments and delinquent employer accounts of $100 or more unless the debtor is in compliance with an installment agreement. Warrants will be issued on all fraudulent overpayments established under Subsection 35A-4-405(5), even if there is an installment agreement, within three years of the establishment of the overpayment. No warrants will be issued on non-fault overpayments established under Subsection 35A-4-406(5).

R994-305-103. When No Warrant Has Been Filed.

All non-fault overpayments established under Subsection 35A-4-406(5) and all accounts receivable overpayments established under Subsection 35A-4-406(5) for claimants and all liabilities assessed against employers where a warrant has not been filed will be written off and removed from the records of the Department after three years without further review unless a payment or offset has been made within the prior 90 days. These debts will be forgiven and forgotten and no further collection or offset will take place.

R994-305-104. When a Warrant Has Been Filed.

(1) Three Year Review.

Except for fraud overpayments established under Subsection 35A-4-406(5), all accounts receivable overpayments for claimant and employer liabilities including interest and penalties, which have not been collected or offset within three years after the filing of a warrant will be reviewed for determination of collectibility. If it is determined on the information reasonably available to the Department that the delinquent claimant or employer has no known assets which are subject to the attachment, and it appears there is no likelihood of collection in the foreseeable future, the Department will write off the account. All collection or offset action shall cease as far as enforcement of collection procedures are concerned. However, consistent with general accounting principles, if the Department receives money by virtue of a warrant judgement on a debt that has been written off, the Department will reinstate the equivalent portion of the debt and retain the collected monies.

(2) Eight Year Write Off.

All accounts receivable overpayments for claimants including Subsection 35A-4-405(5) overpayments and employer liabilities including interest and penalties which have not been collected within eight years after the issuance of a warrant will be written off, unless payments are being received consistent with an installment agreement or court order. All collection or offset action shall cease. The debt will be forgiven and forgotten as though no such debt ever existed and it will be removed from the Department records. When an overpayment for fraud established under Subsection 35A-4-405(5) is removed from Department records, the claimant may receive waiting week credit and future benefits may be paid without reference to the prior Subsection 35A-4-405(5) overpayment.

R994-305-801. Wage List Requirement.

(1) General Definition.

The Department uses wage information submitted by employers to establish benefit determinations for claimants and to verify employer contribution payments. This rule explains what information is required, due dates, acceptable formats, and penalties for non-compliance.

(2) Wage List Due Date.

The wage list for a quarter must be filed by the last day of the month following the end of that calendar quarter.

(3) Wage Information Required.

Each page of the wage list must be identified by the employer's Utah registration number, the employer's name, and the quarter and year being reported. The following information must be provided on each wage list in this order: employee's social security number, employee's name (first initial, second initial and full last name), gross wages paid during the quarter (see Section 35A-4-208 for a definition of wages). The gross wages reported are wages, which are considered to be subject employment (see Section 35A-4-204 for a definition of subject employment). Only those employees who were paid wages during the quarter should be listed on the wage list.

(4) Wage Reporting Methods.

The Department will accept wage lists filed on approved forms or approved magnetic tape, cartridge, diskette, or filed electronically through the Department's website. All wage lists reported on forms other than those provided by the Department require prior approval.

(a) Approved Form Reporting.

The wage list must be typewritten or machine printed in black ink so that it is capable of being "read" by an optical scanner. The wage list must be on Forms 3C or 3H, Utah Employer's Quarterly Wage List, or on plain white paper using the exact same format, placement on the page, and spacing as on the forms listed above. Photocopies of the Department's wage list forms are not acceptable. Wage list forms are available upon request from the Department.

(b) Magnetic Media Reporting.

Employers may report wages paid during the quarter on magnetic tape, cartridge, diskette, or filed electronically through the Department's website. Magnetic media reporting must be submitted according to specifications approved by the Department.

(5) Wage List Total Must Equal the Quarterly Report Total.

The total amount of wages reported on the wage list must be the same as the total wages shown on the Form 3, "Employer's Contribution Report." The total of the wage list for a reimbursable employer must be the same as the total wages shown as "insured payroll" on Form 794, "Reimbursable Insured Employment and Wage Report, Payrolls and New Hires in Utah." Wage lists consisting of more than one page must show the employer's UI registration number, the quarter and year of the reporting period, a total for each page and a grand total for all pages on the first page.

(6) Wage Lists Corrections for Prior Quarters.

Corrections to wage lists for prior quarters must be made on a separate report and not on the wage list for the current quarter. The employer must submit the name, social security number, the quarter, the amount of wages that should have been properly reported, and an explanation for the corrections being made. Corrections to wages may result in additional contributions being assessed or refunded.

(7) Penalty for Failure to Provide Wage List Information.

A penalty may be assessed for each failure to submit a wage list by the due date as specified in this rule or for failure to submit a wage list in an acceptable format as specified in this rule. The penalty amount is $50 for every 15 days, or fraction thereof, that the filing is late, not to exceed $250 per filing. The reports are due on the last day of the month that follows the end of each calendar quarter unless the division, after giving notice, changes the due date. The penalty will be collected in the same manner and under the same legal provisions as unpaid contributions. Waiver of the penalty will be made if the

employer can show good cause for failure to provide the required wage list. Good cause may be established if the employer was prevented from filing a wage list for circumstances which are compelling or beyond his control. Payment of the penalty does not relieve the employer from the responsibility of filing the wage list in the approved format.

KEY: unemployment compensation, overpayments
August 3, 2004 35A-4-305(1)
Notice of Continuation December 20, 1999

R994. Workforce Services, Workforce Information and Payment Services.
R994-404. Payments Following Workers' Compensation.
R994-404-101. Claimants Who Qualify for an Adjustment to the Base Period.

(1) A claimant who was off work due to a work related illness or injury may qualify for an adjusted base period if all of the following elements are satisfied:

(a) the claimant must have been off work for at least seven weeks during the normal base period due to a work related illness or injury. The weeks need not be consecutive;

(b) the claimant must have received temporary total disability (TTD) compensation for the illness or injury under the workers' compensation or occupational disease laws of this state or under federal law;

(c) the initial claim for unemployment insurance benefits must have been filed no later than 90 calendar days after the claimant was released by his or her health care provider to return to full-time work. This does not include release to limited or light duty work. The effective date of the eligible claim must be within the 90 days regardless of the date on which the claimant contacts the Department to file a claim. For example, if the 90th day falls on Wednesday and the claimant files a claim on Thursday, the effective date of the claim would be Sunday of that calendar week and would fall within the 90 day time limitation;

(d) the initial claim for unemployment insurance benefits must have been filed within 36 months of the week the covered injury or illness occurred.

(2) Wages previously used to establish a benefit year cannot be re-used.

R994-404-102. Good Cause for Late Filing.

(1) Good cause for not filing within the 90 day period can be established if:

(a) the claimant contested the release to work date by filing for a hearing with the appropriate administrative agency and there was no substantial delay between the date of the decision of the agency and the filing of the claim;

(b) the delay in filing was due to circumstances beyond the claimant's control;

(c) the claimant delayed filing due to circumstances which were compelling and reasonable; or

(d) the claimant returned to work immediately after receiving a release from his health care provider and there was no substantial delay between the time the employment ended and the filing of the claim.

(2) A lack of knowledge about the wage freeze provisions due to the claimant's failure to inquire or the employer's failure to provide information does not establish good cause for failure to file within the 90 day period.

R994-404-103. The Effective Date of the Claim.

The effective date of the claim for benefits shall be the Sunday of the week in which the claimant makes application for benefits. Although the Act provides for the use of an alternate benefit year, it does not extend coverage to the weeks that were not filed timely in accordance with provisions of Subsection 35A-4-403(1)(a).

R994-404-104. Adjustment of the Base Period.

The claimant can file a claim using wages paid during the first four of the last five completed calendar quarters immediately preceding the week the claim was filed (normal base period) or the first four of the last five completed calendar quarters prior to the date the claimant left work due to the illness or injury.

KEY: unemployment compensation, workers' compensation

August 18, 2004 **35A-4-404**
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